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**S.C. Supreme Court**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Dorchester County

DeAndrea G. Benjamin, Circuit Court Judge

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ANTHONY SANDERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213162

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SUPPLEMENTAL APPENDIX

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|                          | ) | COURT OF GENERAL SESSIONS    |
| COUNTY OF DORCHESTER     | ) |                              |
| State of South Carolina. | ) |                              |
|                          | ) |                              |
| Plaintiff,               | ) |                              |
|                          | ) |                              |
| vs.                      | ) | Case No. 07-GS-18-1295 et al |
|                          | ) |                              |
| Anthony Sanders,         | ) |                              |
|                          | ) |                              |
| Defendant.               | ) |                              |

## TRANSCRIPT OF HEARING

The within Hearing in the above-captioned case was held on Monday, December 21, 2009, before The Honorable R. Markley Dennis, Jr. in open court at the Dorchester County Courthouse, St. George, South Carolina; attended by Counsel, as follows:

### APPEARANCES:

David Pascoe, Solicitor  
 Blair Jennings, Assistant Solicitor  
 Russell Hilton, Assistant Solicitor  
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1 THE COURT: Good morning. Is Mr.  
2 Sanders coming?

3 DEPUTY: Yes, sir.

4 (DEFENDANT ENTERS COURTROOM)

5 THE COURT: Good morning. Thank you  
6 very much, Ladies and Gentlemen. Let the record  
7 reflect -- you are Anthony Sanders?

8 DEFENDANT: Yes, sir.

9 THE COURT: Good morning, Mr.  
10 Sanders.

11 DEFENDANT: Good morning.

12 THE COURT: We are here today to hear  
13 Motions that have been filed by your lawyer on  
14 your behalf. We are ready to proceed, Mr.  
15 Young. Is that correct, sir?

16 BOYD YOUNG: Yes, Your Honor.

17 THE COURT: Very good. Solicitor,  
18 thank you, too. One of the things that we've  
19 done, and I appreciate it very much, Mr. Young,  
20 for the very complete notebook containing all  
21 the Motions and the legal positions stated  
22 therein. It's my understanding you have filed  
23 a similar notebook with the Clerk. Is that  
24 correct?

25 BOYD YOUNG: Yes, Your Honor.

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1 THE COURT: Solicitor, as I under-  
2 stand, those issues that you are challenging,  
3 you've filed a brief that responds to those  
4 particular aspects of the Motion.

5 BLAIR JENNINGS: Yes, Your Honor.  
6 We filed a brief and forwarded it to the Court  
7 and sent it to counsel defense laying out our  
8 argument for the Lyle evidence.

9 THE COURT: Very well. Certainly the  
10 Motions and the legal position stated in each  
11 Motion are incorporated in the record of this  
12 proceeding fully. And while I certainly will be  
13 delighted to hear from you, to allow either side  
14 to elaborate your positions this morning you are  
15 entitled to rely on the legal positions and the  
16 arguments made in your respective motions fully,  
17 and they are now fully part of the record.

18 Before we start -- and I believe you  
19 said that what I have is titled "Motions  
20 Notebook Index", and it has not been provided  
21 to the Solicitor. Is that correct?

22 BOYD YOUNG: That's correct.

23 THE COURT: But it is filed with  
24 those documents filed with the Clerk?

25 BOYD YOUNG: No, Your Honor. The

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1 index is not ---

2 THE COURT: We need to make sure that  
3 the index is a part of it. In fact, why don't  
4 we make copies right now and everybody can have  
5 it? And we'll make mine -- if I could get some  
6 copies, George, so this document will become the  
7 Court's Exhibit Number 1 for purposes of this  
8 proceeding today. If we could just make enough  
9 copies so that everybody has one, then what I  
10 will do is simply state on the record I'll be  
11 referring to the numbers on that sheet.

12 (SO ENTERED AS COURT'S EXHIBIT 1)

13 BLAIR JENNINGS: Your Honor, we've  
14 received, I believe, fifty Motions. As I told  
15 you we did file a brief in support of our Motion  
16 on the prior bad acts. But we are also prepared  
17 today to present testimony on the one out-of-  
18 court statement made by the defendant as well as  
19 the *Neil v. Biggers* issue.

20 THE COURT: Very well. And that's  
21 what one of -- I'm going to proceed with that as  
22 soon as we get -- I need one for me, I need the  
23 original for the court reporter and then one for  
24 each table, so three would be great. Thank you.

25 THE COURT: Which one of the Motions

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1 deals with the identification, which number in  
2 your list? I see the bad acts. That's 67.  
3 Excuse me, that's a memorandum. Are those not  
4 separate from these?

5 BOYD YOUNG: No, Your Honor. I  
6 refiled them in here.

7 THE COURT: What's the number?

8 BOYD YOUNG: It's (the tab) numbered  
9 forty-nine, Motion 43.

10 THE COURT: Motion 43. Motion to  
11 Suppress I.D. Okay? State ready to proceed on  
12 Motion 43?

13 BOYD YOUNG: Yes, Your Honor.

14 THE COURT: That's a motion entitled  
15 "Motion to Suppress ID", identification of the  
16 defendant. You may proceed.

17 BLAIR JENNINGS: And, actually, if  
18 it please the Court, I think one witness will  
19 present all the evidence for the 43, 44, as well  
20 as the prior bad acts evidence.

21 THE COURT: Very well. So we'll not  
22 restrict -- the examination will be germane to  
23 those issues and your cross-examination may be  
24 as well.

25 BOYD YOUNG: Thank you. If the Court

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1 will grant us a little bit of latitude, we may  
2 split up the cross.

3 THE COURT: You feel free to do it  
4 however you want to do it.

5 BOYD YOUNG: Thank you, Your Honor.

6 THE COURT: You bet. Mr. Jennings.

7 BLAIR JENNINGS: We'd like to call  
8 Major John Garrison.

9 (WITNESS TAKES STAND)

10 JOHN BYRON GARRISON, being duly sworn to  
11 tell the truth, the whole truth and nothing but  
12 the truth, testified, as follows:

13 DIRECT EXAMINATION

14 BY BLAIR JENNINGS:

15 Q. Good morning, Major Garrison.

16 A. Good morning.

17 Q. Where are you employed, sir?

18 A. I'm employed at the Dorchester County  
19 Sheriff's Office.

20 Q. In what capacity?

21 A. I'm currently the enforcement major which  
22 covers the patrol, narcotics, investigations and  
23 records division plus community service.

24 Q. How long have you been with the Dorchester  
25 County Sheriff's Office?

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1 A. I've been with the Sheriff's Office  
2 approximately four and a half years.

3 Q. And I believe that was after you retired  
4 from the South Carolina Law Enforcement  
5 Division?

6 A. Yes, sir. I retired from SLED, was off for  
7 a little bit and then I went to work for the  
8 Sheriff's Office.

9 Q. How long were you at SLED?

10 A. I was at SLED for approximately twelve  
11 years.

12 Q. In July of 2007, in what capacity were you  
13 employed with the Sheriff's Office?

14 A. In July of 2007, I was an investigator with  
15 the Detective Office, CID Division.

16 Q. Would you have been involved in investiga-  
17 tions of major crimes, such as murders, armed  
18 robberies, those types of offenses?

19 A. Yes, sir, that would have been part of my  
20 job.

21 Q. And on July the 10<sup>th</sup> of 2007, were you  
22 notified of an incident that happened in the  
23 Archdale Forest Apartments?

24 A. Yes, sir, I was.

25 Q. Obviously, that's within Dorchester County?

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1 A. It is.

2 Q. If you could, what time was the Sheriff's  
3 Office notified that something had taken place?

4 A. Approximately 2:24 a.m. was when we got the  
5 9-1-1 call that there was some gunshots fired at  
6 the apartment complex.

7 Q. And deputies responded?

8 A. Yes, sir.

9 Q. And what did they find once they got to the  
10 apartment complex?

11 A. When the initial deputies responded, they  
12 did not have an exact location. So what they  
13 did is they patrolled around the apartment  
14 complex, and when they got to right about the  
15 [REDACTED] Building they noticed that there was an open  
16 door. And then that's where they made their  
17 entry to see if that was the apartment it had  
18 come from.

19 Q. What did they find inside apartment [REDACTED]?

20 A. At [REDACTED], like I said there was an open  
21 door. They went in. As you walk in the front  
22 door, you go -- there's a kitchen to your right  
23 and then you immediately walk into the living  
24 room. There was two bodies laying in the floor  
25 about halfway between the kitchen area and the

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1 back door.

2 Q. Were you able to identify the identity of  
3 those people?

4 A. Yes, we were.

5 Q. Who were those in apartment [REDACTED]?

6 A. In [REDACTED] was a Diane Grant and a Jatavius  
7 Devore, D-E-V-O-R-E.

8 Q. Jatavius was a black male?

9 A. He's a black male, yes, sir. He was twenty  
10 years old.

11 Q. Were you able to see sort of what -- or  
12 tell the judge what was their condition when  
13 y'all went in there.

14 A. When they made their initial entry the  
15 deputies notified EMS, which responded. There  
16 was no signs of life from either of the two.  
17 So initially what they did is they secured it,  
18 and they cleared the building. And when they  
19 went into the upstairs portion of the apartment  
20 there was two small children, I believe age five  
21 and age one. They were asleep in the bed. So  
22 the deputies removed them from the apartment  
23 awaiting on other units to come and EMS to get  
24 there.

25 Q. By looking at Mr. Devore and Ms. Grant, was

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1    there some physical trauma that was apparent  
2    that they had suffered?

3    A.   Yes, sir.  It appeared that they had both  
4    suffered trauma to the head, possibly from a  
5    gunshot wound.

6    Q.   And, obviously, we've talked about this.  
7    But for the purpose of this hearing, you're  
8    going to basically cover the waterfront on the  
9    investigation?

10   A.   Yes, sir.

11   Q.   As far as processing that crime scene, I  
12   want to touch on a couple of most noteworthy  
13   items.  Lieutenant Asbill with the Sheriff's  
14   Office, was he able to lift some shoe  
15   impressions from the interior of the apartment?

16   A.   Yes, sir, he was.  He was able to lift two  
17   gel lifts from the floor of the apartment.

18   Q.   And, obviously, at the time there was no  
19   correlation into whose shoes might have left  
20   those impressions?

21   A.   No, sir, at that time there was not.

22   Q.   Were there also some shoe impressions from  
23   the front of that apartment?

24   A.   Yes, sir.  They had recently done some work  
25   in the yard and it was muddy.  And there was

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1 some shoe impressions that were also from the  
2 front of the apartment.

3 Q. And you mentioned that it appeared that the  
4 two victims may have suffered gunshot wounds.

5 A. (Affirmative nod).

6 Q. Was any evidence recovered from the inside  
7 of the apartment that might have corroborated  
8 that, any firearms evidence?

9 A. Yes, sir. From the interior of the  
10 apartment, in the proximity of where the bodies  
11 were, we recovered two .40 caliber shell  
12 casings.

13 Q. And what was the make of those shell  
14 casings?

15 A. I believe those were Federal.

16 Q. Smith & Wesson?

17 A. Yes, sir. The caliber is actually .40  
18 caliber Smith & Wesson.

19 Q. Okay.

20 A. But the actual casings were not Smith &  
21 Wesson. They were Federal.

22 Q. Were any signs of forced entry noted on the  
23 apartment?

24 A. No, sir, we did not find any forced entry.

25 Q. While you found two shell casings, were any

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1 firearms found in the apartment?

2 A. No, sir, we did not locate any firearms.

3 Q. Then explain sort of how, if officers  
4 responded at 2:24 and processed the scene, kind  
5 of how things progressed that morning with any  
6 other discoveries that were made.

7 A. Well, at that point, not knowing exactly  
8 what we had, we had several units respond.  
9 Also the City of North Charleston and Charleston  
10 County Sheriff's Office responded with units to  
11 assist us. We interviewed persons that had made  
12 the 9-1-1 calls plus we did what we call a  
13 canvas of the neighborhood. We knocked on  
14 apartments, especially the ones that were close,  
15 to try to determine if we could find anybody  
16 that may have witnessed or heard or seen  
17 anything. Of course, this was nighttime.

18 At approximately 7:00 a.m., just about when  
19 it was starting to get daylight, at an apartment  
20 building down from [REDACTED], at the [REDACTED] Building, two  
21 of our detectives who were walking the area  
22 found the body of a third victim that was laying  
23 on the ground next to an electrical box.

24 Q. And whose body was that?

25 A. That body was identified as a 15-year-old,

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1 Deanne Devore.

2 Q. And she was a black female?

3 A. Black female, yes, sir.

4 Q. And what was her -- as far as clothing  
5 standpoint, what condition was she in when you  
6 found her?

7 A. She had on a top, but she was naked from  
8 the waist down. And on top of the electrical  
9 box there was a roll of clothes which was later  
10 determined to be pajama bottoms and a pair of  
11 panties, girls' panties.

12 Q. She was obviously deceased when the  
13 detectives found her?

14 A. Yes, sir.

15 Q. Were there any signs of obvious trauma that  
16 she had suffered?

17 A. Yes, sir. She was deceased, and there was,  
18 again, signs that appeared to be and what was  
19 later determined to be gunshot wounds to the  
20 head and neck area.

21 Q. In the apartment there were a number of  
22 shell casings were found. Were any shell  
23 casings or other projectiles found there by  
24 Ms. Devore's body?

25 A. Yes, sir, we recovered two projectiles.

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1 I believe it was two underneath the body, and  
2 we recovered four shell casings which were the  
3 same caliber as the 40-caliber Smith & Wesson,  
4 similar to what had been recovered inside the  
5 apartment.

6 Q. Also the Federal brand?

7 A. Yes, sir.

8 Q. I believe later that day all three victims  
9 were taken down to MUSC to have autopsies  
10 performed?

11 A. Yes, sir, all three were autopsied at the  
12 same location.

13 Q. And y'all were able to get a little more  
14 information on the victims. Ms. Grant, I  
15 believe, was a 44-year-old black female?

16 A. Yes, sir.

17 Q. And as far as her autopsy, what was the  
18 final determination of what trauma caused her  
19 death?

20 A. She died from a single gunshot wound to  
21 the right side of her head at relatively close  
22 range.

23 Q. At close range based on the pathologist's  
24 opinion?

25 A. Yes, that's from the pathologist.

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1 Q. Ms. Deann Devore, as you testified was  
2 fifteen years of age.

3 A. Yes, sir.

4 Q. How many gunshot wounds had she suffered?

5 A. She had suffered four individual gunshot  
6 wounds, again determined to be at relatively  
7 close range. There was one to the right face,  
8 the right neck, the right shoulder and the  
9 right upper part of her back.

10 Q. And as part -- obviously with her not  
11 having any pajama bottoms and panties on, a  
12 rape protocol kit was performed?

13 A. Yes, sir, that was part of it.

14 Q. And you were aware that those items were  
15 sent to SLED, the South Carolina Law  
16 Enforcement Division, for testing?

17 A. Yes, sir, that's correct.

18 Q. Of the oral swab, the vaginal swab and  
19 anal swabs that were taken from Ms. Devore,  
20 did you become aware from SLED, was any DNA  
21 profile lifted from those samples?

22 A. Yes, sir. We were notified that from the  
23 oral swab that they had lifted a DNA profile  
24 from an unknown male. That was the only swab  
25 that came back with actually a DNA sample.

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1 Q. And, obviously, we're going ahead a little  
2 bit in the story. But by the time you found  
3 out that there was an unknown male sample in  
4 the oral swab, Anthony Sanders had been  
5 developed as a suspect?

6 A. Yes, sir, right close thereafter. Yes,  
7 sir, right about that time.

8 Q. Do you see Mr. Sanders in the courtroom?

9 A. Yes, sir, I do.

10 Q. Could you point him out for Judge Dennis,  
11 please?

12 A. He's at the defendant's table wearing a  
13 blazer and a gold tie.

14 THE COURT: Thank you, sir.

15 THE WITNESS: Yes, sir.

16 MR. JENNINGS: Thank you, Your  
17 Honor.

18 DIRECT EXAMINATION CONTINUED

19 BY BLAIR JENNINGS:

20 Q. Based on SLED saying that there was an  
21 unknown male sample in that oral swab, was a  
22 Schmera order and a DNA sample taken from Mr.  
23 Sanders?

24 A. Yes, sir, there was.

25 Q. And that was forwarded to SLED?

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1 A. Yes, sir, it was.

2 Q. What was the result of SLED's testing  
3 comparing Mr. Sanders' DNA with that male  
4 sample from the oral swab from Ms. Devore's  
5 mouth?

6 A. They came up with a probability of random-  
7 ly selecting an individual of approximately  
8 one in 260.

9 Q. But as far as the DNA matching, that was  
10 their finding?

11 A. Yes, sir.

12 Q. Of Mr. Sanders' DNA?

13 A. (Affirmative nod).

14 Q. Based on, I guess, counsel SLED and with  
15 the Solicitor's Office was that sample then  
16 sent to a company in Dallas, Texas for more  
17 sophisticated Y-STR testing?

18 A. Yes, sir, it was.

19 Q. And what was the results of that testing?

20 A. It came back to the defendant, Mr.  
21 Sanders, as a match.

22 Q. And you're aware that Y-STR testing just  
23 examines the Y chromosome from a male sample?

24 A. Yes, sir, that's correct.

25 Q. So that matched Mr. Sanders' DNA profile?

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1 A. It did.

2 Q. As to Jatavis Devore, what were the final  
3 autopsy results as to what trauma he had  
4 suffered?

5 A. Again, they called it a close-range  
6 gunshot wound. It was a single gunshot wound  
7 to the left side of his head.

8 Q. As your investigation proceeded what  
9 happened to the six .40 caliber Smith & Wesson  
10 shell casings that were found at the scene?  
11 What did y'all do with those?

12 A. As a protocol, when the shell casings were  
13 collected, after they were photographed and  
14 collected, we took them to the IBIS to see if  
15 there had been any other shell casings that  
16 would have matched that particular weapon.  
17 We received notification that there had been  
18 two other incidents where a weapon with those  
19 particular characteristics had been used in  
20 shootings.

21 Q. Are you familiar with Agent Tracy Thrower  
22 with SLED?

23 A. Yes.

24 Q. What department does he work in?

25 A. I want to say ---

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1 Q. Firearms?

2 A. --- firearms. Yes, sir.

3 Q. Let's look at the six from the crime scene  
4 in this case. According to Agent Thrower, how  
5 many guns fired those six shell casings?

6 A. Those six shell casings were fired by the  
7 same weapon, so one weapon.

8 BOYD YOUNG: Your Honor?

9 THE COURT: Yes, sir.

10 BOYD YOUNG: I'm most certainly  
11 allowing a lot of latitude, and I just want to  
12 preserve our position as far as calling it a  
13 match. I know we have some issues with that.  
14 I know that that's what he says. I'm just  
15 trying to make sure that everybody understands  
16 that just because I don't object today to the  
17 "match" testimony, it doesn't mean I'm waiving  
18 anything.

19 THE COURT: The DNA match?

20 BOYD YOUNG: No, the shell casings.

21 THE COURT: The shell casings.

22 Somebody's going to testify to that,  
23 obviously. He can opine for purposes of this  
24 what somebody's summarized for him.

25 BOYD YOUNG: That is what Agent

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1 Thrower's report says.

2 THE COURT: That's all he's doing.

3 Of course, admissions here don't do a thing  
4 for what happens at the trial and everybody  
5 knows that. Thank you.

6 DIRECT EXAMINATION CONTINUED

7 BY BLAIR JENNINGS:

8 Q. So our six shell casings from the scene  
9 were all fired by one gun?

10 A. (Affirmative nod).

11 Q. And you mentioned the IBIS system also  
12 came up with two other incidents where the  
13 same firearm may have been used?

14 A. Yes, sir, that's correct.

15 Q. What were those incidents?

16 A. There was a March 4<sup>th</sup> of 2007, which is at  
17 The Anchor Bar on Spruill Avenue which is in  
18 the City of North Charleston.

19 Then there was a March 20<sup>th</sup> of 2007, which  
20 was in Dorchester County in the Hunter Ridge  
21 Apartments, which is also off Ashley  
22 Phosphate.

23 Q. The Anchor Bar from March the 4<sup>th</sup> of 2007,  
24 what relevant shell casings were recovered at  
25 that scene?

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1 A. We contacted North Charleston to get  
2 copies of their reports. They had collected  
3 from the parking lot of The Anchor Bar several  
4 shell casings, and those were compared to what  
5 we had at that point.

6 Q. And, obviously, that was all done through  
7 SLED?

8 A. Yes, sir, that's correct.

9 Q. And the March 20<sup>th</sup> of 2007 incident at  
10 Hunters Ridge, were some other .40 caliber  
11 Smith & Wesson shell casings recovered by the  
12 Sheriff's Office at that incident?

13 A. Yes, sir. We actually responded to that  
14 one, and the Sheriff's Office for Dorchester  
15 County recovered shell casings from that  
16 incident which were also compared.

17 Q. And from The Anchor Bar incident there  
18 were six .40 caliber Smith & Wesson casings?

19 A. Yes, sir, I believe six is correct.

20 Q. And from what you saw of the description  
21 of the casings from The Anchor Bar incident  
22 and the Hunters Ridge incident, how did they  
23 compare in caliber and make with the shell  
24 casings from the Shagbark Lane apartment?

25 A. All the collected shell casings were .40

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1 caliber Smith & Wesson; which would be  
2 consistent with the same caliber, and they  
3 could have been fired from the same weapon.

4 Q. You've got these other incidents coming  
5 into play for possible suspects. What did you  
6 do from an investigative standpoint after you  
7 found out about this incident at The Anchor  
8 Bar and Hunters Ridge?

9 A. Like I said, we contacted North Charleston  
10 initially to obtain what they had as far as  
11 their reports. They had not made an arrest on  
12 their case, and did not have suspects.

13 From the Hunters Ridge incident, that had  
14 been worked and there had been an arrest made  
15 in that incident of another suspect that was  
16 involved in that shooting.

17 Q. Did you contact the complaining witness  
18 from The Anchor Bar incident?

19 A. I did. It was a Mr. Reginald Chavers. He  
20 was the security gentleman that was working  
21 that night at The Anchor Bar. We did have him  
22 come into the office, and we spoke with him.

23 Q. And did you have a chance to interview him  
24 on July the 19<sup>th</sup> of 2007?

25 A. Yes, sir, I did.

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1 Q. And if you would, relate to us what Mr.  
2 Chavers -- what information he provided.

3 A. Mr. Chavers provided a written statement  
4 that he had been working that night and there  
5 had been a disturbance inside The Anchor Bar.  
6 They had actually removed a gentleman because  
7 of the disturbance. They had some words out  
8 in the parking lot, then the gentleman that  
9 had caused the disturbance got into what he  
10 described as a black pickup truck. And before  
11 they left the parking lot he apparently shot  
12 several rounds from outside the window of the  
13 pickup truck as they left the parking lot.

14 Q. Did he provide a description to you of  
15 this person?

16 A. He did. He said he was a black male, 24  
17 to 25. He had short hair and he was  
18 approximately five foot four or five foot  
19 five.

20 Q. At this time you did not have Mr. Sanders'  
21 name as a suspect?

22 A. No, sir, he was not a suspect at that  
23 time.

24 Q. Did you have some photographs that you  
25 allowed Mr. Chavers to look at?

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1 A. Yes, sir. We had gathered several  
2 pictures during the course of the  
3 investigation up to that point. He was shown  
4 a stack of several. I don't know exactly the  
5 number, but there was several photographs in  
6 it.

7 Q. Did he identify anybody?

8 A. No, sir, he did not.

9 Q. Was Mr. Sanders' photograph in any of  
10 those pictures?

11 A. No, sir, it was not.

12 Q. Did you have Mr. Chavers come back on July  
13 the 25<sup>th</sup> of 2007?

14 A. Yes, sir, we did.

15 Q. And what was the purpose of that second  
16 meeting?

17 A. This was after Mr. Sanders had been  
18 identified as a suspect. When Mr. Chavers  
19 came back in he was shown a photograph lineup  
20 which consisted of six photographs of people  
21 with like features and characteristics.

22 BLAIR JENNINGS: If you could mark  
23 that as a Court's Exhibit?

24 COURT REPORTER: Court's Exhibit?

25 BLAIR JENNINGS: Yes, ma'am.

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1                   : COURT REPORTER:     Court's Exhibit  
2     Number 2.

3                   (SO ENTERED AS COURT'S EXHIBIT 2)

4                   THE COURT:     Do you have a copy of  
5     this?

6                   BOYD YOUNG:     I've seen it.   No  
7     objection.

8                   THE COURT:     Very well.

9                   DIRECT EXAMINATION CONTINUED

10     BY BLAIR JENNINGS:

11     Q.   Major Garrison, I show you what's been  
12     marked as Court's Exhibit Number 2. Do you  
13     recognize that document?

14     A.   Yes, sir, I do.

15     Q.   And that's the lineup that you created  
16     that included a photograph of Mr. Sanders?

17     A.   Yes, sir, I created this lineup, and this  
18     is the depiction of the lineup I showed Mr.  
19     Chavers.

20     Q.   If you would, take a look at that. If  
21     you could, explain how exactly you go about  
22     creating a lineup like that.

23     A.   In our system of photographs from our  
24     detention center, it has the ability on the  
25     computer to pull up pictures of not only

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1 persons that are in the system at that  
2 particular time, but photographs of people who  
3 have been through the system. And what I did  
4 is I went through and selected pictures that I  
5 felt were of like facial features and  
6 characteristics to Mr. Sanders. I put those  
7 in a lineup in no particular order.

8 Q. And, obviously, you try to get the same  
9 gender, same race, same general facial hair,  
10 facial features?

11 A. Yes, sir. When I do one, I look to get  
12 the same basic features. I wouldn't want them  
13 to vary too greatly. If there's no facial  
14 hair, I'm looking for no facial hair. If  
15 there's long hair, I'm looking for long hair.  
16 I don't want anything to stand out, so to  
17 speak.

18 Q. And when you created Court's Exhibit  
19 Number 2 did you show that to Mr. Chavers?

20 A. Yes, sir, I did.

21 Q. What, if any, instructions did you  
22 provide to him prior to him looking at the  
23 photographs?

24 A. I instructed Mr. Chavers to look at the  
25 photographs, to look at all six. And if he

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1 recognized anyone in that lineup that was the  
2 person that was involved in the shooting from  
3 The Anchor Bar to please point him out, which  
4 he did. He immediately went to the photograph  
5 of Mr. Sanders and stated that was him.

6 Q. Did you in any way suggest to him which  
7 photograph to pick?

8 A. No, sir, I did not.

9 Q. Which photograph was Mr. Sanders in the  
10 photo array?

11 A. Mr. Sanders, I believe, was number three.

12 Q. Which photograph did Mr. Chavers identify?

13 A. Mr. Chavers identified number three.

14 Q. And did he have any hesitation?

15 A. He did not.

16 BLAIR JENNINGS: Please mark this.

17 COURT REPORTER: Court's Exhibit 3.

18 (SO ENTERED AS COURT'S EXHIBIT 3)

19 DIRECT EXAMINATION CONTINUED

20 BY BLAIR JENNINGS:

21 Q. You said Mr. Chavers, in his written  
22 statement, had described the shooter at The  
23 Anchor Bar as a black male who was 24 to 25  
24 years old, 5'4" to 5'5". When Mr. Sanders was  
25 ultimately arrested for discharging at Hunters

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1 Ridge, did you fill out the booking form?

2 A. Yes, sir, I did.

3 Q. I want to show you what's marked as  
4 Court's Exhibit Number 3 and see if you  
5 recognize that.

6 A. Yes, sir, I do. This is a copy of the  
7 booking report that I filled out on July the  
8 24<sup>th</sup>.

9 Q. Who provided you with the personal  
10 information at the top as far as name, date  
11 of birth, social security number, that  
12 information?

13 A. That information is generally given from  
14 the person being booked in. In this case, it  
15 was provided by Mr. Sanders.

16 Q. And how tall did Mr. Sanders tell you that  
17 he was?

18 A. Five foot five (5'5").

19 Q. And that's consistent with the description  
20 Mr. Chavers provided?

21 A. Yes, sir, it is.

22 Q. And what was Mr. Sanders' age?

23 A. Mr. Sanders' age at that time was 25 years  
24 old.

25 Q. And how would you describe Mr. Sanders'

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1     hairstyle at the time?

2     A.   It was short, very short.

3     Q.   So as far as the relevant information that  
4     you were able to corroborate, would that have  
5     been consistent or inconsistent with the  
6     identification or the description that Mr.  
7     Chavers gave?

8     A.   It was consistent with Mr. Sanders. The  
9     description he gave of Mr. Sanders was  
10    consistent.

11    Q.   As far as the Hunters Ridge incident, at  
12    the time that this investigation was going on  
13    there was already a suspect charged with that  
14    incident. Correct?

15    A.   Yes, sir, that's correct.

16    Q.   And what was his name?

17    A.   Xavier Walker, W-a-l-k-e-r.

18    Q.   Were you able to interview Mr. Walker  
19    concerning that incident on July the 23<sup>rd</sup> of  
20    2007?

21    A.   Yes, sir.

22    Q.   And were you able to talk to him about  
23    both the Hunters Ridge and The Anchor Bar  
24    incident?

25    A.   Yes, sir, I was.

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1 Q. Did he know Anthony Sanders?

2 A. Yes, sir, he did.

3 Q. What information did he provide to you as  
4 to the Hunters Ridge incident?

5 A. That earlier that day he had been in a  
6 fight with somebody who lived up on Hunters  
7 Ridge. And that the defendant had picked him  
8 up in a vehicle, and they drove back to  
9 Hunters Ridge. That someone had shot at them  
10 at some point, and that Mr. Sanders had fired  
11 back several shots at the person that shot at  
12 them. And that he was firing a semi-automatic  
13 handgun.

14 Q. So Mr. Walker was with Mr. Sanders during  
15 the March 20<sup>th</sup> shooting at the Hunters Ridge  
16 Apartments?

17 A. Yes, sir, that's correct.

18 Q. And according to Mr. Walker, who was it  
19 that was firing the gun that left those  
20 casings?

21 A. He stated Mr. Sanders was firing the  
22 weapon.

23 Q. Did Mr. Walker have any relevant infor-  
24 mation for you concerning the shooting at The  
25 Anchor Bar on March the 4<sup>th</sup>?

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1 A. Yes, sir, he did.

2 Q. What did he tell you about that incident?

3 A. Again, that Mr. Walker and Mr. Sanders had  
4 been together at the bar; that Mr. Walker was  
5 driving a pickup truck; that the defendant got  
6 kicked out of the bar and that when he got  
7 into the pickup which Mr. Walker was driving,  
8 Mr. Walker said he used the same gun to shoot  
9 rounds out at that time at The Anchor Bar that  
10 he had used at the Hunters Ridge shooting.

11 Q. Just for the purposes of this hearing, how  
12 would you characterize Mr. Walker's  
13 description of that incident at The Anchor Bar  
14 with Mr. Chavers' description of the incident?

15 A. They were very consistent. Both of them  
16 gave very consistent descriptions. Mr. Walker  
17 had not been briefed in any way on what the  
18 statement was from Mr. Chavers. They were  
19 very consistent.

20 Q. So from Mr. Walker, you got information  
21 confirming Mr. Sanders' involvement in the  
22 Hunters Ridge shooting as well as the Anchor  
23 Bar shooting?

24 A. Yes, sir, that's correct.

25 Q. And at this time in your investigation, --

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1 and Mr. Thrower will be here to testify about  
2 his finding, but you knew that, in his  
3 opinion, the same firearm fired the shell  
4 casings at the Hunters Ridge incident, The  
5 Anchor Bar incident as well as the shell  
6 casings from this triple homicide?

7 A. Yes, sir, we did have that information at  
8 this point.

9 Q. Following your interview with Mr. Walker,  
10 what documents -- or how did you proceed in  
11 your investigation?

12 A. Well, Mr. Walker went with an investigator  
13 and showed him the residence of Mr. Sanders,  
14 pointed out the residence and showed him where  
15 he had carried him and dropped him off that  
16 night after the shooting. At that time is  
17 when we obtained an arrest warrant for the  
18 shooting on Hunters Ridge, and also obtained a  
19 search warrant for the residence of Mr.  
20 Sanders.

21 Q. And what was the address of Mr. Sanders'  
22 residence?

23 A. He lived at [REDACTED].

24 Q. And what general location is that address?

25 A. It's off of Dorchester Road, just across

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1 the Dorchester County line into North  
2 Charleston.

3 Q. From late at night on July the 23<sup>rd</sup> into  
4 the early morning of July the 24<sup>th</sup>, what took  
5 place as far as taking Mr. Sanders into  
6 custody?

7 A. We had several units out. We were  
8 actively seeking Mr. Sanders. We had people  
9 watching the apartment or watching the house.  
10 And early in the morning we did a traffic stop  
11 on a green vehicle that had left Mr. Sanders'  
12 residence. We followed it up -- it went to  
13 Dorchester Road, back into Dorchester County,  
14 and we did a traffic stop at Dorchester and  
15 Ashley Phosphate Road in the parking lot of  
16 the Walgreen's Drug Store.

17 Q. And who was in that vehicle?

18 A. Medea Thompson was determined to be  
19 driving the vehicle and Mr. Sanders was a  
20 passenger in the vehicle.

21 Q. Were you able to determine the relation-  
22 ship between Ms. Thompson and Mr. Sanders?

23 A. Mr. Sanders and Ms. Thompson were  
24 boyfriend-girlfriend.

25 Q. And where did Ms. Thompson live?

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1 A. She actually lived in the same apartments  
2 where the homicide had taken place. She lived  
3 at the [REDACTED] Building. [REDACTED], I believe, was  
4 her address.

5 Q. The primary scene where Ms. Grant and Mr.  
6 Devore was found was apartment [REDACTED] Shagbark.  
7 Explain the relevance of that apartment [REDACTED]  
8 with Ms. Devore, the 15-year-old.

9 A. Ms. Devore's body was actually located  
10 directly behind Ms. Thompson's apartment.  
11 The power box is right at the corner of her  
12 apartment, and the body was found directly at  
13 the back door of Ms. Thompson's apartment.

14 Q. If you had to estimate, how far was Ms.  
15 Devore's body found from Ms. Thompson's  
16 apartment?

17 A. Some feet -- ten feet, twelve feet,  
18 somewhere in that range.

19 Q. Were you able to interview Ms. Thompson?

20 A. Yes, sir, we were.

21 Q. Did she provide you with any information  
22 concerning conversations she might have had  
23 with Mr. Sanders concerning any of these prior  
24 incidents?

25 A. Yes, sir. She did have knowledge of both

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1 the Hunters Ridge shooting and of the shooting  
2 at The Anchor club in North Charleston. He  
3 had mentioned that to her.

4 Q. When you say "he", who was that?

5 A. That was Mr. Sanders.

6 Q. And had mentioned being involved in those  
7 incidents?

8 A. Yes, sir, to Ms. Thompson.

9 Q. Obviously, Mr. Sanders was in the car as  
10 well. Was he taken into custody?

11 A. Yes, sir, Mr. Sanders was taken into  
12 custody.

13 Q. And advised of his rights?

14 A. He was.

15 Q. Did you have an opportunity to interview  
16 him the morning of the 24<sup>th</sup>?

17 A. Yes, sir, later on that same morning.

18 Q. And, obviously, that was videotaped?

19 A. Yes, sir.

20 Q. At the Sheriff's Office?

21 A. It was.

22 Q. And you and Detective Giglio, I believe,  
23 conducted that interview?

24 A. That's correct.

25 Q. And the net result of that was Mr. Sanders

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1 indicating to you that he wished to talk to an  
2 attorney before he had any more conversation?

3 A. That's correct.

4 Q. And Mr. Walker had showed you -- had  
5 pointed out where Mr. Sanders lived, at [REDACTED]  
6 [REDACTED]. Were you able to obtain a  
7 search warrant for that address?

8 A. Yes, sir, we did.

9 Q. And what did y'all do once you obtained  
10 the search warrant?

11 A. After the arrest was initiated, we went  
12 back to the [REDACTED] address, and  
13 we executed the search warrant.

14 Q. If you could, highlight for Judge Dennis  
15 some of the relevant items that were found in  
16 Mr. Sanders' room?

17 A. We located three .40 caliber Smith &  
18 Wesson rounds, which were consistent with the  
19 same caliber. They were same make, which is  
20 Federal. They were in a shoebox.

21 We found numerous pairs of the Nike Air  
22 Force One tennis shoe, which is consistent  
23 with the gel lifts that we took from the  
24 apartment.

25 There was a safe that was located next to

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1 the bed. Inside the safe we found a newspaper  
2 article that referenced the homicides that we  
3 were investigating.

4 Q. Let's talk about the safe first. Was that  
5 locked or unlocked when it was retrieved by  
6 the Sheriff's Office?

7 A. I believe it was unlocked.

8 Q. And inside were -- were you at the search  
9 warrant?

10 A. Just briefly. I stayed a few minutes, and  
11 then I went back to the Sheriff's Office.

12 Q. In that safe was actually the newspaper  
13 article from when this triple homicide  
14 occurred?

15 A. Yes, sir. It was, I think, had been cut  
16 out of the newspaper, and there was -- if I  
17 recall right, it was the front page and then  
18 plus the article that went with it. It was  
19 inside the safe when we recovered it.

20 Q. And the ammunition that was found, the  
21 three Federal .40 caliber Smith & Wessons,  
22 were these shell casings or complete  
23 cartridges?

24 A. No, they were actual live rounds of .40  
25 caliber ammunition. During the process of the

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1 search warrant, which is protocol, the entire  
2 location was photographed from different  
3 angles by our crime scene investigators.

4 Q. And so, from a summary standpoint, these  
5 three cartridges in Mr. Sanders' room were the  
6 same caliber and the same make as the shell  
7 casings from the March 4<sup>th</sup> shooting at The  
8 Anchor Bar, the March 20<sup>th</sup> shooting at Hunters  
9 Ridge as well as the six shell casings found  
10 at this scene in Archdale Forest?

11 A. Yes, sir, that's correct. They were all  
12 consistent.

13 Q. You recovered, I believe, three pairs of  
14 Nike Air Force One tennis shoes. Those were  
15 sent to SLED?

16 A. Yes, sir, they were.

17 Q. Were they compared to the gel lifts taken  
18 from the inside of apartment [REDACTED] Shagbark?

19 A. Yes, sir, they were.

20 Q. And I believe you testified that, in fact,  
21 they matched the combined class characteris-  
22 tics?

23 A. Yes, sir. The report we received was that  
24 they matched in combined class characteristics  
25 with the gel lifts that we had taken at the

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1 apartment that night.

2 Q. In addition to the three .40 caliber Smith  
3 & Wesson casings that were found in the  
4 shoebox, did you also find another bullet  
5 under his bed?

6 A. Yes, sir. There was one more .40 caliber  
7 Smith & Wesson shell casing or shell that was  
8 recovered from under the bed itself.

9 Q. Did you have an opportunity to interview  
10 anybody that lived at that house as well, at  
11 [REDACTED]?

12 A. Yes, sir, we did. We interviewed Mr. Tony  
13 Sanders.

14 Q. What relation is Tony Sanders to the  
15 defendant, Anthony Sanders?

16 A. Anthony Sanders and Tony Sanders are  
17 brothers.

18 Q. Did Mr. Sanders recall the night that this  
19 triple homicide took place?

20 A. Yes, sir, he did.

21 Q. What information did he provide you as to  
22 Mr. Anthony Sanders' whereabouts that night?

23 A. Mr. Tony Sanders stated in his statement  
24 to us that him and his brother both lived at  
25 the same place, which is [REDACTED]

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1     [REDACTED]. And he did confirm that the defendant  
2     had stayed with a girlfriend on the night of  
3     the murders; that he had come home at  
4     approximately 11:00 p.m. but that he had left  
5     again; that he did in fact not stay at home  
6     that night, he was not at the house.

7     Q. And, in fact, he was able to tell you  
8     conclusively that Anthony Sanders did not  
9     return home that night?

10    A. Yes, sir, he was certain.

11    Q. How was that, that he was so certain?  
12    Did he tell you that he, in fact, stayed up  
13    all night?

14    A. As a matter of fact, he did. He stayed up  
15    all night. He was -- he stated he slept  
16    during the day, and he stayed up all night and  
17    his brother never came home that night.

18    Q. On July 25<sup>th</sup>, did you receive a phone call  
19    from, I guess, here at the annex or down in  
20    Summerville at the annex?

21    A. Yes, sir, I did.

22    Q. And what was the nature of that phone  
23    call?

24    A. I received it from the supervisor who was  
25    working the annex detention. They stated that

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1 Mr. Sanders wanted to speak with me.

2 Q. How had that officer gotten that  
3 information?

4 A. Mr. Sanders was being housed there. And  
5 he'd told the detention officer that he wanted  
6 to speak to me.

7 Q. And so what did you do once you received  
8 that information?

9 A. It was fairly early in the morning. I got  
10 dressed. I went to the -- I believe I called  
11 my supervisor, and I went straight to the  
12 detention center from my house.

13 Q. Did you have an opportunity to talk to Mr.  
14 Sanders?

15 A. Just briefly, (affirmative nod). It was  
16 just a very short conversation.

17 Q. What was the result of that conversation?

18 A. I met with Mr. Sanders in the detention  
19 area itself. We never left the actual  
20 detention center. He stated that he had been  
21 -- that somebody had talked to him about not  
22 speaking with me and he decided at that point  
23 not to speak any further, so the conversation  
24 was terminated at that point.

25 Q. Did you have any conversation with him at

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1 all?

2 A. No, sir. Other than that, no, sir.

3 Q. And, in fact, at this point he was still  
4 just charged with discharging a firearm into  
5 a dwelling?

6 A. Yes, sir.

7 Q. And that was from the Hunters Ridge  
8 incident?

9 A. It was.

10 Q. Had he been charged with these three  
11 murders at that point?

12 A. No, sir, he had not.

13 Q. I believe that took place on August the  
14 2<sup>nd</sup>?

15 A. Yes, sir, it did.

16 Q. How did all that play out, with him being  
17 charged with those three murders?

18 A. After we interviewed -- after we had  
19 identified him as being involved in the  
20 shootings that we've spoken about, and after  
21 speaking with his brother, murder warrants  
22 were drafted and they were served while he  
23 was still in the detention center.

24 Q. And did you make any effort to interview  
25 him at that point?

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1 A. No, I did not.

2 Q. Because obviously at the time when he was  
3 charged, on July 24<sup>th</sup>, he had indicated that he  
4 wanted to talk to an attorney?

5 A. That's correct.

6 Q. Describe for the judge what happened in  
7 correlation with his bond hearing.

8 A. The warrants were actually served while he  
9 was in the detention center. The protocol  
10 that we observe is that if they're going to  
11 have a face-to-face bond hearing, then the  
12 defendant is walked from the detention center  
13 through a fenced area to the back of the  
14 court, which is next to the Sheriff's Office.  
15 Then there's a holding cell on the bottom  
16 floor where they're held until court security  
17 has made sure that it's safe to bring him up  
18 and that the Court is ready for the defendant.  
19 We don't take them into the courtroom until  
20 they're ready. So when we got into the  
21 building of the courthouse, Mr. Sanders was  
22 placed in a holding cell where I remained with  
23 him at that point.

24 Q. At that point had you made any efforts  
25 or overtures to question him in any way?

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1 A. No, sir, I had not.

2 Q. Did Mr. Sanders contact you in any way  
3 on August the 2<sup>nd</sup>?

4 A. When we were sitting in the cell at the  
5 courthouse, Mr. Sanders made the statement  
6 that -- he asked me a question. He asked me  
7 if I would still like to have the gun. And I  
8 stated that I would. And then at that point  
9 he said that 'one day I'll tell you what  
10 happened.' And he asked me if I'd take him  
11 out to dinner when all this was over. And I  
12 said 'sure, when this is all over, we'll go  
13 to lunch.'

14 Q. Was that in response to any questioning by  
15 you?

16 A. No, sir, I had not asked him any questions  
17 at that point.

18 Q. Had you approached him in any way to try  
19 to elicit this information?

20 A. No, sir, there'd been no conversation  
21 other than the fact that he was going to the  
22 bond hearing.

23 Q. I'm assuming once he was charged and had  
24 had his bond denied, -- did the investigation  
25 just stop, or did you continue to work?

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1 A. No, sir, the investigation continued.

2 Q. On August the 3<sup>rd</sup> of 2007, did you have an  
3 opportunity to interview a gentleman named  
4 Richard Alexander?

5 A. Yes, sir, I did.

6 Q. Where did that take place?

7 A. Mr. Alexander lived at [REDACTED]  
8 [REDACTED] which is in Dorchester County, off  
9 Ashley Phosphate Road.

10 Q. And how did you come to be over there  
11 interviewing Mr. Alexander?

12 A. Mr. Alexander -- I'd have to look at my  
13 notes. I'm not exactly sure how we ended up  
14 at his house. He had -- I'm not exactly sure  
15 how we ended up over there. I'd have to go  
16 back and look at my notes.

17 Q. Did he know Anthony Sanders?

18 A. Yes, sir, he did.

19 Q. What was the nature of their relationship?

20 A. Mr. Alexander stated that he would buy  
21 crack cocaine from the defendant -- or swap.  
22 And in return for the drugs, Mr. Alexander  
23 would allow the defendant to bring women to  
24 his house and use one of the bedrooms.

25 Q. Had he allowed Mr. Sanders to borrow a

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1 vehicle that he had?

2 A. Mr. Alexander owned a black pickup truck  
3 and he would allow Mr. Sanders to use that  
4 pickup truck. Again, they would swap crack  
5 for the use of the vehicle.

6 Q. And, in fact, Mr. Sanders had borrowed  
7 that truck?

8 A. Yes, sir, on several occasions.

9 Q. Did Mr. Alexander describe to you anything  
10 that had been in that truck that was missing?

11 A. Mr. Alexander stated that he had, not too  
12 long prior to this, had purchased a Smith &  
13 Wesson semi-automatic .40 caliber handgun. He  
14 kept this .40 caliber handgun in his pickup  
15 truck. When he had purchased the gun, the  
16 gentleman he purchased it from had also  
17 provided a green military-type ammo can that  
18 contained several rounds of loose .40 caliber  
19 Smith & Wesson ammunition.

20 Q. When you say he had purchased that not too  
21 long before this, he had bought that in  
22 January of '07.

23 A. Yes, sir.

24 Q. Obviously, prior to the March 4th and  
25 March 20th shooting?

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1 A. That's correct.

2 Q. What was the significance of the green  
3 ammunition can that he described to you?

4 A. The ammunition was from a remanufacturer  
5 in Georgia. And when they packaged the ammo,  
6 when I went and interviewed the gentleman in  
7 Goose Creek he had bought it from, he had  
8 several similar ammo cans. On the top of the  
9 ammo can they will tape their label, which is  
10 their company label, at the top. That was  
11 significant because we went back and reviewed  
12 the photographs that we had taken from the  
13 initial search warrant on the night of the  
14 arrest for Mr. Sanders' apartment. And not  
15 knowing at that time that it was significant,  
16 when we looked at the pictures, there was an  
17 ammo can very similar that was still in the  
18 bedroom of Mr. Sanders.

19 Q. What was the caliber of the ammunition  
20 that Mr. Alexander had received in connection  
21 with that firearm?

22 A. It was .40 Smith & Wesson caliber.

23 Q. At the time when you were interviewing  
24 him, on August the 2<sup>nd</sup>, did he know where -- or  
25 August the 3<sup>rd</sup>, I apologize -- did he know

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1 where his gun and where that green ammunition  
2 can were?

3 A. No, he did not.

4 Q. And why was that?

5 A. He reported that it had been stolen. He'd  
6 made a report to North Charleston that his gun  
7 had been taken.

8 Q. Did he relate to you any conversation that  
9 he had had with Mr. Sanders that would have  
10 been after the date of this triple homicide?

11 A. Yes, sir. He said that he had spoke to  
12 Mr. Sanders some days prior to our interview  
13 with him. And that the defendant, while they  
14 were in the vehicle, had asked him a question  
15 if he knew anything about DNA. Mr. Alexander  
16 said in his statement that he told the  
17 defendant that they could get DNA from saliva,  
18 blood or semen. And that then the defendant  
19 asked him if it would matter if a condom had  
20 been used. And then at that point the  
21 conversation really didn't go much further,  
22 according to Mr. Alexander.

23 Q. Had you provided Mr. Alexander with any  
24 details from this case?

25 A. No, no more than what had been in the

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1 newspaper.

2 Q. And I believe testified that during the  
3 execution of the search warrant did you see a  
4 photograph of anything that was similar to  
5 what Mr. Alexander described?

6 A. Yes, sir. After we determined that the  
7 handgun and the ammo can was missing, after  
8 reviewing the photographs from the original  
9 search warrant, we noticed that there was an  
10 ammo can that was very similar to what had  
11 been reported missing, in the photographs from  
12 the original search warrant.

13 Q. And so what did you do, based on that?

14 A. We obtained a second search warrant for  
15 [REDACTED] and then went back to  
16 the apartment and retrieved the green metal  
17 military-style ammo can.

18 Q. Was that, in fact, consistent with the  
19 item that Mr. Alexander described as having  
20 been taken out of his car?

21 A. Yes, sir, it was consistent.

22 Q. Did you find any other items when you were  
23 executing that second search warrant?

24 A. Yes, sir. There was an envelope and some  
25 mail from a Sakira (phonetic) Barrett that we

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1 found that was addressed to the defendant.

2 Q. Were you able to track down who Ms.

3 Barrett is?

4 A. Yes, sir, we were able to determine who

5 Ms. Barrett was from some other documents that

6 had been retrieved earlier from the apartment.

7 Q. Did she live here locally or in another

8 state?

9 A. She had lived in North Charleston prior to

10 this but she had moved to Roanoke, Virginia.

11 I'm not sure what the date was, but it was

12 prior to the July 10<sup>th</sup> homicide.

13 Q. But in July of '07, she was living up in

14 Virginia?

15 A. Yes, sir, she lived in Roanoke, Virginia.

16 Q. I guess Mr. Sanders had had a relationship

17 with her when she lived in North Charleston?

18 A. Yes, sir. In 2006, Ms. Barrett was

19 fourteen years old. Mr. Sanders had had a

20 relationship with her and had, in fact, been

21 charged with CSC with a minor for having sex

22 with her.

23 Q. And that charge had ultimately been

24 dismissed?

25 A. Yes, sir, apparently.

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1 Q. I believe that paperwork was also in the  
2 safe, in addition to the newspaper articles of  
3 this triple homicide?

4 A. Yes, sir, that's what I was referencing.  
5 We found copies of the Court documents that  
6 referenced this arrest in the safe along with  
7 the newspaper clippings.

8 Q. Did you have an opportunity to interview  
9 Ms. Barrett in person?

10 A. Yes, sir, I did. I went to Roanoke,  
11 Virginia and was able to locate Ms. Barrett  
12 and interview her.

13 Q. We will have Detective Morgan here and he  
14 will testify about the work he did on Mr.  
15 Sanders' cell phone records. But, in fact,  
16 Mr. Sanders called Ms. Barrett within an hour  
17 of this triple homicide taking place, didn't  
18 he?

19 A. Mr. Sanders -- from the phone records that  
20 we obtained, the defendant had called Ms.  
21 Barrett at approximately 2:24 a.m. on the  
22 morning of July the 10<sup>th</sup>.

23 Q. Did she recall having a conversation with  
24 Mr. Sanders?

25 A. Yes, she did.

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1 Q. What did she tell you that Mr. Sanders  
2 told her?

3 A. She stated she recalled the conversation  
4 because it was uncharacteristic, because of  
5 his demeanor. He made repeated statements  
6 that he had to get out of South Carolina.  
7 Called himself, quote, "a fuckup." Said all  
8 he did was, quote, "fuck up". And made that  
9 -- said his demeanor was not characteristic of  
10 what she had known of him before.

11 And also during the interview she stated  
12 that Mr. Sanders had admitted to her being  
13 kicked out of The Anchor Bar where a shooting  
14 had taken place.

15 Q. And I think that phone call actually took  
16 place -- that was 3:24 the morning of July the  
17 10<sup>th</sup>.

18 A. Yes, sir.

19 Q. And she recalled having a conversation  
20 with him in addition concerning The Anchor  
21 Bar?

22 A. Yes, she did.

23 BLAIR JENNINGS: Your Honor, beg  
24 the Court's indulgence.

25 THE COURT: Take your time.

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1 BLAIR JENNINGS: Your Honor, that's  
2 all the questions I have for Major Garrison.

3 THE COURT: Very well. You may  
4 cross examine.

5 BOYD YOUNG: Your Honor, I don't  
6 know if now would be a good time for a real  
7 quick break.

8 THE COURT: If you need one, we'll  
9 take a break. If not, we're ready to go  
10 forward.

11 BOYD YOUNG: I'd appreciate the  
12 opportunity to run to the restroom real quick.

13 THE COURT: We'll take a break.  
14 Thank you, sir. Not a problem.

15 BOYD YOUNG: I apologize.

16 THE COURT: No apology necessary.

17 (BRIEF RECESS)

18 (DEFENDANT PRESENT)

19 THE COURT: Let the record reflect  
20 Mr. Sanders is present. When you are ready,  
21 Mr. Young.

22 BOYD YOUNG: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY BOYD YOUNG:

25 Q. Good morning, Major Garrison.

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1 A. Good morning, sir.

2 Q. We've covered a lot of ground this  
3 morning, and I'm going to try to narrow down  
4 where we're talking about.

5 A. All right.

6 Q. I want to talk to you first -- I'm just  
7 going to kind of do it in chronological order.  
8 So the first incident I'd like to talk to you  
9 about is The Anchor club shooting. That was  
10 March the 4<sup>th</sup> of 2007. You said that happened  
11 in North Charleston. That was outside of  
12 y'all's jurisdiction, and you didn't do any  
13 of the initial investigation or followup  
14 investigation initially on that case.

15 A. No, sir.

16 Q. You didn't become involved in that case  
17 until they called you from the IBIS entry  
18 system and said that it was possible the shell  
19 casings from your crime scene at Archdale  
20 matched shell casings recovered from the  
21 roadway outside of the Anchor club.

22 A. That's correct.

23 Q. And at that time you retrieved the initial  
24 incident reports in which Mr. Chavers had  
25 described what had happened at the shooting?

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1 A. That's correct.

2 Q. After receiving that information you also  
3 spoke to Xavier Walker about that shooting,  
4 and what his participation was?

5 A. That's correct.

6 Q. And one of the things I wanted to clear up  
7 real quick was Mr. Chavers was consistent in  
8 his belief that the shots were fired from the  
9 passenger's side of the car. Is that correct?

10 A. I'd have to look at his statement. But he  
11 did know they were fired from the vehicle, the  
12 truck itself. I recall saying the passenger's  
13 side, but I may be in error with that.

14 Q. Do you have a copy of that?

15 BOYD YOUNG: Your Honor, may I  
16 approach?

17 THE COURT: You may.

18 CROSS EXAMINATION CONTINUED

19 BY BOYD YOUNG:

20 Q. Major Garrison, is this a copy of your  
21 summary report? I'll let you flip through it.

22 A. (Upon review), yes, sir, it appears to be.

23 Q. And that's the report that you prepared  
24 based on the notes that you took from the  
25 interview?

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1 A. Correct.

2 Q. Basically, you've conducted a lot of  
3 interviews. You take a lot of notes. Then  
4 you go back and you prepare reports from those  
5 notes?

6 A. Yes, sir. If there's a written statement  
7 taken, then it's not as detailed as it would  
8 be if there was not a statement taken.

9 Q. Do you see this part that I have under-  
10 lined in black on page four of your summary  
11 report?

12 A. I do.

13 Q. And can you just read that for the judge?

14 A. Just the highlighted portion?

15 Q. Yes, just the portion.

16 A. (Reading): "Black male he thought was in  
17 the back shot several times out the window  
18 towards the club."

19 Q. And you had indicated that when you spoke  
20 to Mr. Walker regarding that incident, Mr.  
21 Walker told you that Anthony Sanders was the  
22 driver of the truck. Is that correct?

23 A. I'd have to look again.

24 Q. I'm going to show you page five of your  
25 summary report -- the highlighted or

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1 underlined portion there.

2 A. Yes, that is correct. He stated,  
3 (reading): "Sanders was driving and Walker  
4 was in the front passenger seat."

5 Q. And I have -- I guess I'll put a copy of  
6 it in for the record.

7 BOYD YOUNG: I have a copy of Mr.  
8 Walker's written statement.

9 THE COURT: That's fine.

10 BOYD YOUNG: Entered as a Court's  
11 exhibit.

12 THE COURT: Any objection?

13 BLAIR JENNINGS: No objection.

14 (SO ENTERED AS COURT'S EXHIBIT 4)

15 CROSS EXAMINATION CONTINUED

16 BY BOYD YOUNG:

17 Q. Major Garrison, if you can look at the  
18 highlighted sentence halfway down the page and  
19 just verify that Mr. Walker reported to you  
20 that Anthony Sanders was the driver of the  
21 truck.

22 A. The last highlighted portion you have?

23 Q. Yes, sir.

24 A. (Upon review), yes, sir. It says he was  
25 driving.

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1 Q. And the "he" that Xavier Walker was  
2 talking about was Anthony Sanders.

3 A. Anthony Sanders, correct.

4 Q. Let me ask you some questions about the  
5 Hunters Ridge shooting. That was on March the  
6 20<sup>th</sup>, 2007. And that was in Dorchester County,  
7 right?

8 A. That's correct.

9 Q. Were you part of the initial investigation  
10 into that shooting?

11 A. No, I was not.

12 Q. Did you review the investigative file with  
13 regard to that shooting?

14 A. Yes, sir, I did.

15 Q. There were a number of statements taken  
16 from various people at the Hunters Ridge  
17 Apartments at the time of the shooting?

18 A. That's correct.

19 Q. There were approximately somewhere around  
20 twenty-four shell casings recovered from the  
21 roadway at that incident location?

22 A. I know there were several. I'd have to  
23 look at the crime scene notes to get a count  
24 on it, but there were several.

25 Q. There were more than just .40 caliber

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1 shell casings recovered?

2 A. Yes.

3 Q. The individuals that you talked to, they  
4 did identify a shooter. Is that correct?

5 A. (No verbal response).

6 Q. The individual statements in the Hunters  
7 Ridge shooting file?

8 A. Yes, sir, there's an identification made.  
9 I'd have to go back and read the statements to  
10 see if they were -- again, I didn't work the  
11 case, so I didn't make the arrest. I'd have  
12 to go back and review it.

13 Q. In reviewing the case file, the people  
14 over there knew Xavier Walker and Xavier  
15 Walker knew them?

16 A. Correct.

17 Q. Xavier Walker had gotten in a fight with a  
18 guy named T.J. Is that correct?

19 A. That sounds correct, yes, sir.

20 Q. And then at some time later on, Xavier --  
21 well, it was reported that Xavier Walker came  
22 back and shot up the apartment complex.

23 A. That's correct.

24 Q. And there were people who identified  
25 Xavier Walker as being at least one of the

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1 shooters at the Hunters Ridge apartment  
2 complex?

3 A. Yes, sir.

4 Q. You had reports ranging from two cars with  
5 eight people to two cars with six people, and  
6 multiple shots being fired back and forth?

7 A. Typical Hunters Ridge, yes, sir. There  
8 was several different variations on how the  
9 shooting actually took place.

10 Q. Is Hunters Ridge a problem area for  
11 Dorchester County?

12 A. If you're speaking about the crime rate,  
13 yes, sir. We would consider it a high crime  
14 area for Dorchester County.

15 Q. In your interview with Mr. Sanders, you  
16 said it was "hard to get the truth about  
17 anything that happens at Hunters Ridge".

18 A. Sometimes, yes, sir.

19 Q. What did you mean by that?

20 A. A lot of people -- in investigations we  
21 have over there with incidents, a lot of  
22 people either choose not to cooperate or not  
23 cooperated fully in investigations. It's a  
24 difficult place to work cases.

25 Q. Once you developed Mr. Sanders as a

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1 suspect, did you go back to Hunters Ridge and  
2 re-interview people and show them photographs  
3 of Mr. Sanders?

4 A. Yes, sir, we did.

5 Q. Did anybody identify Mr. Sanders as being  
6 the shooter at the Hunters Ridge apartment  
7 complex?

8 A. No, sir, not from Hunters Ridge. No, sir.

9 Q. Other than Xavier Walker?

10 A. No, sir.

11 Q. Did Xavier Walker say that he had ever  
12 fired a gun?

13 A. No, sir, he didn't.

14 Q. Did he say that he did not fire a gun?

15 A. If I recall correctly, he said that he did  
16 not fire a weapon.

17 Q. And Mr. Walker's statement was that there  
18 was a shot fired at them, Mr. Sanders returned  
19 fire, and then they left. Is that right?

20 A. Pretty much, yes, sir.

21 Q. Was that consistent with the statements  
22 from people at Hunters Ridge?

23 A. According to which version -- no, sir, not  
24 completely.

25 Q. And in what way was it not?

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1 A. According to which variation of the  
2 Hunters Ridge incident, there was people on  
3 both sides. Either people from the vehicle,  
4 and there was people from the crowd that were  
5 shooting -- apparently shooting at each other  
6 or shooting. So there was multiple people  
7 firing weapons.

8 Q. Okay. One -- to back up, one question  
9 with regard to Mr. Chavers at The Anchor Club.  
10 When you interviewed him in July, did you ask  
11 him if he knew who Xavier Walker was?

12 A. I don't recall. I'd have to go back and  
13 look at the interview notes.

14 Q. Moving forward to the initial search  
15 warrant over at Mr. Sanders' residence.

16 A. Yes, sir.

17 Q. Do you know how many brothers Mr. Sanders  
18 has?

19 A. I believe he has three.

20 Q. He has Tony, who you met and interviewed;  
21 right?

22 A. Correct.

23 Q. Ricky, who you've met and interviewed and  
24 conducted a search warrant over at his  
25 apartment.

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- 1 A. Yes, sir.
- 2 Q. Bernard?
- 3 A. Bernard.
- 4 Q. Michael?
- 5 A. I'm not familiar with Michael, I don't
- 6 believe.
- 7 Q. Did you ask anybody how many people Mr.
- 8 Sanders shared that bedroom with?
- 9 A. Yes.
- 10 Q. How many?
- 11 A. Him and his brother, Tony.
- 12 Q. He and his brother are twins. Is that
- 13 correct?
- 14 A. Yes, sir.
- 15 Q. Do you know whether or not they had the
- 16 same size shoe?
- 17 A. No, I don't know.
- 18 Q. How many pairs of Nike Air Force Ones did
- 19 you recover from Mr. Sanders' house?
- 20 A. I believe we retrieved three pairs.
- 21 Q. Was it three size nines? Do you have the
- 22 return from the search warrant there?
- 23 A. I don't have it with me, no, sir.
- 24 Q. Major Garrison, I'm showing you a copy of
- 25 the return from the first search warrant. Can

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1     you just verify that?

2     A.   All right, sir.

3     Q.   Is that a copy of the return from the  
4     initial search warrant at Popper Dam Creek?

5     A.   Yes, sir, it appears to be.

6     Q.   And how many pairs of shoes were reported  
7     as being seized?

8     A.   Item number six is one pair of Nike size  
9     nine.

10     Item number seven is a pair of Nike size  
11     nine.

12     Item number 11, then there's a size ten  
13     and a size eleven.

14     So it looks like four pairs. One, two,  
15     three -- five pairs, I'm sorry.

16     Q.   And they were of various sizes and makes  
17     of Nikes. Is that correct?

18     A.   Yes, sir.

19     Q.   Major Garrison, when you returned to  
20     Popper Dam Creek with the second search  
21     warrant, you were looking for an ammo can that  
22     you had seen in a photograph that was under a  
23     window. Is that correct?

24     A.   Yes, sir.

25     Q.   When you went back into the bedroom the

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1 second time the ammo can wasn't under the  
2 window.

3 A. When I saw it was under the window, I'm  
4 talking just by my recollection I thought it  
5 was. But it was in -- when we reviewed the  
6 photographs you could see it in there. And  
7 just by memory I thought it was under the  
8 window, but it may not have been.

9 Q. Do you recall its exact location when you  
10 went back?

11 A. I think it was in the closet. Again, I'd  
12 have to look at the return on the search  
13 warrant.

14 Q. And it wasn't in the closet when it was  
15 initially photographed.

16 A. No.

17 Q. It had been moved between the searches?

18 A. Apparently, yes, sir.

19 Q. Major Garrison, I want to ask you some  
20 questions about your initial interview with  
21 Mr. Sanders on the 24<sup>th</sup>. And that was about  
22 4:30 in the morning.

23 A. Yes, sir, it was somewhere after 4:00  
24 o'clock in the morning.

25 Q. And that interview was videotaped?

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1 A. Correct.

2 Q. You said you gave Mr. Sanders his *Miranda*  
3 warnings. Is that correct?

4 A. Yes, sir, that's correct.

5 Q. And he did not sign them saying, 'I waive  
6 and agree to talk.'

7 A. No, sir, he did not.

8 Q. How did that go? What happened?

9 A. There was two people in the room, myself  
10 and Detective Giglio. We have a form that  
11 the Sheriff's Office provides that the *Miranda*  
12 warnings with a waiver at the bottom. We  
13 individually went over each of the five  
14 *Miranda* warnings that are printed on that  
15 piece of paper and asked him if he understood  
16 it. We spent some minutes going over the  
17 *Miranda*.

18 Q. And then what happened?

19 A. He said he didn't want to sign anything at  
20 that particular time. I'm sorry. I guess I  
21 don't understand the question.

22 Q. I just wanted to know how the interview  
23 went. I mean, how long was it?

24 A. Approximately an hour, somewhere right  
25 around -- you know, plus or minus, somewhere

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1 around there.

2 Q. Have you reviewed that tape in preparation  
3 for coming here today?

4 A. Just a portion of it, yes, sir.

5 Q. Does Mr. Sanders ever say anything like 'I  
6 was at home'?

7 A. No, I don't believe he does.

8 Q. He never says anything other than, 'y'all  
9 can talk, I'll listen.' Is that pretty much  
10 it?

11 A. Pretty much the gist of it, (affirmative  
12 nod). He speaks some, but he never really  
13 says he did or did not do it. No, sir.

14 Q. And eventually he does -- once the subject  
15 of the murder arises, he says "I want to talk  
16 to an attorney."

17 A. At some point he mentioned that he would  
18 like to talk to an attorney. I don't remember  
19 exactly how far into the interview, and then  
20 he said that he really didn't have anything  
21 else to say at that point.

22 Q. Did that conclude the interview?

23 A. Pretty much, yes, sir.

24 Q. Did y'all talk about the death penalty  
25 any?

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1 A. Yes, sir.

2 Q. Who brought that up?

3 A. I did.

4 Q. And in what regards did you bring up the  
5 death penalty to Mr. Sanders?

6 A. We had got to talking about the murder or  
7 the murders, plural. And, again, without  
8 reviewing it, the fact that there was three  
9 people involved, I think we were talking about  
10 what would and would not constitute being a  
11 death penalty case in South Carolina, some-  
12 thing along those lines.

13 Q. Did you ever toss any pictures across the  
14 table to him?

15 A. Yes, sir, he was shown some pictures. I  
16 didn't, but yes, sir, he was shown some  
17 pictures.

18 Q. That was Detective Giglio?

19 A. I believe, yes, sir.

20 Q. And how were those shown to him?

21 A. If I'm not mistaken, they were in an album  
22 or a folder that we had put the crime scene  
23 pictures. It was opened to a page and shown  
24 to him.

25 Q. Was it shown to him or was it thrown

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1 across the table?

2 A. I don't recall throwing anything across  
3 the table.

4 Q. Okay. When the interview concluded were  
5 y'all getting along?

6 A. Yes, sir.

7 Q. Did you refer to Mr. Sanders as a "sick  
8 little shit"?

9 A. I can't say I didn't. I don't recall it,  
10 but -- I could go back and look at the  
11 transcript.

12 Q. Y'all weren't friendly at the end of the  
13 interrogation?

14 A. According to what your description of  
15 "friendly" was -- I mean, we were getting  
16 along just fine. I don't know that we were  
17 -- if you had been looking at it, I don't know  
18 if you would have characterized the interview  
19 as friendly at that point.

20 Q. And that was on the 24<sup>th</sup>?

21 A. Correct.

22 Q. And then on the 3<sup>rd</sup> is when you went back  
23 to serve the murder warrants?

24 A. I believe so.

25 Q. And you did the ---

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- 1 A. The 2<sup>nd</sup>, I'm sorry.
- 2 Q. The 2<sup>nd</sup>?
- 3 A. (Affirmative nod), I believe the 2<sup>nd</sup>.
- 4 Q. And you swore out the affidavit for those
- 5 warrants?
- 6 A. I did.
- 7 Q. That was done on the 1<sup>st</sup>?
- 8 A. I'm sorry?
- 9 Q. The affidavit that you swore out was on
- 10 the 1<sup>st</sup>?
- 11 A. I'd have to look at it. But probably,
- 12 yes, sir.
- 13 Q. Major Garrison, I'm showing you the murder
- 14 arrest warrants. I believe it's a part of the
- 15 Court's file.
- 16 A. Okay, sir.
- 17 Q. Does that look correct?
- 18 A. (Upon review) -- yes, sir, it does.
- 19 Q. And your affidavit for that arrest warrant
- 20 is approximately two pages long, or it is two
- 21 pages long?
- 22 A. (Upon review) -- yes, sir.
- 23 Q. Can you read the highlighted portion on
- 24 page two of the affidavit?
- 25 A. (Reading): "When arrested for the Hunters

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1 Ridge incident and questioned under *Miranda*  
2 about the murders, the defendant stated he had  
3 been at home that night."

4 Q. That's an error, isn't it?

5 A. Uh, -- it could be. I'd have to go back,  
6 again, and review the interview.

7 Q. Well, the interview is videotaped and  
8 anybody can watch it and see what was said and  
9 hear it?

10 A. Yes, sir.

11 Q. And it was on audiotape?

12 A. Yes, sir.

13 Q. As a matter of fact, on the next day,  
14 after Mr. Sanders had terminated the interview  
15 with you, you had his girlfriend, Ms.  
16 Thompson, come back up to the detectives'  
17 office?

18 A. It may have been the next day. I know she  
19 came back up, yes, sir.

20 Q. And you arranged for her to meet with Mr.  
21 Sanders?

22 A. Yes, sir.

23 Q. And you put them in a room and y'all  
24 videotaped that meeting, too?

25 A. I believe so, yes, sir.

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1           BOYD YOUNG:    Beg the Court's  
2   indulgence for just one second, sir.

3           THE COURT:    Certainly.

4           BOYD YOUNG:    Your Honor, we had  
5   talked about splitting up part of the cross.

6           THE COURT:    Yes, sir.

7                        CROSS EXAMINATION

8   BY MR. LEINEDECKER:

9   Q.   Major Garrison, in relation to The Anchor  
10   Bar shooting, when you got Mr. Chavers to come  
11   up, did he come up to Dorchester the first  
12   time to talk to you?

13   A.   I made a couple of trips to where he lived  
14   over in the Strawberry Community. But he did  
15   come to the detective office. I believe I  
16   ended up speaking with his mother at his  
17   residence, she contacted him and then he came  
18   into the office.

19   Q.   And that's over in Berkeley County, near  
20   Moncks Corner?

21   A.   Yes, sir, about halfway between Goose  
22   Creek and Moncks Corner.

23   Q.   So the first time you met with him or  
24   talked with him was the 19<sup>th</sup> of July. Is that  
25   right?

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1 A. Whatever the date of the interview in the  
2 office was, yes, sir.

3 Q.. At that time you got general information  
4 from him regarding what happened at the bar,  
5 correct?

6 A. Yes, sir.

7 Q. And he was not able to give you a name  
8 of an individual who'd done the shooting,  
9 correct?

10 A. Correct.

11 Q. But he was able to give you a description  
12 of the individual. Is that correct?

13 A. That's correct.

14 Q. In part of the discovery that was provided  
15 to us, can I show you some handwritten notes  
16 from that day, the 19<sup>th</sup>? Can I ask you if you  
17 recognize those notes?

18 A. (Upon review), no, sir, I do not. I don't  
19 know whose notes they are.

20 Q. That's not your handwriting?

21 A. No, sir.

22 Q. Who else was with you on the 19<sup>th</sup>, when  
23 you did this interview?

24 A. I don't recall. I don't recall. There  
25 were several people working on the case, and I

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1 don't recall who was actually in the office  
2 for that interview.

3 Q. Who was working on the case that could  
4 have been there that day?

5 A. Detective Morgan, Detective Giglio,  
6 Sergeant Dixon, Detective Walsh, pretty much  
7 the entire unit at some point was involved in  
8 the investigation. Whoever would have been in  
9 the office at that particular moment, or who  
10 I'd been with, would have probably sat in on  
11 the interview.

12 Q. You didn't use their notes to prepare your  
13 report later? Is that correct?

14 A. No, sir.

15 Q. When you called him in on the 19<sup>th</sup> and he  
16 gave you a general description, tell me again  
17 how he described the individual who did the  
18 shooting.

19 A. Short, black male, twenty-four to twenty-  
20 five, short hair, like five four (5'4") or  
21 five five (5'5"), was his description.

22 Q. Did you review Chavers' written statement  
23 in preparation for your testimony today?

24 A. No, sir, I did not.

25 Q. Can I hand you a copy of that?

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1 A. Sure.

2 Q. (Tendering) -- and ask you, just for  
3 identification purposes, is this the written  
4 statement he gave y'all?

5 A. (Upon review), yes, sir. This is my  
6 handwriting.

7 Q. So he didn't write this statement. You  
8 wrote it and he signed it. Is that right?

9 A. That's correct.

10 Q. If you need that to refresh your  
11 recollection, why don't you take a look at it.  
12 He does give a description, but he gives as  
13 description of a couple of individuals that  
14 night, doesn't he?

15 A. (Upon review) -- you're going to have to  
16 show me where he's doing that.

17 Q. Well, at the beginning of it he describes  
18 an individual they had trouble with at the  
19 club that night, someone who got into  
20 problems, I think, are his words or his  
21 phrase.

22 A. Right. "Him coming in causing problems",  
23 yes, sir.

24 Q. And then later on, down in that, he  
25 described an individual that got in the front

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1 of the vehicle he described, the pickup truck,  
2 correct?

3 A. He references a gentleman getting in the  
4 front seat.

5 Q. They're not the same people. Because the  
6 description he gives is different of that  
7 individual, right?

8 A. (Upon review), I don't see a description  
9 of the other gentleman.

10 THE COURT: It says what it says,  
11 Mr. Leiendecker. What's the relevance of  
12 this, as to what somebody else says?

13 MR. LEIENDECKER: Let me ask this  
14 question ---

15 THE COURT: Let's move on to  
16 something.

17 CROSS EXAMINATION CONTINUED

18 BY MR. LEIENDECKER:

19 Q. The individual that he identified as the  
20 person causing the problems that he said he  
21 could pick out of a lineup, where does he say  
22 that individual got in the truck?

23 A. (Reviewing).

24 Q. In the back, correct?

25 A. (Reading): "The pickup truck..." ---

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1 THE COURT: He's already testified  
2 to that. Mr. Young had asked him a question  
3 as well. And there's a contradiction. So we  
4 have a contradiction in a statement. We'll  
5 concede that. Let's go on. I mean, we're  
6 trying the case to me this morning, sir. This  
7 isn't a jury.

8 MR. LEIENDECKER: Yes, sir.

9 THE COURT: I was a lawyer. Okay?

10 MR. LEIENDECKER: Absolutely, Your  
11 Honor. But what we are trying is whether the  
12 identification was appropriate and proper.

13 THE COURT: I don't think that has  
14 a thing in the world to do with it. But I  
15 appreciate you bringing that out. But it  
16 doesn't change my opinion one iota, that  
17 there's a contradiction of where somebody may  
18 have been sitting. Thank you, sir.

19 MR. LEIENDECKER: Yes, sir.

20 CROSS EXAMINATION CONTINUED

21 BY MR. LEIENDECKER:

22 Q. Major Garrison, did he describe the other  
23 individual in the vehicle who also he  
24 described as doing shooting, as someone of  
25 dark skin with dreads?

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1 A. I'd have to look at the statement. I  
2 don't recall that.

3 MR. LEIENDECKER: Is that all  
4 right, Your Honor?

5 THE COURT: Sure. Again, that's  
6 great for purposes of a jury. It's not for  
7 me.

8 MR. LEIENDECKER: Yes, sir.

9 THE COURT: The photo lineup is not  
10 unduly suggestive. The man said he knew him.  
11 He picked him out, he was sure. I don't think  
12 there's any real concern about any misidenti-  
13 fication here. The jury may choose not to  
14 believe it, but I do.

15 MR. LEIENDECKER: Yes, sir.

16 THE COURT: Thank you, sir.

17 MR. LEIENDECKER: At this point, I  
18 assume Your Honor is going to wait until we  
19 put all of our ---

20 THE COURT: I'm going to hear all  
21 of it. All I'm just saying is that attack of  
22 what this witness said doesn't do -- doesn't  
23 attack his reliability or the reliability of  
24 the identification.

25 MR. LEIENDECKER: Yes, sir.

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1 THE COURT: I haven't heard it all  
2 yet. I don't know. Maybe there is something  
3 that's going to change it. Obviously, if this  
4 witness comes in and says "I don't know what"  
5 -- "they told me to say that". That changes  
6 everything. I'm just saying where we are  
7 right now, sir.

8 MR. LEIENDECKER: Yes, sir.

9 WITNESS: I don't see where he says  
10 that.

11 THE COURT: Why don't you put the  
12 statement in? It speaks for itself. Whether  
13 he sees it or not isn't important. I mean,  
14 it's my determination. I don't care whether  
15 he can find it.

16 MR. LEIENDECKER: Yes, sir, Your  
17 Honor.

18 THE COURT: Just put it in.

19 MR. LEIENDECKER: I don't want --  
20 this statement's all marked. I'll get one  
21 that's not marked for Your Honor.

22 THE COURT: That's fine. Let's  
23 just keep this thing moving, please, sir. He  
24 doesn't need to identify it for me. You can  
25 read it to me if you put it in, or I can read

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1 it.

2 MR. LEIENDECKER: Yes, sir.

3 THE COURT: Thank you.

4 CROSS EXAMINATION CONTINUED

5 BY MR. LEIENDECKER:

6 Q. Major, when you brought him back the  
7 second time for the purposes of identifi-  
8 cation, how did you come to include Mr.  
9 Sanders' photo in the lineup?

10 A. By that time we had the information back  
11 from the IBIS hits and we had looked at the  
12 Hunters Ridge shooting. We had spoke to Mr.  
13 Xavier Walker. That's why we included Mr.  
14 Sanders' picture in the lineup.

15 Q. Did he give you any names before that, on  
16 the 19<sup>th</sup>?

17 A. Mr. Chavers?

18 Q. Yes.

19 A. I don't think so, no, sir.

20 Q. Do you know who Chaz Lamar Brown is?

21 A. Not off the top of my head, no, sir.

22 Q. Did you show Mr. Chavers any individual  
23 photos at any time on the 19<sup>th</sup>, or when you  
24 brought him back on the 23<sup>rd</sup> or 4<sup>th</sup>?

25 A. Yes, sir. When he came in the first time,

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1 we showed him a stack of photographs. Again,  
2 I don't know if it was fifteen or twenty, but  
3 they were in no particular order. We showed  
4 him -- again, there was several pictures, and  
5 he could not identify the suspect. We were  
6 showing him pictures of people that we had,  
7 either Crimestopper tips or people that were  
8 known from the area that we just put in a  
9 stack of pictures.

10 Q. Can you describe the physical  
11 characteristics of those individuals?

12 A. They varied. Those pictures would have  
13 been no particular hairstyle, age, weight,  
14 height. They would have varied completely.

15 Q. Did you include Mr. Walker in the photo  
16 array?

17 A. We may have. I don't know.

18 Q. Did you include him in the photo array  
19 that we have here today?

20 A. No, sir.

21 Q. That he was picked out from?

22 A. No, sir.

23 Q. And the reason being why you didn't  
24 include him?

25 A. His picture would not have fit with the

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1 lineup. His physical characteristics were  
2 completely different than what Mr. Sanders'  
3 are.

4 MR. LEIENDECKER: That's all I have  
5 at this time.

6 THE COURT: As I understand, you're  
7 going to make a clean copy of that statement  
8 for my purposes?

9 MR. LEIENDECKER: Yes, sir. And I  
10 will mark it as a Court's exhibit and provide  
11 it to the court.

12 THE COURT: It will be number five.

13 (SO ENTERED AS COURT'S EXHIBIT 5)

14 THE COURT: Court's Exhibit 5,  
15 being Mr. Chavers' statement?

16 MR. LEIENDECKER: The statement of  
17 Mr. Chavers given on the 19<sup>th</sup> at 11:30 a.m.

18 THE COURT: Thank you Mr.  
19 Leiendecker. I appreciate it. Mr. Young?

20 BOYD YOUNG: Your Honor, may I clear  
21 up one thing?

22 THE COURT: Sure. Absolutely. No  
23 problem.

24 CROSS EXAMINATION RESUMED

25 BY BOYD YOUNG:

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1 Q. Major Garrison, I apologize.

2 A. No, sir.

3 Q. Because when we have issues divided up, we  
4 kind of get to them. I want to talk to you a  
5 little bit about the statement that Mr.  
6 Sanders made to you over at the bond hearing.  
7 Tell me again, you secured Mr. Sanders at the  
8 detention center. You escorted him, along  
9 with some other individuals. Sheriff Nash was  
10 there?

11 A. I think he was at the bond hearing. I  
12 don't think he did the actual walk-over.  
13 Because the walk-over goes from the detention  
14 facility through a fenced walkway to the back  
15 door at the bottom of the courthouse.

16 Q. Okay.

17 A. And then they have to be walked up the  
18 stair to the actual room where the bond  
19 hearing is set.

20 Q. So you and Mr. Sanders were in a holding  
21 cell or in a holding cell area. Can you tell  
22 me how that was?

23 A. We were actually in a holding cell. They  
24 have, I believe, two holding cells on the  
25 bottom floor of the courthouse, which is where

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1 we would walk people over, we were actually  
2 sitting in the holding cell.

3 Q. That's where this spontaneous statement  
4 happened?

5 A. Yes, sir.

6 Q. Was there anybody else in there?

7 A. There were some people from Court  
8 security. Once we got in the building it's  
9 their -- they have to escort us. I don't  
10 recall exactly who it was. I'm sure some  
11 other people had walked over.

12 Q. Was anybody standing there listening to  
13 y'all having this conversation?

14 A. Probably not, no.

15 Q. Have you talked to anybody else about this  
16 conversation that y'all had?

17 A. It's in my notes. I've talked to the  
18 supervisor, the Solicitor. Yes, sir, I've  
19 discussed it.

20 Q. As far as you know, did anybody overhear  
21 this conversation that y'all had?

22 A. Not that I know of.

23 Q. I'm going to show you page ten of your  
24 summary report. And I'm going to direct your  
25 attention to the bottom portion that I have

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1 bracketed off in blue. Can you read that for  
2 Judge Dennis?

3 A. (Reading): "When we walked back from the  
4 jail he asked me if I still wanted the gun.  
5 The question had been spontaneous and not in  
6 reaction to any question being asked of him.  
7 I said that I did, and he responded that one  
8 day he would like to tell me about -- or tell  
9 me all about what happened. He then asked me  
10 if I was going to take him out to dinner when  
11 this was over."

12 Q. And where does it say y'all were when that  
13 conversation happened?

14 A. It says when we were being walked back to  
15 the jail.

16 Q. And that's what you put in your report,  
17 was that while you were walking back to the  
18 jail he made this spontaneous statement?

19 A. Yes, sir.

20 Q. And it was never just you alone escorting  
21 him back to the jail. Y'all had several  
22 people walk with you and walk back with you.

23 A. There would probably have been two people,  
24 myself and one more investigator or somebody  
25 from the detention facility.

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1 Q. What would have been the procedure for you  
2 to be transporting him by yourself?

3 A. It's against protocol. Yes, sir.

4 Q. Against protocol?

5 A. (Affirmative nod).

6 Q. Major Garrison, do you know why Mr.  
7 Sanders was still at the annex as opposed to  
8 being transported over to St. George?

9 A. No, I don't recall why.

10 Q. Thank you, Major Garrison.

11 BOYD YOUNG: That's all the  
12 questions I have.

13 THE COURT: Any additional  
14 questions, Mr. Leiendecker?

15 MR. LEIENDECKER: No, Your Honor.

16 THE COURT: Any redirect?

17 BLAIR JENNINGS: No, sir.

18 THE COURT: You can come down.

19 Thank you, sir.

20 (WITNESS STEPS DOWN)

21 THE COURT: Any additional witnesses?

22 BLAIR JENNINGS: Yes, sir, two brief  
23 witnesses. I'd like to call Agent Tracy  
24 Thrower.

25 THE COURT: Okay.

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1           BOYD YOUNG:   Your Honor, for the  
2 purposes of this hearing we agree to his  
3 qualifications. He works for SLED in  
4 Firearms. Your Honor is familiar with that  
5 type of testimony?

6           THE COURT:    I am.

7                       (WITNESS TAKES STAND)

8           TRACY J. THROWER, being duly sworn  
9 to tell the truth, the whole truth and nothing  
10 but the truth, testified, as follows:

11                       DIRECT EXAMINATION

12 BY BLAIR JENNINGS:

13 Q.   You're employed within the firearms  
14 division at SLED?

15 A.   Yes, sir, I am.

16 Q.   We have you here, obviously, in a little  
17 different format from an actual trial.

18 Because we don't have the actual evidence.

19 I just want to have you testify about your  
20 finding concerning the shell casings in this  
21 case. In this situation we are dealing with  
22 shell casing evidence, correct?

23 A.   Yes, sir.

24 Q.   If you'd just briefly talk to the Judge  
25 about what are the characteristics of the

1 shell casing that you were looking at when you  
2 made your comparison.

3 A. I was examining the breech face markings  
4 that were left on the primer of the fired  
5 cartridge casing.

6 Q. In this situation we have six shell  
7 casings that were recovered at the scene of  
8 the triple homicide?

9 A. From one of the scenes. Yes, sir. I'm  
10 not sure which one.

11 Q. I guess that was the initial information  
12 that was provided to you. And what was the  
13 caliber and the make of those shell casings?

14 A. They were .40 Smith & Wesson caliber, and  
15 they were Rankin and Federal.

16 Q. These shell casings were what I guess you  
17 typically call reloaded ammunition?

18 A. Yes.

19 Q. And can you explain to the judge what that  
20 means?

21 A. Ammunition, once it has been fired once,  
22 it is possible to remove the primer, resize  
23 the cartridge case, place a new primer, new  
24 gunpowder and a new bullet or projectile into  
25 the piece of ammunition and use it again.

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1 Q. What you're looking at when you're  
2 examining the firing pin impression, that's  
3 on the primer?

4 A. Yes, the firing pin impression is on the  
5 primer.

6 Q. And the breech face marking?

7 A. Also, those are the breech face markings I  
8 use, were the ones located on the primer.

9 Q. And that's unique to -- once the shell  
10 casing's fired and reloaded and a new primer  
11 is placed in the shell casing?

12 A. Yes, sir. And the markings left on the  
13 primer will be unique to the firearm that  
14 fired that cartridge case last.

15 Q. So the fact that it's reloaded, I guess --  
16 the point is that does not cause you concern  
17 in making your comparison?

18 A. No, sir. If I realize I'm looking at  
19 reloaded ammunition, I will not use the  
20 markings found on the cartridge case itself.  
21 I will only use the ones found on the primer.

22 Q. And that's what you did in this situation?

23 A. Yes.

24 Q. Are you familiar with a system called  
25 IBIS, the Integrated Ballistics Identification

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1 System?

2 A. Yes, sir, I am.

3 Q. And what is that?

4 A. It is a computerized database that is  
5 supplied to SLED by the Bureau of Alcohol,  
6 Tobacco & Firearms. They own the entire  
7 network. It is a computerized database, which  
8 South Carolina has two units actually, one at  
9 SLED in Columbia. There's another unit in the  
10 Charleston County Sheriff's Office and there  
11 are also units throughout the continental U.S.  
12 It is a national database.

13 Basically, pictures or images of fired  
14 cartridge cases and fired bullets are taken.  
15 They are entered into the system, along with  
16 certain case information. The system then  
17 compares the images to other similar images.  
18 And then, based on its comparisons, it will  
19 return a Top 20 list, what it thinks are the  
20 twenty closest other images out there.

21 An examiner will then review the returned  
22 results and see if there are any similarities  
23 between the other images out there and the  
24 piece of evidence that's being -- everything's  
25 being compared to. This is a way of quickly

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1     trying to connect previously unconnected  
2     crimes. If an examiner sees an image that  
3     bears enough similarities, we will then  
4     retrieve the actual evidence and do a full  
5     microscopic comparison in the firearms  
6     department.

7     Q. It's essentially an investigative  
8     screening type of tool.

9     A. That's exactly, it's a screening tool.

10    Q. Dealing first with the shell casings from  
11    our scene, that was your lab number L07-10327.  
12    I believe initially six .40 caliber Smith and  
13    Wesson shell casings were sent to you?

14    A. Yes.

15    Q. And initially the Dorchester County  
16    Sheriff's Department wanted you to look at  
17    those shell casings and see how many firearms  
18    might have been used in this incident?

19    A. Correct.

20    Q. And what analysis, I guess, did you do on  
21    those shell casings?

22    A. I placed them underneath my comparison  
23    microscope, visually compared them side-by-  
24    side under magnification, looked for  
25    similarities between the six cartridge cases

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1 with each other and made a conclusion.

2 Q. In your opinion how many firearms fired  
3 those six shell casings?

4 A. I believe they were all fired by the same  
5 firearm.

6 Q. Did you then have an opportunity to submit  
7 the characteristics of those six shell casings  
8 into the IBIS system?

9 A. Yes.

10 Q. As you described, did you then get twenty  
11 possible matches or similarities?

12 A. Well, the cartridge cases for this case  
13 were entered into IBIS. I do not recall if I  
14 placed them into IBIS or if they were placed  
15 into IBIS -- I believe they may have been  
16 placed into IBIS by the Charleston County  
17 Sheriff's Office.

18 Q. But at some point were you given some  
19 cases that they might possibly be related to?

20 A. Yes.

21 Q. I believe two in particular. One was a  
22 North Charleston Police Department case.  
23 Their case number was 2007-009371, and that  
24 was associated with your SLED lab number L07-  
25 06377. That was six .40 caliber Smith &

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1 Wesson shell casings.

2 A. Yes.

3 Q. And the other was a Dorchester County  
4 Sheriff's Office case. That case number was  
5 07-002661. I believe your SLED lab number was  
6 L07-06374?

7 A. Yes, sir.

8 Q. You would then look at the IBIS printout,  
9 and in your opinion were there enough  
10 similarities to warrant you pulling the  
11 original evidence in that case?

12 A. Yes, sir. When I viewed these images on  
13 the screen, I did see enough similarities that  
14 I felt it necessary to do the full microscopic  
15 comparison.

16 Q. So did you get the six shell casings --  
17 the six .40 caliber Smith & Wesson shell  
18 casings from the North Charleston case?

19 A. Yes.

20 Q. And the eight .40 caliber Smith & Wesson  
21 shell casings from the Hunters Ridge incident?

22 A. Yes.

23 Q. And were you able to compare the markings  
24 on those shell casings with the markings from  
25 the six shell casings that you originally had?

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1 A. Yes, I compared all three cases.

2 Q. What was your conclusion as to the --  
3 any similarities between those three separate  
4 incidents?

5 A. That the same firearm was used in all  
6 three incidents.

7 Q. And obviously only one gun?

8 A. Yes.

9 Q. As part of your protocol with SLED are  
10 your findings reviewed by another examiner?

11 A. Yes, sir. We have a protocol that states  
12 that we will have a hundred percent micro-  
13 scopic review of all analysis. And also we  
14 have a hundred percent review of case notes  
15 and reports.

16 Q. And was that done in this situation?

17 A. Yes.

18 Q. Thank you very much. Please answer any  
19 questions Mr. Young has.

20 THE COURT: You may cross examine.

21 CROSS EXAMINATION

22 BY BOYD YOUNG:

23 Q. Good afternoon, Agent Thrower. How are  
24 you?

25 A. Good, sir.

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1 Q. You and I met over at SLED one day and we  
2 discussed the shell casing evidence involved  
3 in this case.

4 A. Yes, sir.

5 Q. And at that time I had talked to you  
6 about, I believe shortly before we had met,  
7 the National Academy of Science had come out  
8 with a report regarding ballistic images.

9 A. Yes, sir.

10 Q. And you're familiar with that report?

11 A. Yes, sir.

12 Q. In which they -- well, there are two  
13 different reports, right?

14 A. Yes.

15 Q. One was a study to determine the  
16 feasibility of having a national IBIS entry  
17 for every firearm in the United States.

18 A. Yes.

19 Q. And their conclusion was not to do it.

20 A. That's correct.

21 Q. And they said -- skimming over all of it  
22 -- but they basically said that the "validity  
23 of fundamental assumptions of uniqueness and  
24 reproducibility of firearms-related toolmarks  
25 has not yet been fully demonstrated."

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1 A. That is what they said, yes.

2 Q. And you don't agree with them on that?

3 A. No, sir, I do not.

4 Q. And why?

5 A. There have been numerous validity tests  
6 that have been done that prove just the  
7 opposite, that we can look at firearms that  
8 are consecutively manufactured and tell them  
9 apart. These are examinations that I have  
10 personally done.

11 I have looked at ten consecutively-  
12 manufactured Ruger nine-millimeter barrels.  
13 I examined the test fires. I matched them.  
14 I sent off my results. I passed the test.  
15 I got them all correct.

16 I have also looked at consecutively-  
17 manufactured Glock breech faces, mailed off my  
18 answers. In fact that was at the FBI Academy.  
19 Found out I got those correct.

20 I have also looked at consecutively-  
21 manufactured Glock Evis barrels, also known as  
22 a Miami barrel. I have gotten those correct.

23 So, yes, there have been numerous validity  
24 studies out there that have shown that it can  
25 be done.

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1 Q. Going to the consecutive firearms tests of  
2 Ruger and Glock, the parts, how do you know  
3 that the parts -- the barrels themselves were  
4 manufactured consecutively, where -- my  
5 understanding is -- and correct me if I'm  
6 wrong -- is that there's a barreland of  
7 barrels. There's a barreland of stocks,  
8 whatever. And as it's assembled, you grab one  
9 out of each barrel, assemble it and then put a  
10 serial number on that. And that's the next  
11 one manufactured -- not necessarily that the  
12 barrels themselves are bored out  
13 consecutively. Is that correct?

14 A. That is correct, yes, sir. The samples  
15 I looked at were not consecutively serial  
16 numbered. They were consecutively manu-  
17 factured. A person went to the factory at the  
18 time the samples were being made and walked  
19 through with them. I know during the FBI test  
20 or the ATF -- no, the FBI -- when the FBI was  
21 there for the Glock, they actually had some-  
22 body on site walking through the manufacturing  
23 plant, making sure they were one after the  
24 other.

25 Q. So it's not consecutively serial numbered.

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1 A. No, sir.

2 Q. You were watching them punch barrels, and  
3 you made sure that the same punch was used for  
4 each one of the ten barrels in a row, and that  
5 each one of the breech faces was sanded down  
6 on the same machine?

7 A. I did not, but somebody did.

8 Q. Somebody did.

9 A. Yes, sir.

10 Q. And that's what you were told?

11 A. Yes, sir.

12 Q. These shell casings that we're talking  
13 about, we're talking about reloaded shell  
14 cases, right?

15 A. Yes.

16 Q. So they have multiple extractor marks on  
17 each shell casing?

18 A. Potentially, yes, sir.

19 Q. Were each one of these shell casings  
20 reloads?

21 A. Yes, sir. Reloaders or re-manufactured,  
22 yes, sir.

23 Q. Can you tell me what the difference is  
24 between reloaded and remanufactured?

25 A. They're essentially the same thing.

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1 Whether it be -- most people consider  
2 reloading something that a person like myself  
3 -- hand load ammunition in my garage, versus a  
4 remanufactured, where there's actually a  
5 company, like Georgia Arms, that buys up brass  
6 and buys up, you know, lots of components and  
7 has a business, you know, sells reloaded  
8 ammunition or remanufactured ammunition.

9 Q. So it's not something different. They're  
10 the same thing. You're just talking about ---

11 A. How it's packaged.

12 Q. The breech face marks that you're looking  
13 on the back of the primer, the little silver  
14 indentation at the back of the brass, right?

15 A. Yes, sir.

16 Q. Breech face marks come when the breech  
17 face -- where the firing pin comes through and  
18 is sanded at the manufacturer to make it  
19 smooth?

20 A. That is one technique to make those  
21 markings on the breech face. There are  
22 numerous methods to manufacture those marks.

23 Q. How about Smith & Wesson .40 calibers?  
24 How do they put marks on breech faces?

25 A. Many companies will use a broach which is

1 basically a long strip of metal with a series  
2 of cutters that looks almost like a stairstep,  
3 so that when the cutter comes down in one  
4 pass, each one of these little "stairs" shaves  
5 a little bit more metal off. You take a lot  
6 of metal off, literally, in one pass. There's  
7 sanding. Some are stamped. There's a number  
8 of methods.

9 Q. And each one of these methods leaves  
10 little striations at the back of the breech  
11 face?

12 A. Not all of them leave striations.

13 Q. Were striations present in this case?

14 A. Yes.

15 Q. Is that what you were looking at in this  
16 case?

17 A. Yes.

18 Q. Do you assume that the manufacturer of  
19 this weapon put those striations there, or do  
20 you assume that they came there some other  
21 way?

22 A. Typically, I assume that the manufacturer  
23 placed them there, unless I have some reason  
24 to believe they were placed there another way.

25 Q. And you don't have the firearm to do a

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1 comparison -- a test comparison with in this  
2 case?

3 A. No, I do not.

4 Q. You're just comparing shell casings from  
5 individual scenes, that were collected at  
6 various places?

7 A. Yes, sir.

8 Q. And what you're looking at is the little  
9 lines on that silver piece at the back?

10 A. Yes.

11 Q. There's a certain number of points that  
12 you have to match up to say that I believe  
13 that these two shell casings were fired by the  
14 same firearm?

15 A. No, sir, we don't use that method.

16 Q. Are there any measurements taken?

17 A. No, sir.

18 Q. Do you expect, when you're looking at the  
19 striations, for there to be differences in  
20 between the two?

21 A. Absolutely.

22 Q. Is that why you don't do a side-by-side  
23 picture comparison?

24 A. Well, I do take pictures of my  
25 comparisons. It might be for my notes. But

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1 the pictures I take are not a picture of the  
2 identification. They're simply a note of one  
3 area that I looked at. My comparison is  
4 basically over the entire surface to be  
5 viewed, and not at any one particular place.  
6 The reason I take pictures is so that later on  
7 -- six months, a year, two years from now --  
8 when I have forgotten the details of this  
9 case, I can go back and look at something and  
10 it reminds me of what I saw. And also so that  
11 if another examiner comes in to review my  
12 work, it's a way that they can see what I did  
13 and make sure that what I did makes sense.  
14 But it's not a picture of identification.  
15 Q. Okay. Given the fact that these were  
16 reloads, we talked about the possibility of  
17 there being multiple extractor marks.  
18 A. Yes, sir.  
19 Q. How do you -- is the orientation of the  
20 shell casing when you're looking at it and  
21 doing a side-by-side comparison, is it  
22 important to make sure that both the shell  
23 casings are oriented in the same manner?  
24 A. Yes, sir.  
25 Q. Is that typically done through the

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1 matching up of the extractor marks?

2 A. Well, typically, I'll work off -- if I  
3 have horizontal striations, like I have on the  
4 primers in these cartridge cases, I typically  
5 base my orientation off of those marks. I  
6 have two choices, this direction or 180  
7 degrees in the opposite direction. Those are  
8 my two choices. If I have circular breech  
9 face, which is a series of circles, well, then  
10 I have to move something else. It could be  
11 firing pin drag. It could be extractor marks.  
12 It could be ejector marks. I have to find  
13 some other method to try and find my  
14 orientation, or just some obvious defects that  
15 may be on the breech face that helps.

16 Q. Could they have been vertical, like this  
17 way versus this way?

18 A. What?

19 Q. The striations?

20 A. Yes.

21 Q. You said that they can be this way or 180  
22 degrees this way. How about ---

23 A. On my comparison microscope, the way that  
24 I view the striations, because they're so  
25 microscopic and small, is that I sight light

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1 BY BOYD YOUNG:

2 Q. Detective Giglio -- is it detective? Is  
3 that right?

4 A. Yes, sir, that's fine. At the time of  
5 this case I was in Investigations.

6 Q. You are a detective now?

7 A. No, sir. I transferred back to patrol.

8 Q. Do you have a copy of your report? I  
9 think it's twenty-three pages.

10 A. Yes, sir.

11 Q. I'm going to jump straight to it. I'm  
12 going to direct your attention to about the  
13 middle of the page on Page 22.

14 A. Yes, sir.

15 Q. On August the 2<sup>nd</sup>, 2007, were you involved  
16 in transporting Mr. Sanders to a bond hearing?

17 A. Yes, sir, that is correct.

18 Q. And you were with Detective Garrison,  
19 Detective Morgan and you?

20 A. Yes, sir, myself, Sheriff Nash, Director  
21 Smith met Mr. Sanders in the jail. He was  
22 placed in restraints and escorted to bond  
23 court.

24 Q. Did you overhear any conversation with Mr.  
25 Sanders and Detective Garrison?

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1 A. No, sir, I don't recall.

2 Q. And specifically in your report you say  
3 you walked -- you, Detective Garrison and  
4 Detective Morgan walked Mr. Sanders back to  
5 the detention center?

6 A. Yes, sir. We escorted him from the jail  
7 annex over to the holding cell at the bond and  
8 into the courtroom, at which time numerous  
9 people gathered in the holding area waiting  
10 for clearance to escort Mr. Sanders upstairs.

11 Q. And then after he was done upstairs, what  
12 happened?

13 A. He was escorted back down. Communication  
14 occurred between the holding facility, the  
15 court security personnel and the jail to let  
16 them know that we were going to be back  
17 through the catwalk. So there may have been a  
18 delay of a few minutes in between each  
19 location for security purposes.

20 Q. Thank you.

21 BOYD YOUNG: That's all the  
22 questions I have, Your Honor.

23 BLAIR JENNINGS: Just a couple of  
24 questions, Your Honor.

25 THE COURT: Sure.

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1 CROSS EXAMINATION

2 BY BLAIR JENNINGS:

3 Q. Detective Giglio, you were present when  
4 Mr. Sanders was interviewed on the 24<sup>th</sup>?

5 A. 24<sup>th</sup> of July?

6 Q. Yes, sir.

7 A. Yes, sir.

8 Q. So you knew at that time he had invoked  
9 his right to counsel?

10 A. That is correct.

11 Q. So on August the 2<sup>nd</sup>, in the time that you  
12 were with Mr. Sanders, nobody from the  
13 Sheriff's Office attempted to question him in  
14 any way?

15 A. No, sir. I believe Detective Ashley  
16 served him with the arrest warrant for the  
17 charges of murder. And at that point no  
18 further interview or questioning occurred.  
19 We served him with his documentation, and at  
20 that time he told me -- I didn't have to read  
21 it to him, but I went ahead and read him the  
22 warrants. Nothing further occurred after  
23 that.

24 Q. But nobody in your presence questioned  
25 him?

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1 A. No, sir. I never tried to elicit any  
2 conversation, nor did anyone that was with me  
3 at that time.

4 Q. Thank you very much.

5 THE COURT: Redirect.

6 BOYD YOUNG: No, Your Honor.

7 THE COURT: Thank you, sir. You  
8 may come down.

9 (WITNESS STEPS DOWN)

10 BOYD YOUNG: Judge, may I have just  
11 a moment?

12 THE COURT: Sure.

13 BOYD YOUNG: Your Honor, at this  
14 time the defense would call Mr. Sanders for  
15 the limited purpose of discussing his  
16 statement, for *Jackson v. Denno* purposes.

17 THE COURT: Very well.

18 (WITNESS TAKES STAND)

19 ANTHONY SANDERS, being duly sworn to  
20 tell the truth, the whole truth and nothing  
21 but the truth, testified, as follows:

22 DIRECT EXAMINATION

23 BY BOYD YOUNG:

24 Q. Good afternoon, Mr. Sanders.

25 A. Good afternoon.

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1 Q. Can you tell the Court how old you are?

2 A. Twenty-seven (27)..

3 Q. How long have you been in the Charleston  
4 area?

5 A. Charleston area? All my life.

6 Q. Specifically, I want to ask you some  
7 questions about a statement -- a conversation  
8 that you and Detective Garrison had, okay?

9 A. Uh-huh, (affirmative nod).

10 Q. So do you recall when you were served the  
11 arrest warrants for the murders?

12 A. Yes.

13 Q. Can you tell me what happened?

14 A. From the beginning?

15 Q. Yes.

16 A. I was pulled out of my room, and the  
17 detective and a female came and they read me  
18 my warrants and everything. And I went back  
19 inside my room. Apparently, some time later  
20 they took me back out for the bond hearing.  
21 They took me from the annex to the adjoining  
22 building. And from there I went inside the  
23 holding cell first. We had to wait for the  
24 judge and everything to get set up and  
25 everything. And once they was ready we went

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1 inside the courthouse and everything. And,  
2 you know, they did the formality thing, you  
3 know, the questioning and everything. Then I  
4 went back. They escorted me back to the  
5 facility, the annex, and they placed me back  
6 inside the holding cell.

7 Q. Okay.

8 A. You know? And, right then and there, no  
9 conversation ensued all the way up until that  
10 point. Detective Garrison came inside the  
11 room. I was sitting on the bench and he came  
12 inside the room and sat down next to me and he  
13 was like, 'How are you doing?'

14 I said, "Fine." And, you know, I let him  
15 know, I was like, 'I guess you're happy, you  
16 got what you wanted.'

17 He was like, 'What are you talking about?'

18 I was like, 'You got what you wanted, an  
19 arrest.'

20 He said, "No, that's not what I wanted.'

21 I was like, 'What? The gun?'

22 He was like, 'Yeah, yeah, that's what I  
23 want. That's what I want.'

24 I was like -- you know, I didn't respond.

25 Then he went and said some other things,

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1 and then he was like -- he'd tried to find  
2 every reason to believe that it was not me, or  
3 something like that.

4 And, you know, he spoke and I spoke and I  
5 let him know, I was like, 'When all this is  
6 said and done I'd like an apology,' you know?

7 And he was like, 'I can do something  
8 better. I can take you out to eat, your  
9 choice.'

10 And that's the conversation right there.  
11 I don't recall coming of my mouth stating 'one  
12 day I'll tell you the whole story' and 'do you  
13 want the gun.' I find that to be ridiculous.

14 Q. Okay. Did he come down and ask you how  
15 you were first?

16 A. Yes. He initiated the conversation.

17 Q. Okay. And have you -- is that all of the  
18 conversation? Was that everything?

19 A. I can't recall the whole conversation from  
20 beginning to end, verbatim. But it wasn't a  
21 -- it wasn't a long conversation.

22 Q. When you had been interrogated on the 24<sup>th</sup>  
23 -- do you recall that?

24 A. Yes.

25 Q. Were you asked a lot of questions about

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1 the gun, 'Where's the gun?'

2 A. Oh, yeah. That was like seemed to be the  
3 whole underlying fact of the whole questioning  
4 process.

5 Q. Okay. Is that why you said ---

6 A. Of course. I mean, look at it, from the  
7 interrogation it seemed like his main focus  
8 was, 'Where's the gun?' 'Where's the gun, let  
9 me know where the gun is.' 'All I want is the  
10 gun', the gun, the gun, the gun.

11 Even the day -- you know, I got locked up  
12 after 11:00 on the 23rd and so all the way  
13 from that date, all the way to the 2<sup>nd</sup>, you  
14 know, I've seen them numerous times.

15 Because I seen them that Monday night --  
16 well, actually, Tuesday, in the middle of the  
17 night, around 4:30.

18 I saw them on Tuesday. I saw them again  
19 after 7:00 o'clock sometime when they came  
20 back to serve me with the warrant from  
21 Virginia, from that situation.

22 Wednesday, I saw them again, but he was  
23 literally just stating "I'm here, just in case  
24 you want somebody to talk to."

25 I personally saw him all the way up until

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1 Friday when I went to St. George, you know.  
2 So it's already embedded in my head that  
3 that's all he's really hoping to learn, you  
4 know. So that's what he did, when he brought  
5 me -- to, you know, let him know, 'I guess  
6 you're happy that you got what you wanted.'  
7 He was like, 'No, you know what I want.'  
8 And I already knew what he wanted from the  
9 constant, you know, questioning.

10 Q. Okay. Mr. Sanders, please answer any  
11 questions they may have.

12 THE COURT: Cross-examine?

13 BLAIR JENNINGS: Thank you, Your  
14 Honor.

15 CROSS EXAMINATION

16 BY BLAIR JENNINGS:

17 Q. Good afternoon, Mr. Sanders.

18 A. Good afternoon.

19 Q. There's no question you understand your  
20 Constitutional rights in relation to speaking  
21 with law enforcement, correct?

22 A. Correct.

23 Q. You know you have the right to remain  
24 silent, correct?

25 A. Right.

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1 Q. You have the right to an attorney?

2 A. Correct.

3 Q. The police can't force you to talk to  
4 them?

5 A. Right.

6 Q. Because you've been arrested -- in  
7 addition to having your rights read to you on  
8 the 24<sup>th</sup>, you've been arrested a number of  
9 times and had your rights read to you,  
10 correct?

11 A. Yes, sir.

12 Q. In 2002, in August of that year, you were  
13 arrested for some drug charges. You were  
14 originally charged with possession with intent  
15 to distribute crack and possession with intent  
16 to distribute in proximity of a school. Did  
17 you have your rights read to you then?

18 A. I -- that's, what? Seven years ago? But,  
19 (affirmative nod), I assume.

20 Q. Okay. Then you were arrested on January  
21 the 7<sup>th</sup> of 2003, charged with three counts of  
22 simple assault. Do you recall being read your  
23 rights at that time when you were arrested?

24 A. Three counts?

25 Q. It looks like you were only convicted of

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1 one. But it looks like you were charged --

2 regardless of how many, you were arrested.

3 And do you recall being read your rights?

4 A. Again, that's some time ago but I would  
5 assume.

6 Q. Then in March 15<sup>th</sup> of 2003, you were  
7 charged with disorderly conduct. Do you  
8 recall being read your rights?

9 A. Yes.

10 Q. December 26<sup>th</sup> of 2003 you were charged  
11 with driving under the influence, open  
12 container, failure to give information,  
13 driving under suspension and disorderly  
14 conduct. Do you believe you would have been  
15 read your rights?

16 A. I assume, 'cause I was heavily intoxicated  
17 that night anyway.

18 Q. May the 13<sup>th</sup> of 2004, you were charged  
19 with driving under suspension and possession  
20 of crack. You would have been read your  
21 rights then?

22 A. I assume.

23 Q. October the 3<sup>rd</sup> of 2004, you were charged  
24 with disorderly conduct. Do you think you  
25 would have been read your rights?

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1 A. I assume.

2 Q. June the 4<sup>th</sup> of 2006, you were charged  
3 with kidnapping, driving under suspension and  
4 criminal sexual conduct with a minor. I  
5 believe you were interviewed in that case.  
6 You would have been read your rights?

7 A. Uh-huh, again I assume.

8 THE COURT: Is that a yes?

9 DEFENDANT: Excuse me. Is that a  
10 yes?

11 THE COURT: When you said "um-humm"  
12 or "uh-huh", I need for you to say yes or no  
13 so we can hear you.

14 DEFENDANT: Again, I assume.

15 CROSS EXAMINATION CONTINUED

16 BY BLAIR JENNINGS:

17 Q. Again, the detectives interviewed you in  
18 that case, didn't they?

19 A. Yes.

20 Q. And I believe you had another arrest on  
21 April the 8<sup>th</sup> of 2007, up in Virginia for  
22 possession of a controlled substance. Do you  
23 believe you were read your rights?

24 A. Yes.

25 Q. You've seen the interview, I believe, on

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1 July the 24<sup>th</sup>, by Major Garrison and Detective  
2 Giglio where they go over your rights with you  
3 at the beginning of that interview?

4 A. Yes.

5 Q. And, in fact, you invoked those rights at  
6 that time?

7 A. Correct.

8 Q. Told them you didn't want to talk to them?

9 A. Correct.

10 Q. And I believe from the time that you were  
11 arrested on the 24<sup>th</sup>, did you stay at the  
12 annex?

13 A. I stayed at the annex all the way up until  
14 the 27<sup>th</sup>, which was a Friday.

15 Q. So you were up in St. George when you were  
16 brought back to have the murder warrant  
17 served?

18 A. Yes. I was at the annex until the 27<sup>th</sup>,  
19 went to St. George, and I was brought back to  
20 the annex on the 30<sup>th</sup>. I stayed there again  
21 all the way to August the 3<sup>rd</sup>.

22 Q. So you were first interviewed on the 24<sup>th</sup>.  
23 On the 25<sup>th</sup>, you contacted a guard at the  
24 detention center, right, and told them you  
25 wanted to talk to Detective Garrison?

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1 A. I disagree with that. And I really would  
2 like to know the guard that states that I  
3 informed them that I'd like to speak to  
4 Detective Garrison. Do you got that on  
5 record?

6 THE COURT: No, sir. You just  
7 answered question. You said you didn't talk  
8 to anybody.

9 DEFENDANT: I said I didn't talk  
10 to nobody.

11 CROSS EXAMINATION CONTINUED

12 BY BLAIR JENNINGS:

13 Q. You did not talk to a guard?

14 A. I did not inform a guard that I would like  
15 to speak to Detective Garrison.

16 Q. Do you recall Lieutenant Van Dorn coming  
17 and seeing you in the detention center?

18 A. Yeah, early that morning. It was like a  
19 couple of hours after the interrogation. He  
20 came forward and they brought me out of my  
21 room. They let me know -- and he told me  
22 that, uh, 'my detective, you know, can't speak  
23 to you no more unless you request to speak to  
24 them.' And he was like, 'I just want to let  
25 you know that.' I was like, 'All right, thank

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1     you.' I went back to my cell and he left.

2     Q. And did you tell Lieutenant Dorn, 'That's  
3     okay, I've already talked to the guard and  
4     told them I want to talk to Garrison.'

5     A. No, I said no such thing.

6     Q. So you did not tell Lieutenant Van Dorn  
7     that?

8     A. Uh-uh.

9             THE COURT: Is that a "no"?

10            DEFENDANT: "No."

11            CROSS EXAMINATION CONTINUED

12     BY MR. JENNINGS

13     Q. Then August 2<sup>nd</sup> is the date that you were  
14     served with the warrants for the three counts  
15     of murder, correct?

16     A. Correct.

17     Q. And they brought you down from St. George,  
18     down to the annex in Summerville to serve  
19     those warrants and then had the bond hearing?

20     A. Yes.

21     Q. And nobody tried to interview you during  
22     that time?

23     A. No.

24     Q. Nobody readvised you of your rights?

25     A. No.

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1 Q. They didn't ask you any questions about  
2 this case?

3 A. No.

4 Q. They didn't ask you any questions about  
5 The Anchor Bar incident?

6 A. No.

7 Q. They didn't ask you any questions about  
8 Hunters Ridge?

9 A. No.

10 Q. So you go into Court and you have your  
11 bond hearing and then they take you back out,  
12 place you in the holding cell?

13 A. Yes.

14 Q. And Major Garrison came in to see you?

15 A. Yes.

16 Q. I believe, as you testified, asked you how  
17 you were doing?

18 A. Right.

19 Q. And your response, you started a  
20 conversation with ---

21 A. No, my response -- I immediately answered  
22 the question that 'I'm doing alright.'

23 Q. Then you started a conversation with, 'I  
24 guess you're happy now that you've got what  
25 you want.'

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1 A. Correct.

2 Q. So you would agree with me that you, from  
3 that point, reinitiated that conversation and  
4 sparked that conversation with Major Garrison?

5 BOYD YOUNG: I would object to that  
6 question. It calls for a conclusion.

7 THE COURT: I'll allow it.

8 DEFENDANT: I mean, if you want to  
9 put it that way, but the conversation had  
10 already ensued.

11 CROSS EXAMINATION CONTINUED

12 BY MR. JENNING:

13 Q. All he said to you was, "How are you  
14 doing?"

15 A. He sat down next to me and asked me how I  
16 was doing. But if you ask me that's like a  
17 preamble to a conversation.

18 Q. But as far as extending the conversation  
19 and striking up the conversation, that was  
20 your decision?

21 A. Yes.

22 Q. Thank you very much.

23 BLAIR JENNINGS: That's all I have,  
24 Your Honor.

25 THE COURT: Redirect.

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1 BOYD YOUNG: Nothing further, Your  
2 Honor.

3 THE COURT: Thank you. You may  
4 come down.

5 (WITNESS STEPS DOWN)

6 BLAIR JENNINGS: Your Honor, that  
7 would conclude the evidentiary presentation.

8 THE COURT: Any additional  
9 testimony?

10 BOYD YOUNG: No, sir.

11 THE COURT: I'll be happy to hear  
12 from you on your Motion to suppress the  
13 identification and the statement.

14 BOYD YOUNG: Your Honor, I'll start  
15 with Motion 43, tab forty-nine, the Motion to  
16 Suppress the Identification.

17 THE COURT: All right, sir.

18 BOYD YOUNG: Your Honor, I think  
19 based on the totality of the circumstances,  
20 the identification procedure used to identify  
21 Mr. Sanders was unduly suggestive and should  
22 be excluded. I mean, I know we just had ---

23 THE COURT: Based on -- what do you  
24 believe was unduly suggestive about it?

25 BOYD YOUNG: Your Honor, we don't

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1 have -- Mr. Chavers wasn't here, and certainly  
2 it's the State's burden to present the  
3 identification.

4 We know from the detective that did  
5 testify that there were a number of pictures  
6 shown to Mr. Chavers prior to a six-pack photo  
7 lineup being brought back out there later. We  
8 don't know who those pictures were of or what  
9 they consisted of.

10 I think at this point in time the  
11 State hasn't met their burden to admit the  
12 six-pack identification, although they -- I  
13 can't point to anything specific with regard  
14 to the six photo spread. Certainly, they  
15 didn't contain any identifiers or, you know  
16 -- and the pictures do -- Mr. Sanders, I don't  
17 think, stands out from that lineup in any  
18 particular way, as far as that procedure  
19 itself goes. However, I do have questions  
20 about what else was shown to Mr. Chavers at  
21 the previous interview, and what other  
22 pictures were shown. Those concerns lead me  
23 to believe that the ultimate identification  
24 and in-court identification should be  
25 suppressed.

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1 THE COURT: Okay. Response, Mr.

2 Jennings?

3 BLAIR JENNINGS: Just briefly. I  
4 think, Your Honor, when you look at the case  
5 law, it's clearly a two-prong analysis. The  
6 first focus is purely on the suggestability of  
7 the lineup procedure.

8 I think this was a very fair lineup.  
9 All the individuals in it are of the same  
10 race, the same gender, the same general facial  
11 features, facial hair.

12 I believe Major Garrison testified he  
13 did not suggest in any way which photograph  
14 for Mr. Chavers to chose, didn't even that the  
15 suspect might be in it. Just asked him to  
16 look at the pictures to see if he recognized  
17 anybody. So I think that, one, that it was  
18 not suggestive. At this point in the  
19 proceedings, I think that's really where the  
20 Court's analysis ends.

21 THE COURT: Thank you. Any reply?

22 BOYD YOUNG: No, Your Honor.

23 THE COURT: I agree. It's two-  
24 prong. Clearly the first triggers the second.  
25 Is there any likelihood of substantial

1 misidentification because of the suggestion?

2 But as you stated in your argument, and I  
3 think correctly stated, the photo lineup  
4 itself is not unduly suggestive. The  
5 testimony is that the person viewed it and  
6 picked out and was very sure of the person.

7 Certainly there's -- and we had the  
8 discussion, Mr. Leiendecker and I, and I don't  
9 quarrel with the cross-examination questions  
10 about where the person was in the vehicle.  
11 That certainly is very germane and very  
12 pertinent, and could be pertinent insofar as  
13 'which person did you see', except for the  
14 fact that he identification this person out of  
15 six people. And in the first group of people  
16 he didn't identify anybody, he did not see  
17 him. So to say that there's something  
18 suggestive about the first that triggered this  
19 one just simply -- there's nothing that I  
20 find.

21 If we're trying that who is the  
22 shooter at The Anchor, there's some question  
23 about which one was shooting. No question  
24 about that. But does it mean that this person  
25 wasn't identified by the person as being

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1 present? No. And that, to me, was the issue.  
2 Was he sure of this person being where he was  
3 in the vehicle? Maybe there's some question.  
4 But I don't think that has as lot to do with  
5 the identification part of it.

6 So I find it to be certainly not  
7 unduly suggestive, and nothing about it, to  
8 me, could challenge the reliability of the  
9 identification. So your Motion to suppress  
10 the identification is denied.

11 The statement -- do you want to talk  
12 about that now?

13 BOYD YOUNG: Yes, sir.

14 THE COURT: Okay.

15 BOYD YOUNG: Your Honor, I think --  
16 obviously *Jackson v. Denno* is based on the  
17 totality of the circumstances.

18 THE COURT: Correct.

19 BOYD YOUNG: I would request that  
20 Your Honor, prior to ruling, would take an  
21 opportunity to review the interrogation.

22 THE COURT: I've read all but about  
23 four pages of the transcript, but I want to  
24 review the tape itself.

25 BOYD YOUNG: Okay. And I think it's

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1 relevant to set in place what kind of dynamics  
2 existed between Major Garrison and Mr. Sanders  
3 in the week leading up to this statement at  
4 the bond hearing.

5 THE COURT: Let's put it this way,  
6 I can concede that just from what I've read  
7 and the exchange that I've read without  
8 viewing it, obviously the detectives are there  
9 for one purpose. There's no question about  
10 that. It wasn't to be his friend and buddy --  
11 his best buddy. I mean, there's some  
12 suggestion about that. No, they weren't  
13 friends. There's no question they were.

14 I haven't seen it, but just from what  
15 I've read they were somewhat abrasive with him  
16 and pretty persistent. But he was persistent,  
17 too.

18 And so the key to me is -- and I want  
19 to look at this. But how does that carry  
20 over, I guess I would say, to the part of  
21 where what's alleged and what the testimony  
22 is, that he just makes the statement. It's  
23 not any interrogation.

24 And I understand your argument he  
25 said, 'I didn't make that statement.' And why

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1 would there be any reason, given what's  
2 transpired. I understand that. But what  
3 else, other than that?

4 BOYD YOUNG: And I think the carry-  
5 over leads me to the arrest warrant, which  
6 Major Garrison swore out on August the 1<sup>st</sup> of  
7 2007, and which in the second page of the  
8 affidavit he attributed a statement to Mr.  
9 Sanders saying, "I was home at the night of  
10 the murders." Whereas that's not in any part  
11 of the interrogation. And he admits this  
12 probably was a mistake to include that line in  
13 the affidavit.

14 And that leads me to the next set of  
15 statements where he says in his report, during  
16 transport, during the walk back after ---

17 THE COURT: I understand. One of  
18 them is sitting there waiting. The other's on  
19 the walk back. I understand that. The  
20 location of where it occurred is in question.

21 BOYD YOUNG: Certainly Mr. Sanders  
22 corroborates that there was a conversation in  
23 the holding cell. And Detective Giglio  
24 confirmed that he didn't hear anything on the  
25 walk back where Major Garrison said that the

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1 spontaneous statement happened.

2 Our argument would be, based on the  
3 presentation of evidence, that Major Garrison  
4 initiated contact with Mr. Sanders after Mr.  
5 Sanders had invoked. That the statements  
6 themselves, as far as who's ---

7 THE COURT: Does Mr. Sanders refute  
8 that by saying nobody interrogated him?

9 BOYD YOUNG: Well, I don't think ---

10 THE COURT: I mean, didn't he, in  
11 fact, say that nobody questioned him?

12 BOYD YOUNG: Right.

13 THE COURT: I thought I heard him  
14 say that.

15 BOYD YOUNG: He said that nobody  
16 questioned him until ---

17 THE COURT: At the bond hearing.

18 BOYD YOUNG: Right, other than the  
19 Court saying 'Who are you? Where do you live?  
20 Do you want a lawyer?'

21 THE COURT: Correct.

22 BOYD YOUNG: No, there was no  
23 interrogation. But the conversation was re-  
24 initiated by Major Garrison with him saying  
25 'How are you doing?'

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1 THE COURT: There's no question --  
2 I think we are both on the same page. Given  
3 everything, there's no question there was a  
4 conversation and no question he initiated the  
5 conversation. He just simply said, 'I never  
6 talked about asking him about the gun.' But  
7 he said he had a conversation with him.  
8 There's no question about that. I don't think  
9 there's any question that a conversation was  
10 held in the holding cell before they went to  
11 the bond hearing, while they were waiting.

12 BOYD YOUNG: Our position would  
13 be that Major Garrison initiated that conver-  
14 sation.

15 THE COURT: He doesn't say that.

16 BOYD YOUNG: Mr. Sanders says that  
17 he did initiate the conversation by saying,  
18 'How are you doing?'

19 THE COURT: Okay.

20 BOYD YOUNG: That would be our  
21 argument.

22 THE COURT: And because he said  
23 'how are you doing', then all this other stuff  
24 is just -- is a part of what? "How are you  
25 doing?" 'Well, let me tell you about the gun

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1 and all this stuff?' I mean, that doesn't  
2 make any sense. Maybe I'm missing something.

3 BOYD YOUNG: I mean, "How are you  
4 doing?" ---

5 THE COURT: How are you doing is  
6 not an interrogation. That's just simply, how  
7 are you doing? Okay? I mean, what's the  
8 interrogation? I'll agree. If you want me to  
9 suppress 'How are you doing?', then I will  
10 suppress that. But the rest of it, he's not  
11 asking him any questions. I mean, that  
12 doesn't make any sense, is all I'm saying.

13 BOYD YOUNG: Well, "I hope you're  
14 happy." 'No, I'm not happy. You know what I  
15 want.' The gun.

16 THE COURT: Okay. What's your  
17 response?

18 BLAIR JENNINGS: Under Major  
19 Garrison's story, there is no questioning at  
20 all.

21 THE COURT: Correct.

22 BLAIR JENNINGS: According to him,  
23 it's just an utterance by Mr. Sanders. So I  
24 think what you -- this would all go to weight.  
25 But I think even under -- what the Court's

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1 alluding to, that even under Mr. Sanders'  
2 story, which is the best-case scenario, he  
3 admitted that he took the conversation to the  
4 next level. He brought up, 'Well, I hope  
5 you're happy. You got what you wanted.'

6 So I think that it's clear that he  
7 knows what his rights were. And he made the  
8 decision to not only extend the conversation,  
9 but take it to the realm of where it went. So  
10 all those questions, I think, are questions of  
11 fact and would come down to who the jury  
12 believed, which rendition of the story.

13 But Constitutionally, I don't believe  
14 that his Fifth Amendment or Sixth Amendment  
15 rights were violated.

16 THE COURT: Anything else?

17 BOYD YOUNG: No, Your Honor.

18 THE COURT: Basically, what I'm  
19 going to do, we'll send you an email about the  
20 ruling on this. I want to review -- or I can  
21 review it now. How long does it take to view  
22 the CD?

23 BOYD YOUNG: About an hour.

24 THE COURT: I'm not going to do  
25 that right now. I'll review it. Let's see

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1     what we have. If we have enough to bring back  
2     tomorrow, then I'll come back and do that, or  
3     we can come back and I'll give you my ruling  
4     tomorrow. But I'll take that one under  
5     advisement.

6             BOYD YOUNG:     Okay.

7             THE COURT:     Did we talk about  
8     wrongful -- is that what we took testimony on,  
9     the crimes or other actions?

10            BLAIR JENNINGS:   Yes, sir.

11            THE COURT:     That would be The  
12     Anchor and the Hunters Ridge.

13            BLAIR JENNINGS:   That's correct.

14            THE COURT:     What's your position on  
15     that?

16            BOYD YOUNG:     Your Honor, the Court  
17     has a copy of the State's brief. I certainly  
18     don't disagree with any of the law which they  
19     cite. I have a copy of *Cheeseborough*, which  
20     I've been reviewing. It certainly seems that  
21     this case is distinguishable from  
22     *Cheeseborough* in a number of significant  
23     manners.

24            But first of all, as the Court knows,  
25     the standard is clear and convincing evidence.

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1 Can they prove this is a prior bad act by  
2 clear and convincing evidence? I think that  
3 they've failed to meet their burden on the  
4 first hurdle.

5 Number one, doing these in date  
6 order, the shooting at The Anchor, as the  
7 Court has acknowledged there are significant  
8 issues with who shot, who was where. No  
9 question that they have a witness who will  
10 identify Mr. Sanders as being present. But I  
11 don't think mere presence would qualify as  
12 clear and convincing evidence.

13 That leads me to the shell casing  
14 identification. And, of course, the shell  
15 casing identification at each of the three  
16 crime scenes, two of which Mr. Walker was at.  
17 And we know that Mr. Walker has not been  
18 completely honest in his statements versus  
19 everybody else's statements surrounding these  
20 events.

21 If Mr. Walker is to be believed, and  
22 the reason that we are making a big deal about  
23 who was driving and who was in the passenger's  
24 seat is because Mr. Chavers was pretty clear  
25 that the shots came from the passenger's side.

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1 Mr. Walker is very clear that Mr. Sanders was  
2 driving.

3 Mr. Walker was the one who had an axe  
4 to grind at the Hunters Ridge location where  
5 shell casings from the same .40 caliber  
6 handgun were recovered. Mr. Walker is the  
7 only one who was identified as a shooter at  
8 the Hunters Ridge incident.

9 I think, based on all that evidence,  
10 I think that the State has failed in its  
11 burden to support by clear and convincing  
12 evidence that Mr. Sanders fired the shots at  
13 The Anchor Club and they failed to meet their  
14 burden that Mr. Sanders fired shots at the  
15 Hunters Ridge incident, despite the fact that  
16 shell casings from both those scenes were  
17 identified as being consistent with the shell  
18 casings from the Archdale murder shootings.

19 In Cheeseborough, testimony was  
20 admissible about a murder of a cab driver  
21 because of the pistol. The same gun was used  
22 in the barber shop murder as the murder of the  
23 cab driver.

24 THE COURT: Correct.

25 BOYD YOUNG: Providing the nexus for

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1     which that other crime was admissible. The  
2     gun was recovered. The gun was tested. Now,  
3     the gun was later destroyed inadvertently, not  
4     in bad faith, by the police department; and  
5     ruled that it was admissible anyway, because  
6     it didn't have a provable exculpatory value.

7             However, there is no gun in this  
8     case. The police don't have a gun by which  
9     they can say 'we've matched this gun as having  
10    been at all these locations', or 'this is the  
11   gun that committed these murders.' That's not  
12   there.

13            What they have are reloaded shell  
14   casings. Now, shell casings, as the Court is  
15   aware, and as I talked a little bit about with  
16   Agent Thrower, reloads cut down on the number  
17   of marks that you can attribute to any one  
18   firearm. Which is why Agent Thrower only  
19   looked at the marks that were on the primer,  
20   the part that's ---

21            THE COURT:     I understood fully that  
22   -- I've reloaded shotgun shells. I'm familiar  
23   with the process.

24            BOYD YOUNG:    So that really limits  
25   the number of points of identification.

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1 Usually, you would have shell casings matched  
2 from a semi-automatic handgun that has a  
3 number of different marks that you could all  
4 match up, and they're all consistent.

5 THE COURT: Right.

6 BOYD YOUNG: In this case, we're  
7 talking about one set of markings. You don't  
8 have the other ones to induce any reliability  
9 in that identification. Nor is this a  
10 ballistics characteristic, where you're  
11 talking about striations put on the lead  
12 coming through the barrel.

13 So based on that, I think that that  
14 distinguishes Cheeseborough, the fact that  
15 there is no gun and the fact that we are  
16 talking about one form of potential markings  
17 of shell casings, not the shell casings in  
18 their entirety.

19 I think with those two things, they  
20 don't have enough to meet the clear and  
21 convincing standard to get in those other  
22 shootings.

23 THE COURT: Okay.

24 BOYD YOUNG: At least, on The Anchor  
25 Bar shooting there is an independent witness

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1 who identifies Mr. Sanders as being present.  
2 Even if the Court felt that that was enough to  
3 give them clear and convincing evidence in  
4 that particular circumstance, I think that  
5 they completely fail with regard to the  
6 Hunters Ridge incident in that Mr. Walker, who  
7 was identified by all the other witnesses as  
8 the shooter, is the only person who puts Mr.  
9 Sanders there with that gun.

10 THE COURT: Okay. The State's  
11 position?

12 BLAIR JENNINGS: Your Honor, we  
13 would rely on our brief that we filed with the  
14 Court. I would just point out to the Court, I  
15 think the key point that you end up with is  
16 the fact that the Supreme Court has upheld as  
17 allowing proof of a defendant's involvement in  
18 prior instances of violence to prove his  
19 identity in the case being tried.

20 Yes, in Cheeseborough you had the gun  
21 and that was the element of proof. But in  
22 this case, we're at the same point. Although  
23 we don't have the gun, we know through Agent  
24 Thrower that all three sets of shell casings  
25 were fired by the same gun, in his opinion.

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1 Obviously, that might be subject to attack by  
2 the defendant at trial. But at this point his  
3 opinion is that all three shell casings were  
4 fired by the same gun. So essentially, we're  
5 at the same point as we were at Cheeseborough,  
6 and the Court has upheld that evidence to  
7 prove the identity of the defendant. So the  
8 next question is, can it be proved by clear  
9 and convincing evidence.

10 I think an important point is it's  
11 not just any type of manufacture or any type  
12 of ammunition that's at all three scenes. It  
13 is the same caliber of ammunition as well as  
14 make. It's all .40 caliber Smith & Wesson  
15 Federal reloaded ammunition at each scene.

16 I would submit to the Court that  
17 there is clear and convincing evidence as to  
18 each incident. Of course, Xavier Walker is  
19 the thread that runs through each of the  
20 incidents. Clearly, he can be impeached when  
21 he testifies. But he, nonetheless, does  
22 provide a statement not only placing Mr.  
23 Sanders at those scenes, but does put the gun  
24 in his hands and firing the shots. I think  
25 that fact alone satisfies the clear and

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1     convincing. In both of the cases that we  
2     cited it was essentially eyewitness testimony  
3     that placed Mr. Cheeseborough at the cab  
4     driver shooting as well.

5             But even in addition to Mr. Walker,  
6     look at what we have that supports his  
7     identification. At The Anchor Bar you have  
8     Mr. Chavers who identified Mr. Sanders, not  
9     just as being present but as firing the semi-  
10    automatic handgun.

11            In addition, another reason I point  
12    out that it's significant that the same type  
13    of ammunition is used at each scene, is that  
14    exact type of ammunition is found in a room  
15    that was attributed to Mr. Sanders, where his  
16    safe is, where his shoes are, his personal  
17    documents, letters that are written to him,  
18    Court-charging documents where he was charged  
19    in the past with criminal sexual conduct with  
20    a minor. You had three .40 caliber Smith &  
21    Wesson Federal bullets in the shoebox, as well  
22    as one under the bed.

23            In addition, we have the other fact  
24    tying him to it, is Mr. Alexander who tells  
25    the detectives that he had a canister of that

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1 type of ammunition that had been taken out of  
2 his car, as well as a handgun -- the exact car  
3 that he had lent to the defendant in exchange  
4 for crack. So, really, it all does come back  
5 in a circle.

6 In addition to that information, you  
7 have the defendant's own statement that the  
8 detectives corroborated through Ms. Barrett  
9 who's up in Virginia, who recalled a  
10 conversation where Mr. Sanders admitted to her  
11 being involved in the incident at The Anchor  
12 Bar, and his girlfriend, Medea Thompson, who  
13 recalled not only having a conversation with  
14 him about Anchor Bar, but also a conversation  
15 with him where he described the Hunters Ridge  
16 incident.

17 So I believe at this point there is  
18 clear and convincing evidence, and we would  
19 rely on that.

20 THE COURT: Any response?

21 BOYD YOUNG: No, Your Honor.

22 THE COURT: I agree. At this point  
23 -- of course, again, if we're doing this -- at  
24 any point these persons who've been attributed  
25 to making statements, such as the two females

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1 who said that he'd called them and talked to  
2 them about it. That's evidence,  
3 circumstantial evidence, that connects  
4 everything. If those persons at trial said  
5 'no, he never made such a statement', then  
6 things start breaking down a little bit.  
7 But at this point, given everything that I've  
8 heard, there's no question that it really  
9 connects very clearly.

10 I mean, clearly The Anchor Bar, as  
11 you said, there's an eyewitness and then we  
12 have the corroborating statement. And then  
13 you've got -- and I -- you can certainly  
14 attack the testimony of the expert concerning  
15 his identification. But it really is a  
16 science, and he's testified to it. And I  
17 think it would meet the test that a jury would  
18 have to make the ultimate decision. But  
19 clearly, he says there's no question that  
20 those -- all the cartridges at Anchor and at  
21 the Hunters Ridge and at the murder scene were  
22 fired by the same weapon. And when you put  
23 the weapon -- and I agree you can attack Mr.  
24 Walker's testimony. But he puts it in his  
25 hands, then it's certainly strong

1     circumstantial evidence of indicating his  
2     connection to or involvement with the firearm.  
3     And also, of course, the fact that the same  
4     ammunition or type of ammunition was found.  
5     Good Lord, I'd hate to guess how many of those  
6     cartridges are around. But clearly, that's  
7     still an indicia of it and it connects it.

8             So I would, at this point, deny your  
9     Motion to exclude that. Of course, again,  
10    this is all *in limine* as to that. It's going  
11    to have to meet some tests before ultimately  
12    the jury hears it, obviously.

13            BOYD YOUNG: Certainly, Your Honor,  
14    And I just want to be clear for the record  
15    that at this point in time -- and the State  
16    and I have talked about this, but I just want  
17    to make sure that I'm clear on the record that  
18    only prior bad acts or 404(b) or Lyle evidence  
19    that the State is intending to introduce --  
20    we've had testimony regarding an arrest for  
21    CSC and all that stuff.

22            THE COURT: That's not what -- I'm  
23    not ruling on that. I'm ruling on two things,  
24    Hunters Ridge and The Anchor Bar.

25            BOYD YOUNG: Yes, sir.

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1 THE COURT: Those are the only two  
2 that I assume we're talking about in this.  
3 Everything else, no. It doesn't bootstrap in  
4 on that. No, sir, absolutely. And I assume  
5 those are the only two incidents we're talking  
6 about. Because clearly those are the only two  
7 that really fall under the *Lyle* exception, as  
8 I see it, showing identification of the  
9 shooter. Because that's the only purpose for  
10 which it's being admitted. All right? Okay.  
11 That deals with those evidentiary Motions,  
12 right?

13 BOYD YOUNG: Yes, sir.

14 THE COURT: All right. Have y'all  
15 discussed these Motions before concerning any  
16 objections to -- we mentioned some. You have  
17 your lists. I assume that the Motions that  
18 you've filed, the statement -- I don't need to  
19 rule on his assertion of the Fourth Amendment,  
20 Fifth and Sixth Amendments. That's not  
21 something I need to rule on. You're just  
22 restating that, as I understand it.

23 BOYD YOUNG: That's correct, Your  
24 Honor.

25 THE COURT: And he's not waiving

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1 any rights -- I don't need to do anything with  
2 that.

3 The Motion (Motion Number 4) for him  
4 to be present. He'll be present unless he  
5 specifically waives his presence at all  
6 proceedings. I don't think we need an Order  
7 other than my stating that, as to Motion 10.

8 Motion 11, I don't know what the  
9 procedure is -- he's not in restraints today.  
10 I assume that he'll be just as he is dressed  
11 today.

12 MR. LEIENDECKER: He is in restraints  
13 today, Your Honor.

14 THE COURT: Where? Are they  
15 inside?

16 MR. LEIENDECKER: They're inside.

17 THE COURT: I don't have any  
18 problem with that.

19 MR. LEIENDECKER: I would ask the  
20 Court at this time if you would listen when  
21 he walks to the chair, at times they have a  
22 squeak in the joints. And that all we would  
23 do is be certain that if we're not going to  
24 prohibit the use of them, that Mr. Sanders be  
25 in place and seated before the jury comes in

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1 or out, so he's not walking stiff-legged or  
2 looking unnatural.

3 THE COURT: We'll work around that  
4 at that time, Mr. Leiendecker.

5 MR. LEIENDECKER: Yes, sir.

6 THE COURT: The other things -- we  
7 can call Horry County and borrow the belt that  
8 they tied on the last one that I had. It  
9 unfortunately went off during the middle of  
10 the trial. It was activated. Fortunately the  
11 jury had been excused, because it put him on  
12 the floor. He started screaming before it hit  
13 him, too, because he could hear the beeping.  
14 We can use that if you want. That didn't  
15 restrict him from walking around.

16 But I think inside the leg is really  
17 much better, and it's a much easier way to do  
18 it. I don't have any problem with that.

19 But I agree that no visible  
20 restraints will be shown unless -- I haven't  
21 had this happen, but so we understand, Mr.  
22 Sanders, I respect you as a person and as a  
23 human being. To my knowledge, we've never met  
24 other than through this proceeding. As I told  
25 a gentleman in 1996 who was being tried for a

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1 prison uprising, and I asked them to remove  
2 his restraints from him. I told him, you  
3 know, 'you're a human being, and I'm going to  
4 treat you with the respect that I will assume  
5 you're going to treat this process.' And as  
6 long as you do that, we won't have any  
7 problem. But the minute that you step out of  
8 line and start -- if there's anything that  
9 gives the Court concern about the safety of  
10 you and other people in this courtroom, that  
11 restraint -- that decision is forever gone  
12 because he will be fully in restraints at that  
13 time. But that will be his election, not  
14 mine. But I just want to be clear. I'm not  
15 binding the Court insofar as protecting the  
16 safety and well-being of the people here,  
17 including Mr. Sanders. So as long as that's  
18 understood.

19 I assume there'd be no problem -- I  
20 don't know where -- when y'all bring them, is  
21 there any chance of -- when you bring them in,  
22 do you drive into the building? Is there a  
23 garage underneath this building or do you have  
24 to walk outside to bring them in, when you  
25 transport the prisoners?

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1                   DEPUTY:       Your Honor, there's a  
2   sally port in the back, and we bring them in  
3   that way and bring them into the detention  
4   area.

5                   THE COURT:    So no one outside would  
6   see anyone in the van, then?

7                   DEPUTY:       No, sir.

8                   THE COURT:    Then we shouldn't have  
9   any problem. I assume you let them change  
10  here, not at the detention.

11                  DEPUTY:       Yes, sir.

12                  THE COURT:    We don't want to do  
13  that. That's what happened in Conway where  
14  problems arose. They let them change before  
15  they came, and it was something in the  
16  clothing provided that facilitated something  
17  else that day. So as long as we know the  
18  changing will take place here. No problem  
19  with that, and that would be number twelve.

20                  Number thirteen is you want me to maintain  
21  regular hours. Please define "regular hours".

22                  BOYD YOUNG:   9:00 to 5:00.

23                  THE COURT:    No, sir, I can't  
24  promise you that. I don't know what it will  
25  be. But I will work, try to work with every -

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1 - to keep in mind everybody's needs.

2 BOYD YOUNG: Yes, sir.

3 THE COURT: But the most important  
4 thing is to keep the case moving. So I cannot  
5 promise you regular hours.

6 At this point, I've indicated that I  
7 probably will not sequester the jury. That  
8 still is my leaning. I'll make that decision  
9 as the date for trial approaches. But,  
10 obviously, if they are sequestered, then we  
11 change everything. They're working seven days  
12 a week, and we will too. Just keep that in  
13 mind. Thank you.

14 But I was a lawyer. I understand  
15 your needs as well, aside from the people that  
16 are involved. So I want you to know that I'm  
17 aware of why you ask for that and understand.

18 BOYD YOUNG: Yes, sir.

19 THE COURT: Gag order. I think  
20 we'll do a gag order. If y'all want to  
21 prepare one and just submit it and exchange it  
22 and I'll be happy to sign a gag order. That's  
23 number fourteen.

24 Number fifteen, the Court ---

25 JOHN WILLIAMS, LAW CLERK: Tab

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1 number.

2 THE COURT: Excuse me, you're  
3 correct. I'm referring to the tab numbers.  
4 Number four is the motion to be present.

5 (Motion) Number 3 is the non-waiver. Let  
6 me restate for the record. I said eleven and  
7 that's the tab number.

8 Number twelve is Motion 6.

9 Thirteen is Motion 7.

10 Motion 8 is the gag Order.

11 Motion 9 is *ex parte* communication.

12 The Court intends to comply with the canons of  
13 ethics affecting me. I don't plan to have  
14 any, haven't had any, but -- what else do you  
15 want me to say?

16 BOYD YOUNG: Nothing, Your Honor.

17 THE COURT: Thank you. I don't  
18 think we need an Order for that. I think I'm  
19 under a continuing Order for that.

20 Motion to preserve all evidence.

21 What are you talking about? That's Motion 10.

22 BOYD YOUNG: Your Honor, we're  
23 talking about fungible evidence. I was trying  
24 to get this filed and I wasn't sure about what  
25 the status of all of the DNA samples at the

1 lab were. I knew that the samples were very  
2 minute and that SLED was only able to develop  
3 a partial profile in the initial testing prior  
4 to going to do Y-STR testing. Obviously, all  
5 that testing was completed prior to me filing  
6 the Motion. Whether or not there exists any  
7 sample for independent testing at this time,  
8 I'd just ask the Court to order that if it  
9 does exist, please preserve it and don't  
10 destroy it or don't do any further destructive  
11 testing.

12 THE COURT: What's the State's  
13 position concerning that? Is there any  
14 evidence that's going to be tested further?

15 BLAIR JENNINGS: As of right now as  
16 far as all that as to the Defendant, it's all  
17 been tested.

18 THE COURT: If there are any  
19 samples that remain of any type of evidence --  
20 any type of evidence -- that will require  
21 testing, we cannot run any tests that will be  
22 destructive testing without first having a  
23 hearing. Okay?

24 BLAIR JENNINGS: Yes, sir.

25 THE COURT: So, yes, your Motion to

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1     preserve, it will be preserved.

2                 BOYD YOUNG:     I'll prepare an Order.

3                 THE COURT:     Thank you. Motion 11,  
4     access to evidence. I thought you had had  
5     full access to that?

6                 BOYD YOUNG:     I discussed with the  
7     State a viewing. I think they're happy to  
8     arrange it at some point in time in the near  
9     future. I'm hopeful we can get that done in  
10    the next couple of weeks. I'd like to.

11                THE COURT:     Just do an Order that  
12    sets out specifically what your plans are and  
13    the schedule for viewing.

14                BOYD YOUNG:     Okay.

15                THE COURT:     And, Mr. Jennings,  
16    unless I hear otherwise I'm going to assume  
17    the State does not take a position contrary to  
18    any of these.

19                BLAIR JENNINGS:    Yes, sir. As far  
20    as the evidence, we've given the defense -- in  
21    fact, I gave them another packet today of some  
22    questions that they had. If they'll just let  
23    us know, we'll be happy to set up whatever  
24    they need.

25                THE COURT:     Motion 12. I assume

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1 everybody's going to preserve notes from this  
2 day forward. I can't -- if something's been  
3 destroyed before today, then it certainly  
4 doesn't violate the Order. But from this day  
5 forward, nobody shall destroy any notes or any  
6 type of evidence or any type of record of any  
7 conversation had or conducted during the  
8 investigation.

9 Motion 13, what do you -- anything  
10 that's of record, we'll have a court reporter  
11 and it will be taken pursuant to the rules and  
12 regulations governing the verbatim court  
13 reporting for this State.

14 BOYD YOUNG: And, Your Honor, my  
15 only concern comes into effect for bench  
16 conferences. We've had ---

17 THE COURT: I don't have them  
18 during these proceedings. But if I do, I  
19 excuse the jury and I then place on the record  
20 full statements by both sides of what -- if  
21 it's a matter that has to be discussed that  
22 warrants extensive discussion, then we will  
23 excuse the jury and place them on there. But  
24 this is something that -- we don't need an  
25 Order for that. That's how we're going to

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1     conduct the trial. That's up to me, and I'm  
2     not going to order anything right now. I'm  
3     going to run the trial as I have done, tried  
4     to do for sixteen years.

5             My objective is to preserve a record.  
6     So I think I'm more focused on that than you  
7     are, to be perfectly candid with you. So I  
8     don't need an Order to tell me to do my job, I  
9     don't think.

10            BOYD YOUNG:   Thank you, Your Honor.

11            THE COURT:    Maybe you do. Maybe  
12     I've done something so poorly that I have to  
13     be ordered to do that.

14            BOYD YOUNG:   Not every judge is as  
15     focused on it as you are.

16            THE COURT:    I just think that's  
17     main mission, is to preserve the record. I  
18     will tell you, and we'll see how many of them  
19     we have -- but in cases that -- I'm blessed to  
20     have, I would say, the best court reporter in  
21     the state, as far as I'm concerned, in many  
22     respects. But I've tried cases where Ms.  
23     Garrison comes and she takes shorthand and she  
24     takes down exactly what's said and transcribes  
25     that. So there's no question we're going to

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1 preserve it.

2 But what I typically do is basically,  
3 we'll have it, I will then give you an  
4 indication, and then, what I've done over the  
5 years is when the first break -- I make a note  
6 and I say, 'okay, we had a side conference, we  
7 had a bench conference concerning this issue.  
8 My ruling was such-and-such. I indicated  
9 thusly. Now, I'll be happy to hear from you.  
10 And you may supplement and add whatever you  
11 wish.'

12 Frankly, I think it's -- I haven't  
13 seen anything reversed or anything come back  
14 that said the judge denied them an opportunity  
15 to state on the record what was said. So  
16 hopefully that'll work. But that's my plan.  
17 But I'm not going to have an Order for that,  
18 if that's all right with you.

19 BOYD YOUNG: Yes, sir.

20 THE COURT: Number 14, that is  
21 covered, and we'll have -- as I told you in  
22 the back, there's another one down that talks  
23 about your right to have access to the daily  
24 transcripts. Let's have an understanding,  
25 because the certified record -- and this came

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1     about in the Fallon trial or one of the Sumter  
2     17. Ms. Garrison, I'm going to ask you. That  
3     can't be done until you sit down and go  
4     through and compare everything, as I under-  
5     stand it. You have to transcribe it and then  
6     listen, to verify what you have. And then it  
7     becomes certified. Prior to that, you have  
8     typed it but it is not certified until that  
9     process is done. Do you do that process  
10    daily, or you just transcribe what you have  
11    daily?

12           MS. GARRISON:     No, I don't provide  
13    daily, unless it's specifically requested and  
14    arrangements are made before ---

15           THE COURT:     She will give you  
16    whatever you want, but you're going to have to  
17    ask in advance so she's prepared to do that.  
18    Insofar as the record itself, she will keep it  
19    in accordance with all the rules and  
20    regulations, and that's as far as it goes.  
21    Okay?

22           BOYD YOUNG:     Thank you.

23           THE COURT:     That's my ruling on  
24    that one. Motion 15, the Motion for all  
25    evidentiary matters be held in camera, I'll

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1 hear anything that comes up in the course of  
2 trial that requires legal argument.

3 And let me just state this now, and  
4 we'll remind you of it in the trial. I  
5 understand, because I tried to do it, too --  
6 some are better than others, but speaking  
7 objections are the most fun for a trial lawyer  
8 because we get to have an argument, begin our  
9 arguments to the jury. I don't allow it.  
10 That doesn't work. I want you to give a brief  
11 statement of your objection:

12 Objection, Your Honor, it's hearsay.

13 Objection, Your Honor, not relevant.

14 I will probably rule. If it's something you  
15 want to say, 'May I be heard', then I'll  
16 excuse the jury. But generally, I don't  
17 exclude the jury every time I rule on an  
18 objection. But I don't allow any argument on  
19 an objection if the jury is present. If you  
20 want to argue a position, we'll exclude the  
21 jury. Okay?

22 BOYD YOUNG: Yes, sir.

23 THE COURT: So I will comply with  
24 that. Obviously anything such as we've had  
25 today will always be in camera. But insofar

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1 as my rulings on run-of-the-mill objections,  
2 no, I'm not going to necessarily exclude the  
3 jury every time I rule.

4 I talk to them about that and tell  
5 them -- I use that as an illustration of how  
6 we work together. So hopefully it'll be  
7 clear. But that will be my response to Motion  
8 15.

9 I think we've set out already in the  
10 scheduling order number (Motion) 16, have we  
11 not?

12 BOYD YOUNG: Yes, sir.

13 THE COURT: Okay. But anything  
14 that comes up, certainly we need to set it,  
15 I'll be happy to entertain any modifications  
16 to the scheduling Order that becomes  
17 necessary, as we prepare for trial.

18 I think we talked about that. Unless  
19 the Solicitor responds in writing -- unless it  
20 occurs, of course, during the trial. I assume  
21 we're talking about pretrial issues?

22 BOYD YOUNG: Yes, sir.

23 THE COURT: Okay. During the trial  
24 I'm not going to require them to put in  
25 writing their position. The record will be

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1 there. But any pretrial response will be in  
2 writing, as you have done one the Lyle  
3 evidence, prior bad acts.

4 Motion 18, what's your practice? I  
5 mean, there are certain persons that work here  
6 that are going to be in uniform. But do y'all  
7 generally wear coat and ties?

8 BAILIFF: Yes, sir.

9 THE COURT: All of you?

10 BAILIFF: Court security. Yes,  
11 sir.

12 THE COURT: And in this case are we  
13 going to have any detention personnel who will  
14 be here during the trial? Do you normally  
15 have that?

16 DEPUTY: Customarily, in the  
17 courtroom we'll have two sitting there, unless  
18 you don't want that. I'm the jail director.

19 THE COURT: You want all uniformed  
20 persons excluded?

21 BOYD YOUNG: Your Honor, I've dealt  
22 with this -- there's two guys over here by the  
23 door. If that's it, then we're good.

24 THE COURT: I understand you don't  
25 want a show of force around this person.

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1 I assume that's what you're talking about.

2 BOYD YOUNG: Yes, sir.

3 THE COURT: But jurors go in  
4 courtrooms all over the place. I mean, it's  
5 not uncommon to have uniformed personnel in a  
6 courtroom, because they know that.

7 BOYD YOUNG: Right.

8 THE COURT: As long as we have what  
9 we have here, one or two, that's fine. I  
10 don't have any problem. Okay?

11 BOYD YOUNG: Me either.

12 THE COURT: Okay, so we've dealt  
13 with that one. Motion 19, to sever offenses?

14 BOYD YOUNG: Yes, sir, Your Honor.  
15 Specifically, Mr. Sanders was served an arrest  
16 warrant and was arrested for the Hunters Ridge  
17 incident. We'd ask for a trial, independent  
18 trial, of the Hunters Ridge incident prior to  
19 any ensuing trial on the murder case.

20 THE COURT: That would come in only  
21 as it comes it for making the identification.

22 BOYD YOUNG: Yes, sir.

23 BLAIR JENNINGS: We're only trying  
24 the three counts of murder.

25 THE COURT: Okay. Very well. So

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1 that's a moot issue right now. But we have a  
2 clear understanding that he's going to trial  
3 on the murders.

4 Number 20, that's the Brady informa-  
5 tion?

6 BOYD YOUNG: Yes, sir.

7 THE COURT: You've served him with  
8 that Motion, so that Motion applies and I  
9 don't need to do anything more.

10 Motion 21, if the State has any  
11 evidence that would be favorable in a death  
12 penalty -- in the penalty stage, I assume, is  
13 what you're talking about?

14 BOYD YOUNG: Yes, sir.

15 THE COURT: Then you will provide  
16 that information as well?

17 BLAIR JENNINGS: We will.

18 THE COURT: Very well. Motion 22,  
19 what are you talking about here?

20 BOYD YOUNG: Your Honor, when a jury  
21 list is going to be generated by the Clerk's  
22 Office ---

23 THE COURT: Thirty-one days it's  
24 going out. So it'll be generated before then.

25 BOYD YOUNG: Yes, sir. At that

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1 point in time, the Solicitor's Office has  
2 access to a lot of records pertaining to those  
3 names. Specifically, they have access to rap  
4 sheets that we don't have. And, specifically,  
5 that's what I was requesting. When they run  
6 the rap sheets on the jurors on the list, that  
7 we be given a copy of it.

8 BLAIR JENNINGS: And what we did --  
9 Judge McMahon, in the last death penalty trial  
10 we did, just ordered that we've provide them  
11 with the rap sheets. They're not to be,  
12 obviously, disseminated, or that information  
13 shared.

14 THE COURT: It will be provided to  
15 you before the trial. You may not make any  
16 copies of them. After the jury is selected  
17 you will return all the copies to the  
18 Solicitor's Office for destruction. Okay?

19 BOYD YOUNG: Yes, sir.

20 THE COURT: Other than that, I'm  
21 going to certainly ask them to identify  
22 themselves, and you'll have that information.  
23 It will be provided during *voir dire*.

24 But you're not talking about  
25 independent investigations that are done,

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1     which either side can do on prospective  
2     jurors?

3             BOYD YOUNG:    No, sir, other than the  
4     access that they have to rap sheets.

5             THE COURT:     Very well.   Motion 23  
6     deals with the same issue concerning  
7     witnesses.   Is that what you're talking about?

8             BOYD YOUNG:    Yes, sir.   I believe  
9     that we have ---

10            THE COURT:     You probably already  
11    have that, don't you?

12            BOYD YOUNG:    Yes, sir.

13            THE COURT:     Okay.   So Motion 23 is  
14    already a moot issue.

15            Motion 24, criminal records on State  
16    witnesses.   Will you provide that?

17            BLAIR JENNINGS:   Yes, we will.

18            THE COURT:     All right.   What about  
19    Motion 25, psychiatric history?

20            BLAIR JENNINGS:   Obviously, if  
21    anything comes up that would ---

22            THE COURT:     Yeah.   Motion 25 or  
23    Motion 26, if anything comes up about  
24    suspected -- I'm not going to ask them to  
25    require these people to disclose their past

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1 histories. I'm sorry. Is that what you're  
2 asking me to do?

3 BOYD YOUNG: Yes, sir.

4 THE COURT: For them to divulge  
5 everything that's gone on in their life?

6 BOYD YOUNG: To the extent that  
7 there's a record of it, yes, sir.

8 THE COURT: No, sir. A record? If  
9 it is a criminal record, that's one thing and  
10 that's going to be covered in that.

11 But if they've had treatment for  
12 depression twenty years ago, you want me to  
13 require them to disclose that?

14 BOYD YOUNG: Yes, sir.

15 THE COURT: No, sir. I'm not going  
16 to do that unless there's some need for it.  
17 Thank you. That motion is denied, unless some  
18 specific incident arises. Then I'll be happy  
19 to revisit that.

20 Motion 27, we don't have any confi-  
21 dential informants here, do we?

22 BLAIR JENNINGS: No, sir.

23 THE COURT: What are you talking  
24 about?

25 BOYD YOUNG: There is one

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1 confidential informant who makes a tip to law  
2 enforcement that doesn't pan out. I don't  
3 know if there are any others. They received  
4 a call from a female who did not want to  
5 disclose her name, who gave information about  
6 a prior relationship that turned out not to be  
7 relevant. I don't know how many other tips  
8 that there ---

9 THE COURT: So you know about that  
10 one?

11 BOYD YOUNG: Yes, sir. I don't know  
12 who it was, but I know about it. Yes, sir.

13 BLAIR JENNINGS: We've provided them  
14 with all the CrimeStopper stuff. But the way  
15 that system is set up, they don't retain --  
16 they don't have the identity or anything.

17 THE COURT: Okay. They've provided  
18 what they have.

19 BLAIR JENNINGS: Certainly if  
20 anything were to come up, we would provide it.

21 THE COURT: All right. There is  
22 none at this point.

23 BLAIR JENNINGS: No, sir.

24 THE COURT: There are no names that  
25 they have at this point. And that's as of

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1 December the 21<sup>st</sup>, 2009. If you find something  
2 that they have a name, let me know.

3 BOYD YOUNG: Yes, sir.

4 THE COURT: Thank you. All right,  
5 Motion 28, what are we talking about?

6 BOYD YOUNG: The victim impact  
7 evidence, Your Honor, and then the notice of  
8 aggravation ---

9 THE COURT: You've gotten that.

10 BOYD YOUNG: Yes, sir. That we  
11 received on the record today, does contain the  
12 intention to offer evidence under *Payne* of  
13 victim impact. I know that South Carolina has  
14 not specifically dictated an exact procedure  
15 to deal with victim impact testimony. Some  
16 other states have. Some states require, you  
17 know, an in camera hearing prior to the  
18 presentation of the testimony.

19 THE COURT: Because that is not the  
20 case here.

21 BOYD YOUNG: It's not the case.  
22 It's not the case that it's required but it  
23 should be preferred practice due ---

24 THE COURT: Based on what?

25 BOYD YOUNG: --- due to -- based on

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1 any inclination, anything that comes out that  
2 says ---

3 THE COURT: Based on what proce-  
4 dure, what ruling in this State?

5 BOYD YOUNG: None, Your Honor.

6 THE COURT: Thank you.

7 BOYD YOUNG: Just a prophylactic  
8 procedure.

9 THE COURT: Mr. Young, let me tell  
10 you something. My first death penalty case, I  
11 thought Payne -- I still think that's a  
12 miscarriage. I think it's wrong. I think  
13 it's crazy. Why should certain murders have  
14 any more effect than any other murder? But we  
15 allow it. So my feeling notwithstanding, I  
16 apply the law. You give me a case that says I  
17 shouldn't, I'll be delighted to do it.

18 But I'm going to ask this. I need  
19 for you to disclose what the essence of your  
20 victim impact testimony is going to be. Are  
21 we going to talk about family members? I  
22 mean, what's the evidence of that?

23 To that extent, I will require it.  
24 But I'm not going to have an independent  
25 hearing on that.

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1           BOYD YOUNG:   And that would just  
2   apply as far as testimonial, whether or not  
3   there's a PowerPoint show with music and video  
4   ---

5           THE COURT:    I'm not going to  
6   require them to do that, but I'll be happy to  
7   entertain any objection that goes over the  
8   limit.

9           BOYD YOUNG:   Yes, sir.

10          THE COURT:    Listen.  I'm trying to  
11   think if that was all of them -- or how do you  
12   quantify the effect of a murder, that this one  
13   is worse than any other?  I mean, I don't  
14   understand that in the first place.

15          But the one that comes to my mind  
16   that had to retried was -- I think he was a  
17   deputy sheriff in Sumter.  Every lawyer and  
18   judge in Sumter had recused themselves because  
19   of their connection with the gentleman and/or  
20   family members.  Pretty significant in the  
21   community.  We heard from about four people.  
22   They narrowed it down to pick the four best.

23          And, frankly, the impact part has  
24   been -- I don't know what you experienced in  
25   Georgia.  I've never tried a case in Georgia.

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1 But here, I've been fortunate. I've not seen  
2 that. And I've tried one with Mr. Jennings  
3 already, and it was very -- I mean, it didn't  
4 go over the top. But you talk to him. If you  
5 find out something, I'll be happy to revisit  
6 that. But I'm not going to require a hearing  
7 on that testimony. Okay?

8 BOYD YOUNG: Yes, sir.

9 THE COURT: All right. Number 29.

10 BOYD YOUNG: Your Honor, I recognize  
11 that my arguments are contrary to decisions  
12 post-Apprendi in the South Carolina Supreme  
13 Court. I'll stand on that ---

14 THE COURT: Very well. As I  
15 mentioned in Chambers, if there's some  
16 testimony that you want to supplement your  
17 position, just give me a stipulation. But  
18 basically, as it stands now, I'll apply the  
19 law and find it to be Constitutional. I  
20 certainly understand your position to the  
21 contrary.

22 I assume that would apply to 30 and  
23 31 ---

24 BOYD YOUNG: Yes, sir.

25 THE COURT: --- and 32?

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1 BOYD YOUNG: Well ---

2 THE COURT: Because I haven't seen  
3 anything on 32 yet.

4 BOYD YOUNG: Yes, Your Honor. When  
5 the United States Supreme Court decided *Bush*  
6 *v. Gore*, they applied a standard and it said  
7 the problem with doing the recount in Florida  
8 is that there's not an objective standard as  
9 to what counts as a vote versus what doesn't  
10 count as a vote. And therefore, they stopped  
11 the recount.

12 Civilly, there is no organization  
13 that directs the discretion of prosecution and  
14 which murder is death-eligible versus not  
15 death-eligible. The State is entitled to seek  
16 it on pretty much, as far as I can tell, any  
17 murder in South Carolina, given the broad  
18 latitude of the statutory aggravators that are  
19 ---

20 THE COURT: If the aggravators are  
21 present, you're right.

22 BOYD YOUNG: And it's hard to think  
23 of a murder in which an aggravator wouldn't be  
24 present. I mean, walking up to somebody and  
25 shooting them on the side of the road, having

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1 never met the person before, under the  
2 Greenville case creates a danger to the  
3 public, that somebody else could have been  
4 harmed in discharging that weapon on the  
5 street.

6 It's hard for me to imagine a  
7 situation where a murder could be committed  
8 and it not be death-eligible. Which brings  
9 us to the lack of any directed organization  
10 directing the prosecutorial discretion. And  
11 that without any legislation directing their  
12 discretion, the death penalty as applied would  
13 be unconstitutional.

14 THE COURT: Isn't that the inherent  
15 nature of discretion?

16 BOYD YOUNG: Yes, sir.

17 THE COURT: Thank you, sir. So,  
18 thank you very much. The same applies to us.  
19 Everybody in the legislature keeps trying to  
20 change that and say 'this is what you have to  
21 do.' God help us if we get to that day. I  
22 can tell you one judge that won't be sitting  
23 here.

24 I think that's -- I talked to Judge  
25 Norton years ago about sentencing guidelines.

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1 He said 'Frankly, you really would rather be  
2 where I am, because it's much easier for  
3 sentencing.' He's right. It's the most  
4 difficult thing in the world, and one of the  
5 discretionary acts that we have, what  
6 sentences are proper. But that goes with the  
7 territory.

8 So I think the same -- I would think  
9 the same thing, that it's a tough decision  
10 that the Solicitor has to make, of which one  
11 to proceed. But quite honestly, given the  
12 number that I've seen in sixteen years,  
13 obviously, they are very, very careful about  
14 selecting which cases.

15 So, thank you very much. Your motion  
16 is noted, and I don't argue with any of your  
17 statements but I don't think that changes my  
18 ruling or with going forward with this case.

19 Motion 33 is again unconstitutional,  
20 so the prior rulings apply.

21 BOYD YOUNG: Yes, sir. I will  
22 provide the Court with the affidavits on ---

23 THE COURT: That's fine, no  
24 problem. Just file them. What photographic  
25 evidence are we talking about that we haven't

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1 heard at this point?

2 BOYD YOUNG: Your Honor, I would  
3 request that we hold off on Motion 34 until  
4 the State and I have an opportunity to get  
5 together with what they -- I mean, that's  
6 something that we can take up right at the  
7 trial.

8 THE COURT: That's fine. So we'll  
9 continue that Motion.

10 The questionnaire, is that the  
11 questionnaire that I've been waiting for that  
12 hasn't come?

13 BOYD YOUNG: Well, Your Honor, you  
14 provided us with a copy of the questionnaire  
15 that you intended to use.

16 THE COURT: Well, I need your  
17 input. I need to have a response. If you  
18 want anything else, I'm not necessarily going  
19 to add it. But whatever you do, I need to  
20 have that submitted to me before January 15<sup>th</sup>.

21 BOYD YOUNG: Yes, sir.

22 THE COURT: Okay? The same would  
23 be for the State as well.

24 BLAIR JENNINGS: Yes, sir.

25 THE COURT: Motion to sequester.

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1 I understand the State probably wants to  
2 sequester. I will make that call, but at this  
3 point I'm not inclined to sequester.

4 Motion 37 has been addressed, I  
5 believe.

6 BOYD YOUNG: Yes, Your Honor.

7 THE COURT: You can revisit it,  
8 file a subsequent motion if necessary.

9 BOYD YOUNG: Thank you.

10 THE COURT: What's 38?

11 BOYD YOUNG: Your Honor, I know that  
12 there's a statutory timeline for the court  
13 reporter to preserve the tapes and notes.

14 THE COURT: Not on criminal  
15 matters.

16 MS. GARRISON: Forever.

17 THE COURT: Forever.

18 BOYD YOUNG: Then it's addressed.

19 THE COURT: It is addressed. I  
20 don't know other states -- I know civil  
21 matters, there's a time. But the criminal  
22 matters, they can have them -- I think we've  
23 done some -- I know you keep the records. We  
24 may destroy the evidence, the Clerk does. But  
25 you keep them.

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1 MS. GARRISON: Yes, sir.

2 THE COURT: So that takes care of  
3 that.

4 BOYD YOUNG: Yes, sir.

5 THE COURT: Please tell me what 39  
6 is.

7 BOYD YOUNG: Judge, I don't know if  
8 Your Honor is familiar with anybody involved  
9 in this case or not. I'm assuming that ---

10 THE COURT: I'm familiar with you.

11 BOYD YOUNG: Yes, sir. And Mr.  
12 Jennings, the Solicitor and Mr. Leiendecker.  
13 That's been disclosed. And I didn't know, I  
14 mean -- if the Court was familiar with  
15 anybody, I'm sure ---

16 THE COURT: Again, Mr. Young, I  
17 appreciate your Motion. I think without your  
18 making a Motion, that's one of those things,  
19 again, 'Judge, we want you to be ordered to  
20 follow the canons of ethics.' That's one of  
21 the Canons of Ethics. I can't sit in a matter  
22 that requires me to recuse myself. Further-  
23 more, I'm required to disclose anything. So,  
24 again, you want me to order myself to comply  
25 with the Canons of Ethics? Is that what

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1     you're asking me to do? I think that's  
2     unnecessary.

3             BOYD YOUNG: Yes, sir.

4             THE COURT: Thank you, sir. I'm  
5     going to call that as not sure, moot, I think.  
6     But I will comply with the canons of ethics to  
7     the best of my ability.

8             Motion for the State to disclose any  
9     agreements with witnesses. I assume that  
10    would deal with prosecuting. I don't know  
11    what other agreements there would be.

12            BLAIR JENNINGS: The only one that  
13    I'm aware of at this point is Mr. Walker,  
14    which they know the proffer that was entered  
15    into with him as to his charge on the Hunters  
16    Ridge incident. Certainly if anything arises  
17    between now and the trial, we'll let him know.

18            THE COURT: Are you talking about  
19    of confining it solely to criminal prosecution  
20    agreements?

21            BOYD YOUNG: Yes, sir. And one of  
22    the reasons I make this Motion is because I  
23    have a couple of different copies of an  
24    agreement between Mr. Walker's attorney and  
25    the State. Some of them are edited, some of

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1     them are not and I don't know which one was  
2     the final.

3             THE COURT:     Make sure we have the  
4     final agreement, whatever it is.

5             BLAIR JENNINGS:     Yes, sir.

6             THE COURT:     And you'll be provided  
7     with a copy. So I agree with you on that.  
8     Motion 41.

9             BOYD YOUNG:     This would be that the  
10    Solicitor comply with the Rules of  
11    Professional Responsibility.

12            THE COURT:     Well, I assume they  
13    have to disqualify themselves if there's  
14    something that would disqualify them.

15            BOYD YOUNG:     Sure.

16            THE COURT:     Thank you.

17            BOYD YOUNG:     I just hope, you ---

18            THE COURT:     Number 42, we've dealt  
19    with, I think, have we not?

20            BOYD YOUNG:     Yes, sir.

21            THE COURT:     And Motion 43?

22            BOYD YOUNG:     Yes, sir.

23            THE COURT:     Motion 44, I'm going to  
24    rule on. Motion 45, ---

25            BOYD YOUNG:     Number 45, we've dealt

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1 with.

2 THE COURT: Forty-five is dealt  
3 with.

4 BOYD YOUNG: Yes, sir.

5 THE COURT: Motion 46, that will  
6 deal with my instruction to the jury, would it  
7 not?

8 BOYD YOUNG: Yes, sir.

9 THE COURT: When I ask them  
10 questions, I think I talk about that in my  
11 initial voir dire of the jury and individual  
12 voir dire. I talk about that. But certainly  
13 you're entitled to explore that as well.

14 BOYD YOUNG: Yes, sir.

15 THE COURT: Motion 47, that deals  
16 with my governing and doing what I'm supposed  
17 to do as a judge, I think.

18 BOYD YOUNG: Yes, sir.

19 THE COURT: So I don't need an  
20 Order to do that. If I violate it, then you  
21 can take that to my boss.

22 Motion for daily transcripts -- as I  
23 said, if you pay for them she'll be happy to  
24 provide them. But you may want to think about  
25 it before you do that.

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1 BOYD YOUNG: Yes, sir.

2 THE COURT: Motion 49, what am I  
3 supposed to do, have a crystal ball? I mean,  
4 again, I will entertain any objection you want  
5 to make concerning his statements.

6 BOYD YOUNG: Yes, sir.

7 THE COURT: Thank you very much.  
8 I'm not going to presume anything.

9 Motion 50, what are you talking  
10 about? I mean, the only time I'll even -  
11 that's what I talk about -- are you talking  
12 about my initial remarks that I say to the  
13 jury? Is that what precipitated this?

14 BOYD YOUNG: Everybody's. It's not  
15 in particular Your Honor. It's just in Court.

16 THE COURT: I tell the jury --  
17 explain what Guilty and Not Guilty means. I  
18 don't say "innocent", because I don't even  
19 think you need to go there, to be candid with  
20 you.

21 BOYD YOUNG: That's my point.

22 THE COURT: I tell them a guilty  
23 verdict simply means that that jury heard the  
24 case and after analyzing it were convinced  
25 beyond a reasonable doubt that the State has

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1 established every element of that crime.

2 A not guilty verdict simply means  
3 that that jury analyzed it and the State  
4 failed on one or more elements essential for a  
5 conviction.

6 That's all it means, and nothing  
7 more. So, I mean, I'll elaborate if you want  
8 me to talk about innocence is not the issue  
9 here. But what I worry about suggesting that  
10 is that subconsciously then they start saying  
11 'well, which one is he?' And they lose sight  
12 of what the mission is. The mission is can  
13 the State prove all the elements. And that's  
14 what I tell them.

15 BOYD YOUNG: That's exactly my  
16 point.

17 THE COURT: Okay. I think I'll  
18 cover that with my opening statements. At  
19 least I think I've done it. I've pretty much  
20 been saying that for the last -- for a while  
21 now. So I think I understand that, and I  
22 think we'll address that.

23 Motion 51, I'm not -- what is  
24 rehabilitation? I mean, that's in the eye of  
25 the beholder. My objective in my questioning

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1 is not to rehabilitate. My point is to try to  
2 ascertain what that juror really believes.  
3 And then I have to make the call.

4 But I will tell you all now, just  
5 from what's happened -- and I've said it on  
6 the record in the last one, so they'll review  
7 these too. But with *Cottrell*, and some of the  
8 others, but *Cottrell* more than anything, I  
9 decided that the best call is not to take a  
10 bullheaded legal position and think my  
11 analysis is correct but, rather, to err on the  
12 side of caution. And that is to exclude a  
13 person, because we have more than enough  
14 people who are type-three jurors. We don't  
15 need to force that issue. And so I've heard  
16 the questions and I've had solicitors ask, you  
17 know, 'Is there some situation where you might  
18 be able to do that?' And I understand that.  
19 But if their initial response is I just don't  
20 ever do that, I'm sorry, that person's gone.  
21 I'm just not going to put someone on there  
22 that can't consider all of it.

23 Now, your arguments -- and for the  
24 life of me, I don't understand someone that  
25 says 'I'm pro death penalty, but I could

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1 consider all of them', why we can't have the  
2 flip that says 'I will always be life.' Why  
3 should you be able to have that person on  
4 there?

5 Frankly, the call has got to be I try  
6 to make sure they're type three. They're  
7 leaning? That's up to y'all to discover, as  
8 to whether they are. But rehabilitation? I'm  
9 going to ask questions, and I'm not going to  
10 tell you I'm going to restrict my questions.  
11 But I don't know how far I'll go. But I'll be  
12 happy, at each stage, when we talk about each  
13 juror, you'll have an opportunity to make any  
14 ruling or make any Motions you want concerning  
15 my questions. Okay?

16 BOYD YOUNG: Yes, sir.

17 THE COURT: So I think we'll  
18 address it in that fashion. Please tell me  
19 what you meant by fifty-eight.

20 BOYD YOUNG: Judge, it's tab number  
21 fifty-eight, Motion 52.

22 THE COURT: Excuse me. Motion 52.

23 BOYD YOUNG: We get these sheets  
24 where people are entered in through the  
25 Clerk's system as either black, white or

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1 other, or sometimes other has an age or  
2 sometimes there's an (A) for Asian. I think,  
3 really, under *Batson* and, more importantly,  
4 under *Snyder*, the Louisiana recent Supreme  
5 Court case, I think it's just better to have  
6 the jurors please state their race for the  
7 record.

8 THE COURT: Thank you. I think  
9 that's a wonderful thought, but I don't think  
10 that's necessary. Because I don't think that  
11 has anything to do with anything, other than  
12 the fact -- because, to be candid with you,  
13 the way *Batson* has ruled, has been decided, it  
14 applies to everybody. I mean, I haven't seen  
15 a situation where -- when it started out, I  
16 thought it was for certain protected people  
17 that could possibly, there could be some  
18 modicum of discrimination. But when you start  
19 saying 'Well, you can't exclude -- you can't  
20 exclude men versus females'. I mean, it's  
21 just silly. It doesn't matter whether they're  
22 black, white or polka-dotted. It really  
23 doesn't. So I thank you.

24 You will have a chance to look at the  
25 person, just as I will. But I don't intend to

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1 inquire of them or ask for them to tell me  
2 what their ethnicity is. I just don't think  
3 that's necessary. Thank you very much. Your  
4 Motion is noted and denied.

5           Aside from that, you're free to do  
6 whatever independent investigations you want.  
7 And since we're going to have the jury come in  
8 on the Friday before, you'll have an idea of  
9 who the groups are before. So you will have a  
10 chance to inquire. Be careful about what you  
11 inquire, because some inquiries can cause some  
12 problems later. But that's up to you, you  
13 make the call.

14           Number 53. I think that's going to  
15 have to be dependent upon who I exclude. And  
16 I'll be happy to ---

17           BOYD YOUNG: Yes, sir. I don't know  
18 what the normal procedure is for Dorchester  
19 County, especially sending out summons in a  
20 capital case.

21           THE COURT: We're going to send out  
22 more.

23           BOYD YOUNG: Send out more. And I  
24 would request personal service of the  
25 summonses that come back Undeliverable; you

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1 know, where people have moved and they -- they  
2 typical response rate is about fifty percent.  
3 You sent out two hundred summonses and a  
4 hundred people show up. What happens to the  
5 other hundred? Do they get it and throw it in  
6 the trash and not show up? Or did the Clerk's  
7 Office get it back?

8 THE COURT: We'll have a chance to  
9 report on that. We'll have a hearing before  
10 that, and you can make whatever Motions you  
11 want.

12 BOYD YOUNG: Okay.

13 THE COURT: Thank you.

14 BLAIR JENNINGS: Your Honor, just to  
15 the point or something to think about. When  
16 we're deciding on the number to send out, I  
17 would ask that we at least do three hundred  
18 fifty. I think our last trial we kind of got  
19 up close. We had a large number.

20 THE COURT: That was one of the  
21 things that I want to talk about. We did in  
22 Charleston, three hundred fifty, I think.

23 COURT REPORTER: Three fifty in  
24 Charleston, seven hundred in Horry.

25 THE COURT: Seven hundred in Horry,

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1 because Horry was about a third with the  
2 movement. I don't know what Dorchester's rate  
3 is. But you say you only did three hundred  
4 fifty in that ---

5 BLAIR JENNINGS: I think that last  
6 trial ---

7 MR. LEIENDECKER: We did three  
8 hundred and we were nearly single digits away  
9 from not having enough jurors.

10 BLAIR JENNINGS: I bet we didn't  
11 have a third. We were just over a hundred.

12 MR. LEIENDECKER: Right. We sent  
13 three hundred and we had a hundred and two  
14 respond, and we only had ninety-some that were  
15 ---

16 THE COURT: I would like to have  
17 between a hundred and fifteen and a hundred  
18 twenty-five. That's what I want. So maybe I  
19 need to send three hundred seventy-five.

20 BLAIR JENNINGS: Yes, sir.

21 THE COURT: Okay. Motion Number  
22 54?

23 BOYD YOUNG: Your Honor, as the  
24 Court knows, you know, we provide for people  
25 who are primary caregivers of young children

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1 under a certain age. That's a statutory  
2 exclusion. But should somebody say, 'Well,  
3 if I had childcare, I would like to serve.'  
4 I think that they should have that option.  
5 And I think it is incumbent upon us, as the  
6 Court system, to help facilitate those jurors'  
7 service in their civic duty as jurors.

8 THE COURT: From what pool of money  
9 am I supposed to pull that?

10 BOYD YOUNG: We could provide  
11 daycare downstairs. Surely, we could find  
12 somebody qualified and have room. Morgan  
13 could ---

14 THE COURT: Oh, we can? Are you  
15 going to provide for the insurance coverage  
16 for them too?

17 BOYD YOUNG: Well, surely the County  
18 can take care of it.

19 THE COURT: The County's willing to  
20 jump on that one?

21 BOYD YOUNG: I don't know if they're  
22 willing to. But I think the Court has ---

23 THE COURT: Based on what? Based  
24 on what? I mean, I know we have the Act --  
25 and I don't have any problem with the Act

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1 requiring us to make concessions for persons  
2 suffering from a disability. It's no problem.  
3 We do that with jurors. I've had plenty of  
4 people who can't hear, and we've provided them  
5 with devices that will assist them in that. I  
6 haven't had a blind person want to serve yet  
7 but I would have no problem providing that,  
8 and providing assistance.

9 But when you start providing and  
10 paying these people daycare so they can then  
11 perform their services, it's their call.  
12 They don't have to serve. They have to -- I  
13 don't excuse them because of it. It's their  
14 call. I mean, they're not prevented from  
15 serving. It's just a question of whether they  
16 want to do it.

17 So, no, sir. Thank you very much.  
18 Your Motion is noted and denied. I don't  
19 think that deprives the Defendant or the State  
20 of jurors.

21 What are you talking about on video-  
22 tapes and handbooks?

23 BOYD YOUNG: Your Honor, I don't  
24 know what, when all the jurors report to the  
25 courthouse -- different places do it different

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1 ways.. Some people have a jury orientation  
2 video that they show.. Some people pass out a  
3 pamphlet saying this is what to expect. I  
4 would just prefer that the Clerk's Office not  
5 do anything like that, that any instructions  
6 from the jury come from Your Honor. That  
7 there not be the use of any orientation  
8 videos, in the event that they do exist. I  
9 don't even know. Or any other handouts.

10 THE COURT: I don't know what your  
11 website has. Most of the websites have  
12 information now on them concerning jury  
13 service. So, you know, I -- thank you. It's  
14 noted. You can take that up with the Chief  
15 Justice as to whether we should deny them  
16 access to information that's available to the  
17 public of what they do. I don't have any  
18 problem with it. I haven't seen anything --  
19 and I'll be happy, if you have some examples  
20 where it's been abused in this state, I'll be  
21 happy to hear it. But it's my pleasure to  
22 find most jurors are very, very conscientious  
23 and take the job very seriously. And, quite  
24 frankly, the material that I've seen that has  
25 been disseminated to jurors really reinforces

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1 that, of what a tremendous service it is, what  
2 an incredible responsibility it is. So  
3 anything that heightens that awareness, I  
4 don't think is a bad thing. I think it's a  
5 good thing. Your Motion's noted. I'm denying  
6 it.

7 That the alternates not be publicly  
8 identified?

9 BOYD YOUNG: Yes, sir. That you  
10 just don't tell them that they're alternates.  
11 When we do jury selection, we have -- whatever  
12 the number is, sixteen people over in the box,  
13 and we don't tell four of them, 'Hey, look,  
14 you're an alternate. We might need you. We  
15 might not need you.' You just don't tell them  
16 that they're alternates.

17 THE COURT: Okay. And so what  
18 happens then, assuming that we don't do that,  
19 and I discuss with them specifically 'don't  
20 let that change your approach, and you are  
21 very much a part of the jury, because you  
22 never know when you're going to be placed on  
23 the jury.' Assuming that's legitimate, what  
24 happens -- do we have to redraw a jury for the  
25 penalty phase, because we clearly have them

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1 identified at the guilt phase. Because they  
2 don't get to deliberate. And now in the  
3 second phase, which is probably the most  
4 critical part, now they know that they're  
5 alternates.

6 BOYD YOUNG: Yes, sir.

7 THE COURT: So what's the harm?

8 BOYD YOUNG: Is there a potential  
9 for harm ---

10 THE COURT: No.

11 BOYD YOUNG: --- if you don't tell  
12 them?

13 THE COURT: No. Give me a -- as  
14 you've talked about -- tell me your cases that  
15 show that that's in the case.

16 BOYD YOUNG: I don't have any cases  
17 that show that.

18 THE COURT: Tell me your studies  
19 that show that's been the case.

20 BOYD YOUNG: I have studies from  
21 Craig Haney and the Capital Jury Project.

22 THE COURT: Thank you. I'll give  
23 you some studies to show you that for sixteen  
24 years my alternate jurors have been wonderful.  
25 Thank you very much. Your Motion is noted and

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1 denied.

2 I spend time talking to them about  
3 it. So, I think they take it seriously. But  
4 I respect your opinion, and you can take all  
5 the exception you want to anything I tell  
6 them. I'd be delighted to hear from you.

7 What's Motion Number 57 about?

8 BOYD YOUNG: The Court would term  
9 that as a motion for the bailiffs to comply  
10 with their rules and oath.

11 THE COURT: Are you as offended as  
12 I am, George, about that?

13 BAILIFF: I think so.

14 BOYD YOUNG: Judge, I mean, in  
15 Spartanburg ---

16 THE COURT: Boyd, all I'm saying to  
17 you is, what are we doing? Are we setting up  
18 something for contempt? Or are we setting up  
19 something -- because you don't need an Order  
20 for that. If a bailiff is talking to a juror,  
21 I'm not going to stop these people from  
22 talking to them.

23 BOYD YOUNG: No, sir.

24 THE COURT: I assume you're not  
25 asking me to do that. Because I tell jurors

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1 all the time they are, without a doubt, you  
2 nor I, nor Mr. Sanders want to try cases  
3 without a bailiff in this courtroom.

4 BOYD YOUNG: No, sir.

5 THE COURT: Because they are,  
6 without a doubt, the greatest friend of the  
7 Court of all of us. They are the liaison  
8 between the Court and the jury. They have an  
9 incredible responsibility.

10 And, quite frankly, you mentioned  
11 Spartanburg -- you know, I've seen all types.  
12 I've seen them -- one gentleman, they put a  
13 note on his. They handed it to him to give to  
14 me, and he was sitting on that side, the far  
15 side of the jury, fortunately. And he was  
16 sitting back like this -- (demonstrating).  
17 And the fellow stood there. I watched him.  
18 He stood there and the guy was just sitting  
19 there, because he couldn't see him. I could.  
20 And I knew why he wasn't responding. Finally,  
21 he put the note -- just set it on his chest.  
22 He was sound asleep, didn't move. Nobody said  
23 anything. Those are funny stories. But that  
24 doesn't hurt anybody, and it doesn't create a  
25 problem. So I don't know what you're talking

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1 about.

2 BOYD YOUNG: In the event that some-  
3 thing happens and we end up in a higher court  
4 and they are, like, 'What? You didn't say  
5 anything before, so you can't have a remedy  
6 now.'

7 THE COURT: How in the world -- you  
8 tell me what Court does not allow external  
9 conversations to destroy a case? Because I've  
10 seen them. I've had it come up. I had it  
11 come up with a juror -- in fact, you can read  
12 it. It's in the, uh, ---

13 COURT REPORTER: Luba Lynch.

14 THE COURT: --- Luba Lynch case  
15 where a juror -- and I had a hearing on it.  
16 It was raised, the issue was raised that he  
17 went out and talked to some people. One of  
18 the witnesses went into the store next door,  
19 Ben Silver's store, to check out where the  
20 lady had worked. Interesting aspect. They  
21 didn't make that Motion until after the fact.

22 BOYD YOUNG: As the Court's aware,  
23 it's a lot harder to do after the fact. And  
24 there are rules about what can and can't occur  
25 ---

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1 THE COURT: I'm not going to get  
2 involved. That would be something that these  
3 people are hired -- and I don't presume that  
4 they would do anything other than what they're  
5 instructed to do. For me to do otherwise,  
6 without any basis for it, I think, is  
7 insulting to them, Mr. Young. Thank you, sir.

8 Motion 58. I don't ever -- in civil  
9 cases, I've not done it. In every criminal  
10 case, I have. You're talking about the notes  
11 made during deliberation, or their notes if  
12 any of them take notes during the trial?

13 BOYD YOUNG: Both and all of them.

14 THE COURT: Why should I -- I think  
15 they ought to be destroyed. I keep them.  
16 They don't take them home with them. But  
17 that's invading the sanctity of the delibera-  
18 tions, is it not?

19 BOYD YOUNG: I mean, it could be.

20 THE COURT: Could be?

21 BOYD YOUNG: It could be considered  
22 that. Well, it depends on what they say. Who  
23 knows what they say?

24 THE COURT: I don't know about you  
25 but we know we're not -- unless something is

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1 raised in conversation, and that happens and  
2 we find it out -- and I've had two of those in  
3 my life, where I've had hearings on the issue  
4 that -- one issue that allows us to go back.  
5 And that is when there's been something that  
6 was discriminatory that came out during the  
7 deliberations. I have had hearings on those  
8 issues but that's the only time that I know of  
9 that we have the right to, in any way, invade  
10 the sanctity of the jury's deliberations. And  
11 that's precisely what you're doing.

12 BOYD YOUNG: The only time that we  
13 ever find out about that is when a defense  
14 attorney gets a phone call and it's said,  
15 'Hey, by the way, this happened during  
16 deliberations.' And then we're like, 'Well,  
17 why didn't you say anything when you were  
18 polled by the Court?' That you didn't want to  
19 vote this way and then somebody called you  
20 these names?

21 THE COURT: Mr. Young, what do you  
22 as a defense attorney then do?

23 BOYD YOUNG: Have him call you.

24 THE COURT: You file a motion, and  
25 that brings us back. And there's your remedy

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1 and there's your recourse. You have recourse.

2 BOYD YOUNG: Yes, sir. But what if  
3 I never find out? What if there were notes  
4 saying it, but I never found out?

5 THE COURT: Precisely. Why don't  
6 we take a court reporter and send them back in  
7 there so we can all have that in case we have  
8 to look at it? When would we ever know it?

9 BOYD YOUNG: I guess I could add  
10 that.

11 THE COURT: Go ahead and add that.  
12 Thank you, sir. Because that's precisely what  
13 it's tantamount to. No, sir. If they take  
14 notes, I will instruct them that they are  
15 their notes. And they are their notes. I'm  
16 not going to keep them. Now, any notes that  
17 -- where I've had notes, typically, what I  
18 have done is show them to opposing counsel.  
19 Obviously, if I find a note that shows that  
20 something that's gone on that violates my  
21 instruction, then I think I have a  
22 responsibility to bring that as -- as we have  
23 found. I've had it happen. I've had it  
24 happen with deliberations. Fortunately, I had  
25 one that was -- we took a guilty plea, but I

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1 thought about it and I thought how would I  
2 have known this? Because it was a case of --  
3 I don't think it was murder. I think it was  
4 assault and battery with intent to kill. One  
5 of the issues was self-defense. I hadn't  
6 charged the jury yet. We had adjourned for  
7 the day. And when we went back, what greeted  
8 me was that we were going to have -- they were  
9 going to do a plea. They had a plea to ABHAN,  
10 as I recall. So I went in to dismiss the  
11 jury, and one of the jurors said 'Yeah, I was  
12 online last night doing some research, and I  
13 couldn't figure out how they were going to get  
14 around this self-defense issue.' Violates the  
15 Court's instruction? Sure, it did.  
16 Independent investigation.

17 Suppose that had never come out, you  
18 know. That goes on your side of the ledger.

19 So it's just part of what we have in  
20 our system. But I don't think we need to  
21 tamper with it, and that's exactly what you're  
22 asking. I'm not going to presume that they're  
23 not going to follow my instructions. When  
24 it's called to my attention that they don't,  
25 I'll deal with it, as I've done in the past.

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1 I'd certainly do it in this. I hope I don't  
2 have to have that situation. But should I do,  
3 then we'll deal with it if it arises. So  
4 thank you very much.

5 BOYD YOUNG: Yes, sir.

6 THE COURT: Number 59. Tell me  
7 what -- I'm not sure I understand.

8 BOYD YOUNG: Your Honor, that we not  
9 do any of the death qualifications, that we  
10 not ask the jurors their view about the death  
11 penalty. That we just *voir dire* them  
12 regularly and not discuss the death penalty  
13 with them.

14 THE COURT: So we just simply take  
15 the first twelve out of the box?

16 BOYD YOUNG: Well, we could modify  
17 that number a little bit. But as far as their  
18 views regarding the death penalty, we don't  
19 ask them that.

20 THE COURT: Do we have any case law  
21 that says we can do that?

22 BOYD YOUNG: We certainly don't have  
23 any that says we can't.

24 THE COURT: Yeah. What about the  
25 requirement on me to make sure that I have a

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1 juror who can consider both forms of  
2 punishment?

3 BOYD YOUNG: Well, Your Honor, I  
4 guess that would be up to Mr. Sanders to waive  
5 that inquiry.

6 THE COURT: That's a new one. I've  
7 gotten ordered that I'm going to have to  
8 follow the canons and next I'm going to let  
9 the Defendant tell I don't have to do my job?

10 BOYD YOUNG: Just that little  
11 portion.

12 THE COURT: Oh, I see. You would  
13 agree that it is my job?

14 BOYD YOUNG: I believe that the  
15 statute tells you that it is your job.

16 THE COURT: I believe the case law  
17 says that, over and over and over and over  
18 again.

19 BOYD YOUNG: Yes, sir.

20 THE COURT: Thank you very much.  
21 To be candid with you, that's probably, for  
22 you -- you think it's bad to have to listen.  
23 You ought to have to say it over and over and  
24 Deb, Ms. Garrison (court reporter) has to take  
25 it down over and over eighty-five times, of

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1 asking the same question. No fun, but  
2 necessary. Thank you very much. Motion's  
3 denied.

4 I assume you're talking about  
5 individual *voir dire* of each juror?

6 BOYD YOUNG: Yes, sir.

7 THE COURT: We do that?

8 BOYD YOUNG: Yes, sir.

9 THE COURT: No problem.

10 BOYD YOUNG: And, Your Honor?

11 THE COURT: Yes, sir?

12 BOYD YOUNG: In watching Your Honor  
13 conduct *voir dire* in Charleston, you brought  
14 up an interesting point. And that was the  
15 jurors' demeanor and how it wasn't preserved  
16 for other court's to review. Under the  
17 Supreme Court's decision *Udick*, however it is  
18 pronounced, you know, that was a critical  
19 factor for them determining when a juror was  
20 properly excused. I would move that we  
21 videotape the individual questioning for *voir*  
22 *dire* to preserve it.

23 THE COURT: Thank you. You know  
24 the beauty of the English language -- and  
25 we're going to find out how articulate you

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1 are. Some people are better at this than  
2 others. You've read the books where somebody  
3 writes a paragraph and you can just see where  
4 you are, just by virtue of what that person  
5 says. You can do the same thing with how a  
6 person's responding. I try to make those  
7 observations.

8 I noticed a juror's hands were  
9 shaking. I did it in Horry County, I think,  
10 when one juror started crying, tears were  
11 coming down and I made that notation when I  
12 ruled and excluded her. There wasn't any  
13 question, not only what she said, but this  
14 lady was visibly upset by the questions and  
15 the thought of having to make a decision of  
16 whether somebody should die or not.

17 You can do the same thing. So I  
18 appreciate it. I don't intend to have a video  
19 camera going at this time.

20 Or we can change the rules and -- Ms.  
21 Garrison (court reporter) may or may not like  
22 this. I still don't know if they can do away  
23 with a person, because somebody's got to be  
24 there to operate it. In 1989, when I went to  
25 the Nationals and mock trial in Kentucky, I

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1 found out that in Kentucky, that's how they  
2 preserve the record, is a video camera. It's  
3 sound activated. There's three of them. And  
4 wherever the person's speaking, that camera  
5 pops on. So all of it's by video. But we  
6 aren't there yet. So thank you very much.  
7 It's noted, but I'm not going to change.

8 Now, that deals with sixty Motions --  
9 well, minus one that we're going to hold in --  
10 two, because I'm going to rule on one. Do you  
11 have any more today?

12 BOYD YOUNG: Not today, Your Honor,  
13 no.

14 THE COURT: Do we have any need for  
15 testimony tomorrow?

16 BOYD YOUNG: No, Your Honor. We  
17 have one *ex parte* matter to take up with Your  
18 Honor.

19 THE COURT: Okay. I'll address  
20 that just as soon as we adjourn the Hearing.  
21 Anything from the State at this point?

22 BLAIR JENNINGS: No, sir.

23 THE COURT: Okay. Thank you all  
24 very much. That having been said, I assume  
25 then we may cancel tomorrow's day for

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1       hearings. We have no need for tomorrow, then?

2               BOYD YOUNG:    No, sir.

3               THE COURT:    Okay. Very good.

4       Thank you. We will be in recess in this case  
5       until the next time we have to assemble, which  
6       is, by Order thus far, -- we're probably going  
7       to need another few visits back. You were  
8       kind enough to include the scheduling Order in  
9       my notebook. Thank you.

10              Ladies and Gentlemen, at this  
11       point there's a matter that I have to take  
12       up out of everyone's presence. It's one time  
13       the Rules allow me to have *ex parte* communica-  
14       tions, with the exception of the security  
15       persons, I assume, Mr. Leiendecker?

16              MR. LEIENDECKER:   Absolutely.

17              (IN CHAMBERS CONFERENCE)

18                               (RECESS)

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## 1 CERTIFICATE OF REPORTER

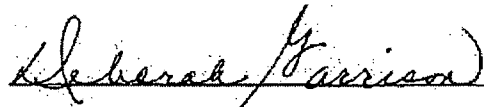
2

3 I, the undersigned, Deborah Garrison,  
4 official court reporter for the 9th Judicial  
5 Circuit of the State of South Carolina, do  
6 hereby certify that the foregoing is a true,  
7 accurate and complete transcript of the  
8 hearing held before The Honorable R. Markley  
9 Dennis, Jr., on December 21, 2009;

10 I further certify that I am neither kin  
11 nor counsel to any of the parties and have no  
12 interest in the outcome of this action.

13

14



15

Deborah Garrison

16

Circuit Court Reporter

17

9th Judicial Circuit

18

19

20

21

22 Charleston, South Carolina

23 February 15, 2010