

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

Honorable Kristi F. Curtis, Circuit Court Judge

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S.C. SUPREME COURT

ANTHONY SANDERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001544

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	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:

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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 10th 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
15 213 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 213-B?

20 A. At 213-B, 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 213-B?

6 A. In 213-B 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 213, at the 105 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 4th 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 20th 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 4th 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 20th 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 19th 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 25th 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

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 24th.

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 23rd 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 20th 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 4th?

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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 4995 Popper Dam Creek Drive.

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 23rd into
4 the early morning of July the 24th, 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 105 Building. 105-D, I believe, was
4 her address.

5 Q. The primary scene where Ms. Grant and Mr.
6 Devore was found was apartment 213-B Shagbark.
7 Explain the relevance of that apartment 105-D
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 24th?

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 4995
6 Popper Dam Creek. 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 4995 Popper Dam Creek 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 4th shooting at The
8 Anchor Bar, the March 20th 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 213-B 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 4995 Popper Dam Creek?

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 4995 Popper Dam

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1 Creek. 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 25th, 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 2nd?

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 24th, 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 2nd?

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 3rd 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 7287 Tanglewood
8 Drive 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 2nd, did he know where -- or
25 August the 3rd, 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 4995 Popper Dam Creek 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 10th 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 10th.

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 10th.

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 4th 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 20th, 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 24th. 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 24th?

21 A. Correct.

22 Q. And then on the 3rd 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 2nd, I'm sorry.

2 Q. The 2nd?

3 A. (Affirmative nod), I believe the 2nd.

4 Q. And you swore out the affidavit for those
5 warrants?

6 A. I did.

7 Q. That was done on the 1st?

8 A. I'm sorry?

9 Q. The affidavit that you swore out was on
10 the 1st?

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 19th 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 19th? 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 19th, 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 19th 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 19th?

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 19th, or when you
24 brought him back on the 23rd or 4th?

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 19th 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 barrelful of
7 barrels. There's a barrelful 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

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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 them. If this is my cartridge case ---

2 Q. Yes, sir.

3 A. --- I shine a light at an angle so that I
4 can see the markings. So basically, I'm
5 looking at small shadows to help me visualize
6 what these markings look like. And the way my
7 microscope is set up is the lights are in
8 front of me, shining towards me. So with the
9 light coming in that direction, that's why I
10 say I have two choices, this direction or 180
11 degrees.

12 Q. You didn't mean that that's the way the
13 orientation, that they are on the breech face?

14 A. On my microscope. I did mean how they are
15 oriented on the firearm, no, sir.

16 Q. Thank you, sir.

17 THE COURT: Redirect?

18 BLAIR JENNINGS: No, Your Honor.

19 May he be excused?

20 THE COURT: Any objection?

21 BOYD YOUNG: No, Your Honor.

22 THE COURT: You are free to leave,
23 sir.

24 (WITNESS STEPS DOWN)

25 THE COURT: Do you have another

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1 witness?

2 BLAIR JENNINGS: No, Your Honor.

3 That's all the testimony we have.

4 THE COURT: You mentioned in
5 chambers in a status conference that you would
6 call several witnesses.

7 BOYD YOUNG: Your Honor, I think two
8 things. Number one, I have a copy of the DVD
9 of the initial interview with Mr. Sanders on
10 7/24/07.

11 THE COURT: Sure.

12 BOYD YOUNG: And I have a better
13 copy of a rough transcript. If it is alright
14 with you, I'll give you the sealed copy.

15 THE COURT: That'll be fine. We'll
16 make that ---

17 BOYD YOUNG: I'd like to put these
18 into evidence as far as the totality of
19 circumstances.

20 THE COURT: Absolutely. That'll be
21 fine.

22 (SO ENTERED COURT'S EXHIBIT 6 - CD)

23 (SO ENTERED AS COURT'S EXHIBIT 7 - TRANSCRIPT)

24 COURT REPORTER: I have marked the
25 CD as Court's Exhibit 6 and the transcript as

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1 Court's Exhibit 7.

2 THE COURT: Thank you.

3 MR. LEIENDECKER: Judge, just for
4 clarification, on the transcript that was done
5 by private transcription. And anytime a word
6 wasn't completely understood you'll see an
7 "inaudible" there. So that's why you have
8 both the disk and the transcript.

9 BOYD YOUNG: Your Honor, I need to
10 meet with Mr. Sanders briefly.

11 THE COURT: I just wanted to know,
12 because we can take a break for lunch at this
13 point if you want to, and come back, if ---

14 BOYD YOUNG: That'd be great.

15 THE COURT: If that would
16 facilitate things.

17 BOYD YOUNG: Yes, sir. Thank you.

18 THE COURT: Thank y'all very much.
19 We'll be at-ease until ---

20 BLAIR JENNINGS: Your Honor, if I
21 could -- just one housekeeping matter. The
22 State has filed its Notice of Evidence of
23 Aggravation. We filed it back in July and I
24 provided a copy to defense counsel, but have
25 not given Mr. Sanders certified copies.

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1 THE COURT: Okay.

2 BLAIR JENNINGS: So I'm giving he
3 and Mr. Young certified copies of that.

4 THE COURT: Very well. Let's plan
5 to come back at 1:15, please.

6 (LUNCH RECESS)

7 COURT REPORTER: You'll bring me a
8 clean copy of Exhibit 5 then?

9 MR. LEIENDECKER: Yes, ma'am.

10 THE COURT: Thank you.

11 (LUNCH RECESS)

12 (DEFENDANT PRESENT)

13 COURT REPORTER: Thank you. Your
14 Honor, Mr. Leiendecker has provided the clean
15 copy of Exhibit 5.

16 THE COURT: Thank you, sir. Let
17 the record reflect Mr. Sanders is present.
18 Mr. Young?

19 BOYD YOUNG: Your Honor, at this
20 time the defense calls Detective Giglio.

21 (WITNESS TAKES STAND)

22 MICHAEL JOHN GIGLIO, being duly sworn
23 to tell the truth, the whole truth and nothing
24 but the truth, testified, as follows:

25 DIRECT EXAMINATION

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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 2nd, 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 24th?

5 A. 24th 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 2nd, 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 24th
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 2nd, 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 24th, 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 7th 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 15th of 2003, you were
7 charged with disorderly conduct. Do you
8 recall being read your rights?

9 A. Yes.

10 Q. December 26th 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 13th 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 3rd 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 4th 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 8th 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 24th, 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 24th, did you stay at the
12 annex?

13 A. I stayed at the annex all the way up until
14 the 27th, 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 27th,
19 went to St. George, and I was brought back to
20 the annex on the 30th. I stayed there again
21 all the way to August the 3rd.

22 Q. So you were first interviewed on the 24th.
23 On the 25th, 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 2nd 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

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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 1st 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

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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

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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 21st, 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 be 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 15th.

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)

19

20

21

22

23

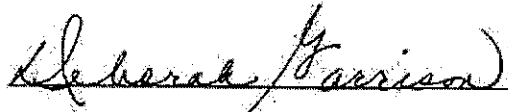
24

25

CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the
hearing held before The Honorable R. Markley
Dennis, Jr., on December 21, 2009;

I further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

February 15, 2010

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 COUNTY OF DORCHESTER)

State of South Carolina,)

Plaintiff,)

vs.)

Anthony Sanders,)

Defendant.)

07-GS-18-01296

FILED
 2012 FEB -7 PM 12:12
 CLERK OF COURT
 DORCHESTER COUNTY

TRANSCRIPT OF STATUS CONFERENCE

The within hearing was held January 21, 2010, before The Honorable R. Markley Dennis, Jr., in the Courtroom E of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel, as follows:

APPEARANCES:

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 Blair Jennings, Assistant Solicitor
 1st CIRCUIT SOLICITORS OFFICE
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 Appearing for State of South Carolina

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 -and-

S. Boyd Young, Esq.
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1 (DEFENDANT PRESENT)

2 THE COURT: For the record, we are in
3 Charleston County. We're not -- we're drawing
4 the jury in Dorchester. Other than persons
5 associated with either your office or your
6 office, are there any -- are there any persons
7 in the courtroom present from Dorchester County
8 who are not associated with one side or the other
9 specifically? If so, please stand. (No
10 response). Thank you.

11 We are here on the State versus Anthony
12 Sanders. Good morning, Mr. Sanders.

13 DEFENDANT: Good morning.

14 THE COURT: Mr. Sanders is present.
15 We are here today at the request of both sides
16 concerning a potential agreement that has been
17 basically confirmed and I believe presented in
18 writing in the form of -- it's entitled
19 "Contractual Consent Order to Waive Rights to
20 Jury Trial."

21 Mr. Sanders, do you understand the
22 purpose of this proceeding today?

23 DEFENDANT: Yes, sir.

24 THE COURT: Okay. Solicitor, if you
25 will, I am going to ask if you -- I know that I

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1 have the writing before me but, if you will,
2 state the State's position for the record.
3 Then Mr. Young I am going to ask you to respond
4 to that from Mr. Sanders' perspective.

5 MR. YOUNG: Yes, Your Honor.

6 MR. JENNINGS: Thank you, Your
7 Honor. Essentially how we arrived here -- you'll
8 recall that on January 8th we had all congregated
9 at the Dorchester County Courthouse, that we had
10 all the physical evidence, and Mr. Sanders and
11 his attorney looked through that evidence.

12 Part of the premise of being there was
13 based on prior conversations that Mr. Sanders had
14 intended to plead guilty that Friday to three
15 counts of murder. We'd met with the victim's
16 family and discussed that proposition, that he
17 would be sentenced to life without parole
18 pursuant to that plea and they were all in
19 agreement.

20 That Friday we were not able to execute
21 the plea, but had some discussion at that time of
22 the possibility of a bench trial.

23 Essentially where we are procedurally
24 is that the State has agreed that in the event
25 we do have a bench trial the defendant waives his

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1 right to a jury trial. We're prepared to consent
2 to a bench trial before Your Honor and agree with
3 Mr. Young that in the event of a bench trial,
4 should he be found guilty by Your Honor, that he
5 would be sentenced pursuant to 16-3-20, under the
6 normal murder statute, where he would face thirty
7 years to life.

8 THE COURT: Okay.

9 MR. JENNINGS: I think, under the
10 case that what we have been discussing is that
11 the Supreme Court upheld that as a contractual
12 right the defendant waives his right to an appeal
13 or PCR, which I think is also incorporated in
14 this agreement. I believe that we've all agreed
15 that -- that in return for the State asking that
16 he would be sentenced from thirty years to life
17 that he and his counsel are willing to waive that
18 right to a jury trial, in addition to waiving any
19 right to appeal Your Honor's -- whatever that
20 verdict might be -- nor could he bring any PCR
21 action. I think the Supreme Court has upheld
22 that contractual relationship which could be
23 created.

24 THE COURT: Okay. Mr. Young?

25 MR. YOUNG: Judge, -- Your Honor, the

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1 agreement before the Court, signed by all the
2 parties, the offer, uh, that the State would be
3 basically withdrawing seeking the death penalty.
4 The consideration is that withdrawal. We agree
5 that in exchange for that to a trial before Your
6 Honor, putting the burden on the evidence. We
7 also agree to waive any appeal and/or PCRs from
8 that trial. We accept their offer and are ready
9 to proceed.

10 THE COURT: Mr. Young, you have
11 discussed this -- you and Mr. Leindecker have
12 discussed this fully with Mr. Sanders?

13 MR. YOUNG: Yes, Your Honor.

14 THE COURT: And you've answered all
15 of his questions?

16 MR. YOUNG: Yes, Your Honor.

17 THE COURT: And based on your con-
18 versations with your client, he's inclined to
19 encourage you on his behalf to make this
20 statement saying that he wants to accept this;
21 is that correct?

22 MR. YOUNG: That's correct, Your
23 Honor.

24 THE COURT: Mr. Leindecker, do you
25 concur with that, sir?

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1 MR. LEINDECKER: I do, Your Honor.

2 THE COURT: Mr. Sanders, good
3 morning. You may remain seated, sir, if you
4 wish.

5 First of all, your lawyers have talked
6 with you, certainly, about your fundamental
7 rights in this case; have they not?

8 DEFENDANT: Yes, sir.

9 THE COURT: And one of the major
10 fundamental rights that all persons have in this
11 state, this country, is the right to of course
12 not to say anything at all. That's the right to
13 remain silent. I am going to be asking you some
14 questions this morning. Do you fully understand
15 that right to remain silent?

16 DEFENDANT: Yes, sir.

17 THE COURT: And you've had a chance
18 to talk with your lawyers about that?

19 DEFENDANT: Yes, sir.

20 THE COURT: Of course, it continues
21 from the time I -- we haven't had any hearings
22 but I am assuming that at some point in time in
23 this process that the arresting officer or
24 officers basically gave you your -- what we call
25 Miranda Warnings. Is that correct, sir?

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1 DEFENDANT: Yes.

2 THE COURT: And you understand that
3 that continues until this matter is concluded?
4 In other words, at no time do you have to say a
5 word. Do you understand that?

6 DEFENDANT: Yes, sir.

7 THE COURT: This morning -- I heard
8 from your lawyers, but I need to ask you because
9 I need to be satisfied with this agreement before
10 I can accept it. It's now where -- it comes to
11 me this morning in this posture: the State has
12 accepted it, you by signing it and by your
13 lawyers' representations are accepting it, as
14 well. Now you've submitted it to me and I have
15 it, in the form of basically a document that
16 contains three pages, the last page being
17 primarily a signature page. There is a signature
18 at the top of Anthony Sanders. There is one of
19 Mark Leindecker, your lawyer. One of Mr. Boyd
20 Young. Then Mr. Pascoe, then Mr. Jennings.
21 There is one blank signature beneath that.

22 Before I could sign that, I have to be
23 convinced that this is an agreement that is fair,
24 that it represents truly the contract, if you
25 will, with both sides. That is, what was the

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1 offer, what are you accepting, what is the
2 bargain, the deal, and the consideration for
3 that contract. Do you understand that?

4 DEFENDANT: Yes.

5 THE COURT: So I have to ask you some
6 questions. I ask you, sir, are you willing to
7 answer my questions here this morning, sir?

8 DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that
10 for purposes of this proceeding that you're
11 giving up your Constitutional rights to remain
12 silent by doing so?

13 DEFENDANT: Yes, sir.

14 THE COURT: Mr. Sanders, I am going
15 to ask that you raise your right hand, please.

16 DEFENDANT: (Complies)

17 THE COURT: Do you solemnly swear or
18 affirm that your answers to all of my questions
19 will be the truth and nothing but the truth, so
20 help you God?

21 DEFENDANT: I do.

22 THE COURT: Thank you, sir. First of
23 all, Mr. Sanders, are you under the influence of
24 any alcohol or any medication here today?

25 DEFENDANT: No, sir.

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1 THE COURT: Have you consumed any
2 alcohol or taken any type of medication or drugs
3 in the last twenty-four hours?

4 DEFENDANT: No, sir.

5 THE COURT: Have you in the past or
6 are you now being treated for any emotional or
7 mental conditions?

8 DEFENDANT: No, sir.

9 THE COURT: Have you had sufficient
10 time to discuss this hearing today with your
11 lawyers?

12 DEFENDANT: Yes, sir.

13 THE COURT: And any other persons
14 that you wish to talk with -- because, as I
15 recall when we were last assembled, there were
16 family members present. We were glad to give
17 you as much time as you needed to talk with those
18 family members and you had that opportunity. Is
19 that correct, sir?

20 DEFENDANT: Yes, sir.

21 THE COURT: Have you had an
22 opportunity to talk about this agreement as well,
23 sir?

24 DEFENDANT: Yeah.

25 THE COURT: So you're satisfied and

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1 comfortable with your decision here today, is
2 that correct?

3 DEFENDANT: Yes, sir.

4 THE COURT: And your decision is
5 what? That you want to accept this agreement?

6 DEFENDANT: Yes.

7 THE COURT: Do you understand the
8 rights that you are giving up?

9 DEFENDANT: Yes, sir.

10 THE COURT: Of course you're not
11 giving up your right to require the State to
12 prove your guilt beyond a reasonable doubt,
13 because we're going to have a bench trial.
14 And you understand that?

15 DEFENDANT: Yes, sir.

16 THE COURT: Of course, you don't have
17 to say anything at that proceeding. Your lawyers
18 have told you that?

19 DEFENDANT: (Affirmative nod).

20 THE COURT: I would have instructed
21 that the jury, if we'd had a jury trial, that
22 they couldn't use that against you because that's
23 the law. I certainly will not use that against
24 you. Do you understand that?

25 DEFENDANT: Yes, sir.

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1 THE COURT: But nevertheless you're
2 giving up the right -- if I accept this agreement
3 -- to have a jury empaneled, a fair and impartial
4 jury, to listen to the evidence and decide what
5 they believe to be the true facts. I wouldn't
6 have anything to do with that process if we had
7 a jury trial. Do you understand that?

8 It wouldn't have anything to do with
9 the factual decision. I would have something to
10 do with the selection process, the legal aspect,
11 but the actual decision on the issues of fact
12 would be made by a jury. Do you understand that?

13 DEFENDANT: Yes, sir.

14 THE COURT: You're not going to have
15 that right now and you realize that, sir?

16 DEFENDANT: Yes, sir.

17 THE COURT: You also understand that
18 you're giving up the right in this deal, this
19 contract, to have my decision reviewed by the
20 court. By the normal process that has been
21 around since this country has existed, and it
22 basically is the process that, I believe, is a
23 part that so critical to the overall process of
24 a fair and reasonable determination. That is
25 the right of a party that is not satisfied with

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1 a decision to have another court review it to see
2 if there were any errors of law or any other
3 issues which would be addressed on appeal. Do
4 you understand that, sir?

5 DEFENDANT: Yes, sir.

6 THE COURT: Your lawyers have
7 discussed that with you?

8 DEFENDANT: Yes, sir.

9 THE COURT: And you want to give up
10 your right to appeal?

11 DEFENDANT: Yes, sir.

12 THE COURT: That's your decision?

13 DEFENDANT: Yes, sir.

14 THE COURT: And you fully understand
15 that?

16 DEFENDANT: Yes, sir.

17 THE COURT: Are you satisfied with
18 the manner in which your lawyers have advised you
19 about that particular right?

20 DEFENDANT: Yes, sir.

21 THE COURT: Do you have any questions
22 that you want to ask them -- and let me say, too.
23 Let's stop for a second. If at any point, if
24 there is a question that makes you the slightest
25 uncomfortable, either you're not sure of what I'm

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1 asking you or you're not sure of your answer, if
2 you're not comfortable with your answer, if you
3 need to talk with your lawyer, just stop me and
4 I will let you talk with them as long as you need
5 to. Okay?

6 DEFENDANT: All right.

7 THE COURT: But if you answer my
8 questions as you have thus far, I'm going to
9 assume that those are your answers and what you
10 really want to tell me this morning. Is that
11 fair?

12 DEFENDANT: Yes.

13 THE COURT: That you fully understand
14 the question and that you're giving me a complete
15 and truthful answer. Is that fair?

16 DEFENDANT: Yes, sir.

17 THE COURT: Okay. The second part of
18 this is kind of a second trial issue, if you
19 will, that can arise in some cases -- not always
20 but it certainly can. It's a very real and
21 substantial right that you have as a person
22 accused of a criminal offense in this state.
23 That is after a person has concluded all their
24 "options", so to speak, of having the matter
25 reviewed, if they believe that their lawyer(s)

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1 did something improper or that the judge did
2 something improper, it could be a legal decision
3 issue. They're multiple, but those are
4 statutorily provided. Your lawyers have talked
5 with you about the post conviction relief
6 statute. Is that correct?

7 DEFENDANT: Yes, sir.

8 THE COURT: And you understand that
9 you're giving up that right, too, kind of a
10 second review, if you will, really. The same
11 process would apply. You'd have a right to a
12 hearing where you'd present evidence, you've had
13 a right to appeal from that hearing or have that
14 matter reviewed by the court. Do you understand
15 that?

16 DEFENDANT: Yes, sir.

17 THE COURT: And you want to give up
18 that right, too, this morning; is that right?

19 DEFENDANT: Yes, sir.

20 THE COURT: The reason that you make
21 this decision is because you want to avoid the
22 death penalty as a possible punishment; is that
23 correct?

24 DEFENDANT: Yes, sir.

25 THE COURT: Because that's a real

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1 right -- that's a real benefit for you, from your
2 vantage point?

3 DEFENDANT: Yes, sir.

4 THE COURT: And you believe that is
5 substantial consideration that the State is
6 making, to give up the death penalty; because
7 offering you and being willing to give up the
8 death penalty is a substantial consideration?

9 DEFENDANT: (No verbal response).

10 THE COURT: You understand that just
11 because they're seeking it doesn't mean that they
12 are going to get the death penalty. Do you
13 understand that?

14 DEFENDANT: (No verbal response).

15 THE COURT: The options, of course,
16 would be -- well, first of all they've got to --
17 you understand that the process if we had a jury
18 trial is that we'd have a two-phase trial
19 process. Your lawyers have explained that to
20 you?

21 DEFENDANT: (Affirmative nod).

22 THE COURT: First is what I call the
23 'guilt phase' where they present only evidence
24 dealing with the offense(s) charged. If a jury
25 finds you not guilty then there would be no

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1 second phase. Do you understand that?

2 DEFENDANT: Yes, sir.

3 THE COURT: If we had a second phase,
4 then the jury would consider basically two
5 potential sentences and there would be additional
6 evidence presented at that time. Your lawyers
7 have explained that to you, as well?

8 DEFENDANT: Yes, sir.

9 THE COURT: The two options that the
10 jury would have would be -- of course, they could
11 impose the death penalty if that were back on the
12 table, so to speak. But they could also impose
13 life in prison as a possible sentence. Do you
14 understand that?

15 DEFENDANT: Yes, sir.

16 THE COURT: That really is the same
17 thing that I can give you -- it doesn't change --
18 the life associated with a death penalty trial
19 and the life that I could consider -- and I am
20 not saying what my sentence would be -- is thirty
21 years to life. Do you understand that?

22 DEFENDANT: (No verbal response).

23 THE COURT: Your lawyer has explained
24 that to you, that if I accept this deal?

25 DEFENDANT: Yes, sir.

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1 THE COURT: But that life sentence
2 would be the same life sentence, or it would be
3 the equivalent. It would be without parole. Do
4 you understand that?

5 DEFENDANT: I understand that.

6 THE COURT: Now, there's the
7 possibility of a thirty-year sentence, of course,
8 but -- at least from that standpoint the two --
9 the two opportunities or the two possible
10 consequences are really the same here. Do you
11 understand what I'm saying?

12 DEFENDANT: Yes, sir.

13 THE COURT: But you have removed
14 something and that is the death penalty option.
15 That's what you seek to do. Is that right?

16 DEFENDANT: Yes, sir.

17 THE COURT: Are you totally satisfied
18 with your lawyers' representation thus far?

19 DEFENDANT: Yes, sir.

20 THE COURT: And I was delighted to be
21 with them when I was requested to come talk about
22 a possible plea and I certainly respect your
23 decision fully, a hundred percent, saying 'I am
24 not going to plea.' I understand that and I
25 respect you for that. It's a tough decision,

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1 I'm sure. And I don't know anything about what
2 went on. I just know that there was substantial
3 time that we sat and ultimately a decision was
4 made. That was your conscious decision,
5 something that you chose to do. Is that correct?

6 DEFENDANT: Yes, sir.

7 THE COURT: Just as this is today.
8 This is your conscious decision that you want me
9 to accept this agreement?

10 DEFENDANT: Yes, sir.

11 THE COURT: And you feel comfortable
12 with that decision?

13 DEFENDANT: Yes, sir.

14 THE COURT: Can you think of any
15 reason, from your vantage point, that I should
16 not accept this decision?

17 DEFENDANT: No, sir.

18 THE COURT: I'm been doing this for
19 -- gosh, time flies. It'll be seventeen years in
20 March. This is the first time I've ever had
21 this. It's not something that I do every day.
22 Not agreements; that part, I've had. I've just
23 never had this part where a person is asking me
24 to accept something where they are giving up a
25 right to review; and a right to review the

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1 review, basically, in a PCR, indirectly. I am
2 not saying that's a definite, because it's not.
3 But that is what you want me to do?

4 DEFENDANT: Yes, sir.

5 THE COURT: Solicitor, anything
6 further from the State?

7 MR. JENNINGS: No, sir.

8 THE COURT: Mr. Young, anything
9 further from Mr. Sanders?

10 MR. YOUNG: No, Your Honor.

11 THE COURT: Mr. Sanders, thank you,
12 sir, for discussing it with me today.

13 First of all, I find that Mr. Sanders
14 has demonstrated, both by his responses, his
15 facial expressions, his body language, that he
16 is fully aware of what he is doing today. Is
17 that true, Mr. Sanders?

18 DEFENDANT: Yes, sir.

19 THE COURT: That he has answered my
20 questions fully and has demonstrated by his
21 responses that he does fully appreciate the
22 extent and the depth of this agreement. I find
23 this agreement to be one that he makes freely and
24 voluntarily without any threat or coercion.
25 Nobody has threatened you in any way or promised

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1 you anything other than the removal of the death
2 penalty, is that correct?

3 DEFENDANT: Yes, sir.

4 THE COURT: I find that Mr. Sanders
5 also has certainly -- I think that the record
6 will demonstrate and it is the court's
7 observation that he has very competent counsel
8 in this type of case. He's indicated that he
9 is totally satisfied with their representation.
10 Thus far, Mr. Sanders, you don't see them as much
11 as I have seen matters from them -- probably. I
12 don't know, they might be about equal. But I can
13 assure you that the court has had a number of
14 conferences, communications with your lawyers,
15 all appropriate ex parte communications. And
16 they have been endeavoring to represent you fully
17 in every way. That's been, I think the record
18 supports that in every respect. Do you agree
19 with that, sir?

20 DEFENDANT: Yes, sir.

21 THE COURT: I therefore find this
22 agreement to be fair and I appreciate the State's
23 willingness to do this. Solicitor, Mr. Jennings,
24 I think from the family's standpoint -- to have,
25 to facilitate something that represents closure

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1 for them, that's a significant part of this. Of
2 course we don't know what the outcome of the
3 trial is going to be but it will be closure,
4 because it is going to -- obviously if the State
5 loses, that would be closure. And, Mr. Sanders,
6 if the State is able to convince me beyond a
7 reasonable doubt of each element of the crime or
8 crimes charged, then of course it would be
9 closure for you and for the family, too, because
10 that will be the last proceeding in this process.
11 Do you understand that?

12 DEFENDANT: Yes, sir.

13 THE COURT: Okay. Very well, I will
14 sign it. I ask, Solicitor, that at this point --
15 and if it needs it, I will be happy to sign it.
16 That until this matter is tried, and it appears
17 now in looking at it that if you'all want to use
18 the first term -- it'll be March 15th. Does that
19 work?

20 MR. JENNINGS: Yes, sir.

21 THE COURT: Okay. That work for you,
22 Mr. Young?

23 MR. YOUNG: Yes, Judge.

24 THE COURT: That's okay. I would
25 check with the most important person, too, if I

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1 were you. In fact, I had an opportunity -- just
2 as an aside -- to speak to the Charleston Legal
3 Assistants Group. It was a pleasure to do so. I
4 told them -- they were asking me anything that I
5 could observe and I said, 'yeah, one of the
6 things that -- if we can cut down on the number
7 of times that the lawyers have to go to the
8 assistants to find out what to do.' But I
9 understand that. I did the same thing. You're
10 -- everybody has a different role. It's a great
11 process, it works well. So it works for you,
12 too?

13 MR. YOUNG: Yes, sir.

14 THE COURT: Okay, then we will plan
15 -- I will ask that this document either be
16 retained in your office and filed at the time
17 that we conclude the case -- is that agreeable
18 with you, Mr. Young, and you, Mr. Sanders?

19 MR. YOUNG: Yes.

20 DEFENDANT: Yes, sir.

21 THE COURT: And Mr. Leindecker?

22 MR. LEINDECKER: Yes, Your Honor.

23 THE COURT: Then let's do that. We
24 will not file it until it -- it will become the
25 -- I tell you what, it will become the agreement

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1 of the parties as of January 21st, 2010. Right
2 before we start trial we will confirm this
3 agreement again. I want to ratify this agreement
4 again, Mr. Sanders, before we start it. It won't
5 take as much time as we have thus far. But
6 clearly -- at that time or when we conclude that
7 proceeding, then we will file this matter. It
8 will be a part of the filing that will be a part
9 of any judgment that is awarded in that
10 proceeding. Okay? If that is agreeable with
11 everyone.

12 MR. YOUNG: Certainly.

13 THE COURT: Thank you so much.

14 MR. YOUNG: Judge, we have two other
15 -- well, three other matters. Your Honor, at the
16 conclusion of the hearing on the 21st has yet to
17 make a final ruling on the *Denno* issue.

18 THE COURT: You want me to rule on
19 that?

20 MR. YOUNG: Whatever Your Honor is
21 comfortable doing but -- yes, sir.

22 THE COURT: Okay.

23 MR. YOUNG: Certainly before trial.

24 THE COURT: Well, I've reviewed the
25 matter and considered it and I think that -- from

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1 the standpoint at that stage of the game, which
2 is the preponderance of the evidence, I think the
3 State has established that -- number one, that
4 rights were given; number two, notwithstanding
5 all the circumstances, I believe that they were
6 understood and that Mr. Sanders made some
7 statements. So ---

8 MR. YOUNG: Just briefly, can we
9 invoke, then, that there was ---

10 THE COURT: I understand. He chose
11 -- he initiated that, from my perspective. I
12 understand that. I understand your position that
13 you differ with that. Now, that's by the
14 preponderance of the evidence.

15 MR. YOUNG: I got ---

16 THE COURT: You certainly -- we can
17 revisit this, and I expect that we might, --
18 well, there won't be a whole lot of reason to,
19 but I'll be happy to review it. Okay?

20 MR. YOUNG: Yes, sir. And I have
21 electronically sent -- I told the court on the
22 21st that I would submit a proposed gag Order,
23 which -- I think that the Court ordered that
24 everybody was going to be under it, but we just
25 need you to sign the Order.

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1 THE COURT: Do we need a gag Order
2 now that I'm going to be the only person at
3 trial?

4 MR. YOUNG: Not for my purposes. I
5 just want to make sure that everything is ---

6 THE COURT: I understand. I am not
7 -- your gag Order is noted but because we're not
8 going to have a jury involved, I don't think that
9 there is any real problem with that now.

10 MR. YOUNG: I agree.

11 THE COURT: Thank you, sir.

12 MR. YOUNG: The court has requested
13 that I submit affidavits concerning the weekly
14 injection procedures and the challenges thereto,
15 and I believe the agreement ---

16 THE COURT: Obviates the necessity
17 for that. I agree with you.

18 MR. YOUNG: The only ---

19 THE COURT: Do you agree with that,
20 Mr. Sanders?

21 DEFENDANT: (Affirmative nod).

22 MR. YOUNG: I think that those were
23 the only matters outstanding?

24 THE COURT: Very well. I don't think
25 that there is any real necessity -- now that the

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1 death penalty is removed, officially as of today.
2 That, Gentlemen, is binding. Everybody
3 understands that? Both sides?

4 MR. JENNINGS: Yes, sir.

5 MR. YOUNG: Yes, sir.

6 THE COURT: Okay. Do you understand
7 that, Mr. Sanders?

8 DEFENDANT: Yes, sir.

9 THE COURT: Very well. Thank you
10 very much.

11 MR. YOUNG: Your Honor, good to see
12 you again.

13 THE COURT: You, too, Boyd. Thank
14 you.

15 (HEARING CONCLUDED)

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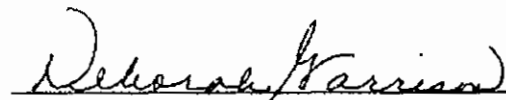
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1 CERTIFICATE OF REPORTER

2
3 I, the undersigned, Deborah Garrison,
4 official court reporter for the 9th Judicial
5 Circuit of the State of South Carolina, do hereby
6 certify that the foregoing is a true, accurate
7 and complete transcript of the hearing held
8 before The Honorable R. Markley Dennis, Jr., on
9 January 21, 2010.

10 I further certify that I am neither kin nor
11 counsel to any of the parties and have no
12 interest in the outcome of this action.

13
14 

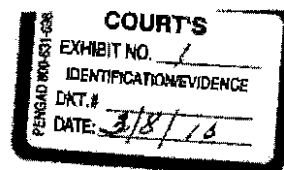
15 Deborah Garrison

16 Circuit Court Reporter

17 9th Judicial Circuit

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19
20
21
22 Charleston, South Carolina

23 January 20, 2012



STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

STATE OF SOUTH CAROLINA,)

v.)

ANTHONY SANDERS,)
Defendant.)IN THE COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

Indictment #(s) 2007-GS18-1296, 1297, 1298

**CONTRACTUAL CONSENT ORDER TO
WAIVE RIGHT TO JURY TRIAL**

The Defendant is currently charged with three counts of Murder in the above referenced indictments. The Defendant has previously requested a jury trial.

The Honorable R. Markely Dennis has been assigned by South Carolina Court Administration as the trial judge for this case.

The Defendant, Anthony Sanders, hereby consents pursuant to Rule 14(b) of the South Carolina Rules of Criminal Procedure to waive his right to a jury trial. In consideration for his doing so, both parties agree that in the event Mr. Sanders is found guilty by the trial judge he will be sentenced pursuant to SC Code Ann §16-3-20(A), which is 30 years to life imprisonment for each indictment. The State and the trial judge hereby approve this waiver, and agree for this case to be resolved by a bench trial before the Honorable R. Markley Dennis.

Pursuant to South Carolina Code Section 16-3-20(A) the Defendant will not be eligible for parole, community supervision, or any early release program, nor is the Defendant eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the sentence.

The Defendant, Anthony Sanders, has been informed by his counsel that appealable error may have already occurred in evidentiary hearings or may occur during the bench trial which

A handwritten signature in black ink, appearing to be "RMJ".

may entitle him to a new trial. Anthony Sanders agrees to waive absolutely and unconditionally all future rights to appeal any legal issues associated with this case or conviction in State or Federal Court. The Defendant waives the right to appeal any evidentiary rulings made by the Honorable R. Markley Dennis. The Defendant also waives the right to appeal the verdict and sentence entered by the trial judge. This waiver applies to all rights of judicial review, including, but not limited to direct appeal, post conviction proceedings, or habeus corpus proceedings in State or Federal Court.

The Defendant, Anthony Sanders, is making a knowing, intelligent and voluntary decision to enter into the terms of this consent order.

The Defendant, Anthony Sanders, in signing this consent order, acknowledges and attests to the following:

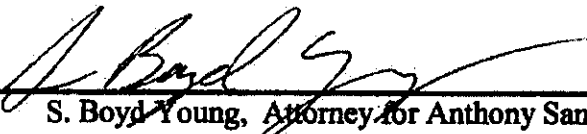
- a) He is mentally and legally competent;
- b) He has full understanding of the terms and provisions of this consent order;
- c) He has read the consent order in detail;
- d) He has had ample opportunity to discuss, and has discussed at length, the terms and provisions of this consent order with his counsel; and
- e) He understands the provisions of this consent order are permanent and irrevocable such that he will not have a jury decide his guilt for the above referenced indictments, and he will never be entitled to appeal any aspect of this case.

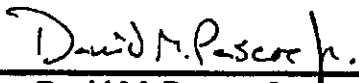
Counsel for Anthony Sanders, by virtue of their signatures below, attest that to the best of their knowledge, Anthony Sanders fully understands the terms of this consent order and has made a knowing, intelligent, and voluntary decision to enter into this consent order after thorough discussion with counsel such that he has a full understanding of the consequences of his actions.

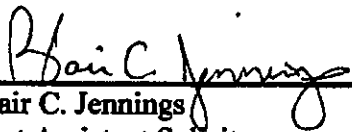
The Defendant, Anthony Sanders, further understands that if he breaches any of the terms of this agreement, his death penalty trial will proceed as currently scheduled beginning March 8, 2010.

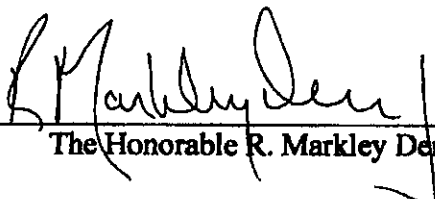

 Anthony Sanders, Defendant


 Mark Leindecker, Attorney for the Anthony Sanders


 S. Boyd Young, Attorney for Anthony Sanders


 David M. Pascoe, Jr.
 First Circuit Solicitor


 Blair C. Jennings
 First Assistant Solicitor


 The Honorable R. Markley Dennis, Circuit Judge

This 21st day of January, 2010

RMJ3

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF DORCHESTER	)	COURT OF GENERAL SESSIONS
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	07-GS-18-01296 et al
	)	
Anthony Sanders,	)	
	)	
Defendant.	)	

TRANSCRIPT OF BENCH TRIAL

The within bench trial was held March 8-9, 2010. before The Honorable R. Markley Dennis, Jr., in the Court of General Sessions for Dorchester County in the Dorchester County Courthouse, St. George, South Carolina; attended by counsel, as follows:

APPEARANCES:

Russell Hilton, Solicitor
 Blair Jennings, Assistant Solicitor
 1st CIRCUIT SOLICITORS OFFICE
 St. George, South Carolina
 Appearing for State of South Carolina

Mark A. Leiendecker, Esq.
 Mitchell Farley, Esq.
 OFFICE OF THE PUBLIC DEFENDER
 107 West 6th North Street, Suite 100
 Summerville, South Carolina 29483

-and-

S. Boyd Young, Esq.
 Laura Wood, Esq.
 SC Commission on Indigent Defense
 P O Box 11433
 Columbia, South Carolina 29211
 Appearing for Defendant

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 901
 Johns Island, South Carolina 29457
dGarrison@sccourts.org

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10

1 MARCH 8, 2010 9:00 A.M.

2

3 (DEFENDANT PRESENT)

4 THE COURT: Solicitor, good morning.
5 We're ready to proceed?

6 SOLICITOR HILTON: Yes, Your Honor.

7 THE COURT: Defense is ready to
8 proceed?

9 MR. YOUNG: Yes, Your Honor.

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

12 MR. SANDERS: Good morning.

13 THE COURT: How are you, sir?

14 MR. SANDERS: Fine.

15 THE COURT: Good. You're ready to
16 proceed, sir?

17 MR. SANDERS: Yes, sir.

18 THE COURT: The first matter, Mr.
19 Sanders, the last time we were together I signed
20 a Consent Order which we discussed at length at
21 that last meeting, and bearing your signature
22 indicating how this matter would proceed. And
23 you again confirmed and ratified that agreement,
24 sir?

25 MR. SANDERS: Yes, sir.

1 THE COURT: And it is your desire to
2 go forward pursuant to this Order?

3 MR. SANDERS: Yes, sir.

4 THE COURT: Very well, sir. I'm
5 going to make the Order -- we'll have to find the
6 original, I guess. We need to make a copy of it.
7 Any objection to the copy being the Court's
8 Exhibit?

9 MR. YOUNG: No, Your Honor.

10 THE COURT: Very well. The copy will
11 become Court's Exhibit number one for purposes of
12 this proceeding. Solicitor, I'll return the
13 original to you for filing, please.

14 SOLICITOR HILTON: Yes, sir.

15 (SO ENTERED AS COURT'S EXHIBIT 1)

16 THE COURT: Thank you very much.
17 Therefore, since that Order and the agreement
18 waives trial by jury, we're ready to proceed. Is
19 the State ready to proceed?

20 SOLICITOR JENNINGS: We are, Your
21 Honor. And we are calling three indictments for
22 murder against Anthony Sanders, 2007-GS-18-1296,
23 1297 and 1298.

24 THE COURT: Very well.

25 SOLICITOR JENNINGS: Would you like

1 the indictments or just return them to the clerk?

2 THE COURT: You can just return them
3 to the clerk. Thank you so much, sir. Okay.
4 You can proceed. Do you want to make any brief
5 opening statements, or do you want to proceed
6 with calling your first ---

7 SOLICITOR JENNINGS: No, we'll waive
8 opening.

9 THE COURT: The defense waives
10 opening as well?

11 MR. YOUNG: We do, Your Honor.

12 THE COURT: Very well. You may call
13 your first witness, sir.

14 SOLICITOR HILTON: The State calls
15 Scott Morgan.

16 (WITNESS TAKES STAND)

17 SCOTT MORGAN, being duly sworn to tell
18 the truth, the whole truth and nothing but the
19 truth, testified, as follows:

20 DIRECT EXAMINATION

21 BY SOLICITOR HILTON:

22 Q. Thank you, Mr. Morgan. Thanks for coming
23 here today. Where are you currently living right
24 now?

25 A. I live at [REDACTED] Shagbark Trail at Archdale

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1 Forest Apartments.

2 Q. And how long have you lived there?

3 A. About ten years.

4 Q. So you were living there back in July of
5 2007?

6 A. Yes, sir.

7 Q. Let me turn your attention to the night of
8 July 9th and the morning of July 10th. Was there
9 anything unusual about that night that you
10 remember?

11 A. Yes, that night actually, I was awoken
12 probably about 2:20. I wasn't really sure
13 actually what I'd heard, but I could hear some
14 shots fired. And then I heard a scream and then
15 heard three more shots. I got up and looked to
16 see what it was. However, it was July and I had
17 my AC running and the condensation had, you know,
18 it fogged up the windows. I really couldn't see
19 anything. I really wasn't sure actually what I'd
20 heard, until I got to work the next day and I
21 heard about on the radio and from a fellow
22 employee actually what had occurred.
23 Then it all came together.

24 Q. A shot, ---

25 A. (Affirmative nod).

1 Q. --- followed by a scream ---

2 A. Yes, sir.

3 Q. --- and then some more shots?

4 A. Yes.

5 Q. All total, about how many shots do you think
6 you heard?

7 A. I heard five shots.

8 SOLICITOR HILTON: Please answer
9 any questions the defense may have for you.

10 THE COURT: You may cross.

11 CROSS EXAMINATION

12 BY MR. YOUNG:

13 Q. Good morning, Mr. Morgan.

14 A. Good morning.

15 Q. You talked about your windows being fogged
16 up. Can you tell me a little bit about that?

17 A. Yes, sir. Actually, I came up to my window
18 and even when I just rubbed my window to see what
19 was going on, they would just fog up again with
20 condensation from the AC that was going. I
21 couldn't see anything else, couldn't see out the
22 window. Later on that morning I had gotten up
23 early to go to work, probably -- I think I had to
24 be in at 6:00 that morning and I heard it on the
25 news.

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1 Q. Was this one of those days that we have down
2 in the lowcountry where your windows just fog up
3 from the air conditioning on the inside and you
4 really can't see outside?

5 A. That is correct.

6 Q. Thank you.

7 MR. YOUNG: That's all the questions
8 that I have.

9 THE COURT: Redirect, Solicitor?

10 SOLICITOR HILTON: No redirect, Your
11 Honor.

12 THE COURT: Thank you, Mr. Morgan.
13 You may step down, sir.

14 (WITNESS STEPS DOWN)

15 THE COURT: Call your next witness.

16 SOLICITOR HILTON: The State would
17 call Mr. Matthew Rogers.

18 (WITNESS TAKES STAND)

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

22 DIRECT EXAMINATION

23 BY SOLICITOR HILTON:

24 Q. Thank you, Mr. Rogers. Where are you
25 currently living, now?

1 A. [REDACTED] Shagbark Trail, Archdale Forest
2 Apartments.

3 Q. Do you know Mr. Morgan?

4 A. Actually, no. Today is the first day that I
5 have really spoken to him.

6 Q. All right. But he's actually your neighbor,
7 kind of across the street. Is that correct?

8 A. Yes.

9 Q. And were you living back at [REDACTED] Shagbark
10 Trail in July of 2007?

11 A. Yes, sir.

12 Q. Let me just ask you -- I'm going to show you
13 what's been premarked as State's Exhibit 1 and
14 see if you can maybe put your initials where [REDACTED]
15 Shagbark Trail is.

16 A. (Complies).

17 Q. You put an "MR" there. That's for "Matthew
18 Rogers?

19 A. Correct.

20 Q. Turning your attention to the morning of
21 July 10th or the late night of July 9th, what were
22 you'all doing that night - I say "you'all" being
23 you and your fiancée?

24 A. We were watching TV in bed. Earlier that
25 day she had bumped her head. I was concerned

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1 about that, so we decided that she needed to stay
2 awake. I wanted to stay awake with her to make
3 sure it didn't turn out to be something serious;
4 it turned out to be nothing serious. So we were
5 awake watching TV.

6 Q. And that was around what time?

7 A. 2:30.

8 Q. Is there anything that you recall that night
9 that was out of the ordinary?

10 A. Absolutely.

11 Q. What was that?

12 A. I heard a gunshot, I heard a scream and then
13 I heard three more gunshots immediately
14 following.

15 Q. And in relation to your apartment, what
16 location would you say those gunshots were coming
17 from?

18 A. Behind it.

19 Q. Behind it a hundred yards or immediately
20 behind it or what?

21 A. It sounded very close.

22 Q. What did you do at that point?

23 A. Called 9-1-1 and informed the 911 operator
24 of what I had heard. She asked me a couple of
25 questions. I responded. My wife and I moved

1 from my bedroom to the front bedroom. We stayed
2 upstairs but away from the side of the building
3 where we heard the shots coming from and waited
4 there until we saw the police cruiser lights
5 drive by. We basically stayed awake until they
6 knocked on our door to speak to us.

7 Q. At any point in time during that night,
8 around the 2:30'ish hour did you'all look out the
9 window to see what was going on?

10 A. No, sir. I was concerned that someone was
11 behind our building shooting a gun. And we
12 didn't want to draw attention to our apartment,
13 I thought that might be too risky; so we stayed
14 away from the windows and didn't venture
15 downstairs, didn't try to go outside and look to
16 see what had happened.

17 Q. Did you have the opportunity to review the
18 compact disc that contains the 9-1-1 tape?

19 A. Yes, sir.

20 Q. And that's marked here as State's Exhibit
21 42. And that tape that you listened to, is that
22 an accurate recording of the 9-1-1 call as you
23 remember it?

24 A. Yes.

25 SOLICITOR HILTON: Your Honor, at

State of South Carolina v. Anthony Sanders
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1 this time we'd like to publish that 9-1-1 tape.

2 THE COURT: Any objection?

3 MR. YOUNG: No objection.

4 THE COURT: Without objection,

5 State's Exhibit 42 is admitted and may be

6 published.

7 (SO ENTERED AS STATE'S EXHIBIT 42)

8 TRANSCRIPTION OF TAPE:

9 Operator: Dorchester County 9-1-1.

10 What is the nature of your emergency?

11 Male Speaker: I live in Archdale
12 Forest. I just heard four gunshots and someone
13 scream.

14 Operator: I'm sorry. You heard
15 someone what now?

16 Male Speaker: I live in Archdale
17 Forest and we just heard four gunshots and
18 someone scream.

19 Operator: Do you know where it was
20 coming from over there?

21 Male Speaker: It sounded like --
22 we're on Shagbark Road. It sounded like it came
23 from behind our building.

24 Operator: Okay.

25 Male Speaker: The area is a loop.

1 We're on [REDACTED] and behind us is trees and another
2 apartment.

3 Operator: Did you hear any vehicle
4 speed off?

5 Male Speaker: No, I haven't heard
6 any vehicles speed off.

7 Operator: Can you let me know, call
8 me back if you hear any vehicles speed off or
9 anything?

10 Male Speaker: Yes.

11 Operator: Okay. We're going to get
12 the officers on their way.

13 Male Speaker: All right.

14 Operator: Okay. Thank you. Bye,
15 bye.

16 (911 TRANSCRIPT CONCLUDED)

17 SOLICITOR HILTON: Thank you, Mr.
18 Rogers. Please answer any questions the defense
19 may have for you.

20 MR. YOUNG: No questions.

21 THE COURT: Thank you, sir. You may
22 come down, Mr. Rogers.

23 (WITNESS STEPS DOWN)

24 THE COURT: Call your next witness,
25 please.

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1 SOLICITOR HILTON: The State would
2 call Deputy Adam Smith.

3 (WITNESS TAKES STAND)

4 ADAM SMITH, being duly sworn to tell
5 the truth, the whole truth and nothing but the
6 truth, testified, as follows:

7 DIRECT EXAMINATION

8 BY SOLICITOR HILTON:

9 Q. Thank you, Deputy Smith. Are you with the
10 Sheriff's Office now?

11 A. I am.

12 Q. And were you with the Sheriff's Office back
13 in July of 2007?

14 A. Yes, I was.

15 Q. And back in 2007, what section of the
16 Sheriff's Office were you assigned to?

17 A. At that time it was called Region Three
18 which is the Ashley Phosphate/Dorchester Road,
19 North Charleston area of Dorchester County.

20 Q. And were you a road patrolman or detective
21 or what?

22 A. Yes, road patrol.

23 Q. And now -- are you a detective now?

24 A. Yes, I'm in the Detective Division.

25 Q. And how long have you been working in the

1 Sheriff's Office altogether?

2 A. Since October of 2006.

3 Q. On the morning of July 10th back in 2007, did
4 the Sheriff's Office get a call out to the
5 Archdale Forest Apartments area?

6 A. Yes, they did.

7 Q. And what was that call in relation to?

8 A. It was in relation to gunshots being heard
9 in the apartment complex.

10 Q. And just tell the Court a little bit about
11 how you proceeded to that call.

12 A. At that time I was on patrol on Park Forest
13 Parkway which runs directly across from Ashley
14 Phosphate Road at the intersection of Dorchester
15 Road. At that time I proceeded right on
16 Dorchester Road and went to Archdale Forest
17 Apartments and began patrolling the area, looking
18 for any suspicious persons or vehicles in the
19 area.

20 Q. And what did you find?

21 A. At Archdale Forest, where the apartment
22 complex goes into a circle, I first proceeded to
23 the right and made my way around the back side
24 of the circle. And as I came back around I
25 looked to my left side. It would have been the

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23

1 200 section, I didn't know for sure of the
2 apartment number at that time. On my left-hand
3 side, I observed a door that was partially
4 cracked open and there was a light on inside.
5 Being the time of day, it seemed kind of
6 suspicious at the time.

7 Q. Did you have anybody with you?

8 A. I had just met with Deputy Crisp who was
9 also patrolling the area with me. I contacted
10 Deputy Crisp by the radio and he met with me at
11 the apartment complex. And at that time we
12 approached the building, which would have been
13 the [REDACTED] building.

14 Q. And what did you'all see inside?

15 A. I was approaching from the right side of
16 the door and we were proceeding cautiously due
17 to the gunshots being heard and not knowing what
18 we had. I was proceeding from the right side of
19 the apartment at the front door. Deputy Crisp
20 was at the left side of the door. Due to my
21 vantage point I couldn't see anything except for
22 the door, the way it was cracked. Deputy Crisp
23 then advised me that he observed what appeared
24 to be a person that was on the ground inside the
25 apartment. And at that time we held our

1 position and notified the rest of the responding
2 units.

3 Q. Then what happened?

4 A. We put in a call to Sergeant Hill, who is
5 now Lieutenant Hill, and also Deputy Buckman.

6 Once they arrived on the scene we began
7 to clear the apartment, first cleared the
8 downstairs. At that time I observed two persons
9 inside the downstairs portion of the apartment
10 who were not moving and non-responsive.

11 At that time we proceeded upstairs in the
12 apartment. We located two small juveniles that
13 were asleep in their bedrooms. Those two
14 juveniles, after we cleared the apartment, were
15 then escorted downstairs. They were placed in a
16 patrol car awaiting notification of other family
17 members or DSS.

18 Q. Were you'all able to determine who the
19 bodies were at that time?

20 A. We had an idea just from mail and other
21 articles inside the apartment, but we weren't
22 able to identify for certain who they were at
23 that time.

24 Q. All right. Archdale Forest Apartments, is
25 that in Dorchester County?

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1 A. Yes, it is.

2 SOLICITOR HILTON: Please answer
3 any questions the defense may have for you.

4 MR. YOUNG: No questions.

5 THE COURT: Thank you, sir. You may
6 come down.

7 (WITNESS STEPS DOWN)

8 THE COURT: Call your next witness.

9 SOLICITOR HILTON: The State would call
10 Deputy Joel Crisp.

11 (WITNESS TAKES STAND)

12 JOEL CRISP, being duly sworn to tell
13 the truth, the whole truth and nothing but the
14 truth, testified, as follows:

15 DIRECT EXAMINATION

16 BY SOLICITOR HILTON:

17 Q. Deputy Crisp, you're with the Dorchester
18 County Sheriff's Office?

19 A. Yes, I am.

20 Q. Were you working with the Sheriff's Office
21 on the morning of July 10th, 2007?

22 A. Yes, I was.

23 Q. And what type of call did you'all get that
24 night out to the Archdale Forest Apartments?

25 A. We received multiple calls on shots fired.

1 And I believe there were two to three people
2 that also heard a female scream. Since we had
3 multiple calls, me and Deputy Smith both
4 responded out there together to patrol the area.

5

6 While we were patrolling the area, at first
7 we didn't observe anything. Then Deputy Smith
8 located an open door which, again, was very odd
9 for 2:30 in the morning -- a door being open.

10 He advised me to come over there to the
11 location. We got at the location and he went to
12 the right side of the building and I went to the
13 left side behind some cars that were parked
14 there at the front of the building. I observed
15 what appeared to be two bodies laying in the
16 doorway of the apartment building.

17 Q. Let me show you what's been marked for
18 identification as State's Exhibit 2 and State's
19 Exhibit 3 and just ask you to take a look at
20 those.

21 A. (Complies)

22 Q. Does that appear to be an accurate
23 photograph of what you saw that night?

24 A. Yes, it does. Exhibit 3 is pretty much the
25 exact area that I was looking from, from behind

1 the vehicles.

2 Q. And Exhibit 2, what is that a picture of?

3 A. Exhibit 2 is from actually where Deputy
4 Smith would have been, a little bit more to the
5 right, still in the same apartment, but it was
6 more or less his angle from my angle and where
7 we were approaching from.

8 Q. These two items here, were those the bodies
9 that you referenced?

10 A. Yes, they were.

11 SOLICITOR HILTON: Your Honor, at
12 this time we'd offer State's Exhibits 2 and 3
13 into evidence.

14 MR. YOUNG: Without objection.

15 THE COURT: Without objection,
16 State's 2 and 3 are admitted.

17 (SO ENTERED AS STATE'S EXHIBIT 2)

18 (SO ENTERED AS STATE'S EXHIBIT 3)

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR HILTON:

21 Q. After you saw the bodies inside the
22 apartment what did you do?

23 A. We basically just waited until we had other
24 units to arrive at the scene. And once the
25 other units arrived on the scene and there were

1 three or four of us, and we proceeded to make
2 entry into the house, observed the two bodies,
3 no movement whatsoever.

4 Deputy Buckman and Sergeant Hill cleared
5 the downstairs, and I basically stayed tight on
6 the stairs. Then I proceeded to go upstairs,
7 with the three of them following, and located
8 two children in two different rooms.

9 Q. Were they injured?

10 A. No, they were still sleeping. So we
11 proceeded to clear the rest of the house
12 without waking them up. Once we cleared the
13 house, I carried one of them down and Deputy
14 Buckman carried the other one down.

15 Q. Were these teenage children or small
16 children?

17 A. They were infants, at the time I would
18 guess in between maybe two and five at the
19 most. And we carried them down and put them
20 in back of the squad car until we could find a
21 safer place for them. I basically watched them
22 until somebody else could come and take custody
23 of them.

24 Q. All right.

25 SOLICITOR HILTON: Please answer

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1 any questions the defense may have for you.

2 MR. YOUNG: No questions.

3 THE COURT: Thank you, sir. You may
4 come down.

5 (WITNESS STEPS DOWN)

6 THE COURT: Call your next witness.

7 SOLICITOR JENNINGS: Thank you, Your
8 Honor. We call Detective Earl Asbill.

9 (WITNESS TAKES STAND)

10 EARL ASBILL, being duly sworn to tell
11 the truth, the whole truth and nothing but the
12 truth, testified, as follows:

13 DIRECT EXAMINATION

14 BY SOLICITOR JENNINGS:

15 Q. Detective Asbill, where are you employed?

16 A. Dorchester County Sheriff's Office.

17 Q. And in what capacity?

18 A. I'm the lieutenant in charge of the crime
19 scene unit.

20 Q. You obviously respond to crime scenes,
21 process and collect evidence?

22 A. That's correct.

23 Q. How does that work as far as when a crime
24 takes place? How are you notified?

25 A. Either the dispatcher or the detective on

1 the scene. That particular night Captain
2 Marshall called me about 3:00 o'clock in the
3 morning to let me know he had a possible --
4 well, he thought it was a murder/suicide at the
5 time.

6 Q. And that was the early morning on July 10th
7 of 2007?

8 A. That's correct.

9 Q. Where did you respond?

10 A. [REDACTED] Shagbark Trail.

11 Q. And that's in Dorchester County?

12 A. Yes, sir, Archdale Forest.

13 Q. Explain to us what you did when you first
14 got to the scene.

15 A. When I first arrived on the scene I talked
16 to one of the officers to try to get an idea of
17 what happened. They told us they had two
18 bodies laying inside of the apartment and they
19 had removed two children from there. At that
20 point, I just went ahead and took the camera
21 out and photographed the scene as I approached
22 it.

23 Q. Is that your normal -- what you normally
24 would do to process the scene prior to going
25 into it?

1 A. Well, we photograph it before we go in it,
2 yes, sir. We document it with photographs as
3 we are walking in.

4 Q. You took a number of photographs at that
5 scene.

6 A. Yes, sir.

7 Q. I show you what's marked as State's
8 Exhibits 2 and 3 which are already in, as well
9 as State's 4, 5, 6, 7, 8, 9, 10 and 11. If
10 you'll just take a quick look at those.

11 A. State's Exhibit number 4, this was taken as
12 you walk in the front door.

13 Q. We'll go through them. If you'll just look
14 at them and see if those are the photos that
15 you took.

16 A. (Upon review) -- yes, sir, they are.

17 Q. And they fairly and accurately depict what
18 you saw that morning?

19 A. Yes, sir, they do.

20 SOLICITOR JENNINGS: Your Honor, we
21 would offer State's Exhibits 4 through 11 into
22 evidence.

23 THE COURT: Any objection?

24 MR. FARLEY: No, Your Honor.

25 THE COURT: Without objection,

1 State's 4 through 11 are admitted.

2 (SO ENTERED AS STATE'S EXHIBITS

3 4 THROUGH 11)

4 DIRECT EXAMINATION CONTINUED

5 BY SOLICITOR JENNINGS:

6 Q. Lieutenant Asbill, that's State's Exhibit

7 2. And that's obviously a photograph as you
8 approached the apartment, apartment 213B?

9 A. That's correct. I'm showing the area was
10 cordoned off prior to me getting there.

11 Q. Deputy Smith and Deputy Crisp had roped off
12 the scene, which is the tape that you see in
13 that photograph?

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

15 Q. State's Exhibit 3 -- can you describe what
16 that shows?

17 A. As I was approaching the front door I took
18 a photograph. You can see the two bodies
19 laying in there. Her's is more prevalent than
20 his. You could see the bodies through the
21 front door.

22 Q. I know you've got a diagram which we'll use
23 in a minute. Kind of describe the layout. As
24 you walk into the door immediately to the
25 right, what was in that area?

1 A. That's the kitchen area. As you walk in to
2 the left there's the stairs. To the right is
3 the kitchen, and you have a little narrow
4 pathway where you go into the dining area and
5 it chambers over to the living room area. It's
6 a long, narrow apartment.

7 Q. State's Exhibit 9?

8 A. State's Exhibit 9 is showing two gel lifts.
9 When I came into the front door I could see
10 some footwear on the floor that was not made by
11 the police officers' boots. So I made gel
12 lifts of the footwear going into the dining
13 room area.

14 Q. Describe what it appeared like when you say
15 a footwear impression.

16 A. Well, you could see dirt. And you could
17 shine the flashlight across it and you could
18 see the footwear. A gel lift is kind of a
19 rubber gel. It's tacky on one side. All we
20 do is take it and lay it down over the footwear
21 and smooth it out over the top of it and write
22 on the back of it the information about the
23 case and the date and my initials. And when
24 you peel it up it actually lifts the footwear
25 from the floor. They're placed in boxes to be

1 sent to SLED to be photographed.

2 SOLICITOR JENNINGS: Would you
3 please mark these?

4 COURT REPORTER: State's Exhibit 56
5 for identification.

6 DIRECT EXAMINATION CONTINUED

7 BY SOLICITOR JENNINGS:

8 Q. Lieutenant Asbill, I'll show you what's
9 marked as State's Exhibit 56 and ask, do you
10 recognize that?

11 A. Yes, sir. This is the box that I placed
12 the gel lifts in and it contains the two gel
13 lifts I made off the floor between the kitchen
14 and the dining room.

15 SOLICITOR JENNINGS: We'd offer 56
16 into evidence, Your Honor.

17 THE COURT: Any objection?

18 MR. FARLEY: No, Your Honor.

19 THE COURT: Without objection,
20 State's Exhibit 56, containing two gel lifts,
21 is admitted.

22 (SO ENTERED AS STATE'S EXHIBIT 56)

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR JENNINGS:

25 Q. Lieutenant Asbill, obviously, the gel

1 lifts, the purpose is if subsequently some
2 shoes are found that might be compared to those
3 it could be some evidentiary significance?

4 A. That's correct.

5 Q. I show you next what's marked as State's
6 Exhibit 4. Were you able to identify this
7 victim?

8 A. This victim is Diane Grant. When we first
9 arrived on the scene we thought that was the
10 brother and sister inside the house and the
11 mother was not home. We didn't realize that
12 that was the mother, at first. That was a
13 picture of her as I was walking in; right where
14 you see the gel lift, that would have been
15 taken from that position right there.

16 Q. And that's right as you enter into the
17 apartment?

18 A. That's right when you walk straight in.

19 Q. And, obviously, the bodies were sent to
20 MUSC for autopsies. Were you able to, just
21 from a preliminary standpoint, tell what kind
22 of trauma she had suffered?

23 A. She had a hole in her left cheek that
24 appeared as an exit wound. When we first her
25 there was a lot of blood spatter on the back of

1 the door, and we thought maybe that a beating
2 had occurred but upon closer examination we
3 noticed the exit wound on her cheek. I didn't
4 do any photo examination of the head at that
5 time.

6 Q. I'm showing you State's Exhibit 5, that is
7 the second victim in the apartment?

8 A. That's correct. That would be Jatavius
9 Devore. You can see his brother's left foot in
10 the bottom right-hand corner of the picture.
11 That is a picture of the position that he was
12 in at the time.

13 Q. Were you also -- in addition, he was sent
14 to MUSC for an autopsy?

15 A. (Affirmative nod).

16 Q. Were you able to make some preliminary
17 diagnosis of the trauma that he had suffered?

18 A. I got photos of the back of the head. At
19 first I didn't notice until later on that he
20 had a gunshot to the, I believe that it was the
21 left cheek right below the eye.

22 Q. I show you State's Exhibit 6. If you could
23 tell us, please, what's shown in that
24 photograph.

25 A. It's a little dark, but those are the two

1 shell casings. You've got one laying on the
2 floor right in front of the counter. The door
3 opens to the counter. Then there's another one
4 on the right-hand side in front of the other
5 counter and stove area.

6 Q. And did you collect those shell casings?

7 A. Yes, sir, I did.

8 Q. I show you what's marked as State's Exhibit
9 8. Is that one of the shell casings?

10 A. That's correct. Shell casing, labels by
11 placard number three, that would be the one
12 that was closest to the stove on the right-hand
13 side of the kitchen.

14 Q. And State's Exhibit 7?

15 A. This would be the other shell casing, photo
16 placard four, that was in front of the sink
17 area. That's the cabinet doors below it.

18 Q. And you collected both item three and item
19 four?

20 A. Yes, sir, I did.

21 Q. I show you what's marked as State's
22 Exhibits 43 and 44. Do you recognize those?

23 A. (Upon review) -- yes, sir.

24 This is a box containing -- that I placed
25 the shell casings in, photo placard number

1 three, which is a spent .40 caliber Smith &
2 Wesson RP brand.

3 The other is photo placard number four.
4 It's a spent .40 caliber shell casing. It's a
5 Federal .40 caliber shell casing.

6 Q. When you use the terms "RP" and "Federal,"
7 that's the brand of the ammunition?

8 A. That's correct.

9 SOLICITOR JENNINGS: Your Honor,
10 we'd offer State's Exhibits 43 and 44 into
11 evidence.

12 THE COURT: Any objection?

13 MR. FARLEY: No objection.

14 THE COURT: Without objection,
15 State's 43 and 44, each containing a shell
16 casing, are admitted.

17 (SO ENTERED AS STATE'S EXHIBIT 43)

18 (SO ENTERED AS STATE'S EXHIBIT 44)

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR JENNINGS:

21 Q. You found two shell casings. Any other
22 shell casings in the apartment?

23 A. No, sir, that was the only two found.

24 Q. And as you were able -- found from
25 examining Ms. Grant that she had an exit wound,

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1 I believe, to her left cheek, were you able to
2 find where that bullet traveled after it left
3 her cheek?

4 A. Yes, sir. It entered the wall on the
5 right-hand side of the dining room table. It
6 was sixteen feet and some inches from the rear
7 wall, and I think two feet nine inches from the
8 floor and exited then through Apartment A. We
9 placed a rod into the bullet hole that went all
10 the way through. At that point we went to
11 Apartment A to examine that and make sure
12 nobody was hurt over there.

13 Q. And were you able to find the projectile?

14 A. Yes, sir. It had traveled through the wall
15 and it entered into his desk drawer, which was
16 on the opposite side in Apartment A. And we
17 recovered the bullet out of the side of the
18 desk drawer.

19 Q. I show you what's marked as State's Exhibit
20 45. Do you recognize that?

21 A. Yes, sir. This is the projectile that
22 traveled through the wall and was recovered in
23 [REDACTED].

24 SOLICITOR JENNINGS: Your Honor,
25 we'd offer 45 into evidence.

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1 MR. FARLEY: No objection.

2 THE COURT: Without objection,
3 State's Exhibit 45 is admitted.

4 (SO ENTERED AS STATE'S EXHIBIT 45)

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR JENNINGS:

7 Q. Lieutenant Asbill, did you prepare a
8 diagram of all your findings in Apartment [REDACTED]?

9 A. Yes, I did. We had a rough diagram that we
10 did at the scene and this weekend I did that
11 one.

12 Q. I show you what's marked as State's Exhibit
13 36.

14 A. Yes, this is the diagram that I did this
15 weekend.

16 SOLICITOR JENNINGS: We'd offer 36
17 into evidence, Your Honor.

18 MR. FARLEY: No objection.

19 THE COURT: Without objection,
20 State's Exhibit 36 is admitted, a diagram.

21 (SO ENTERED AS STATE'S EXHIBIT 36)

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR JENNINGS:

24 Q. If you would, using State's Exhibit 36,
25 just summarize the forensic findings that you

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1 had in the apartment that night. If you'll
2 just go over what's shown in this diagram.

3 A. Items one and two, those are the two gel
4 lifts that were taken at the front door.

5 Items three and four are the two shell
6 casings.

7 The first body you see as you enter, pass
8 through the kitchen, is Diane Grant.

9 At the dining room table on the right-hand
10 side is her son, Jatavius, uh, is the one
11 laying on his stomach -- half on his stomach
12 and half on his right side next to the couch.

13 Then as you go forward there's a sofa bed
14 there.

15 Item six was a Rice Krispies Treat and a TV
16 remote.

17 Number seven was a cell phone.

18 Number five is Jatavius's shoes. That
19 little square there represents an ironing
20 board. Then right behind that, that dark area,
21 that was a door that went out the back with a
22 window on each side -- item number five.

23 Q. You mentioned two pairs of shoes that you
24 collected that belonged to Jatavius?

25 A. I only inspected one. We were looking for

1 a pattern and his shoes had the same pattern as
2 that footprint we took from the front door.

3 SOLICITOR JENNINGS: If you would
4 please mark these. This is a size eleven, Nike
5 Air. This is a white pair of Nike Air, I
6 believe these are size ten.

7 COURT REPORTER: State's Exhibits 57
8 and 58 for identification.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR JENNINGS:

11 Q. I show you what's marked as State's Exhibit
12 58, a pair of white, size ten, Nike Air.

13 A. Yes, sir.

14 Q. Were those collected out of the apartment?

15 A. That's correct. They were collected next
16 to the sofa bed in the living room.

17 Q. And a pair of size eleven, black Nike Airs.

18 A. Yes, sir.

19 SOLICITOR JENNINGS: Your Honor, we
20 would offer 57 and 58 into evidence.

21 THE COURT: Any objection?

22 MR. FARLEY: No objection.

23 THE COURT: Without objection,
24 State's 57, a bag containing a pair of (size)
25 eleven Nike Airs, black in color; 58, a bag

1 containing a pair of Nike Airs, size ten, white
2 in color.

3 (SO ENTERED AS STATE'S EXHIBIT 57)

4 (SO ENTERED AS STATE'S EXHIBIT 58)

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR JENNINGS:

7 Q. From your perspective, what was the reason
8 you said for collecting State's Exhibits 57 and
9 58?

10 A. They had the same type footwear pattern
11 that was on the floor when we came through the
12 door. So we were going to send them to SLED
13 and see if they could tell us whose shoes they
14 were.

15 Q. And those were the two gel lifts taken,
16 Exhibit 56?

17 A. That's correct.

18 Q. And, in fact, were those sent to SLED?

19 A. Yes, sir, they were.

20 Q. When you completed your -- you were still
21 working there at Apartment [REDACTED], were you
22 notified later in the morning of another victim
23 that was found?

24 A. Yes, we were. We were notified that there
25 was a partially nude female behind Apartment

1 [REDACTED]. At that time we secured the scene and
2 left and went to that crime scene.

3 Q. And where was that in relation to where you
4 were, at [REDACTED]?

5 A. It was two apartments rows behind it,
6 directly behind the one we were in. We had to
7 go around behind this apartment, across the
8 road and behind another set of apartments and
9 -- [REDACTED].

10 Q. I show you State's Exhibit 1. Could you
11 point out [REDACTED]?

12 A. Yes, this was [REDACTED]. Come around here and
13 cross the road and over here is [REDACTED]. We come
14 across the road and went around this way until
15 we saw the woman.

16 Q. Where in orientation to Building [REDACTED] was
17 Deanna found?

18 A. I'm sorry?

19 Q. Where was her body in relation to the
20 apartment?

21 A. It was right behind [REDACTED]. There was an
22 electrical box that sits behind the apartments
23 and it was laying right behind the electrical
24 box there.

25 Q. And as you approached that, which was now

1 your second crime scene, did you process that
2 in the same general manner that you did the
3 apartment?

4 A. Yes, sir. We started taking photographs as
5 we approached. We went around the perimeter of
6 it and photographed it from all angles when we
7 approached.

8 Q. I show you State's Exhibits 12 through 23.
9 If you'll just look and tell me if those fairly
10 and accurately depict what you saw that
11 morning?

12 A. (Upon review) -- yes, sir, they do.

13 SOLICITOR JENNINGS: Your Honor,
14 we'd offer 12 through 23 into evidence.

15 MR. FARLEY: No objection.

16 THE COURT: Without objection,
17 State's Exhibits 12 through 23, each being a
18 photo, is admitted.

19 (SO ENTERED AS STATE'S EXHIBITS 12 THRU 23)

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR JENNINGS:

22 Q. I show you State's Exhibit 12. Could you
23 describe the scene for us generally as you
24 found it that morning?

25 A. As you come across the street and around

1 the apartment building there is a -- to the
2 left of her body as you're looking at that
3 picture, there is a small hill. So we came
4 around the end of the hill and we could see
5 the body. I took a photo. That was the first
6 photograph I took at the time I seen her body.

7 Q. What was the condition of her body?

8 A. It was partially nude, from the waist down,
9 laying on her side. There was no movement from
10 what I could see from where I was at. There
11 was some clothing laying on top of the
12 electrical box.

13 Q. And were those ---

14 A. At that point I couldn't really tell what
15 was going on. I just knew there was a body
16 laying there.

17 Q. What type of clothing was on top of the
18 electrical box?

19 A. It looked like pajama bottoms, I believe,
20 or underwear.

21 Q. I show you State's Exhibit 13. Are those
22 the items of clothing?

23 A. Yes, sir, that's the clothing.

24 Q. From a ballistic standpoint were you able
25 to collect any evidence, any shell casings, any

1 projectiles, out there at the scene?

2 A. When we got close enough and saw that she
3 had been shot, we saw a couple of shell
4 casings. I think we discovered three at the
5 time. And we started going around the body.
6 There were some footwear impressions -- what
7 appeared to be footwear impressions and scrapes
8 as if there was a struggle next to the body.
9 We photographed those and cast them. At some
10 point in time we realized that we had at least
11 four bullet holes in the body and we only had
12 three shell casings. We got the metal detector
13 out and we found the fourth shell casing. And
14 I believe that one was labeled "H" -- the last
15 one we found.

16 Q. So, total, you found how many shell
17 casings?

18 A. Four shell casings and two projectiles
19 underneath the body.

20 SOLICITOR JENNINGS: I will hand
21 these up, Your Honor. They're very graphic.

22 THE COURT: Thank you.

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR JENNINGS:

25 Q. Lieutenant Asbill, I'll show you State's

1 Exhibits 46, 47, 48 and 49. Do you recognize
2 those items?

3 A. Yes, sir. These are the four shell casings
4 that were collected near the body.

5 Q. What caliber and make were those shell
6 casings?

7 A. Photo placard "A" is a Federal .40 caliber
8 spent shell casing.

9 Photo placard "H" is a Federal .40 caliber
10 spent shell casing, along with B and C.

11 All four are Federal .40 caliber spent
12 shell casings.

13 Q. And from just looking at the caliber
14 standpoint, how did those four shell casings
15 compare to the two shell casings that you
16 recovered from the apartment?

17 A. All six of them were .40 caliber, but one
18 of them in the apartment was also a Federal and
19 one was an RP. So these matched the shell
20 casings that we had in the apartment, as far as
21 caliber goes.

22 Q. And five of the six were Federal?

23 A. Yes, sir.

24 SOLICITOR JENNINGS: Your Honor, we
25 would offer State's 46, 47, 48 and 49 into

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1 evidence.

2 THE COURT: Any objection?

3 MR. FARLEY: No, Your Honor.

4 THE COURT: Without objection 46
5 through 49 are admitted, each containing a box
6 containing a shell casing.

7 (SO ENTERED AS STATE'S EXHIBIT 46)

8 (SO ENTERED AS STATE'S EXHIBIT 47)

9 (SO ENTERED AS STATE'S EXHIBIT 48)

10 (SO ENTERED AS STATE'S EXHIBIT 49)

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR JENNINGS:

13 Q. From examination of Deanne, it appeared she
14 had been shot several times.

15 A. Yes, sir. There were three gunshot wounds
16 in the neck and one in the -- we could see an
17 entry wound or an exit wound right by the eye.

18 Q. And once her body was removed what did you
19 do?

20 A. We took a metal detector and went over the
21 area, and we recovered two more projectiles
22 when we removed the body.

23 Q. I show you State's Exhibits 50 and 51.

24 A. Yes, sir. These are letter "I" and letter
25 "J". These are the two projectiles that were

1 recovered from underneath where the body was.

2 SOLICITOR JENNINGS: Your Honor, we
3 would offer 50 and 51 into evidence.

4 THE COURT: Any objection?

5 MR. FARLEY: No, Your Honor.

6 THE COURT: State's 50 and 51 are
7 admitted, each containing a projectile.

8 (SO ENTERED AS STATE'S EXHIBIT 50)

9 (SO ENTERED AS STATE'S EXHIBIT 51)

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR JENNINGS:

12 Q. And after you processed the area where
13 Deanna was found, what did you do next?

14 A. We returned back to the scene. First of
15 all, before we left we did a GSR kit on her
16 hands.

17 And before we left the first time we did
18 a GSR kit on the mother and the son.

19 When we returned back to the scene, as we
20 come around it was daylight then and I noticed
21 there was some mud out in front of Apartments
22 213B and C that had a lot of footwear in it.
23 And it was the same type pattern that was on
24 the kitchen floor, plus we had a barefoot shoe
25 impression, and the young lady was barefoot

1 when we found her. So we photographed all the
2 shoe impressions and the foot impressions and
3 made casts of them.

4 Q. And all those were sent to SLED as well?

5 A. All those were sent to SLED, plus we inked
6 her feet and made impressions of her feet also
7 and sent those to SLED.

8 Q. As far as State's Exhibits 43, 44, 46, 47,
9 48 and 49, the six shell casings from the two
10 scenes, did you process those to attempt to
11 lift any fingerprints?

12 A. Yes, sir, I did. When we got back to the
13 office that evening we processed the shell
14 casings at that time to see if we could get any
15 latents off of them, but nothing appeared on
16 them.

17 Q. And what process did you use to do that?

18 A. We superglue everything that comes in when
19 it first comes in. And then we do a visual on
20 it. Then we use a dye stain or black powder,
21 depending on what we're doing. But there were
22 not visible latents at all on the shell
23 casings.

24 Q. And then what did you do with the six shell
25 casings as well as the projectiles?

1 A. They were placed into evidence and Sergeant
2 Chisholm took them down to the Charleston
3 County Police Department, in Summerville, so
4 they could enter them into IBIS. He did that
5 on the 12th.

6 Q. Okay.

7 A. That was on the 12th, then on the 13th he
8 called and told us that he had a match with a
9 couple of other shootings. So on the 16th, I
10 think it was, or the 18th, they were
11 transported to SLED.

12 Q. And you're familiar with Agent Thrower of
13 SLED?

14 A. Yes. I had Sergeant Cooper and Chris
15 Limehouse -- we went up on the 16th. They were
16 carrying a bunch of evidence up. Apparently,
17 they left one of the boxes and so they had to
18 make another trip and turned this into evidence
19 on the 18th.

20 Q. Okay. So all the shell casings and all the
21 projectiles were sent up to SLED for forensic
22 analysis?

23 A. Correct.

24 Q. And you later had a conversation with Agent
25 Thrower concerning these six shell casings that

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1 were found at the scene?

2 A. He called me on July the 16th and said it
3 was definitely a handgun.

4 Q. And that how many handguns were used to
5 fire them?

6 A. Just one.

7 Q. And as the investigation progressed, in
8 July, on the 24th, did you have an opportunity
9 to execute a search warrant at Mr. Sanders'
10 home?

11 A. Yes, we did at search warrant at [REDACTED]
12 Popper Dam Creek Road.

13 Q. If you would, explain what you did during
14 that.

15 A. We were looking for footwear, the weapon,
16 bullets, any ammunition -- anything that would
17 link him to the crime. We photographed the
18 apartment as we did the search warrant.

19 When we went upstairs, there were several
20 pair of Nike Air with a pattern which was
21 fairly consistent with the ones we had from the
22 apartment. We took several pair of tennis
23 shoes from there.

24 As we were going through the boxes there
25 was a black Converse box. Inside that black

1 Converse box was three more .40 caliber Federal
2 bullets consistent with the ones we found at
3 the crime scene.

4 And also underneath his bed we found
5 another .40 caliber live round of ammunition
6 along with a .32 Derringer.

7 And in that box containing the three .40
8 caliber shell casings were ammunition for the
9 .32 Derringer.

10 We also removed a safe and then later we
11 came back and got a gun box from that house.

12 Q. And you took a number of photographs?

13 A. Yes, sir, I did.

14 Q. I show you what's marked as State's
15 Exhibits 24 through 35 and if you would tell us
16 if they fairly and accurately depict how you
17 found the residence that day?

18 A. (Upon review) -- yes, sir.

19 SOLICITOR JENNINGS: Your Honor,
20 we'd offer 24 through 35 into evidence.

21 THE COURT: Any objection, Mr.
22 Farley?

23 MR. FARLEY: No, Your Honor.

24 THE COURT: Without objection, 24
25 through 35, each being a photograph admitted.

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1 (SO ENTERED AS STATE'S EXHIBITS 24 THRU 35)

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR JENNINGS:

4 Q. How were you able to validate or confirm
5 that the room where you were was actually where
6 Anthony Sanders stayed?

7 A. His parents were there. His mother was
8 there. She told us that was his bedroom.
9 There were two beds in there. The other one
10 belonged to Tony.

11 Q. And who is Tony?

12 A. That's his brother.

13 Q. I show you State's Exhibit 28. Tell us
14 -- kind of orient Judge Dennis to what we're
15 looking at in this photograph?

16 A. The entry to the bedroom is on your right.
17 I'm standing at the foot of the bed, probably
18 in the far left-hand corner of the bedroom.
19 The bed on the right is Anthony Sanders'.
20 The bed on the left is Tony's. There was some
21 clothing on the left that had Tony's wallet in
22 it. The boxes you see stacked up against the
23 wall were all tennis shoes, plus there were
24 several pair under the bed. The black Converse
25 box is the very first box on top on the front

1 row. It's the box that had the ammunition in
2 it.

3 SOLICITOR JENNINGS: (Tenders item
4 to be marked as exhibit).

5 COURT REPORTER: State's Exhibit 59
6 for identification.

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR JENNINGS:

9 Q. I show you what's marked as State's Exhibit
10 59. Is that the Converse box?

11 A. Yes, sir. The top box and it also had the
12 ChapStick that you see in the photograph. It
13 had a receipt and the six bullets were inside
14 of this box here.

15 SOLICITOR JENNINGS: We'd offer
16 State's Exhibit 59 into evidence.

17 THE COURT: Any objection?

18 MR. FARLEY: No, Your Honor.

19 THE COURT: Without objection,
20 State's Exhibit 59 is admitted.

21 (SO ENTERED AS STATE'S EXHIBIT 59)

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR JENNINGS:

24 Q. State's Exhibit 26, I believe, is a
25 photograph that you took as you opened State's

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1 Exhibit 59?

2 A. That's correct, the Converse box. You can
3 see the ChapStick at the back part of it, and
4 the bullets are to your left.

5 Q. This is a little closer photograph. Could
6 you describe the bullets that you found inside
7 State's Exhibit 59?

8 A. They were three .32 caliber. They were the
9 same ammunition that would go in the Derringer.

10 And then there were three .40 caliber
11 Federal. Smith & Wesson, I believe.

12 Q. I show you State's Exhibits 52, 53 and 54.
13 Are these the three bullets that were in the
14 Converse box that day?

15 A. Yes.

16 Q. And what caliber were each of these?

17 A. Federal .40 caliber, Smith & Wesson,
18 copper-jacketed bullets.

19 SOLICITOR JENNINGS: Your Honor,
20 we'd offer 52, 53 and 54 into evidence.

21 THE COURT: Any objection?

22 MR. FARLEY: No, Your Honor.

23 THE COURT: Without objection, 52
24 through 54 admitted.

25 (SO ENTERED AS STATE'S EXHIBIT 52)

1 (SO ENTERED AS STATE'S EXHIBIT 53)

2 (SO ENTERED AS STATE'S EXHIBIT 54)

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR JENNINGS:

5 Q. And how did State's Exhibits 52, 53 and 54
6 compare in caliber to the six shell casings
7 that were found at the crime scene?

8 A. They were identical to the shell casings
9 found at the crime scene.

10 Q. These being Federal brand .40 caliber
11 ammunition, how did they compare to five of the
12 six shell casings that were there?

13 A. They were identical as far as the
14 manufacturer and the head stamps.

15 Q. I believe -- did you find another bullet in
16 Mr. Sanders' room?

17 A. Yeah, there was one laying on the carpet
18 underneath the bed.

19 Q. I show you State's Exhibits 25, a photo-
20 graph. Is that bullet depicted in that
21 photograph?

22 A. Yes, sir, it is. Right at the corner of
23 the exhibit sticker. That's a Federal .40
24 caliber, Smith & Wesson.

25 Q. I show you what's marked as State's Exhibit

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1 55.

2 A. That's the .40 caliber that we found
3 underneath the bed.

4 Q. If you'll look at that head stamp, is that
5 actually RP?

6 A. (Upon review) -- yes, sir, it is. I'm
7 sorry.

8 Q. And that is actually -- that's the same
9 caliber, and RP is the other projectile from
10 the apartment?

11 A. Yes, sir, it is.

12 SOLICITOR JENNINGS: Your Honor, we
13 would offer 55 into evidence.

14 MR. FARLEY: No objection.

15 THE COURT: Without objection,
16 State's 55 is admitted.

17 (SO ENTERED AS STATE'S EXHIBIT 55)

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR JENNINGS:

20 Q. You mentioned or we saw boxes of tennis
21 shoes shown in State's Exhibit 28. Were you
22 able to collect several pair of Nike Air Force
23 Ones?

24 A. Yes, sir, we collected quite a few pairs of
25 tennis shoes.

1 Q. I show you State's Exhibit 30. Describe
2 what that shows.

3 A. That's a pair still in the box -- one of
4 the many tennis shoes that were stacked up
5 against the wall and had the same type pattern
6 on the bottom.

7 SOLICITOR JENNINGS: (Tenders items
8 to be marked as exhibits).

9 COURT REPORTER: State's Exhibits 60
10 and 61 for identification.

11 SOLICITOR JENNINGS: Thank you.

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR JENNINGS:

14 Q. I show you what's been marked as State's
15 Exhibit 60, a pair of size nine Air Force Ones.
16 Do you recognize those?

17 A. Yes, these are the ones in the picture
18 here. Those were under the bed.

19 SOLICITOR JENNINGS: Your Honor,
20 we'd offer State's Exhibit 60 into evidence.

21 THE COURT: Any objection?

22 MR. FARLEY: No objection.

23 THE COURT: Without objection,
24 State's Exhibit 60, a box containing a pair
25 of shoes is admitted.

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1 (SO ENTERED AS STATE'S EXHIBIT 60)

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR JENNINGS:

4 Q. State's Exhibit 61, another size nine pair
5 of Nike Air Force Ones?

6 A. That is correct. These were on the wall
7 between the beds.

8 SOLICITOR JENNINGS: Your Honor,
9 we'd offer 61 into evidence as well.

10 THE COURT: Without objection, Mr.
11 Farley?

12 MR. FARLEY: No, Your Honor.

13 THE COURT: There's no objection to
14 State's 61, a box containing a pair of shoes is
15 admitted.

16 (SO ENTERED AS STATE'S EXHIBIT 61)

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR JENNINGS:

19 Q. Finally, a white pair of size nine Nike Air
20 Force Ones?

21 A. That's right.

22 SOLICITOR JENNINGS: We need to mark
23 these -- I apologize.

24 COURT REPORTER: State's Exhibit 62
25 for identification.

1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR JENNINGS:

3 Q. State's Exhibit 62, (tendering to witness).

4 A. (Upon examination), yes. These were
5 removed from the hall closet, size nine, Air
6 Force Ones.

7 BY SOLICITOR JENNINGS: Your Honor,
8 we would offer State's Exhibit 62 into
9 evidence.

10 MR. FARLEY: No objection.

11 THE COURT: Without objection,
12 State's Exhibit 62, a bag containing a pair of
13 shoes, is admitted.

14 (SO ENTERED AS STATE'S EXHIBIT 62)

15 DIRECT EXAMINATION CONTINUED

16 BY SOLICITOR JENNINGS:

17 Q. And all of the Nike Air Force Ones, the two
18 pairs that belonged to Jatavius, that were
19 taken from the apartment as well as these three
20 pair from Mr. Sanders' room, were all sent to
21 SLED?

22 A. Yes, sir, they were.

23 Q. State's Exhibit 24 is a photograph you took
24 that day, on the 24th. We'll get to when
25 you'all went back to collect it, but kind of in

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1 the sort of the middle left-hand section, can
2 you tell me what is shown right there?

3 A. That's the ammo box that was under the
4 window. That photograph was taken from the
5 door as you enter the bedroom.

6 Q. And when you say "an ammo box", what are
7 you referring to?

8 A. It's a metal box, military-type box, where
9 they put ammo in, those metal boxes. I think
10 it's labeled on the outside. I don't remember
11 what the label says. I believe it was either
12 green or grey. I don't remember the color
13 right now, metal ammo box.

14 Q. During the time that you and others from
15 the Sheriff's Office were there did you also
16 collect a safe?

17 A. Yes, sir, we did.

18 Q. I show you what's marked as State's Exhibit
19 33. Was that recovered from Mr. Sanders' room?

20 A. Yes, it was.

21 Q. Was it taken into evidence?

22 A. Yes, sir, it was.

23 Q. And tell us, please, what you did with that
24 once you had it in your custody?

25 A. On the 24th of July, Major Garrison and

1 myself took it to Martin's Locksmith and he
2 opened the safe for us. And inside was the
3 newspaper clippings of the homicides along
4 with an arrest warrant and several other
5 photographs and papers.

6 Q. I show you what is State's Exhibit 35 in
7 evidence. Is that a photograph of the safe
8 when you opened it?

9 A. Yes, sir, it was.

10 Q. And were there documents inside the safe
11 that showed you whose belongings were inside?

12 A. Yes, sir.

13 Q. Did you collect all the paperwork that was
14 inside?

15 A. We took all the paperwork and placed it in
16 evidence.

17 SOLICITOR JENNINGS: (Tenders item
18 to be marked as exhibit).

19 COURT REPORTER: State's Exhibit 63
20 for identification.

21 SOLICITOR JENNINGS: Your Honor,
22 we'd offer State's Exhibit 63 into evidence.

23 THE COURT: With the contents?

24 SOLICITOR JENNINGS: Yes, sir.

25 THE COURT: Any objection, Mr.

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1 Farley?

2 MR. FARLEY: No, Your Honor.

3 THE COURT: Without objection, a bag
4 containing various documents is admitted into
5 evidence.

6 (SO ENTERED AS STATE'S EXHIBIT 63)

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR JENNINGS:

9 Q. In the safe was multiple correspondence to
10 Mr. Sanders?

11 A. That's correct, all this had his name on it
12 along with the yellow copy of an arrest warrant
13 and the photograph from the newspaper about the
14 homicides.

15 Q. In fact, the newspaper article is about the
16 case that we're here on?

17 A. That's correct, of the crime scene.

18 Q. And the article was from the *Post and*
19 *Courier*, an article from July the 12th of 2007,
20 a Thursday?

21 A. That's correct.

22 Q. An above-the-fold article entitled "Dreams
23 and Fatal Nightmare"?

24 A. That's correct.

25 Q. And they had photographs of the three

1 victims: Diane Grant, Deanna Devore and
2 Jatavius Devore.

3 A. That's right.

4 Q. Did you have an opportunity to go back to
5 Mr. Sanders' residence on August the 6th of
6 2007?

7 A. Yes, sir, we did. We went back to retrieve
8 the ammo box.

9 Q. And what had transpired from the 24th to the
10 6th that caused you'all to go back?

11 A. There was some information that he had
12 gotten a weapon from some other gentleman, and
13 I believe the ammo box came with it, but I'm
14 not really sure on that part of it.

15 SOLICITOR JENNINGS: (Tenders item
16 to be marked as exhibit).

17 COURT REPORTER: State's Exhibit 64
18 for identification.

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR JENNINGS:

21 Q. I show you what's marked as State's 64.
22 Can you tell us about that?

23 A. Yes, sir. This is the box that we
24 photographed. It was a box we collected from
25 the closet in his bedroom on the second trip.

1 SOLICITOR JENNINGS: We would offer
2 State's Exhibit 64 into evidence.

3 MR. FARLEY: No objection.

4 THE COURT: Without objection it is
5 admitted.

6 (SO ENTERED AS STATE'S EXHIBIT 64)

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR JENNINGS:

9 Q. And as you pointed out on July 24th when you
10 were there and photographed, in the general
11 photos of the room, it actually had State's
12 Exhibit 64 in it. At that time it was right
13 under the window sill as shown in State's
14 Exhibit 24?

15 A. That's correct.

16 Q. And when you went back on August the 6th
17 specifically looking for that green ammunition
18 can, where was it found?

19 A. It was in the closet of his bedroom.

20 Q. I show you State's Exhibit 37. I believe
21 it is just a blown-up of Exhibit 24.

22 A. That's correct. You can see the ammo box.
23 There's a curtain hanging straight down, and
24 it's right at the base of that curtain.

25 SOLICITOR JENNINGS: We would offer

1 37 into evidence.

2 MR. FARLEY: No objection.

3 THE COURT: Without objection it is
4 admitted.

5 (SO ENTERED AS STATE'S EXHIBIT 37)

6 SOLICITOR JENNINGS: Your Honor,
7 we've been going about an hour and a half.
8 Could we take a little break just to make sure
9 we've got everything?

10 THE COURT: Sure, absolutely.
11 We'll take a break at this point for about
12 ten or fifteen minutes.

13 SOLICITOR JENNINGS: Thank you.

14 THE COURT: Be at-ease.

15 (BRIEF RECESS)

16 (DEFENDANT PRESENT)

17 THE COURT: You may continue,
18 Solicitor.

19 DIRECT EXAMINATION RESUME

20 BY SOLICITOR JENNINGS:

21 Q. We have one more pair of size nine Nike Air
22 Force Ones that were taken out of Mr. Sanders'
23 room, State's Exhibit 67.

24 A. Yes, these are the white Nikes that were
25 located under Tony's bed.

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1 Q. And those were on the Defendant's left?

2 A. Yes, sir.

3 SOLICITOR JENNINGS: We would offer
4 67 into evidence.

5 THE COURT: Any objection, Mr.
6 Farley?

7 MR. FARLEY: No, Your Honor.

8 THE COURT: Without objection,
9 State's Exhibit 67 is admitted.

10 (SO ENTERED AS STATE'S EXHIBIT 67)

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR JENNINGS:

13 Q. During the autopsy on Deanne Devore you are
14 aware that oral swabs were collected by the
15 pathologist at MUSC?

16 A. Yes, sir.

17 Q. And those were brought back and turned into
18 evidence?

19 A. That's correct.

20 Q. And just for identification I'll show you
21 State's Exhibit 65.

22 A. Yes, sir. Those are oral swabs that were
23 brought back by Officer Greer.

24 Q. And were sent up to SLED?

25 A. Yes, sir.

1 Q. And following Mr. Sanders' arrest a Court
2 Order was secured where a DNA sample was taken
3 from him on October 16th of 2007?

4 A. That's right.

5 Q. I show you State's Exhibit 66. Is that
6 that item?

7 A. Yes, sir. Major Garrison brought these to
8 me and I took them straight to SLED.

9 SOLICITOR JENNINGS: That's all the
10 questions I have. Please answer any questions
11 Mr. Farley has.

12 THE COURT: You may cross examine,
13 Mr. Farley.

14 MR. FARLEY: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. FARLEY:

17 Q. How are you doing, Lieutenant?

18 A. Fine.

19 Q. It's good to see you on a beautiful sunny
20 day in St. George. I'm going to try to go back
21 through your testimony just as you gave it.

22 Hopefully that will make things go a little bit
23 more easy. Let's talk about the gel lifts that
24 you obtained in the apartment. What made the
25 gel lift? Was it blood? Was it mud?

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1 A. Dirt.

2 Q. Dirt?

3 A. Yes.

4 Q. What direction were those prints taken?

5 Was it entering the house or was it leaving the
6 house?

7 A. As we were entering the residence.

8 Q. Could you tell just from first glance what
9 kind of shoe made that impression? Was it a
10 boot? Was it a flip-flop?

11 A. It was a tennis shoe impression. It's very
12 common on the Nike Air tennis shoes.

13 A lot of them have them, but that circular
14 pattern on the ball of the foot and heel, we
15 see quite a bit of that.

16 Q. Just to be clear, when we speak about Nike
17 Air, isn't it true that all these shoes are
18 Nike Air Force?

19 A. Yes, sir.

20 Q. All right. So every shoe obtained in this
21 investigation was the exact same make, maybe a
22 different model, but the same -- and the tread
23 patterns were all exactly the same?

24 A. Yes.

25 Q. When you earlier testified you testified

1 that the shoes that you obtained in the
2 residence were those of Jatavius. Is that
3 correct?

4 A. They were next to his bed. I assumed that
5 they were, at the time.

6 Q. But you have no way of knowing, in fact,
7 whose shoes those were; do you?

8 A. No, sir.

9 Q. Did you send those up to SLED to be
10 analyzed?

11 A. Yes, sir.

12 Q. Did you get those results back?

13 A. I don't believe there was a match made on
14 the shoes.

15 Q. There wasn't a match on any of the shoes?

16 A. They were consistent, but I'm not -- I'd
17 have to read the report.

18 Q. Can you tell me what biofoam is?

19 A. It's a soft impression material. That's
20 all I can tell you. You can take your finger
21 and it makes indentations very easy into it.
22 For example, on Deanna's foot, I just put the
23 box impression up against her foot and it left
24 the impression of her foot.

25 Q. How about Jatavius? Did you do that?

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1 A. No, I didn't.

2 Q. You didn't?

3 A. (Negative gesture).

4 Q. How is biofoam useful in an investigation?

5 A. To take impressions. You can take shoe
6 impressions with it. If we've got a pair of
7 shoes we can put the shoes on and step in it
8 and make an impression of that shoe.

9 Q. Couldn't you use it to tell -- say you take
10 the imprint on the biofoam. Couldn't you look
11 at the imprint made on the biofoam and any kind
12 of wear on the inside of the shoe and possibly
13 be able to compare the two?

14 A. (No verbal response).

15 Q. In other words, you take the footprint and
16 inserts, after being worn, they wear down in a
17 certain way. Could you compare the print from
18 the biofoam and the impression on the sole to
19 give you a better idea of one person's foot?

20 A. We do that with a cast.

21 Q. With a cast on the outside, right?

22 A. On the scene, yes, sir, that's the
23 evidence.

24 Q. Okay.

25 A. And we send the shoes and we send the foam

1 that we get with the shoes.

2 Q. You said you took the shell casings that
3 you found back to your lab and fingerprinted
4 them or used the superglue method to see if
5 there were latent fingerprints. Is that
6 correct?

7 A. Yes, sir.

8 Q. And you found none?

9 A. No, sir.

10 Q. Do you ever find fingerprints on shell
11 casings?

12 A. I personally have never found a fingerprint
13 on a spent casing. Now, we do
14 get them on live rounds periodically.

15 Q. So why would you test them for fingerprints
16 if you've never gotten them?

17 A. It's standard procedure.

18 Q. Standard procedure?

19 A. (Affirmative nod). We fingerprint all
20 shell casing when they come in, whether they're
21 fired or not fired. You know, somebody could
22 have picked it up from the floor.

23 Q. Once you completed your on-scene
24 investigation you told us that you sent the
25 spent shell casing down to the Charleston lab.

1 Is that correct? Or someone did that on your
2 behalf?

3 A. We take all weapons and all shell casings
4 that are brought to the office down there and
5 they do an IBIS check.

6 Q. Can you tell me what IBIS is?

7 A. It's the International Ballistics
8 Identification System where the bullets --
9 they're not doing the bullets any more.
10 They're doing the firing pin, I believe.
11 It's not my expertise. I'm not really sure
12 of the whole procedure.

13 Q. But they have a system where they can
14 compare bullets. They put it into a database
15 -- or shells and they put it into a database
16 and they claim that they can tell what -- if
17 one gun fired them or different ones?

18 A. That's correct.

19 Q. When they do this they say that they can
20 guarantee that the bullets found at the scene
21 of this crime were fired by the same gun as
22 that of another crime or a gun that they have?

23 A. Yes, sir.

24 Q. But just because a gun was used at one
25 scene or one crime doesn't necessarily mean

1 that the same person used it at another crime,
2 does it?

3 A. Not necessarily, no.

4 Q. Actually, there's no way of telling that
5 just from the shell. Is that correct?

6 A. That's correct.

7 Q. While we're on the topic of the gun, did
8 you ever obtain the gun that was used in this?

9 A. No, sir, we never found the weapon.

10 Q. Never found the weapon?

11 A. No, sir.

12 Q. So you don't have a gun -- a .40 caliber
13 gun to test the shell casings against? In
14 other words, you can't shoot this gun that you
15 think is the weapon and determine if this gun
16 shot those bullets?

17 A. No, we do not have a weapon.

18 Q. I'd like to turn to the search warrant in
19 this case at the Sanders residence. All right?

20 A. Yes.

21 Q. Who all lived in that house?

22 A. I couldn't tell you. There was a lot of
23 people there when we got there, his brother,
24 his mother and possibly a couple more brothers.
25 I have no idea who lived in that house.

1 Q. You didn't really meet any of the people?

2 A. I met the mother when I came through, but
3 other than that -- I saw them in there when I
4 was going through the house, but I didn't sit
5 down and talk to them, no.

6 Q. But it's safe to say there were a lot of
7 people that were in that house?

8 A. There seemed to be a few people sitting
9 downstairs, four or five maybe. I'm not too
10 sure how many were there. But when I came in
11 I went straight upstairs and just kind of
12 nodded to them as I walked through and said
13 'Hi.'

14 Q. Earlier you said that the room that
15 Anthony, or what was said to be Anthony's, was
16 also his brother Tony's. Is that correct?

17 A. That's correct.

18 Q. Did you have the occasion to meet Tony?

19 A. I believe I might have seen him in there,
20 but I never met any of them and talked to them.

21 Q. Isn't it true that Tony is an identical
22 twin to Mr. Sanders?

23 A. I'm not sure. I really don't know.

24 Q. But it is your understanding that his
25 brother and him stay in the same room?

1 A. That's correct.

2 Q. Following that train of thought, how can
3 you be certain that the things that you've
4 associated with Anthony are or aren't related
5 to Tony or are/is or are not Tony's? How did
6 you determine whose was what in that room?

7 A. We just took everything. We didn't know
8 -- he had stuff at the door by his bed. The
9 bullets were found right next to Anthony's bed
10 and the bullets were under Anthony's bed.

11 Q. But you have no idea of knowing whose was
12 what in that room.

13 A. No, sir.

14 Q. Isn't that correct?

15 A. Yes, sir.

16 Q. Let's talk about the bullets that you found
17 in the bedroom. There's some .32 caliber
18 bullets.

19 A. That's correct.

20 Q. What brand were those again?

21 A. I have no idea. I just know it was a box
22 of bullets.

23 Q. And you also found three .40 caliber
24 rounds. Is that correct?

25 A. Three in a box alone.

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1 Q. And what brand were those?

2 A. I made a mistake on one of the boxes. It
3 was an RP instead of Federal. Most of the
4 bullets were Federal, and I mislabeled the box.

5 Q. That happens from time to time, I'm sure.

6 A. (No verbal response).

7 Q. In your line of work do you see a lot of
8 bullets?

9 A. Do I see a lot of?

10 Q. Bullets.

11 A. Yes, sir.

12 Q. Wouldn't you say Smith & Wesson is a pretty
13 common projectile?

14 A. Yes, sir. We get a lot of Remingtons,
15 Smith & Wesson.

16 Q. So it's not uncommon. This ammunition
17 isn't, you know, some kind of specialty
18 ammunition made in Europe for a certain gun.
19 It's a pretty standard brand and type of
20 ammunition.

21 A. They were reloads so there was something
22 different about them.

23 Q. But you're not shocked to find those at a
24 crime scene?

25 A. No.

1 Q. I hate to keep beating a dead horse, but
2 the shoes that you found in the apartment or in
3 their room, they were all these Nike Air Force
4 Ones. Is that correct?

5 A. I believe they were all Nike Air Force
6 Ones.

7 Q. And, you know, they all have the same
8 soles. Is that correct?

9 A. That's correct.

10 Q. So the shoes that you found in the
11 apartment where two of the murders happened
12 and the shoes that you found in the defendant's
13 house were all Nike Air Force Ones, correct?

14 A. I believe so.

15 MR. FARLEY: May I have a moment?

16 THE COURT: Sure.

17 CROSS EXAMINATION CONTINUED

18 BY MR. FARLEY:

19 Q. When you went to serve and execute the
20 first search warrant you said that you took
21 everything and didn't assign it to any one
22 person in that house. Is that correct?

23 A. That's correct.

24 Q. So you took everything you could that
25 you thought would be relevant to this

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1 investigation?

2 A. Yes, sir.

3 Q. So one of the two key pieces of evidence
4 that you obtained from the crime scene,
5 wouldn't you agree that it's the bullets?

6 A. That's correct.

7 Q. And the shoes in question?

8 A. Correct.

9 Q. Why, then, would you go to this house and
10 see an ammunition can and indeed search through
11 all these boxes to find shells but not take the
12 ammunition can into evidence?

13 A. I never touched the can. I was working
14 around Anthony's bed. There were two other
15 detectives in the room. I don't have any idea
16 why we didn't take it the first time.

17 Q. Let's talk about the safe. It's a pretty
18 decent sized safe, wouldn't you agree?

19 A. Yes, sir.

20 Q. There were many people in that house,
21 weren't there?

22 A. Yes, sir.

23 Q. Did you ever ask any of them if they knew
24 the combination?

25 A. No, sir.

1 Q. Did you fingerprint the outside of the
2 safe?

3 A. No, sir.

4 Q. Did you fingerprint any of the contents of
5 the safe?

6 A. No, sir.

7 Q. Why didn't you do that?

8 A. It was from his bedroom. I would expect
9 his find his prints anyway, so there was no
10 evidentiary value to finding his fingerprints
11 on it.

12 Q. Now you made a second trip. You used that
13 search warrant to go get the ammo box. Isn't
14 that correct?

15 A. That's correct.

16 Q. Didn't you testify that when you went back
17 the ammo box was not in the same spot as it was
18 during the initial warrant?

19 A. Yes, sir. The room was a mess when we
20 left. It had been straightened up and the ammo
21 box was inside the closet.

22 Q. But at that point it wasn't where you had
23 left it.

24 A. No.

25 Q. You spoke briefly about DNA and obtaining

1 DNA evidence when you testified about the oral
2 swabs and the taking of the DNA from my client.

3 Is that correct?

4 A. Yes, sir.

5 Q. Did you do any DNA testing at the apartment
6 where the murders took place?

7 A. We took a swab. We took blood swabs and
8 swabs from the counter area where we could see
9 where somebody had touched the counter, where
10 we could see ridge detail. And we took swabs
11 off the door handles.

12 Q. Did you fingerprint the door handles?

13 A. Yes, sir. We fingerprinted the counter,
14 the door handles and that sort of thing. In
15 the photographs you can see the black smudges
16 where we processed for latents. There were
17 couple of articles sitting on the sink that we
18 processed, some of the stuff that was in the
19 sink. We checked the beds. We checked all the
20 doors.

21 Q. Were you responsible for obtaining DNA from
22 the victims as well as the defendant?

23 A. That comes from the autopsy.

24 Q. It happened at the autopsy?

25 A. Yes, sir.

1 Q. Did you obtain any DNA from anybody else in
2 this investigation besides the three victims
3 and the defendant?

4 A. Not to my knowledge.

5 Q. No one else?

6 A. Not to my knowledge, no.

7 MR. FARLEY: I have no further
8 questions, Your Honor.

9 THE COURT: Thank you. Redirect?

10 SOLICITOR JENNINGS: Nothing.

11 THE COURT: You may come down.

12 Thank you, sir.

13 (WITNESS STEPS DOWN)

14 THE COURT: Call your next witness,
15 please.

16 SOLICITOR JENNINGS: The State calls
17 John Garrison.

18 (WITNESS TAKES STAND)

19 JOHN B. GARRISON, being duly sworn to
20 tell the truth, the whole truth and nothing but
21 the truth, testified, as follows:

22 DIRECT EXAMINATION

23 BY SOLICITOR JENNINGS:

24 Q. Good morning, Major Garrison. Where are
25 you employed, sir?

1 A. I'm employed with the Dorchester County
2 Sheriff's Office.

3 Q. How long have you been with the Sheriff's
4 Office?

5 A. Approximately five years.

6 Q. And you were there on July the 10th of 2007?

7 A. Yes, sir, I was.

8 Q. And did you act as essentially the lead
9 detective in this case?

10 A. Yes, sir, I did.

11 Q. When did you get out to the scene at
12 Archdale Forest?

13 A. It was approximately 3:40 or 3:45 by the
14 time I arrived.

15 Q. And obviously at that point the scene was
16 well under being processed, the investigation
17 was beginning?

18 A. The investigation was beginning. The crime
19 scene had been taped off. People were starting
20 to arrive. The crime scene units, other
21 investigators, supervisors from the Sheriff's
22 Office, they were all starting to gather at
23 that point. Yes, sir. I wasn't
24 the first investigator there, but I was fairly
25 early.

1 Q. Obviously, by the time the deputies
2 responded to the scene there was no suspect
3 still present.

4 A. No, sir, we had no suspects.

5 Q. Any eyewitnesses?

6 A. We were trying to identify witnesses when I
7 got there. That was one of the jobs I had when
8 I initially arrived, was knocking on doors,
9 containing people that had made the
10 911 calls and trying to identify who would or
11 would not be a witness.

12 Q. And I think it's fair to say you'all
13 scanned pretty much the entire apartment
14 complex.

15 A. I think that would be a fair statement,
16 yes, sir.

17 Q. Were you able to find any witnesses who had
18 witnessed the actual shooting and what
19 took place in the apartment?

20 A. No, sir, we did not.

21 Q. Any witnesses to the shooting of Deanne
22 Devore?

23 A. No, sir, we did not.

24 Q. It's a fair statement that after really
25 weeks there had been no suspects developed.

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

2 Q. And the first real lead came from the
3 ballistics evidence where there was a match
4 between the shell casings found at this scene
5 with the shell casings from a shooting in North
6 Charleston at a bar?

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

8 Q. And what was the name of the bar?

9 A. It was The Anchor Bar on Spruill Avenue in
10 North Charleston.

11 Q. Once you got that information what did you
12 do to follow up on it?

13 A. Having that information, what we did is we
14 contacted North Charleston because it was their
15 jurisdiction and tried to obtain any
16 information or evidence they may have had or at
17 least find out what the case involved. And
18 they did have a witness in their case, which
19 was a bouncer at the bar where the shooting
20 actually took place. So we contacted him and
21 conducted an interview with him.

22 Q. So all around this time period did you
23 develop the name of a suspect in this triple
24 murder?

25 A. At this point, no.

1 Q. Were you able to, sort of in the time when
2 you interviewed Mr. Chavers, were you able to
3 develop the name of a suspect?

4 A. When we conducted the first interview, I'm
5 not sure at that point if we had a definite
6 suspect at that point or not.

7 Q. You obviously met with Mr. Chavers. Did he
8 provide you with a statement?

9 A. Yes, he did. The first time we met with
10 him, when he came to the office he provided a
11 statement. I remember we showed him several
12 pictures, but we didn't have any particular
13 suspect in mind and he did not pick out anybody
14 at that time.

15 Q. And that was on July 19th that he came in?

16 A. Yes, sir, I believe that's correct.

17 Q. Was he able to give you a physical
18 description of the person who he saw shooting
19 at The Anchor Bar that evening?

20 A. Yes, sir, he did provide a physical
21 description.

22 Q. Did you ask him whether or not he thought
23 he might be able to identify that person if he
24 saw his photograph later?

25 A. Yes, sir. When we conducted the interview

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1 he stated that he had spoken to him directly.

2 MR. YOUNG: Objection. Hearsay.

3 THE COURT: I will allow the
4 question. He said he'd spoken to him directly.
5 I'll allow that. I'll sustain it otherwise.

6 THE WITNESS: He said he could
7 identify him.

8 THE COURT: Okay.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR JENNINGS:

11 Q. Between July the 19th, when Mr. Chavers gave
12 his written statement, and July the 25th when he
13 came back in, did you in that time period
14 develop the name of a suspect?

15 A. Yes, sir, in that time frame we had
16 developed a suspect.

17 Q. And who was that?

18 A. Anthony Sanders.

19 Q. Do you see him in the courtroom today?

20 A. Yes, sir, I do.

21 Q. And can you point him out, please?

22 A. He is the gentleman sitting at the
23 defendant's table.

24 Q. What did you do in relation to Mr. Chavers
25 when you developed Mr. Sanders' name as a

1 suspect?

2 A. We recontacted Mr. Chavers and asked him if
3 he would come back for a second interview. And
4 at that point we showed him a photographic
5 lineup.

6 Q. And that was an item that you created?

7 A. Yes, sir, it was.

8 Q. I show you what's marked as State's Exhibit
9 41.

10 A. Yes, sir.

11 Q. Explain to me, how did you go about
12 creating State's Exhibit 41?

13 A. On that particular lineup ---

14 Q. Yes, sir.

15 A. What I did with this particular lineup
16 is we have in our jail pictures, we have the
17 ability to go through and create a lineup, and
18 we can pick as many pictures as we choose.

19 What we look for is similar facial
20 characteristics, age, race, sex
21 characteristics. And through that I developed
22 the six pictures, and I put those in random
23 order in a folder and then showed the folder
24 itself to Mr. Chavers.

25 Q. Did you give him any instruction prior to

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1 showing him State's Exhibit 41?

2 A. Yes, I did. Before I showed him that I
3 told him -- I asked him to look at that and see
4 if he was certain that the person in question
5 that had done the shooting in North Charleston
6 was in there. Then I asked him to point him
7 out. Also I told him that if he was not
8 certain that he was not to point out anyone.

9 Q. In fact, I think your initials are on the
10 back of State's Exhibit 41?

11 A. Yes, sir, that's correct. That's my
12 initials.

13 Q. You had identified Mr. Sanders as the
14 suspected that you had developed. Was his
15 photograph shown in State's Exhibit 41?

16 A. Yes, it is.

17 Q. Which photograph is it?

18 A. Number three.

19 Q. Did you suggest to Mr. Chavers which
20 photograph to select?

21 A. No, sir, I did not.

22 Q. Ultimately, I believe on July the 23rd, I
23 believe Mr. Sanders was arrested?

24 A. I believe that date is correct, yes, sir.

25 Q. Whose company was he in when he was placed

1 under arrest?

2 A. In the company of one of his girlfriends.

3 Q. And what was her name?

4 A. Madea Thompson (phonetic).

5 Q. Were they in a vehicle together?

6 A. Yes, sir, they were.

7 Q. I believe a traffic stop was initiated and
8 he was taken into custody?

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

10 Q. Were you aware of where Ms. Madea Thompson
11 lived?

12 A. Yes, sir, we were. We had spoken to her
13 previous.

14 Q. And what was her address?

15 A. Ms. Thompson lived at [REDACTED] Shagbark Trail.

16 Q. Major Garrison, explain to me what's the
17 significance of apartment building [REDACTED] Shagbark
18 Trail in relation to these crime scenes.

19 A. [REDACTED] -- Building [REDACTED] and specifically
20 Apartment [REDACTED] is the apartment directly -- in the
21 back yard is where the third victim in this was
22 found. The young lady in question here, the
23 deceased, was found -- the power box is almost
24 directly behind the back door of [REDACTED] Building
25 [REDACTED], Apartment [REDACTED]

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1 Q. And that was the same building that Mr.
2 Rogers who testified earlier resided in?

3 A. Yes, sir.

4 Q. Who'd called 9-1-1?

5 A. Yes, sir.

6 Q. Referring to State's Exhibit 1, Mr.
7 Sanders' girlfriend actually lives in Building
8 ■ which is right in front of where Ms.
9 Devore's body was found?

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

11 Q. You had an extensive opportunity when Mr.
12 Sanders was taken into custody to talk to him
13 about the incident, advised him of his rights,
14 and you'all had about an hour of conversation?

15 A. Yes, sir, that's correct. Later on that
16 morning, yes, sir.

17 Q. I believe several days later he was
18 actually charged with the murder, with these
19 three counts of murder?

20 A. Yes, sir, I believe that was August the 2nd
21 when he was charged.

22 Q. What, procedurally, happened that day when
23 you had an opportunity to come into contact
24 with him?

25 A. After the warrants were served he was

1 walked from the jail annex to the courtroom
2 in Summerville for a bond hearing.

3 Q. Were you with him when he was being
4 transported over there?

5 A. Yes, sir, I escorted him the whole way.

6 Q. And during that time did you'all have any
7 conversation?

8 A. We -- (affirmative nod). There's a walkway
9 that's fenced in. And once we entered the
10 actual courtroom building, we were asked to
11 stay in a holding cell until the courtroom was
12 prepared. And there was some conversation at
13 that point initiated by Mr. Sanders.

14 Q. Tell the Court how that conversation --
15 what conversation you'all had.

16 A. When we were in the holding cell, and after
17 our first interview I was not going to speak
18 with him again. And then he stated to me, he
19 said that one day he would like to tell me what
20 actually happened. I told him I would like to
21 know and then he asked me at that point that
22 when all this was over if I would take him out
23 to dinner. I told him I would and he said he'd
24 pick the place.

25 Q. Did he make any -- at this point in the

1 investigation had any gun been recovered?

2 A. No, sir, it had not.

3 Q. And to-date, has the gun been recovered?

4 A. No, sir, it has not.

5 Q. Did Mr. Sanders make any statements to you
6 that day concerning the gun or its whereabouts?

7 A. Yes, sir. During the same period he asked
8 me if I still wanted the gun, and I told him I
9 did.

10 Q. Did he say anything more about where it
11 was?

12 A. He would not tell me where it was, no.

13 SOLICITOR JENNINGS: Your Honor,
14 that's all the questions we have for Major
15 Garrison.

16 THE COURT: Cross examine?

17 CROSS EXAMINATION

18 BY MR. YOUNG:

19 Q. Good morning, Major Garrison.

20 A. Morning.

21 Q. Getting right to it: On the night of the
22 homicide when you reported to the Archdale
23 Subdivision, you'all canvassed the area like
24 you were talking about, right?

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

1 Q. Did you ever -- there's only one roadway in
2 and out of that particular apartment complex.
3 Isn't that correct?

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

5 Q. Did you'all ever -- you never blocked that
6 off to stop people from coming in or out from
7 the neighborhood to ask them if they had heard
8 anything or seen anything?

9 A. I personally did not. I don't think
10 anybody did, but there were so many people that
11 I can't say that did not happen. I can say I
12 did not have any part in that if it did.

13 Q. And you heard Mr. Morgan testify this
14 morning about leaving and going to work and
15 then hearing about what happened?

16 A. Yes, sir.

17 Q. And he was not stopped or talked to before
18 he left for work?

19 A. Apparently not.

20 Q. Going back to when the suspect was
21 developed, it was reported to you that there
22 were some shell casing matches from the
23 homicide scene and other crime scenes,
24 particularly the one in North Charleston. Is
25 that correct?

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

2 Q. There was another crime scene that was
3 associated with the same shell casings or shell
4 casings that were also similar, I believe, in
5 the Hunters Ridge shooting, right?

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

7 Q. The Hunters Ridge shooting was in
8 Dorchester County, I believe?

9 A. Yes, sir, it was.

10 Q. You'all were developing that case?

11 A. Correct.

12 Q. You had made an arrest in that case, and
13 the buy had bonded out?

14 A. Yes, sir. An arrest had been made. I
15 wasn't the investigator on that case, but an
16 arrest had been made on it.

17 Q. And that was Xavier Walker.

18 A. That's correct.

19 Q. And you brought in Mr. Walker to talk to
20 him?

21 A. Yes, we did.

22 Q. And after some negotiations Mr. Walker told
23 you -- he gave you the name of Anthony Sanders?

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

25 Q. Mr. Walker is the one who said that Anthony

1 Sanders was shooting at gun at Hunters Ridge.
2 Is that correct?
3 A. Yes, sir, he did.
4 Q. He denied shooting a gun at Hunters Ridge,
5 Mr. Walker?
6 A. Yes, Mr. Walker denied it.
7 Q. Despite the fact that numerous eye-
8 witnesses identified him as the shooter at
9 Hunters Ridge.
10 A. I can't -- the word "numerous," I don't
11 know how many people. Again, I didn't work
12 that particular case. I can't speak to that.
13 Q. Okay.
14 A. I know he had been identified.
15 Q. And he was charged?
16 A. That's correct.
17 Q. And pursuant to his agreement and your
18 interview those charges were dismissed?
19 A. The agreement was that they would be, I
20 believe. What happened to the charges, I'm not
21 sure. At this point I don't know if they've
22 been dismissed or not.
23 Q. Your meeting with Mr. Walker was before
24 taking a photo lineup over to meet with Mr.
25 Chavers or when Mr. Chavers came to meet with

1 you from the North Charleston incident. Is
2 that correct?

3 A. Yes, sir.

4 Q. You did not prepare a lineup with Mr.
5 Walker's photograph in it to show to Mr.
6 Chavers.

7 A. He was shown several pictures the first day
8 he showed up, and there was numerous pictures.
9 I don't recall if Mr. Walker's picture was in
10 that batch of photos or not.
11 I just don't recall.

12 Q. Mr. Walker was a potential suspect or
13 somebody that you'all had named as a potential
14 suspect early on in this case?

15 A. I think "suspect" would be a little strong.
16 I think he was a person of interest.

17 Q. A person of interest?

18 A. "A person of interest" would be more
19 accurate; yes, sir.

20 Q. He is a pretty well-known drug dealer and
21 involved in other incidents in the area?

22 A. Mr. Walker's well known at the Sheriff's
23 Office, yes.

24 Q. The statement that you were talking about
25 Mr. Sanders making is on his way to bond court;

1 is that correct?

2 A. Yes.

3 Q. You'all stopped in the holding cell?

4 A. That's correct.

5 Q. You've reviewed your report that you
6 prepared in this case?

7 A. I have.

8 Q. And in report you said, "When being walked
9 back to the jail he asked me if I still wanted
10 the gun." Is that correct?

11 A. That's correct.

12 Q. That's not what happened.

13 A. I probably wrote it up wrong. The
14 conversation took place in the holding cell.
15 When I put that in my notes, that would have
16 been correct.

17 Q. There were other people who were walking
18 Mr. Sanders to the hearing and returning back
19 from the hearing; is that correct?

20 A. I know there was myself and probably one
21 more investigator and probably someone from the
22 detention center staff would have been with us.

23 Q. And it would be against protocol for you
24 alone to escort an inmate over to court or
25 whatever. I mean, anytime you have an inmate,

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1 you make sure you have somebody else with you.

2 A. Yes, sir, that would be good policy.

3 Q. And you don't take them around by yourself?

4 A. As a rule, no.

5 Q. And it was -- your meeting with Mr. Walker
6 is when Mr. Walker agreed to go with you to
7 identify where Mr. Sanders lived.

8 A. Yes, sir, he did point out where Mr.
9 Sanders lived.

10 Q. And then you'all sort of staked out the
11 house and waited until a car pulled up. And
12 then they left and then you pulled the car
13 over and that was where Mr. Sanders was?

14 A. Mr. Walker actually accompanied another
15 investigator and I believe one of our narcotics
16 investigators to point out the residence. I
17 didn't go on that particular piece of it.

18 Q. Okay.

19 A. But the rest is correct. Yes, sir, once we
20 obtained warrants for one of the shootings we
21 believed he did, we were actively seeking him
22 as part of that and we did keep an eye on the
23 residence.

24 Q. And that warrant that was obtained was for
25 the shooting at Hunters Ridge?

- 1 A. Yes, sir, that's correct.
- 2 Q. The initial warrant that Mr. Sanders was
3 detained on?
- 4 A. That's correct.
- 5 Q. And that information came solely from Mr.
6 Walker?
- 7 A. Pretty much, yes, sir. That and the
8 ballistics match.
- 9 Q. Mr. Walker is the one that says that Mr.
10 Sanders had that gun?
- 11 A. On that particular shooting, yes, sir.
- 12 Q. And The Anchor Club too, right?
- 13 A. That's correct. Mr. Walker did talk about
14 that.
- 15 Q. Where was Mr. Walker on the night of the
16 homicide?
- 17 A. I'm not sure. I would have to check my
18 notes. I'm sure we asked him that but I would
19 have to check my notes to see where he was.
- 20 Q. Did you ever pull his cell phone records
21 and try to verify his location?
- 22 A. Yes, his cell phone records were pulled.
- 23 Q. And compared to the towers that were in the
24 area of the homicide?
- 25 A. I'm not going to be able to speak to that

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1 directly because another investigator was doing
2 the cell phone work. I would probably get it
3 wrong if I tried to answer your question on
4 that.

5 Q. Was any DNA samples ever collected from Mr.
6 Walker?

7 A. No, sir, I didn't take any.

8 Q. Do you know if Mr. Walker's DNA is
9 currently in a database?

10 A. I'm not sure. I don't know. I can't speak
11 to that. I don't know.

12 MR. YOUNG: Beg the Court's
13 indulgence.

14 THE COURT: Certainly.

15 CROSS EXAMINATION CONTINUED

16 BY MR. YOUNG:

17 Q. Since Mr. Sanders' arrest and during his
18 incarceration have you received subsequent
19 information regarding the possible location of
20 a gun that may have been involved in the case?

21 A. Yes, sir, we got a -- I don't want to say a
22 tip -- it was information on possibly where
23 a gun involved in this may have been, from
24 another investigation.

25 Q. Mr. Walker is involved in another homicide

1 that occurred after Mr. Sanders was detained in
2 this case?

3 A. Yes, sir.

4 Q. And some of the witnesses from that case
5 said that they knew where the gun was?

6 A. Again, I didn't speak to the witness. But
7 the information we got was that he did
8 reference the weapon in this particular
9 homicide, yes, sir.

10 Q. And did you go and do a search for that?

11 A. No, sir, we did not.

12 Q. Why not?

13 A. We did a cursory look, but did we do a
14 full-out search? No.

15 Q. You're skipping ahead on me. You'all got a
16 location of a ditch where the weapon was
17 reported to be.

18 A. Yes, sir, but we could never narrow down an
19 exact location from this witness. I don't
20 think he was ever able to provide that
21 information.

22 Q. Like you say, the ditch was never searched?

23 A. Fully searched, no, sir, it was not.

24 Q. It had water in it, right?

25 A. Yes, sir, it did.

1 Q. And so the decision was made to come back
2 in a couple of days and see if the water had
3 gone down?

4 A. That's correct.

5 Q. And then when you went back a couple of
6 days later it was still full of water?

7 A. It still had water in it.

8 Q. And that was the last time anybody's been
9 out there?

10 A. We have not searched the ditch, no.

11 BOYD YOUNG: Thank you, Major
12 Garrison. No further questions.

13 THE COURT: Redirect?

14 SOLICITOR JENNINGS: Briefly, Your
15 Honor.

16 THE COURT: Sure.

17 REDIRECT EXAMINATION

18 BY SOLICITOR JENNINGS:

19 Q. Xavier Walker is buddies with Mr. Sanders.

20 A. I think that's a correct statement, yes.

21 Q. And sort of a lead, I guess, was developed
22 and you got the ballistics match on the shell
23 casings from this scene to the two other
24 scenes, The Anchor Bar and the Hunters Ridge
25 Apartment shooting, and Mr. Walker provided you

1 with the initial information concerning those?

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

3 Q. And Mr. Walker was with Mr. Sanders at the
4 Hunters Ridge shooting as well as The Anchor
5 Bar shooting?

6 A. Yes, that's correct.

7 Q. And, in fact, there was another -- The
8 Anchor Bar shooting really has a witness who
9 identified Mr. Sanders as being the one
10 shooting the semiautomatic handgun.

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

12 Q. And that was Mr. Chavers in State's Exhibit
13 41?

14 A. Yes, sir.

15 Q. You were actually present on October the
16 17th when the DNA sample was taken from Mr.
17 Sanders?

18 A. Yes, sir, I was.

19 Q. October 16th, I'm sorry, of 2007? I show
20 you for identification State's Exhibit 56.
21 You were present when that was taken?

22 A. Yes, I was.

23 Q. And this was taken from the man that you've
24 identified as Anthony Sanders?

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

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1 SOLICITOR JENNINGS: That's all the
2 questions I have, Your Honor.

3 THE COURT: Recross?

4 MR. YOUNG: One quick one.

5 RECROSS EXAMINATION

6 BY MR. YOUNG:

7 Q. Mr. Sanders has a twin brother named Tony.
8 Is that correct?

9 A. Yes, he does.

10 Q. You've met with Tony Sanders?

11 A. Yes, I have.

12 Q. And taken statements from Tony Sanders?

13 A. Yes, sir, I have.

14 Q. And he's Anthony Sanders' identical twin
15 brother?

16 A. They're supposedly identical twins.

17 Q. Mr. Sanders has three other brothers, other
18 than Tony. Is that correct?

19 A. I don't know how many brothers he has.

20 Q. Did you ever find out who his father was?

21 A. No, sir, I did not.

22 Q. Thank you.

23 THE COURT: You may come down.

24 (WITNESS STEPS DOWN)

25 THE COURT: You want to recess at

1 this point for lunch?

2 SOLICITOR JENNINGS: Yes, sir, that
3 would be good.

4 THE COURT: What time do you want to
5 come back?

6 SOLICITOR JENNINGS: Around 1:30 or
7 1:45?

8 THE COURT: 1:30 will be fine.
9 Thank you, sir. We'll be at-ease until 1:30.

10 (LUNCH RECESS)

11 (DEFENDANT PRESENT)

12 THE COURT: Call your next witness,
13 please.

14 SOLICITOR JENNINGS: The State calls
15 Officer Karen McDonald.

16 (WITNESS TAKES STAND)

17 KAREN MCDONALD, being duly sworn to
18 tell the truth, the whole truth and nothing but
19 the truth, testified, as follows:

20 DIRECT EXAMINATION

21 BY SOLICITOR JENNINGS:

22 Q. Good afternoon, Officer McDonald. Where
23 are you employed, ma'am?

24 A. North Charleston Police.

25 Q. And how long have you been there?

1 A. About four years now.

2 Q. You're an officer out on the road?

3 A. Yes, sir.

4 Q. Were you in the same position on March the
5 4th of 2007?

6 A. Patrolman.

7 Q. What shift were you assigned to?

8 A. I worked nights.

9 Q. And what time would you come on to work?

10 A. 10:00 p.m. until 8:00 o'clock in the
11 morning.

12 Q. Are you familiar with The Anchor Bar?

13 A. Yes, sir.

14 Q. On Spruill Avenue?

15 A. Yes, sir.

16 Q. And that was in North Charleston?

17 A. Yes, sir.

18 Q. Would that have been within your region?

19 A. Yes, sir.

20 Q. Were you working the night shift on March
21 4th, 2007?

22 A. Yes, sir.

23 Q. At around 4:50 do you recall where you
24 were?

25 A. I was in the vicinity and I got another

1 call at one of the smaller apartment complexes
2 Columbus and Spruill Avenue.

3 Q. And did you hear anything?

4 A. I heard approximately eight shots coming
5 over the radio and I heard from other officers,
6 so I quickly completed the call that I was one
7 and went over to The Anchor Bar.

8 Q. And when you got over to The Anchor Bar did
9 you have an opportunity to talk with a Reginald
10 Chavers?

11 A. Yes, sir.

12 Q. I think he was a bouncer there?

13 A. Yes.

14 Q. Did you look around the parking lot area
15 and try to collect any evidence?

16 A. After I got information from Mr. Chavers
17 about what had happened, he described three
18 black males in a green pickup truck with a
19 short bed firing a weapon out the window at the
20 corner of Spruill and Jackson, which was right
21 across the street from The Anchor Bar. I
22 checked that area and I recovered six shell
23 casings.

24 Q. And did you turn those into evidence?

25 A. Yes, sir.

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1 Q. I show you a bag. Do you recognize this?

2 A. Yes, sir, that's the bag I put the shell
3 casings in.

4 Q. And turned them into evidence?

5 A. Yes, sir.

6 Q. I show you what is marked as State's
7 Exhibits 68, 69, 70, 71 and 72. Do you
8 recognize those?

9 A. Those are the shell casings that I placed
10 in the bag.

11 Q. Those are the ones you collected that
12 morning at The Anchor Bar?

13 A. Yes, sir.

14 SOLICITOR JENNINGS: Your Honor, we
15 would move these exhibits into evidence.

16 THE COURT: Any objection?

17 MR. YOUNG: No objection.

18 THE COURT: Without objection, 68
19 through 72, State's Exhibit inclusive, are
20 admitted.

21 (SO ENTERED AS STATE'S EXHIBIT 68)

22 (SO ENTERED AS STATE'S EXHIBIT 69)

23 (SO ENTERED AS STATE'S EXHIBIT 70)

24 (SO ENTERED AS STATE'S EXHIBIT 71)

25 (SO ENTERED AS STATE'S EXHIBIT 72)

1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR JENNINGS:

3 Q. That was really the end of your
4 investigation?

5 A. Yes, sir. I turned the evidence in, placed
6 it in the Evidence room.

7 Q. And no charges were ever filed?

8 A. No, sir. The casings were processed by the
9 City of Charleston and they didn't find any
10 latents or anything, so there was no way to --
11 go down that road.

12 SOLICITOR JENNINGS: That's all the
13 questions I have, Your Honor.

14 THE COURT: Cross?

15 LAURA WOOD: Beg the Court's
16 indulgence.

17 THE COURT: Certainly.

18 CROSS EXAMINATION

19 BY LAURA WOOD:

20 Q. Ms. McDonald, I'm Laura Wood for the
21 defendant. I just a quick couple of questions.
22 You said that you heard about eight gunshots.
23 Is that right?

24 A. Yes, ma'am.

25 Q. How far away from the actual bar do you

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1 think you were?

2 A. About two to three hundred yards.

3 Q. Did you hear the shots in succession or was
4 there a break?

5 A. They were in succession.

6 Q. You heard eight shots in succession?

7 A. (Affirmative nod).

8 Q. Did you ever hear any shots after that?

9 A. I don't recall hearing any other shots.

10 Q. Thank you. That's all I have.

11 A. I don't believe.

12 THE COURT: Redirect?

13 SOLICITOR JENNINGS: Nothing, Your
14 Honor.

15 THE COURT: You may come down. Thank
16 you.

17 (WITNESS STEPS DOWN)

18 THE COURT: Next witness?

19 SOLICITOR JENNINGS: May she be
20 excused, Your Honor?

21 THE COURT: Any objection?

22 MR. YOUNG: No, Your Honor.

23 THE COURT: You are free to leave,
24 too. Thank you very much, Ms. McDonald.

25 SOLICITOR HILTON: The State would

1 call Agent Vickie Hallman.

2 (WITNESS TAKES STAND)

3 VICKIE HALLMAN, being duly sworn to
4 tell the truth, the whole truth and nothing but
5 the truth, testified, as follows:

6 DIRECT EXAMINATION

7 BY SOLICITOR HILTON:

8 Q. Thank you, Agent Hallman. Who do you work
9 for?

10 A. I work for the South Carolina Law
11 Enforcement Division.

12 Q. And how long have you been with SLED?

13 A. I've been with SLED for approximately six
14 years.

15 Q. All right. And in that years with SLED
16 what has been your assignment?

17 A. I am assigned to the latent print crime
18 scene unit of the South Carolina Law
19 Enforcement Division.

20 Q. All right. As far as footwear analysis
21 goes, how long have you been doing that?

22 A. For the whole time I've been at SLED, six
23 years. And I actually do have a little bit of
24 previous experience from my former employer
25 before that, who was the Lexington County

1 Sheriff's Office.

2 Q. Briefly, tell the Court what your education
3 and background is as far as forensic analysis,
4 footwear comparisons, ---

5 A. Well, I have a Bachelor of Arts from the
6 University of South Carolina. I have a Masters
7 of Criminal Justice degree from the University
8 of South Carolina. I have actively participated
9 and completed a two-year in-house training
10 program with the South Carolina Law Enforcement
11 Division in the latent print crime scene unit,
12 which includes sections on crime scenes, latent
13 fingerprint comparison and development,
14 footwear and tire tread comparison, blood stain
15 pattern analysis and crime scene
16 reconstruction. I actively keep up with --
17 through the South Carolina Division of the
18 International Association for Identification,
19 I have completed within the last two years a
20 one-week training class on footwear, and also
21 a one-week training class on tire treads.

22 Q. And have you ever been qualified as an
23 expert before?

24 A. Yes, I have.

25 Q. In state court?

1 A. Yes.

2 Q. How many times approximately?

3 A. With footwear and tire treads, probably at
4 least five.

5 Q. And how about in federal court?

6 A. I haven't testified in federal court yet.

7 Q. Five times in state court?

8 A. Yes. Federal court's tomorrow.

9 SOLICITOR HILTON: Your Honor, at
10 this time we'd offer Agent Vickie Hallman as
11 an expert in the field of forensic footwear
12 analysis comparison.

13 THE COURT: Do you care to examine
14 her as to her qualifications?

15 MR. YOUNG: No, Your Honor.

16 THE COURT: She will be permitted to
17 render opinions in those areas.

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR HILTON:

20 Q. Thank you. Agent Hallman, in this
21 particular case did you receive some casts and
22 lifts related to the case against Anthony
23 Sanders? I think it would be SLED case number
24 L-0710327?

25 A. Yes, I did.

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1 Q. Let's talk about specifically these gel
2 lifts. Did you receive those gel lifts?

3 A. Yes, sir, I did.

4 Q. I show you what's been entered into
5 evidence as State's Exhibit 56 and ask if
6 you recognize these items?

7 A. Yes, sir, I do.

8 Q. Do those appear to be the gel lifts that
9 were submitted to you for comparison?

10 A. Yes.

11 Q. And what did you do -- what process do
12 you go through when you get items such as what
13 ended up being SLED items numbered twelve and
14 thirteen?

15 A. The first thing that we usually do is I'll
16 go in, I'll put the little scale markers on it
17 which are still attached to them. And they're
18 sent to our photography department for photo
19 documentation.

20 Q. And is that what happened in this case?

21 A. Yes, it is.

22 Q. I show you what's been marked as State's
23 Exhibit 75 and ask if you recognize that?

24 A. Yes.

25 Q. What is that?

1 A. That would be the one-to-one photograph
2 that I received back from our photography
3 department.

4 SOLICITOR HILTON: Your Honor, at
5 this time we'd offer State's Exhibit 75 into
6 evidence.

7 THE COURT: Any objection?

8 MR. YOUNG: No, Your Honor.

9 THE COURT: Without objection it is
10 admitted.

11 (SO ENTERED AS STATE'S EXHIBIT 75)

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR HILTON:

14 Q. And after you get these photographs of the
15 gel lifts back, what do you do from there?

16 A. If I've got shoes to compare it to, I make
17 test impressions of the shoes, and then I start
18 my comparison.

19 Q. Let me show you several items. State's
20 Exhibits 61, 67, 60, 62 and 57 and just ask --
21 and you had the opportunity to look at these a
22 moment ago, did you not?

23 A. Yes, I did.

24 Q. Do they all appear to be the items that
25 were submitted to you?

1 A. Yes.

2 Q. Just to keep from having to go back through
3 it again. And what did you do with those shoes
4 when you got them?

5 A. Like I said, I would have made test
6 impressions for comparison purposes.

7 Q. Let me show you what's been marked as
8 State's Exhibits 76, 77, 78, 79, 80 and 81
9 and ask if you recognize these items?

10 A. (Upon review) -- yes,

11 Q. What are those?

12 A. These would be the documentation of the
13 bottom of the footwear or the bottom of the
14 shoes that would have also been done by our
15 photography department.

16 Q. And, likewise, these would be one-to-one
17 photographs of the bottoms of the shoes?

18 A. Yes, they are.

19 SOLICITOR HILTON: Your Honor, at
20 this time we'd like to offer State's Exhibits
21 76 through 81 into evidence.

22 THE COURT: Any objection?

23 MR. FARLEY: No objection.

24 THE COURT: Without objection they
25 are admitted.

1 (SO ENTERED AS STATE'S EXHIBIT 76 THRU 81)

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR HILTON:

4 Q. Now, were you asked to make a comparison of
5 the gel lifts, which would have been State's
6 Exhibit 56, with the shoes that you obtained?

7 A. Yes, I was.

8 Q. And what were you able to determine from
9 those gel lifts and from the shoes? Were you
10 able to determine whether there was any match,
11 either in class or specifically?

12 A. With the first one, which is SLED item
13 number twelve, I was able to eliminate the SLED
14 items number fourteen and fifteen shoes.

15 And then with the other shoes that I was
16 given, which is State's 61, 67, 60 -- and I
17 think there's one other pair, -- they actually
18 matched in combined class characteristics;
19 which, for the purposes of shoes, that would
20 be the size, shape and tread design.

21 Q. What about the size, shape and tread design
22 of specifically -- and I'm going to use SLED
23 items numbers just to stay consistent with your
24 report.

25 A. Okay.

1 Q. It would be items 88, 89, 90 and 91. What
2 size shoes were those?

3 A. I'll have to -- the item 88 shoes are a
4 size nine. The item 89 shoes are also a size
5 nine, as well as the item 90 and 91 shoes.

6 Q. So all of those items were size nine shoes,
7 right?

8 A. Yes, sir.

9 Q. And what about items fourteen and fifteen?
10 What size shoes were those?

11 A. Item fourteen shoes were size 11.

12 Item fifteen shoes were size ten.

13 Q. Were they all the same type of shoe?

14 A. They're all -- basically fall under the
15 category of Nike Air Force One shoes.

16 Q. And a Nike Air Force One, is that a common
17 style shoe?

18 A. Yes.

19 Q. And in your experience as a footwear
20 analyst, is the tread pattern of a Nike Air
21 Force One, is that something that's new to you
22 or something that you have plenty of experience
23 with?

24 A. About ninety-five percent of my cases are
25 Nike Air Force Ones or that tread design.

1 Q. Okay. Let me ask you about your experience
2 briefly. About how many footwear cases have
3 you analyzed?

4 A. Probably in the six years I've been at
5 SLED, several hundred.

6 Q. Is it common that you would look at a size
7 nine in a case of logging an adult male?

8 A. It just varies. A lot of times I have
9 bigger shoes than that, sometimes I have
10 smaller. I really -- without going back and
11 pulling all the cases, I really couldn't tell
12 you what the average size was. But nine is
13 on the smaller size, from what I remember.

14 Q. Let me ask you -- you also received several
15 cast impressions relating to this case.

16 A. Yes, sir.

17 Q. Let me show you what's been marked for
18 identification as State's Exhibits 82, 83, 84,
19 85, 86, 87 and 88 and ask if you recognize
20 these items?

21 A. (Upon review) -- yes, I do.

22 Q. What are those?

23 A. Some of them are photographs of the cast
24 that I received into the laboratory. And
25 others would actually be one-to-one photographs

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1 from a disk of crime scene photos that were
2 admitted to the laboratory.

3 Q. And were you asked to do comparisons on
4 those as well?

5 A. Yes.

6 Q. And how do you go about doing that?

7 A. Basically the same way that I do with the
8 gel lifts. It's sent to our photography
9 department. They make a one-to-one photograph,
10 and then I use the test impressions that I
11 completed to do the actual comparison.

12 Q. Specifically, with items -- on your report,
13 in item 19.1, left shoe, were you able to make
14 an identification with regard to that?

15 A. With item 19.1 I was able to eliminate the
16 items numbered fourteen and fifteen shoes,
17 which were the ones that were size ten and a
18 size eleven. And I had to include the other
19 four pairs of shoes.

20 Q. And the other four pairs would be 88
21 through 91. Is that correct?

22 A. Yes, they matched up with combined class
23 characteristics, which, like I said, is the
24 size, shape and tread design.

25 Q. And those would have been the size nine

1 shoes?

2 A. Correct.

3 Q. How about item twenty, which would have
4 been -- what was item twenty?

5 A. Item twenty is another dental stone cast
6 that was submitted.

7 Q. And what were the results of that?

8 A. Basically, the same as item 19.1. I was
9 able to eliminate the size fourteen -- excuse
10 me, the items 14 and 15 shoes. But I had to
11 include as possibly making those impressions
12 the items 88, 89, 90 and 91 shoes.

13 Q. And, likewise, with item twenty-two?

14 A. Yes, sir.

15 Q. And twenty-three as well, right?

16 A. Yes.

17 Q. And there were some items in here that you
18 weren't able to exclude shoes item number
19 fourteen and fifteen. Why is that?

20 A. Did you ask me about the item twenty-three
21 shoe?

22 Q. Yes.

23 A. Because, actually, with the item twenty-
24 three shoe, I had to include items fourteen and
25 fifteen. But I excluded the other four pairs

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1 of shoes, on my item twenty-three.

2 Q. So item twenty-three, you say, was
3 consistent with the larger shoes but excluded
4 the other ones? Am I stating that correctly?

5 A. That's correct.

6 Q. And there were some items on here that you
7 weren't able to exclude any of the shoes; is
8 that right?

9 A. That's correct also.

10 Q. And why would that have been?

11 A. Usually because the impression wasn't a
12 full shoe impression. And all the tread
13 designs were the same on all the shoes. So
14 there wasn't enough for me -- there wasn't
15 enough information in the unknown shoe to
16 actually eliminate any of them.

17 Q. Boiling this down real simply, the two gel
18 lifts that are depicted in a photograph here in
19 State's Exhibit 75, and the actual lifts in
20 State's Exhibit 56, would you say that that's
21 consistent with the shoes that were submitted,
22 the size nine shoes that were submitted?

23 A. Yes.

24 Q. And it would be inconsistent with the other
25 two shoes that were submitted, correct?

1 A. That's correct.

2 Q. And the casts -- I think you just went over
3 those. Some of them were consistent and some
4 of them were not. Is that right?

5 A. That's correct.

6 Q. Were there some size nine shoes that were
7 taken with the casts -- were there some nine --
8 excuse me, were there some size nine shoeprints
9 that were taken?

10 A. There appeared to be, yes. They matched up
11 with those size nine shoes I had.

12 SOLICITOR HILTON: Please answer
13 any questions the defense may have for you.

14 THE COURT: Cross examine.

15 CROSS EXAMINATION

16 BY MR. FARLEY:

17 Q. Good to see you again, Ms. Hallman.
18 Earlier you said the vast majority of shoes you
19 see at the SLED lab are these Air Force Ones.
20 Is that correct?

21 A. It is.

22 Q. So above and beyond anything else, Air
23 Force Ones are what you see?

24 A. For footwear comparisons, yes.

25 Q. Would you say that Air Force Ones have a

1 very unique pattern at the bottom of them?

2 A. I'm not sure -- when you say "unique" what
3 specifically you are asking.

4 Q. The actual tread. Is that found on any
5 other shoe, the circles -- is that found on any
6 other shoe that you are aware of?

7 A. Not that I've ever seen.

8 Q. When you analyze a gel lift or a cast,
9 isn't it true that you can't say that exactly
10 -- 'this is exactly a size nine or this is
11 exactly a size ten', you can only narrow it
12 down?

13 A. That's correct.

14 Q. So by looking at the gel lifts and the
15 impressions, you can't say for a fact that that
16 is a size nine. You can probably say it's not
17 a size five. But you can't say for a fact that
18 it's a size nine?

19 Q. Well, usually, when I do a comparison I
20 actually have a shoe that is a known shoe, a
21 possible suspect shoe. So that's usually what
22 I go by to do the comparison. I have had shoes
23 that have come in that there was no size tag in
24 them, so I had no idea what size they actually
25 were.

1 Q. But if I was just to give you a photograph
2 of an impression, a gel lift or cast or what-
3 not, you couldn't tell me with any certainty
4 that that was a size whatever?

5 A. Not for certain, no, without having an
6 actual shoe.

7 Q. When you analyzed the shoes that Dorchester
8 County sent you were there any rocks in the
9 treads or any slash marks on the treads or
10 anything that would identify this as the shoe,
11 that only this shoe could make that print?

12 A. No.

13 Q. So basically what you're saying is that any
14 Nike Air Force One with the same class
15 characteristics could have made that print?

16 A. That's correct.

17 MR. FARLEY: Could I have a moment,
18 Your Honor?

19 THE COURT: Sure, absolutely.

20 MR. FARLEY: I have no further
21 questions.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY SOLICITOR HILTON:

25 Q. Going back to the shoe size, Agent Hallman,

1 how in this case do we know that the shoeprint
2 taken from the gel lift was not a size ten or
3 eleven or twelve or any other size?

4 A. Well, with those impressions I actually
5 could see where the impression started and
6 stopped. So basically I had a full shoe. And
7 when I used my test impressions with the size
8 ten, eleven and nine shoes, the ten and eleven
9 were not consistent in size, whereas the size
10 nines were consistent in size.

11 Q. Would I be correct in saying that in this
12 particular case you know that that's a size
13 nine? Is that a fair statement?

14 A. I know that I can eliminate the ten and the
15 eleven. So with the nine, it was the closest
16 thing that I had. So, yes, I could eliminate
17 the others and say it was a size nine.

18 Q. Thank you, Agent Hallman.

19 RECROSS EXAMINATION

20 BY MR. FARLEY:

21 Q. But you didn't have a size eight to
22 compare?

23 A. No, I did not.

24 Q. Or a size six or five or anything else?

25 A. No.

1 MR. FARLEY: I have nothing further.

2 THE COURT: You may come down. Do
3 you wish the witness to be excused, Solicitor?

4 SOLICITOR HILTON: She may be, Your
5 Honor.

6 THE COURT: Any objection?

7 MR. FARLEY: No, Your Honor.

8 THE COURT: You are free to leave.
9 Thank you.

10 (WITNESS STEPS DOWN)

11 THE COURT: Call your next witness,
12 please.

13 SOLICITOR JENNINGS: Thank you, Your
14 Honor. We'd call Agent Katie Coy.

15 (WITNESS TAKES STAND)

16 KATIE COY, being duly sworn to tell
17 the truth, the whole truth and nothing but the
18 truth, testified, as follows:

19 DIRECT EXAMINATION

20 BY SOLICITOR JENNINGS:

21 Q. Good afternoon, Agent Coy. Where are you
22 employed, ma'am?

23 A. I work in the DNA Department at the South
24 Carolina Law Enforcement Division.

25 Q. And in that capacity you do DNA serology

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1 testing?

2 A. Yes.

3 Q. How long have you been with SLED?

4 A. Four years.

5 Q. Can you briefly describe your educational
6 background?

7 A. I have a Bachelor of Science degree in
8 Forensic Science from Virginia Commonwealth
9 University as well as a Master of Science
10 degree in Forensic Science.

11 Q. What training classes or other training
12 have you received in serology and DNA?

13 A. I've taken many courses throughout my
14 college career, it was specifically a forensics
15 biology-type program. And when I got to SLED,
16 I continued a year-long training under a court-
17 qualified analyst. During that time I was
18 training in serology and DNA analysis.

19 Q. In the four years that you've been at SLED
20 how many opportunities have you had to conduct
21 serology or DNA testing?

22 A. I would say that I've completed several
23 hundred cases.

24 Q. Have you had the opportunity to testify in
25 court as an expert?

1 A. Yes.

2 Q. How many times?

3 A. At least fifty.

4 Q. In state court. Have you ever testified in
5 federal court?

6 A. No.

7 SOLICITOR JENNINGS: Your Honor, we
8 would offer Agent Coy as an expert in forensic
9 serology and DNA analysis.

10 THE COURT: Do you care to examine
11 her as to her qualifications?

12 MR. FARLEY: No, Your Honor.

13 THE COURT: She will be permitted to
14 render opinions in those areas.

15 SOLICITOR JENNINGS: Thank you.

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR JENNINGS:

18 Q. Agent Coy, can you explain what forensic
19 serology is, please?

20 A. Serology is the identification of body
21 fluids such as blood, semen and saliva.

22 Q. So hat typically happens is a law
23 enforcement agency submits items of evidence to
24 you and you would test them initially for a
25 serology test to see if there is body fluids?

1 A. Right. The log-in sheets that we receive
2 from police departments specifically state
3 whether they want just DNA analysis done or
4 analysis of other bodily fluids such as blood,
5 semen or saliva.

6 Q. And in this case your SLED number, or item
7 number sixty-one, which is State's Exhibit 65,
8 was oral swabs taken from Deanna Devore, one of
9 the victims. Was that submitted to you for
10 serology testing?

11 A. Yes.

12 SOLICITOR JENNINGS: Your Honor, we
13 would offer State's Exhibit 65 into evidence.

14 THE COURT: Any objection?

15 MR. FARLEY: No objection.

16 THE COURT: Without objection,
17 State's Exhibit 65 is admitted.

18 (SO ENTERED AS STATE'S EXHIBIT 65)

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR JENNINGS:

21 Q. If you would explain how, exactly, with an
22 oral swab like that, how would you conduct a
23 serology test?

24 A. On an oral swab that's submitted with a
25 rape kit, we do a test that is specific for

1 semen and we just run -- it comes up positive
2 or not positive.

3 Q. And did you do that with State's Exhibit
4 61, or 65, I'm sorry?

5 A. Yes.

6 Q. What was the result?

7 A. Semen was identified.

8 Q. And what do you do -- what's the next step
9 in your testing following the serology testing?

10 A. Following a positive serology test, we
11 proceed to DNA testing in an attempt to develop
12 a DNA profile.

13 Q. Was a DNA sample from a suspect submitted
14 to you in this case?

15 A. Yes.

16 Q. From a Mr. Sanders?

17 A. Yes.

18 Q. I'll show you what's marked as State's
19 Exhibit 66.

20 A. Yes, that is my item number ninety-four.

21 SOLICITOR JENNINGS: We would offer
22 State's Exhibit 66 into evidence, Your Honor.

23 MR. FARLEY: Without objection.

24 THE COURT: Without objection,
25 State's Exhibit 66 is admitted.

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1 (SO ENTERED AS STATE'S EXHIBIT 66)

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR JENNINGS:

4 Q. Agent Coy, would you please explain what
5 the field of forensic DNA is?

6 A. Typically we receive items of evidence as
7 well as known standards from an individual.
8 And my job is to compare a DNA profile from the
9 evidence to a DNA profile from the standards.
10 Essentially a profile is a string of numbers,
11 and I look at the numbers from the evidence
12 samples as well as the known standard and just
13 look to see if the numbers match.

14 Q. Were you able to, in State's Exhibit 65,
15 the oral swab from Deanne Devore, were you able
16 to develop a DNA profile from that item?

17 A. Yes.

18 Q. And as well from State's Exhibit 66, the
19 DNA sample from Anthony Sanders? Were you able
20 to develop a DNA sample from that item?

21 A. Yes.

22 Q. And what were the results of your analysis?

23 A. The partial DNA profile developed from the
24 semen on item 61 matches the DNA profile of
25 Anthony Sanders.

1 Q. Were you able to work up a mathematical
2 equation for the probability of randomly
3 selecting another person that might have the
4 same DNA profile?

5 A. Right. In this case, the probability of
6 randomly selecting an unrelated individual
7 having a DNA profile matching the semen on this
8 item is approximately one in two hundred sixty.

9 Q. You're familiar with another type of DNA
10 testing known as Y-STR testing?

11 A. Right.

12 Q. Explain briefly what that is.

13 A. STR testing is looking at the entirety of
14 the DNA profile. With the Y-STR testing we are
15 specifically looking at the Y chromosome and it
16 is a test done for a male profile.

17 Q. And at the time that was not a type of
18 testing that SLED performed?

19 A. Correct, we still don't perform that.

20 Q. But you had the suggestion to send that to
21 a private company, one of which is Orchid
22 Cellmark in Dallas?

23 A. Correct.

24 Q. And you're aware that that testing was
25 done?

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1 A. Right.

2 SOLICITOR JENNINGS: Thank you very
3 much. Please answer any questions that the
4 defense counsel has.

5 THE COURT: Cross examine.

6 CROSS EXAMINATION

7 BY MR. FARLEY:

8 Q. Good to see you again. Thanks for coming
9 down from Columbia. Y-STR testing, it is only
10 looking for hits on a small number of -- not
11 alleles but points. Can you explain that to
12 me?

13 A. It has the idea of looking at fifteen
14 different locations within the DNA,
15 specifically non-coded regions of DNA.

16 Q. And that's junk DNA?

17 A. Essentially.

18 Q. Wouldn't you agree that that is not as
19 accurate as other forms of DNA testing?

20 A. The STR DNA testing is an accurate test.

21 Q. When you tested the semen was it just --
22 was there just one set of DNA in there or were
23 there others?

24 A. When we are testing semen, we do a sort of
25 two-step process to extract the DNA. For

1 semen, we want to separate the sperm cells from
2 any other cells that may be there, so we
3 essentially develop two "fractions", we call
4 them, and sometimes in what we call the male
5 fraction, without the sperm cell, we can have a
6 mixture.

7 Q. And was there a mixture in this sample?

8 A. Yes.

9 Q. Were you able to identify the other DNA
10 that was in there besides the standard?

11 A. Yes, it was in the DNA.

12 Q. Can you tell me about blood testing and
13 blood typing and how that is used?

14 A. We don't do blood testing in our model.

15 Q. Blood typing? You don't use that?

16 A. No.

17 Q. You said that the chance of this being --
18 of this DNA matching the standard of the
19 defendant is one in two hundred sixty; is that
20 correct?

21 A. Yes.

22 Q. So if you were to extrapolate that out to
23 the Charleston community, North Charleston
24 community and tri-county area, it could be
25 thousands of people that could possibly match

1 and fit in that one out of two sixty, couldn't
2 it?

3 A. What this is explaining is how rare the
4 profile is that I developed. We are saying
5 that if you randomly select two hundred and
6 sixty unrelated individuals, you would see that
7 profile once.

8 Q. Since there's hundreds of thousands of
9 people in this area, you would see a whole lot?

10 A. Possibly.

11 MR. FARLEY: May we have a moment,
12 Your Honor?

13 THE COURT: You may.

14 CROSS EXAMINATION CONTINUED

15 BY MR. FARLEY:

16 Q. When you got the one in two hundred sixty
17 match, did you submit that to CODIS?

18 A. No.

19 Q. Were you given any other samples except
20 from the victim -- control samples from the
21 victim and the defendant?

22 A. In this case I analyzed four known samples.

23 Q. So that's all that you had to work with,
24 were those four?

25 A. Right.

1 Q. So you did not submit any other suspect's
2 DNA? You weren't given any other suspect's
3 DNA, and you did not submit any of the samples
4 that you had into CODIS?

5 A. There were, I believe, two other samples
6 that were entered into CODIS.

7 Q. Do you know whose those were?

8 A. If it doesn't show in the report, then I
9 don't know.

10 Q. Let's talk about the Y-STR testing. You
11 didn't actually perform that test, did you?

12 A. No.

13 Q. You read the report that Orchid Cellmark
14 did. Is that correct?

15 A. Correct.

16 Q. Do you have a copy of that?

17 A. I do.

18 Q. It is State's Exhibit 74. Wouldn't you
19 agree with me that in the report it does not
20 specifically say that the DNA that was found
21 was my client's? Can you elaborate on that?
22 What is the actual result?

23 A. The conclusion in the report by Orchid
24 Cellmark states that a Y-STR profile came from
25 some fraction of the oral swab, (reading):

1 "Antony Sanders cannot be excluded as a
2 contributor of male DNA detected from the sperm
3 fraction of the oral swab."

4 Q. Isn't it true that every male in that line
5 -- uncles, brothers, cousins, grandfathers,
6 grandchildren -- all will have the same profile
7 when you use the Y-STR?

8 A. Y-STRs can be traced through your paternal
9 lineage so a father would pass his Y chromosome
10 to his son.

11 Q. So any number of people related to the
12 defendant could match this Y-STR profile.
13 Isn't that correct?

14 A. I can't answer that question.

15 Q. But you did say that fathers, grand-
16 fathers, up, down and left and right all have
17 the same Y-STR profile, right?

18 A. It is essentially through the male line but
19 I don't have enough training to know anything
20 about the mutation rate for that chromosome.

21 Q. Were you given a DNA -- what was thought to
22 be a DNA sample from a pair of pajama pants?
23 Item number eighty?

24 A. I was given a cutting from pants, which was
25 item eighty-point-one (80.1).

1 Q. And what were your results from that
2 testing?

3 A. The DNA profile developed from item 80.1 is
4 a mixture of two individuals. The DNA profile
5 of the major contributor to this mixture is
6 from an unidentified male individual, entered
7 into CODIS. The partial DNA profile of the
8 minor contributor to this mixture was
9 insufficient for reliable interpretation.

10 Q. So with all the control samples you were
11 given, there were no matches?

12 A. The profile of the major contributor did
13 not match.

14 Q. So it's completely unknown where that DNA
15 came from?

16 A. Correct.

17 Q. Let's talk about the doorknob. Did you get
18 a DNA sample from the doorknob of the
19 residence?

20 A. Item forty-one?

21 Q. Yes, ma'am.

22 A. Yes.

23 Q. And what did you find after running that
24 sample?

25 A. The DNA profile developed from item forty-

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1 one is a mixture of three individuals. Diane
2 Grant, Jatavius Devore and Deanna Devore cannot
3 be excluded as possible contributors. Anthony
4 Sanders is excluded as a possible contributor
5 to this mixture.

6 Q. Okay.

7 MR. FARLEY: I have no further
8 questions, Your Honor.

9 THE COURT: Redirect?

10 SOLICITOR JENNINGS: Nothing, Your
11 Honor.

12 THE COURT: Thank you. You may come
13 down.

14 (WITNESS STEPS DOWN)

15 THE COURT: Call your next witness,
16 please.

17 SOLICITOR JENNINGS: Your Honor, as
18 stipulated with the defense, we would offer
19 State's Exhibit 74 into evidence, which is the
20 report from Orchid Cellmark showing that the Y
21 chromosome DNA markers from Anthony Sanders are
22 the same as the DNA markers from the epithelial
23 faction and sperm fraction of the oral swab.

24 MR. YOUNG: That's correct.

25 THE COURT: Very well. It is

1 admitted without objection and stipulated.

2 (SO ENTERED AS STATE'S EXHIBIT 74)

3 THE COURT: Call your next witness.

4 SOLICITOR HILTON: Thank you, Your
5 Honor. The State would call Agent Tracy
6 Thrower.

7 (WITNESS TAKES STAND)

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

11 DIRECT EXAMINATION

12 BY SOLICITOR HILTON:

13 Q. Thank you, Agent Thrower. Where are you
14 employed?

15 A. The South Carolina Law Enforcement
16 Division, also known as SLED, in the firearms
17 department.

18 Q. And how long have you been there?

19 A. It will be twelve years in a couple of
20 days.

21 Q. And has that twelve years all been in the
22 firearms department?

23 A. All twelve in the firearms department.

24 Q. Briefly tell the Court what your training
25 and educational background is in firearms and

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1 toolmark identification.

2 A. I have completed the course of instruction
3 in firearms and toolmark identification that
4 was taught by SLED.

5 I have completed the specialized technique
6 in firearm identification which is taught by
7 the Federal Bureau of Investigation.

8 Completed a course on serial number
9 restoration that was taught by the Bureau of
10 Alcohol, Tobacco & Firearms.

11 I've completed the scientific defensible
12 criteria for the identification of toolmarks
13 which is taught by Murdaugh Muran.

14 I've been to numerous seminars and
15 conferences in the field of firearms
16 identification.

17 Q. Have you ever been qualified as an expert
18 witness before?

19 A. Yes, sir, I have.

20 Q. In state court?

21 A. Yes, sir.

22 Q. About how many times?

23 A. I believe forty times in state court.

24 Q. Any in federal court?

25 A. One time in federal court.

1 MR. HILTON: Your Honor, at this time
2 we'd offer Agent Tracy Thrower as an expert in
3 the field of firearms and toolmark
4 identification.

5 MR. YOUNG: No objection to his
6 qualifications.

7 THE COURT: Very well. He will be
8 permitted to render opinions in those areas.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR HILTON:

11 Q. Agent Thrower, did you receive some items
12 of evidence in this case, L-0710327,
13 specifically six shell casings that were
14 submitted?

15 A. Yes, sir, I did.

16 Q. I know there were several items submitted
17 at different times but specifically for those
18 six shell casings, just based on the
19 characteristics of those, what did you
20 determine from them?

21 A. That they were .40 Smith & Wesson caliber.

22 Q. Were you able to determine at that time if
23 they were reloads or not?

24 A. Yes, I believed them to be reloads. I saw
25 numerous mechanism marks on the body of the

1 cartridge case consistent with them having been
2 cycled through or fired out of numerous
3 firearms. Also around the primer pocket it
4 appeared that the primer pocket had reamer
5 marks, which is a typical indication of
6 reloading or remanufacturing.

7 Q. This reamer mark, is that like from the
8 tooling that actually reloads those casings?

9 A. It's a device which actually makes sure
10 that the primer pocket is uniform in shape. It
11 is kind of a "pencil sharpener", it goes in
12 there and trims the inside of the primer pocket
13 to make sure it's the same diameter.

14 Q. At some point in time did you receive some
15 bullet fragments and projectiles related to
16 this case as well?

17 A. Yes, sir, I did.

18 Q. Just based on the characteristics of those
19 were you able to determine anything of any
20 significance?

21 A. More or less that they were -- the larger
22 fragments or bullets were consistent with being
23 bullets being loaded in .40 Smith & Wesson
24 caliber cartridges. I came up with a -- based
25 on measurements, a list of possible guns that

1 could have fired them.

2 Q. You're saying "Smith & Wesson cartridges."

3 Were there any other cartridges? Or what other
4 types of cartridges are there?

5 A. Well, the caliber is .40 Smith & Wesson.

6 Q. Just educate me a little bit. What else
7 would there be?

8 A. Other calibers are .25 automatic, .45
9 automatic, nine-millimeter luger, .38 special,
10 .357 magnum.

11 Q. So here we're dealing with a .40 caliber
12 gun. Is that correct?

13 A. Correct.

14 Q. Later on, I think you received -- let me
15 back up a little bit. Are you familiar with
16 IBIS?

17 A. Yes, sir, I am.

18 Q. And just real briefly, what is IBIS?

19 A. IBIS is the Integrated Ballistic
20 Identification System. It is a computerized
21 database that is owned by the Bureau of
22 Alcohol, Tobacco and Firearms. It is a system
23 that is supplied to local and state agencies to
24 run. It's essentially a large screening tool
25 in which fired bullets or fired cartridge cases

1 or test specimens from guns that are submitted
2 in cases, pictures are taken of certain areas
3 of a fired bullet or a fired cartridge case and
4 entered into this database. The database then
5 performs a search to find the most similar
6 other items in the database based on the firing
7 markings. The database will then return what
8 it believes to be the twenty closest matches
9 for comparison. An individual will then sit
10 down and look at those top-twenty list and
11 attempt to determine if they believe that they
12 see enough similarity to warrant further
13 investigation, to have the evidence sent to
14 them for a full firearm examination.

15 Q. And that full firearm examination, would
16 that be like a manual eye comparison of the
17 items?

18 A. Yes, sir. That's where we place both
19 specimens underneath a comparison microscope
20 and actually physically compare the evidence to
21 determine if it was fired by one gun or more
22 than one firearm.

23 Q. Are you aware in this case whether the
24 shell casings that were taken from the scene,
25 whether or not they were submitted to IBIS?

1 A. They were submitted to ISIB.

2 Q. All right. And what was the outcome of
3 that?

4 A. There was a potential match or a high-
5 confidence correlation found.

6 Q. Do you know how many cases there was the
7 high correlation?

8 A. How many separate incidents?

9 Q. Yes.

10 A. We came back with high-confidence
11 correlations on two different incidents or
12 crime scenes.

13 Q. And once you get a match like that from
14 IBIS, what do you do at that point?

15 A. The evidence in all the cases is sent to
16 SLED for the various examinations that we
17 perform. In this case I believe it was only --
18 probably only the firearms identification that
19 was requested. The evidence was submitted.
20 It became my case, or my cases. I processed
21 them. I compared the evidence and formed my
22 conclusions.

23 Q. The items that were submitted as a result
24 of the IBIS hit, are you familiar with the
25 background of those? Do you know where they

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1 came from or what?

2 A. The background, I believe, on the incident
3 report was -- many times I don't read the
4 incident report.

5 Q. Let me ask you this. Does IBIS give you
6 a case number of those other incidents that
7 occurred?

8 A. We will have the local agency case number,
9 submitting agency's case number, yes.

10 Q. And was one of those a North Charleston
11 Police Department case number 2007-9371?

12 A. 2007-009371, yes.

13 Q. Did you have any indication of where those
14 items came from?

15 A. Once again, it was probably in the incident
16 report but I don't recall if I even actually
17 read the incident report or not.

18 Q. That really doesn't matter to you for
19 comparison purposes, does it?

20 A. No, sir. I'd rather not know the
21 background of the incident.

22 Q. And those items from that North Charleston
23 PD case number, were they also .40 caliber
24 Smith & Wesson shell casings?

25 A. Yes, sir, they were.

1 Q. And you may have mentioned this a minute
2 ago, but were they consistent, based on the
3 markings and so forth, with the six shell cases
4 that were submitted from the Archdale Forest
5 Apartments?

6 A. Yes.

7 Q. I think you mentioned these were all
8 reloads. Is that right?

9 A. That is correct, yes.

10 Q. So to be a reload, wouldn't that mean that
11 they had been shot previously?

12 A. Correct, yes.

13 Q. So how are you able to determine with a
14 reload any unique markings or how do you know
15 it came from one gun as opposed to the gun that
16 originally fired the cartridge?

17 A. Well, what I will look at is I will look at
18 the markings that are left on the primer. The
19 primer is the ignition component of a
20 cartridge. Once it has been fired, the primer
21 is no longer good. So in order to reload it,
22 you have to take out the old primer and insert
23 a new one. When the new cartridge is fired,
24 new markings will be placed on that primer in
25 the form of firing pin markings and breech face

1 markings. So I limit, for a true identifica-
2 tion, I limit the markings I'm looking at to
3 those found on the primer.

4 Q. And so when you're talking about a reload,
5 you're reusing the shell casing but you're not
6 reusing the primer. The primer would be a new
7 primer. Is that correct?

8 A. That's correct. I look at the primer which
9 is new, the striker marks, the ejector marks,
10 the chamber marks and any sort of feed
11 mechanism marks that may be found. The
12 cartridge case itself I do not use for
13 identification.

14 Q. And did you also receive as a result
15 of that IBIS comparison, did you receive
16 Dorchester County Sheriff's Office case number
17 07-002661, eight shell casings submitted from
18 that scene?

19 A. Yes, sir, I did.

20 Q. And what were you able to determine about
21 those shell casings?

22 A. The same information, consistent with being
23 a .40 Smith & Wesson caliber cartridge. They
24 were also reloads.

25 Q. And, likewise, you didn't know where that

1 scene was or any of the facts related to that
2 scene?

3 A. No, sir, I do not.

4 Q. And again, that wouldn't assist you in your
5 comparison?

6 A. No, sir.

7 Q. Your findings, were they reviewed by
8 anybody else, or is this just your final
9 finding solely?

10 A. They were reviewed. As part of our quality
11 assurance we have a one hundred
12 percent microscopic review of all results of
13 all analysis. So a second court-qualified
14 examiner would come in and perform independent
15 microscopic analysis of my evidence.

16 Q. Agent Thrower, are you familiar with other
17 guns like a Mac or a Tec-9 or a Kel Tec or any
18 of those guns?

19 A. Yes.

20 Q. Is there anything unique about these shell
21 casings that you could exclude those types of
22 guns from?

23 A. Yes, sir. Many of these cartridge cases in
24 these three sets that we have described had
25 firing pin drag that was parallel to the breach

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1 face markings. So if the breech face markings
2 go up and down, the firing pin drag would go
3 up. That style marking is indicative or
4 suggestive of a dropping barrel or a gun in
5 which the barrel drops during the unlocking
6 process.

7 The Ingrams, the Mac-10's, the SWDs, the
8 Cobrays, all these small submachine gun style
9 firearms, these are semi-automatic, all work on
10 what we call a straight blowback-type action.
11 So the barrel does not drop. The barrel is
12 fixed. Simply the breech face, the bolt, is
13 what supports the head of the cartridge case
14 during firing, moves straight back and forward.
15 It does not drop. So you will not have that
16 firing pin drag that moves up as in this type
17 firearm.

18 Q. All right. So let me ask you, just in
19 summary, in your expert opinion, would the
20 shell cases that you received from the Anchor
21 Bar which would be from the North Charleston
22 Police Department case, the shell cases that
23 you received from the Dorchester County
24 Sheriff's Office case from Hunters Ridge,
25 that was 07-0002661, and the six shell casings

1 submitted from this case, with SLED number
2 L-0710327, were all of those shell casings
3 consistent with being fired from the same gun?
4 A. Yes, sir. That was my opinion, that all
5 the cartridge cases I received in reference to
6 these three incidents were fired by one firearm
7 to a degree of scientific certainty that the
8 likelihood that another firearm could have
9 produced this style marking is so rare, it
10 would be considered a practical impossibility.

11 SOLICITOR HILTON: Thank you, Mr.
12 Thrower. Please answer any questions the
13 defense might have.

14 THE COURT: Cross.

15 CROSS EXAMINATION

16 BY MR. YOUNG:

17 Q. Good afternoon, Agent Thrower. Do you have
18 a copy of your report up there?

19 A. Yes, sir, I do.

20 Q. Do you mention anywhere in your report the
21 firing pin drag that you were just testifying
22 about?

23 A. No, sir, I do not.

24 Q. Why isn't that in there?

25 A. It wasn't a question of -- it's not

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1 something I normally would address in my
2 report. I'd only address the question of
3 fired by, not fired by inconclusive or
4 unsuitable.

5 Q. Well, on the shell casings there are
6 three different likely sources of marks that
7 are impressed on every shell. Is that correct?

8 A. There's more than three. Yes, sir.

9 Q. There's the firing pin, right?

10 A. Yes.

11 Q. There's the breech face.

12 A. Correct.

13 Q. There's the extractor.

14 A. Right. There's the ejector, chamber,
15 magazine marks and other feed marks.

16 Q. Okay. And in these cases, in particular,
17 we talked about reloads.

18 A. Correct.

19 Q. You narrowed down your focus to one
20 specific type, like you testified about, the
21 breech face marks on the primer.

22 A. Breech face and firing pin, yes, sir.

23 Q. And firing pin?

24 A. Yes.

25 Q. So you did examine the firing pin? You did

1 not specifically focus on the breech face marks
2 in this case?

3 A. That is correct. I looked at both.

4 Q. When you're comparing shell casings you
5 do a side-by-side comparison on a comparison
6 microscope?

7 A. Yes, sir.

8 Q. Is it important to orient -- to make sure
9 that the shell casings are oriented the same
10 way when you're looking at them?

11 A. Absolutely.

12 Q. Because, you know, if you had breech face
13 markings that were at an angle on one breech
14 face and you lined up the extractor pin and the
15 breech face markings were at a different angle
16 on another shell casing you would know that
17 they were fired by different firearms.

18 A. They would look different, yes.

19 Q. In this case you couldn't use the extractor
20 marks to properly orientate the two shell
21 casings.

22 A. I was not sure which extractor mark to
23 identified the gun at the time.

24 Q. Right.

25 A. Because each of these casings had several

1 extractor marks.

2 Q. Yes, sir. So how did that affect your
3 ability to orientate the shell casings
4 correctly, so that you would know you were
5 looking at the exact same angle?

6 A. Well, the cartridge cases all had parallel
7 breech face which is simply a series of lines.

8 Q. Right.

9 A. So I put my lines literally from three
10 o'clock to nine o'clock on my comparison
11 microscope, I only had two choices. It could
12 be this direction or I could look at one-eighty
13 and it would be the exact opposite.

14 So I placed them both up -- if I don't have
15 firing pin drag. If I have firing pin drag
16 then the firing pin drag is either both
17 pointing at three o'clock or both pointing at
18 nine o'clock, which makes it real easy. Then
19 I've only got one option.

20 If I don't have firing pin drag to help me
21 orient them, then I just look at them in both
22 directions and see which way they line up.

23 Q. Did the firing pin drag assist you in
24 properly orienting the shell casings in this
25 particular case?

1 A. Not every cartridge case had firing pin
2 drag. But those that had firing pin drag,
3 absolutely. It made it much clearer.

4 Q. So not all the shell casings that you
5 collected had the same firing pin drag?

6 A. Correct.

7 Q. So a gun firing multiple shells would leave
8 drag on some and not on others?

9 A. Absolutely.

10 Q. Why is that?

11 A. Sometimes the firing pin is -- the firing
12 pin is not forced to remain forward after
13 firing.

14 Sometimes it goes forward and simply
15 bounces back into the slide where it remains.
16 Those are the occasions where there would be no
17 firing pin drag.

18 Sometimes the firing pin may go forward and
19 remain forward because the action where the
20 slide is supposed to come back is so fast it
21 gets stuck forward. And when the barrel starts
22 to drop, now that firing pin which is forward
23 has got pressure pushing down on it which kind
24 of wedges it or causes it to be stuck in that
25 forward position.

1 Q. You and I have spoken before regarding the
2 National Resource Council produced a book
3 called *Ballistic Images*. You're familiar with
4 this book?

5 A. Yes.

6 Q. And this was a study that they conducted to
7 determine the feasibility of a nationwide-type
8 IBIS system.

9 A. Correct.

10 Q. And they elected that it wasn't feasible to
11 start this nationwide IBIS system?

12 A. That's correct.

13 Q. Kind of like an FBI fingerprint database or
14 an FBI DNA database.

15 A. Yes.

16 Q. One for firearms, and they elected not to
17 do it?

18 A. Correct.

19 Q. And their conclusion specifically was
20 the validity of fundamental assumptions of
21 uniqueness and reproducibility of firearms-
22 related toolmarks has not yet been fully
23 demonstrated?

24 A. That's was their opinion.

25 Q. And you disagree with their opinion?

1 A. Absolutely, I do.

2 Q. And your description is -- your opinion
3 is there are validation studies that you
4 participated in?

5 A. Yes. There have been numerous validation
6 studies in which bullets have been fired out of
7 consecutively-made barrels, literally. When
8 they're making barrels, they make one barrel,
9 then they take it off the machine and they put
10 it in the next barrel on the machine. They
11 make another barrel and take it off. Ten of
12 them in a row. Your best chance to have
13 markings that -- your best chance to disprove
14 firearms toolmarks in a case as being possible
15 is consecutively-manufactured barrels.

16 You know, if you have -- the machine that
17 makes that barrel puts the rifling in there.
18 If it has a large chip or defect on it, if it
19 survives long enough to make it through one
20 barrel, there's a possibility it could survive
21 long enough to make it through a second barrel
22 or a third barrel. This is where the critics
23 say you can't differentiate them.

24 Well, there's been numerous validity
25 studies done now where ten consecutive barrels

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1 and ten consecutive breech faces have been
2 tested and ---

3 Q. And -- I'm sorry, I don't mean to cut you
4 off.

5 A. They've been tested and it's been shown
6 time after time that we can tell them apart.
7 I have personally performed consecutive -- or
8 testing on consecutive Glock breech faces and
9 consecutive Ruger barrels and consecutive Glock
10 EBIS barrels.

11 Q. Specifically we're dealing in this case
12 with breech face markings, right?

13 A. Yes.

14 Q. So the Glock breech face test, when did you
15 do that?

16 A. When I was at the specialized technique and
17 firearm identification school at the FBI.

18 Q. Can you tell me how that works? Did you go
19 to the Glock plant and pick up the ten
20 consecutively stamped slides?

21 A. No, sir. I did not. Somebody went there.
22 I believe it was a representative from the FBI,
23 one of the guys that works in the firearms
24 section there, went to the Glock manufacturing
25 -- went down to Smyrna, Georgia and actually

1 watched them produce ten slides and took them
2 off the line at one time.

3 Q. And that was the study reported by Bunch
4 and Murphy in 2003, does that sound correct?

5 A. Possibly. I'm not sure of the actual name
6 of the study.

7 Q. And the consecutively-manufactured Ruger
8 barrels, that was a study in which they
9 collected those and then made test fires and
10 they sent those out to firearm examiners all
11 over the world?

12 A. That is correct.

13 Q. After the National Research Council
14 produced the *Ballistic Images* book they also
15 produced a report, "Strengthening Forensic
16 Science in the United States, A Path Forward."
17 Are you familiar with that report as well?

18 A. Yes.

19 Q. And in that report they kind of echoed the
20 same findings that they had put in their book?

21 A. Basically, yes.

22 Q. And the study that you cite regarding the
23 validity studies for the ten manufactured --
24 ten consecutively-manufactured breech face and
25 the ten consecutively-punched barrels were

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1 referenced in that report.

2 A. I do not recall.

3 MR. YOUNG: May I approach?

4 THE COURT: Certainly.

5 CROSS EXAMINATION CONTINUED

6 BY MR. YOUNG:

7 Q. Agent Thrower, I'm just showing you the
8 summary assessment and looking at what is the
9 last paragraph. In this down here, is this the
10 ten consecutively-manufactured nine millimeters
11 Ruger barrels that you were talking about?

12 A. Yes, ten consecutive Ruger nine
13 millimeters.

14 Q. Is this a copy of that report?

15 A. (Upon review) -- it appears to be.

16 Q. And in that report did they also reference
17 the Glock study?

18 A. (Upon review) -- it appears so, yes.

19 Q. And with regard to both of those studies,
20 the National Research Council said that the
21 capsule summary suggests a heavy reliance on
22 the subjective findings of examiners rather
23 than on the rigorous quantification and
24 analysis of sources of variability?

25 A. Yes, sir. Largely, in part what firearm

1 and toolmark identification examiners do is
2 subjective in nature. Based on our opinion and
3 our experience of what we were looking at -- we
4 look at objective materials. Anybody in this
5 courtroom, we can put them in front of a
6 computer monitor next to our microscope and I
7 can show you a magnified image of what I'm
8 looking at. And anybody in here can see here's
9 the series of ridges. You can look at how far
10 apart these ridges are. You can look at how
11 deep the depressions are in between. You can
12 look at the sizes, the shape. And you can look
13 at how all these things -- all these different
14 ridges, these lines, these striations, come to
15 form a pattern. All that is objective
16 criteria.

17 What we are looking at, where it becomes
18 subjective is, what does it mean? How many
19 lines in a row does it take to make a match?
20 How much similarity must there be in order for
21 this to be this gun to a reasonable degree of
22 scientific certainty that it can't be any
23 other.

24 Q. And that's kind of my point. You don't do
25 that, do you? You don't come to Court and put

1 them up side-by-side and say here's two lines
2 here. Here's two lines there.

3 A. No, sir, we do that in the laboratory and
4 then we have another analyst come behind us and
5 perform their own independent study of the
6 evidence.

7 Q. Because there are also differences in those
8 two pictures, right?

9 A. Yes, sir, we expect there to be
10 differences.

11 Q. Right. You expect there to be differences
12 because you have basically a chamber in which
13 an explosion takes place.

14 A. Yes, sir.

15 Q. It leaves debris.

16 A. Yes, sir.

17 Q. Pieces of lead. Other pieces of trace
18 metals. They're going everywhere?

19 A. Yes.

20 Q. All over the person. All over the breech
21 face.

22 A. Yes.

23 Q. And you expect that those metals cause
24 microscopic changes each time a shell casing
25 is fired?

1 A. It's a potential. Or this debris may be
2 present on the surface so it may cause a
3 difference in the toolmarks made for a short
4 period of time, yes.

5 Q. Or you could get a piece of dirt in there
6 and it'll throw off the next ten casings?

7 A. In that one microscopic area, yes, sir.

8 Q. And that's why it is subjective. That's
9 why it is whether you call it a match and
10 whether you call it a non-match.

11 A. Yes, sir.

12 BOYD YOUNG: That's all the questions
13 I have. Thank you, Agent Thrower.

14 THE COURT: Redirect?

15 SOLICITOR HILTON: No redirect, Your
16 Honor.

17 THE COURT: Thank you. You may come
18 down, Mr. Thrower.

19 (WITNESS STEPS DOWN)

20 THE COURT: We need a break. Thank
21 you. We'll take about a five-minute break.

22 (BRIEF RECESS)

23 (DEFENDANT PRESENT)

24 THE COURT: Solicitor, are you
25 ready?

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1 SOLICITOR JENNINGS: We're ready,
2 Your Honor.

3 THE COURT: Very well. Let the
4 record reflect that Mr. Grant (sic) is present.
5 Call your next witness.

6 SOLICITOR JENNINGS: Your Honor, we
7 would call Reginald Chavers.

8 (WITNESS TAKES STAND)

9 REGINALD CHAVERS, being duly sworn to
10 tell the truth, the whole truth and nothing but
11 the truth, testified, as follows:

12 DIRECT EXAMINATION

13 BY SOLICITOR JENNINGS:

14 Q. If you would, just say your name for the
15 record, Mr. Chavers?

16 A. Reginald W. Chavers.

17 Q. Thank you for being up here this after-
18 noon. You and I have talked several times,
19 haven't we, about your testimony in this case?

20 A. Yes, sir.

21 Q. And in March of 2007 where were you
22 working?

23 A. I was working several places, one of which
24 was The Anchor Bar and Grill.

25 Q. And you, essentially, would go to different

1 establishments and serve as a bouncer?

2 A. I own a security company, sir, and we did
3 security for twelve different locations at that
4 time.

5 Q. And in March of '07 one of those spots was
6 The Anchor Bar?

7 A. That is correct.

8 Q. And I think that's on Spruill Avenue?

9 A. It was, yes, sir.

10 Q. And were you working there at The Anchor
11 Bar on March the 4th of 2007?

12 A. That is correct, sir.

13 Q. If you would describe to Judge Dennis an
14 incident that took place about 4:50 that
15 morning.

16 A. I am estimating that that's the time that
17 the incident took place. We had removed a
18 gentleman from the establishment and asked him
19 to leave the premises.

20 I am unsure as to what the reason was that
21 he was removed, but he was removed from the
22 building and he was standing outside the door.

23 I was working the door that night for about
24 fifteen minutes because -- well, now I'm not
25 sure for what reason. That went on for about

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1 fifteen minutes. At the conclusion of that, he
2 walked across the street and got into a pickup
3 truck, a grey pickup truck, short bed, had some
4 writing on the right rear fender. Suddenly
5 eight shots were fired out of two different
6 windows.

7 Q. This interaction that you had with this
8 person, where did it take place?

9 A. It took place -- he was directly in front
10 of the door, it was a glass door. There's a
11 wall, a brick wall. He walked around the brick
12 wall and got into the vehicle. The vehicle
13 pulled cattywompus to the club, probably about
14 two o'clock from where I was standing. The
15 windows were rolled down, the passenger front
16 windows as well as the passenger rear window
17 was rolled down, and the shots were fired.

18 Q. This person that you said, I think, was
19 cursing you and saying some racial slurs, did
20 you -- was there lighting outside that you were
21 able to see who it was that you were talking
22 to?

23 A. Yes, it was. North Charleston had came by
24 and told them that they needed additional
25 lighting. They's since corrected the

1 situation, so there was adequate lighting for
2 me to see individuals.

3 Q. Did you have any problem seeing who it was
4 you were talking to?

5 A. No, sir, I did not have any problem.

6 Q. Did the person have anything over his face,
7 anything hiding his identity?

8 A. No, sir, he did not.

9 Q. Could you see him as he crossed the street
10 and got into the dark-colored pickup truck?

11 A. Yes, sir, I could.

12 Q. And which door -- was it a two-door or
13 four-door?

14 A. Four-door.

15 Q. And which door did this person get into?

16 A. The passenger rear.

17 Q. Then, as you said, the front window rolled
18 down and the back window rolled down. Did you
19 see that individual have any type of firearm?

20 A. Which individual are you talking about?

21 Q. The one who you had the altercation with
22 and who got in the back passenger side door?

23 A. Yes, I did.

24 Q. And what type of handgun did you see?

25 A. It was a semi-automatic pistol of some

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1 sort.

2 Q. A handgun?

3 A. That is correct.

4 Q. And did you see him fire that gun?

5 A. Yes, sir, I did.

6 Q. And none of the bullets struck you?

7 A. No, sir, they did not. One struck the
8 building but none struck me.

9 Q. And Officer McDonald from the North
10 Charleston Police Department who was here
11 earlier and testified, in fact she came to
12 the scene?

13 A. I'm not sure who the officer was.

14 Q. But an officer did?

15 A. That is correct. Yes, sir.

16 Q. Really, I guess, that night that was kind
17 of the end of that incident.

18 A. That is correct, sir.

19 Q. And were you contacted by officers with the
20 Dorchester County Sheriff's Department then in
21 July of 2007?

22 A. I'm not sure -- but, yes.

23 Q. I think on July the 19th you actually met
24 with the detectives and gave them a written
25 statement about that incident, didn't you?

- 1 A. I gave them a verbal statement. They wrote
2 it up for me.
- 3 Q. But you read what you wrote down?
- 4 A. That is correct.
- 5 Q. And did you give -- you described the
6 incident to the detectives?
- 7 A. (Affirmative nod).
- 8 Q. Did you give a description of this person
9 that you had the interaction with?
- 10 A. Yes, sir, I did.
- 11 Q. And how did you describe him?
- 12 A. I said he was a black guy -- I said black
13 male, 25 or 27 years old, five-four or five-
14 five of medium build, almost stocky but not
15 muscular, short hair, no facial hair, almost
16 military looking, dressed casual with jeans and
17 a button-up shirt, I believe that it was a
18 plaid shirt.
- 19 Q. In fact, did you indicate to the officers
20 you thought you might be able to identify him
21 if you saw a photograph?
- 22 A. When I was questioned that night?
- 23 Q. That you had gotten a good enough look at
24 him that you could identify him later?
- 25 A. Yes, sir.

1 Q. Then they had you come back in on July the
2 25th of 2007?

3 A. I'm not sure of the date, but they had me
4 return a second time.

5 Q. And what took place at that meeting?

6 A. They showed me a photo lineup. That was
7 the second of two.

8 Q. The first time you were there they had you
9 look at some photographs?

10 A. A whole lot of photographs.

11 Q. And you didn't identify anybody out of
12 those?

13 A. No, I told them there were two of them that
14 looked similar but it wasn't him.

15 Q. I'm going to show you what's marked as
16 State's Exhibit 41. Do you recognize that?

17 A. Yes, sir.

18 Q. In fact, is your name and your signature on
19 the back?

20 A. Yes, it is.

21 Q. Major Garrison let you look at these
22 photographs?

23 A. (Affirmative nod).

24 Q. Did you recognize anybody?

25 A. Yes, sir.

1 Q. And which photograph?

2 A. Number three, sir.

3 Q. Did you signify that on the back of State's
4 Exhibit 41 with your signature?

5 A. I did, sir.

6 Q. And number three was who? Who was that
7 that you were identifying?

8 A. The person I had the altercation with that
9 night. I didn't know his name.

10 Q. And that was the person you saw fire the
11 semi-automatic handgun?

12 A. That's correct.

13 Q. Is there any doubt in your mind that that's
14 the person?

15 A. No, sir.

16 SOLICITOR JENNINGS: Your Honor, we
17 would offer State's Exhibit 41 into evidence.

18 THE COURT: Any objection?

19 MS. WOOD: No objection.

20 THE COURT: Without objection,
21 State's 41 is admitted.

22 (SO ENTERED AS STATE'S EXHIBIT 41)

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR JENNINGS:

25 Q. Mr. Chavers, do you see that man in this

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1 courtroom today?

2 A. Yes, sir.

3 Q. Can you point him out to the judge, please?

4 A. He is seated at the defendant's table, one,
5 two, three -- third person, going from left to
6 right.

7 Q. Thank you very much. If you would answer
8 any questions the defense attorney has.

9 THE COURT: Cross examine.

10 CROSS EXAMINATION

11 BY MS. WOOD:

12 Q. Good afternoon, Mr. Chavers. How are you?

13 A. I'm wonderful. Thank you.

14 Q. Good. I'm going to go back over a few
15 details that the Solicitor left out from your
16 statement. You stated when you talked to
17 Officer McDonald on the night of this actual
18 offense -- you remember telling her that there
19 was a succession of gunshots, right?

20 A. Right.

21 Q. And then a break and then another gunshot?

22 A. Correct.

23 Q. Is that correct?

24 A. That is correct.

25 Q. In your statement that you gave to the

1 Dorchester County Sheriff's Office in July you
2 stated that Mr. Sanders, the person you just
3 identified and picked out of the photo lineup,
4 was the one who got in the rear passenger door,
5 correct?

6 A. Correct.

7 Q. And you said that he fired one shot, right?

8 A. Correct.

9 Q. And that one shot hit somewhere in the
10 building, right -- or he fired towards the
11 club, you said.

12 A. It hit the outside of the building, not in
13 the building.

14 Q. Okay. And the front passenger seat was
15 also occupied by a person?

16 A. That is correct.

17 Q. And what did he look like?

18 A. He was a black male, slender, had braids or
19 dreads.

20 Q. How long were the dreads, do you remember?

21 A. I can't recall how long they were. They
22 were long enough to be braids.

23 Q. And that individual, who was not Mr.
24 Sanders, he reached out of the car and fired up
25 into the air seven or eight times. Is that

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1 correct?

2 A. That is correct. That's accurate.

3 Q. And you're positive that Mr. Sanders fired
4 one time out of the car.

5 A. Am I positive?

6 Q. (Affirmative nod).

7 A. I'm going by the number of shots that I
8 heard. The passenger in the front, you could
9 see the muzzle flash from the weapon and it was
10 easy to identify. There was at least one shot
11 fired that hit the building and that's when
12 everyone ducked, ran, they were trying to pull
13 me inside the building.

14 Q. And the car sped off at that point and
15 there were no more shots?

16 A. It did a u-turn and went back towards the
17 city of Charleston.

18 Q. And there were no more shots after that
19 last one?

20 A. There were no more shots.

21 Q. Did you review your statement prior to
22 coming into Court today?

23 A. I read it just now.

24 Q. And have you met with the Solicitor before
25 about your testimony today?

1 A. Yes, I have.

2 Q. And were you contacted by someone from the
3 defense to meet with them?

4 A. Yes, I was.

5 Q. And you didn't ever meet with them,
6 correct?

7 A. I did not.

8 MS. WOOD: May I have a minute,
9 Judge?

10 THE COURT: Sure.

11 CROSS EXAMINATION CONTINUED

12 BY MS. WOOD:

13 Q. That's all I have. Thank you, Mr. Chavers.

14 THE COURT: Redirect?

15 SOLICITOR JENNINGS: Very quickly.

16 REDIRECT EXAMINATION

17 BY SOLICITOR JENNINGS:

18 Q. Mr. Chavers, the person you saw shoot out
19 of the front passenger seat you thought had a
20 Mac or a Tec-9 submachine gun?

21 A. That's correct.

22 Q. But there was no question that Mr. Sanders,
23 who was in the back passenger seat, was firing
24 a semi-automatic handgun?

25 A. No question.

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1 Q. Thank you very much.

2 THE COURT: Recross?

3 MS. WOOD: Nothing. Thank you.

4 THE COURT: Thank you, sir. You may
5 step down.

6 (WITNESS STEPS DOWN)

7 SOLICITOR JENNINGS: May he be
8 excused, Your Honor?

9 THE COURT: Any objection?

10 MS. WOOD: No.

11 THE COURT: You are also free to
12 leave, sir. Thank you. Call your next
13 witness, please.

14 SOLICITOR JENNINGS: Your Honor,
15 we would call Mr. Richard Alexander.

16 (WITNESS TAKES STAND)

17 RICHARD ALEXANDER, being duly sworn to
18 tell the truth, the whole truth and nothing but
19 the truth, testified, as follows:

20 DIRECT EXAMINATION

21 BY SOLICITOR JENNINGS:

22 Q. Mr. Alexander, will you please state your
23 name for the record?

24 A. Richard Alexander.

25 Q. And I want to make sure you speak up, okay?

1 Where do you live, sir?

2 A. [REDACTED] Tanglewood Drive on Ashley Phosphate
3 Road.

4 Q. And that's in North Charleston?

5 A. Yes, sir.

6 Q. How long have you lived there?

7 A. We've been there since 1970.

8 Q. Is that your mom's house?

9 A. Yes, sir.

10 Q. And I think you've kind of lived there off
11 and on?

12 A. Yeah, pretty well much. I just recently,
13 within the last three or four years, started
14 getting back over there. But I was married for
15 fifteen years.

16 Q. What kind of work are you doing right now?

17 A. Odds and ends, mostly central heat and air.
18 I do central heat and air for a living.
19 I'm certified in central heat and air and a
20 certified electrician, and I do a lot of
21 construction work and stuff like that.

22 I work on cars. Odds and ends, anything to
23 make a dollar.

24 Q. Do you know a gentleman named Anthony
25 Sanders?

1 A. Oh, yes, I know Ant.

2 Q. Do you see him in the courtroom?

3 A. Yes, sir, I sure do.

4 Q. Can you point him out to the judge, please?

5 A. That's him right there.

6 Q. You said "Ant." Is that his nickname?

7 A. Yes, that's the only name I know.

8 I didn't know his real name. I know his
9 nickname's "Ant".

10 Q. How did you know him?

11 A. I met Ant through my mother when -- I mean,
12 I lost my job at Pack's Heating and Air. I
13 ended up moving back in with my mother and I
14 was kind of financially binded up.

15 My mother knew Ant. Ant used to, you know,
16 associate with my mother. He would come over
17 there and visit and borrow rooms for him and
18 his girlfriend and stuff like that. My
19 mom let him use a room so that he could enjoy
20 himself with his girls or whatever. I got to
21 know Anthony through that way.

22 I never really -- you know, Ant was a good
23 guy. We never had any problems out of him. We
24 only had one incident out of him the whole time
25 that I knew him.

1 Q. How long do you think that you've known Mr.
2 Sanders?

3 A. I would probably say from when I first met
4 him until, you know, I mean, today -- I mean,
5 as far as today, I would probably say a couple
6 of years. I don't know. Before he got in any
7 trouble and before he got arrested or whatever,
8 I would probably say nine to a year -- nine
9 months to a year.

10 Q. When you're saying he would come over to
11 your house with girls and things, tell me about
12 that.

13 MS. WOOD: Your Honor, I'm going to
14 object to relevancy.

15 THE COURT: The people were coming
16 over -- the question is what people were saying
17 about him?

18 SOLICITOR JENNINGS: Just how he
19 knew him, the basis for it.

20 THE COURT: I'll allow you to
21 develop that. I overrule the objection at this
22 point.

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR JENNINGS:

25 Q. So he would be at your house?

1 A. Yeah, he would come over and he would call
2 us on the phone or something like that and ask
3 us if he could borrow, you know, a room instead
4 of going to a motel or something like that. He
5 would bring one of his girlfriends over or
6 something like that. He would do what he had
7 to do and then he would leave.

8 Q. Did you consider yourselves friends or just
9 acquaintances?

10 A. I mean, I have nothing against Anthony
11 whatsoever. I mean, Anthony is a good friend
12 of mine. I want to say this, I don't have no
13 problems with him whatsoever.

14 Q. What kind of vehicle did you have at the
15 time?

16 A. I had an '88 Chevy pickup truck, 1500,
17 solid black with ten-inch rims on it with big
18 fat tires on it, tinted windows. It was solid
19 black, blacked out -- completely black. Two
20 door.

21 Q. Would there be times -- would you let Mr.
22 Sanders borrow your truck?

23 A. You know, yeah, definitely, I let him use
24 my truck. I figured that he was a good enough
25 friend and he hadn't never did me no wrong. He

1 was always told me when he would bring it back
2 and it was always on time and never had no
3 problems out of him. So, yeah, I loaned him my
4 vehicle.

5 Q. How many times -- if you had to estimate,
6 how many times do you think he borrowed your
7 vehicle?

8 A. I would probably say maybe twenty to
9 twenty-five, thirty times the whole time that I
10 knew him. Yeah, if he was to ask me to borrow
11 the truck, yeah, I'd let him borrow it.

12 Q. Were you letting him use it out of the
13 goodness of your heart or would he pay you in
14 return?

15 A. No, I mean, sometimes -- sometimes, yeah,
16 he'd call me up and say, 'Man, I need to go
17 somewhere.' At first, you know, I would take
18 him -- you know, I would take him wherever he
19 needed to go. If he wanted to go to the
20 Chinese place, I'd take him to go get something
21 to eat or if he wanted to go somewhere or
22 whatever. I did that. Sometimes I did it out
23 of the goodness of my heart but sometimes, you
24 know, he would give me a little something for
25 doing it, you know.

1 Q. What would he give you?

2 A. He'd give me crack cocaine.

3 Q. You would buy handguns from time to time?

4 You had several different types of guns?

5 A. Before I moved back in my mom's house I
6 probably had, I don't know, fifteen handguns;
7 odds and ends, here and there, yeah.

8 Q. In 2007, at the beginning part of that
9 year, did you purchase a .40 caliber Smith
10 & Wesson?

11 A. Oh, yeah.

12 Q. Who did you buy that from?

13 A. I bought that from Peter Knight.

14 Q. Tell me what you got when you bought the
15 gun. Did you get anything else?

16 A. Oh, yes. I got the gun, I got a holster
17 from him, a Bulldog holster, I got a box of
18 ammo. Let's see -- I got some cleaning oil
19 from him, some cotton things to clean.

20 Me and Peter was good friends. As a matter
21 of fact, he was with me -- I stayed
22 with Peter for about a month or so. I mean,
23 he talked me in -- when I was living in
24 Summerville, me and him was real good friends.
25 He talked me into going to get my concealed

1 weapons license, so I went to the classes and
2 stuff like that.

3 Me and him was kinda -- we was thinking
4 about opening a pawn shop, and that never
5 worked out. But we would go to gun -- go to
6 ATP, buy guns or -- just shooting, pretty much
7 friends.

8 Q. When you say an ammo box, describe to me
9 what you're talking about.

10 A. A green Army ammo box.

11 Q. Let me show you what's marked as State's
12 Exhibit 64. Do you recognize that?

13 A. Oh, yes.

14 Q. Is that the type of ammo box?

15 A. Yes.

16 Q. Where did you keep that .40 caliber Smith &
17 Wesson and this ammo box, State's Exhibit 64?

18 A. The ammo box was behind the seat in my
19 truck, and the gun was up underneath the seat.
20 That's there I had it.

21 Q. It was .40 caliber ammunition in the box?

22 A. I don't remember. There was a bunch of .40
23 caliber shells in there, but there was some
24 nine millimeters in the box too.

25 Because, I mean, you know, when I'd go to

1 ATP to shoot there would be duds, what they
2 called squids, whatever, duds, and there was
3 some nine millimeters in the box. That's not
4 the way it came from ATP but when he ordered
5 them, that's the way they came, all kind of
6 mixed up with some other shells in there.

7 Q. Did there come a point in time when you
8 noticed that your .40 caliber Smith & Wesson
9 and the ammo box was not in your truck any
10 more?

11 A. It was, I would say, after -- I am going to
12 say after -- as far as the dates and times and
13 stuff like that, I kind of have a hard time
14 remembering times and stuff like that. But I
15 think it was after they picked up Anthony for
16 what you'all using him for.

17 Q. You heard about when the three people were
18 murdered in Archdale Forest?

19 A. Oh, yes, it was all over the news.

20 Q. And had Anthony used your truck prior to
21 when you noticed the gun and the ammo box
22 missing?

23 A. I mean, Anthony used to use the truck -- at
24 that time, you know, that we heard about the
25 murders and stuff like that, I mean it -- I

1 would say Anthony would borrow the truck pretty
2 regular; you know, once or twice a week or so.

3 So, I would say yeah.

4 Q. And it was after that that you noticed the
5 gun and the ammo box were missing?

6 A. Yes.

7 Q. And after these murders was there a time
8 when you had a conversation with Anthony about
9 DNA? Do you recall him asking you some
10 questions?

11 A. Yeah. Me and him, he come in the house one
12 day and I'm not absolutely sure if he was
13 -- I ended up buying something from him or
14 something like that. But he asked me, he said
15 did I ---

16 MS. WOOD: Judge, I'm going to
17 object to hearsay.

18 THE COURT: To what he said?

19 MS. WOOD: (Affirmative nod).

20 THE COURT: Overruled.

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR JENNINGS:

23 Q. What did Mr. Sanders say about DNA?

24 A. Yeah, he asked me, he said do I know
25 anything about DNA?

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1 I said, 'Well, I know a little bit about
2 DNA.'

3 He said, 'What is DNA?'

4 I said, 'DNA is either blood, saliva or
5 semen.'

6 And that was pretty well much the
7 conversation. I mean, I thought -- me, myself
8 personally, I thought when he asked me that --
9 I thought that Anthony might be getting in
10 trouble for some kind of sexual act with some
11 girl, because he was always around girls. You
12 know? And I figured he might have made a boo-
13 boo, made a mistake with a girl and thought he
14 might get in trouble for a sexual offense or
15 something like that. That's what I thought he
16 asked me about it. I didn't realize at that
17 time, didn't catch onto to about anything else.

18 Q. That's all I have, Mr. Alexander. If
19 you'll answer any questions Mr. Sanders'
20 attorney has.

21 THE COURT: Cross examine.

22 CROSS EXAMINATION

23 BY MS. WOOD:

24 Q. Mr. Alexander, how are you?

25 A. I'm doing fine. How are you?

1 Q. Good. You stated a second ago that you
2 have some trouble with remembering dates and
3 times and memory loss, right?

4 A. If you'd done as much drugs as I have, yes,
5 you would.

6 Q. So your memory loss is due to your use of
7 crack?

8 A. Well, that's not true because -- I mean,
9 after I moved back in my mother's house, I had
10 a back injury and I had -- I had an air
11 conditioning unit fall on me, and for three
12 years I took Percocet. For three years I took
13 a hundred and twenty Percocets every three
14 years (sic). And at the time, when I first
15 moved back to my mom's, I was starting to wean
16 off of Percocet.

17 As far as my memory and stuff like that,
18 yeah, I can remember a lot of the major stuff
19 and stuff like that. But as far as dates and
20 times and stuff like that, I can get you close
21 but I can't get you right on the nose.

22 Q. Are you still using drugs now?

23 A. No, ma'am. I'm clean right now.

24 Q. How long have you been clean?

25 A. Right now, about a month.

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1 Q. You haven't used any drugs today?

2 A. Ma'am?

3 Q. You haven't used any drugs today?

4 A. No, ma'am.

5 Q. Let me back you up a second. You said that
6 you -- do you remember when you reported that
7 your truck had been broken into?

8 A. Yes, I do remember when it was reported. I
9 think it was -- I'm thinking it was a day after
10 the murders, or maybe two days after the
11 murders that I reported the truck stolen.

12 Q. Okay, so you don't remember the exact date?

13 A. Not stolen but broken into.

14 Q. Right. You don't know if you called the
15 police on August 2nd of 2007 to report your
16 truck stolen.

17 A. I know -- I do know it was -- I had a bad
18 feeling about that. I had a bad feeling. And
19 I think it was right after what happened in
20 Archdale. And I had a bad feeling, and that's
21 when I looked in the truck and I didn't notice
22 the gun in there. I waited -- I kind of
23 lollygagged around for a little bit deciding
24 what to do. I was scared about the gun. I
25 didn't know if the gun was involved in what

1 happened or anything like that.

2 Q. So you don't remember calling the police
3 that the reason it took you a month to report
4 that your car had been broken into and your gun
5 stolen was because you thought you had left it
6 in a storage shed?

7 A. No, no. I told that officer -- I think I
8 told that officer I had several others in the
9 storage shed. As a matter of fact, at that
10 time I had a Mac-12, a Mac-10. I had a .380,
11 I had a 38, I had a .410 shotgun. I had
12 several guns. A lot of my guns were in the
13 storage shed. The only gun that I kept in the
14 truck or in the house was for protection.

15 Q. Have you reviewed your statement? Do you
16 remember giving a statement to the police?

17 A. I remember giving a statement to the police
18 but, no, I have not reviewed that statement.

19 MS. WOOD: Judge, can I approach?

20 THE COURT: You may.

21 CROSS EXAMINATION CONTINUED

22 BY MS. WOOD:

23 Q. Is this your handwriting?

24 A. That's not my handwriting, but that's my
25 signature, because I had the officer do the

1 writing and I signed it.

2 Q. The officer actually wrote this?

3 A. Yes, because I'm not very good at spelling
4 and stuff.

5 Q. Do you see that date?

6 A. It's 8/3/07.

7 Q. So that's August 3rd, 2007, at 2:10 p.m.?

8 A. It looks to me like 2:40, but it could be
9 2:10. Looks like a four to me.

10 Q. 2:10 or 2:40, sometime in the afternoon.

11 Do you have your glasses?

12 A. I do not have my glasses on me, no.

13 Q. Do you think you'll be able to make this
14 out?

15 A. I can make it out if I hold it back.

16 THE COURT: Why don't you just read
17 it for him?

18 MS. WOOD: Okay, Judge, I'll be
19 happy to do that.

20 THE COURT: That will be fine.

21 CROSS EXAMINATION CONTINUED

22 BY MS. WOOD:

23 Q. It says, (reading): "Back in January of
24 this year I bought a Smith & Wesson from Peter
25 Knight. It was a .40 caliber semi-automatic.

1 The gun had fifteen rounds. The ammo was kept
2 in an ammo can and was loose in that can. I
3 don't know if was stolen from the truck or if
4 it was in the storage shed." Do you remember
5 saying that?

6 A. Yeah, I probably said that, yes. I mean, I
7 don't remember saying it, but I probably did
8 say that, yes.

9 Q. Now, you also told the police that Mr.
10 Sanders never had access to that gun when he
11 would borrow your car. Do you remember telling
12 them that?

13 A. I mean, literally, as far as giving him the
14 gun, no, I never gave him the gun. I never
15 gave him access. If he had access to the
16 vehicle, he had access to the gun because the
17 gun was right underneath the seat of the
18 vehicle. But he did not know it was there.

19 Q. But you didn't remember telling them that
20 you actually took the gun out of the car when
21 you would give it to Anthony?

22 A. No, I did not -- I remember saying
23 something to the officer about that. And I
24 told him I did not recall pulling the gun out
25 of the truck, because I kept the gun underneath

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1 the seat.

2 Q. Okay.

3 A. I never, never pulled the gun from under-
4 neath the seat whenever Anthony was around the
5 vehicle.

6 Q. You always traveled in the car with a
7 concealed weapon?

8 A. I had a concealed weapons license. Yes.

9 Q. Okay. So you don't remember telling them
10 that you didn't think Anthony ever had access
11 to the gun because you would remove it from the
12 truck when Anthony borrowed your truck. You do
13 not remember saying that?

14 A. I do not recall saying that.

15 MS. WOOD: Beg the Court's
16 indulgence.

17 THE COURT: Take your time.

18 CROSS EXAMINATION CONTINUED

19 BY MS. WOOD:

20 Q. Okay, Mr. Alexander. You said Anthony
21 would sometimes give you crack in exchange for
22 using the truck?

23 A. Yes.

24 Q. And sometimes he'd give you money, grocery
25 money?

- 1 A. (No verbal response).
- 2 Q. Do you remember telling the police that?
- 3 A. Mostly drugs. Mostly drugs.
- 4 Q. How much did you pay Mr. Knight for the
- 5 gun?
- 6 A. I think I paid Mr. Knight four hundred or
- 7 four-fifty for it. As a matter of fact, I gave
- 8 them a copy of the bill of sale, paperwork and
- 9 receipt where I'd bought the gun.
- 10 Q. Do you remember what else you reported
- 11 stolen from the car?
- 12 A. No.
- 13 Q. You don't remember telling them that ten
- 14 CDs were stolen and a CD holder?
- 15 A. I might have.
- 16 Q. Magazine with fifteen rounds?
- 17 A. That was in the gun, it was an extra one.
- 18 Q. The holster?
- 19 A. The holster, yeah.
- 20 Q. And some sort of box that was under the
- 21 seat as well? Or maybe it was a soft container
- 22 for the gun?
- 23 A. No, it wasn't a box. It was a holster that
- 24 had a metal clasp that slid up underneath the
- 25 seat. That's what would hold it up underneath

1 the seat.

2 Q. The ammo can, State's 64, -- have you been
3 in Mr. Knight's shop?

4 A. It's not a shop. It's his house.

5 Q. So it's his house. Trader's World is run
6 out of his house?

7 A. It's in his house. When you walk in Peter
8 Knight's house -- you go right in the garage
9 door and right there by the garage door he's
10 got probably fifty of them.

11 Q. Fifty of these?

12 A. Yeah.

13 Q. Is there anything special about any of
14 these that you would be able to pick it out
15 from one of the fifty that he has in his store
16 in his house?

17 A. No.

18 Q. So you don't know that this was the one
19 that was maybe in your truck or not?

20 A. No, I couldn't tell you that's exactly what
21 was in the truck, no. It looks like it.

22 Q. It's like the other fifty that Knight has?

23 A. Yes, ma'am.

24 Q. I don't have anything else.

25 THE COURT: Redirect?

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1 SOLICITOR JENNINGS: No, sir.

2 THE COURT: You may come down, sir.

3 Thank you.

4 SOLICITOR JENNINGS: May he be
5 excused?

6 THE COURT: Any objection?

7 MS. YOUNG: No, sir.

8 THE COURT: You are also free to
9 leave. Thank you.

10 (WITNESS STEPS DOWN)

11 THE COURT: Any additional witnesses
12 today?

13 SOLICITOR JENNINGS: Not today.

14 THE COURT: Very well. Anything
15 further from the defendant?

16 MR. FARLEY: No, Your Honor.

17 THE COURT: I misspoke. I apologize
18 for calling Mr. Sanders, Grant. I don't know
19 what I was thinking of. But I apologize, Mr.
20 Sanders. I know that you are not Mr. Grant.
21 So thank you, sir. We'll be at-ease, then,
22 until 9:30. Thank you.

23 (COURT IN RECESS)

24 (TRANSCRIPT CONTINUED NEXT PAGE)

25

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2

3 (DEFENDANT PRESENT)

4 THE COURT: Are you ready to

5 proceed?

6 SOLICITOR JENNINGS: Yes, Your

7 Honor.

8 THE COURT: Very well. Thank you
9 very much. Let the record reflect Mr. Sanders
10 is present. Good morning, Mr. Sanders.

11 MR. SANDERS: Good morning.

12 THE COURT: The State's ready to
13 call their next witness?

14 SOLICITOR JENNINGS: We are, Your
15 Honor.

16 THE COURT: You may proceed, sir.

17 SOLICITOR HILTON: Your Honor, the
18 footprint expert yesterday, the pictures, I
19 thought, were admitted, which were State's 82
20 through 88. According to the court reporter
21 they have not been admitted. I think without
22 objection we would admit them now.

23 MR. FARLEY: We have no objection.

24 THE COURT: Very well. They are
25 admitted without objection. Thank you very

1 much.

2 (SO ENTERED AS STATE'S EXHIBITS 82 THROUGH 88)

3 SOLICITOR JENNINGS: We would call
4 Dr. Cynthia Schandl.

5 (WITNESS TAKES STAND)

6 CYNTHIA ANA SCHANDL, being duly sworn
7 to tell the truth, the whole truth and nothing
8 but the truth, testified, as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR JENNINGS:

11 Q. Good morning, Dr. Schandl. Where are you
12 employed now?

13 A. At the Medical University of South
14 Carolina in Charleston.

15 Q. And in what capacity?

16 A. Assistant professor, forensic pathologist.

17 Q. How long have you been at MUSC?

18 A. I've been at MUSC since 1991, and on
19 faculty since 2004.

20 Q. And during that time you've performed
21 numerous autopsies and testified numerous
22 times?

23 A. Yes, sir.

24 Q. How many times have you been qualified as
25 an expert?

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1 A. More than fifty.

2 SOLICITOR JENNINGS: Your Honor, we
3 would offer her as an expert in forensic
4 pathology.

5 THE COURT: Any objection?

6 MR. LEIENDECKER: No objection, Your
7 Honor.

8 THE COURT: Very well, I will permit
9 her to render opinions in the area of forensic
10 pathology.

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR JENNINGS:

13 Q. Dr. Schandl, were you working on July the
14 10th, 2007 when three victims of a homicide were
15 brought to MUSC for autopsy?

16 A. Yes, sir.

17 Q. I believe you actually did two of them and
18 Dr. Presnell did one?

19 A. That is correct.

20 Q. For expediency, you're just going to
21 testify to all three?

22 A. That's correct.

23 Q. Let's begin with Diane Grant. She was a
24 44-year-old black female?

25 A. That was the information provided, yes,

1 sir.

2 Q. On all three victims you have diagrams
3 that were created during the autopsies?

4 A. Yes, sir.

5 Q. State's Exhibits 38, 39 and 40. Were
6 those prepared during the autopsies?

7 A. Yes, they were prepared at that time.

8 Q. Would these assist you in your testimony?

9 A. Yes, they will.

10 SOLICITOR JENNINGS: Your Honor, we
11 would offer these into evidence.

12 THE COURT: Any objection?

13 MR. LEIENDECKER: No objection, Your
14 Honor.

15 THE COURT: Without objection,
16 State's 38, 39 and 40 are admitted into
17 evidence.

18 (SO ENTERED AS STATE'S EXHIBIT 38)

19 (SO ENTERED AS STATE'S EXHIBIT 39)

20 (SO ENTERED AS STATE'S EXHIBIT 40)

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR JENNINGS:

23 Q. Dr. Schandl, if you would describe what
24 evidence of injury you found during the autopsy
25 of Diane Grant.

1 A. There was a single gunshot wound. There
2 was stippling around that gunshot wound which
3 was to the back of her head on the right-hand
4 side. The round itself was found to go from
5 the right side to the left side and from back
6 to front, running from the right side of the
7 head along the base of the skull and exiting at
8 the left cheek. This round then caused
9 bleeding into and around the brain, which led
10 to her death.

11 Q. I'll show you State's Exhibit 40. This
12 is a diagram that was prepared of the injuries
13 that she suffered. The injury that is
14 delineated on the back of her head as "A" is
15 the entrance wound?

16 A. Yes, sir.

17 Q. And is the stippling that you noted, is
18 that shown on the diagram?

19 A. Yes, it is shown by the small dots that
20 are on the skin of the diagram, surrounding
21 that defect "A."

22 Q. And for your purposes during the autopsy
23 what's the significance of stippling being
24 present?

25 A. Well, there are a limited number of things

1 that we can look for in relation to a gunshot
2 wound that can give us an idea of the range of
3 fire, meaning how far from the muzzle of the
4 gun, the end of the gun to the target -- in
5 this case, the head behind the ear. And those
6 thing include soot which would indicate a
7 contact gunshot wound or stippling which is
8 what we see in this case, which are actual
9 abrasions of the skin which are indicated by
10 small dots, which indicate what we consider a
11 close-range gunshot wound.

12 Q. And what do you consider a close-range
13 gunshot wound?

14 A. Generally speaking, you will not see
15 stippling if the muzzle of the gun is more than
16 about three feet from the target.

17 That's generally speaking. The only way you
18 clearly delineate a range would be to test fire
19 the weapon and see at what range from the
20 muzzle to the target leaves that particular
21 pattern.

22 Q. As the bullet exited through wound "B",
23 obviously no projectile was recovered?

24 A. That is correct. There was no projectile
25 or bullet in this case.

1 Q. And what did you find was the cause of
2 death for Ms. Grant?

3 A. Single perforating close-range gunshot
4 wound to the head.

5 Q. As to Jatavius Devore, you were supplied
6 information that he was a 20-year-old black
7 male?

8 A. Yes, sir.

9 Q. And what evidence of injury did you note
10 during his autopsy?

11 A. During his autopsy it was apparent that
12 he had a laceration, which is a split of the
13 skin, due to blunt trauma at the right side of
14 the scalp. Underneath that laceration there
15 was a skull fracture. The skull is made up of
16 two layers of bone, and this particular skull
17 fracture just fractured the outer layer of
18 bone. That was associated with some
19 hemorrhage. He had several abrasions on his
20 body which are just scrapes, and then there was
21 a gunshot wound -- a penetrating gunshot wound,
22 in this case. The last case, with Ms. Grant
23 was a perforating gunshot wound, meaning that
24 the round or bullet traveled all the way
25 through. And in the case of Jatavius Devore,

1 the gunshot wound was a penetrating gunshot
2 wound which started at the left cheek and
3 traveled into the head, through the brain stem,
4 through part of the brain called the cerebellum
5 and then the bullet was recovered in three
6 fragments from the back of the right side of
7 the head. In this case this was another what
8 we would consider close-range gunshot wound.
9 There was stippling also associated with the
10 entry wound to the left cheek.

11 Q. And looking at State's Exhibit 39, the
12 dots around the left eye and the associated
13 gunshot wound, that's the stippling that you
14 described?

15 A. That's correct. From the circle in the
16 center right below the left eye there's the
17 defect of the gunshot wound hole. And then the
18 dots surrounding it are representing the
19 scrapes to the skin that we term "stippling."

20 Q. And as with the autopsy of Ms. Grant, you
21 termed that a close gunshot wound as well?

22 A. That is correct.

23 Q. And as you said before, the muzzle of the
24 gun would have been inside of three feet?

25 A. Yes. By the appearance as compared to Ms.

1 Grant, the stippling pattern is a little bit
2 tighter. That suggests that it's a closer
3 range. Again, I cannot be any more specific
4 than less than three feet. But a test firing
5 would give you a better idea.

6 Q. And you were able to recover the
7 projectile?

8 A. Yes, sir.

9 Q. I show you what's marked as State's
10 Exhibit 92.

11 A. Yes, this is the main projectile and the
12 additional fragments -- and that's what this is
13 here.

14 SOLICITOR JENNINGS: Your Honor,
15 we would offer 92 into evidence.

16 THE COURT: Any objection?

17 MR. LEIENDECKER: No objection.

18 THE COURT: Without objection,
19 admitted into evidence.

20 (SO ENTERED AS STATE'S EXHIBIT 92)

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR JENNINGS:

23 Q. The wound to Jatavius's head with the
24 accompanying skull fracture, what type of an
25 injury was that?

1 A. We call that a blunt force injury. That's
2 one that you can see -- it's sort of the
3 irregular wound to the right side of the head.

4 And that is -- the reason that we call it
5 blunt trauma is that it has produced both a
6 laceration -- and a laceration is
7 differentiated from an incision or a sharp
8 injury, by what we see as tissue bridging. So
9 there will be areas of tissue that will bridge
10 between one side of the wound and the other.
11 So that differentiates it for us between blunt
12 trauma and sharp trauma. In this case it is
13 blunt trauma.

14 In addition, beneath that laceration again
15 is a skull fracture of the outer table, not the
16 inner table, of the skull.

17 Q. The cause of a skull fracture would
18 require some significant type of force?

19 A. Yes, some sort of blunt force.

20 Q. And I think, as you testified, the bullet
21 as it went through his head struck the
22 cerebellum as well as the brain stem?

23 A. That is correct.

24 Q. And those would have been fatal injuries?

25 A. Yes, sir.

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1 Q. And, in fact, was that the cause of his
2 death?

3 A. Yes, sir. Brain stem and cerebellum
4 destruction due to close-range penetrating
5 gunshot wound to the head.

6 Q. You also performed the autopsy on Deanna
7 Devore?

8 A. Yes, sir.

9 Q. A 15-year-old female?

10 A. That is the information I received, yes,
11 sir.

12 Q. She was a little more complex autopsy as
13 far as the number of injuries?

14 A. Yes, she was shot multiple times.

15 Q. If you would, describe to us the -- let's
16 start with the wound to the head. And I'll
17 show you State's Exhibit 38.

18 A. Okay. So we're looking at the side view,
19 so where I've drawn on these diagrams -- as you
20 can see, lateral to the right eye there is an
21 oval effect with little dots around it. That's
22 the gunshot wound that we call gunshot wound A.
23 That is an entrance wound. That wound -- that
24 bullet went from A to C, which you can see
25 there on the side of the neck next to the jaw

1 line.

2 The middle one there -- there's three
3 wounds there to the neck.

4 So A went to C. Within that gunshot wound
5 pathway, there were fractures to the frontal
6 skull and to the facial bone. Then it went
7 through soft tissue and part of the round
8 exited at C. And a portion of that round was
9 identified in that tract from A to C. So we
10 have a piece of the bullet -- not a complete
11 bullet, but a piece of the bullet, associated
12 with the gunshot that goes from A to C.

13 Also shown on this diagram are two
14 additional entrance gunshot wounds to the right
15 side of the neck. One is B and then the other
16 is D. Both of those are, again, behind the
17 angle of the jaw on the right side of the face.
18 Entrance B and D, again there's a stippling
19 pattern so, again, those dots on this diagram
20 represent actual abrasions of the skin in a
21 stippling pattern are suggestive that one of
22 those, either B or D, was a close-range gunshot
23 wound. It may be both B and D, or it may be
24 just one or the other. I cannot tell because
25 the stippling surrounds all three of those

1 wounds, B, C and D. So gunshot B went through
2 -- it entered the neck here where you see "B,"
3 and then it did, in fact, fracture the base of
4 the skull and disrupt the brain stem where it
5 connects to the very proximal spinal cord. So
6 at that junction, the medulla to spinal cord,
7 and then continued through the left cerebellum,
8 another part of the brain, and then continued
9 to exit at the left side of the head where you
10 see exit wound E. So that particular round did
11 result in destruction of the brain stem as well
12 as other parts of the brain, intracranial
13 hemorrhaging, including into the brain and
14 around the brain. And that is the round, from
15 B to E, that I would consider the immediate
16 cause of death, although the other gunshot
17 wounds may have directly contributed or been
18 fatal in and of themselves. B to E would have
19 been immediately fatal.

20 The other gunshot wounds that you see in
21 this diagram is that that goes from D, also on
22 the right side of the neck, traveled across the
23 midline and exited at F, which causes a
24 laceration to the earlobe on the left-hand
25 side. This gunshot wound actually fractured

1 the third cervical vertebral body. So it did
2 fracture the upper spine and likely would have
3 also caused a great deal of disability if not
4 death by that fracture to the upper cervical
5 spine.

6 I believe that explains the gunshot wounds
7 we see here.

8 Q. She also was shot from the back as well?

9 A. Yes, sir. Okay, this -- may I just
10 continue?

11 Q. Please.

12 A. This diagram, this is a diagram that
13 reiterates the gunshot wounds that we just
14 described using the face diagram, and then also
15 shows the additional gunshot wounds.

16 The gunshot wound to the back is
17 designated as "I", and it's a sort of round,
18 dark spot on the upper right side of the back.
19 This gunshot wound traveled to the left and
20 traveled up and actually exited at gunshot
21 wound G which you can see on the frontal view
22 of this diagram, right above the left clavicle.
23 The round did not enter into any of the body
24 cavities, but just went through soft tissues.
25 However, upon the pathway it did cause through

1 its effects bleeding into the left lung as well
2 as bleeding around the left lung as well as, of
3 course, damage to the subcutaneous tissues and
4 soft tissues that it traveled through. No
5 bullet was recovered because it went all the
6 way through her. So it perforated.

7 There was one other gunshot wound here and
8 that is "H". And that is in the clavicular
9 region on the right-hand side of the shoulder,
10 on the right-hand side. This is an entrance
11 wound that did result in retrieval of a bullet.
12 It was a penetrating gunshot wound. It did
13 cause fracture to the clavicle.

14 It is possible that the round that
15 traveled through Ms. Devore's face, from
16 A to C, continued and that H is a re-entry
17 wound rather than a separate entry wound or a
18 separate gunshot.

19 So, in total, that means that she was shot
20 either four or five times depending on whether
21 H is an entry wound or a re-entry wound in
22 association of the bullet that went from A to
23 C.

24 Q. So we had, I believe, two bullets and a
25 fragment recovered?

1 A. Yes, that is correct. So a fragment was
2 recovered within the pathway from A to C. A
3 bullet or at least a portion thereof was
4 recovered in relation to gunshot wound H to the
5 right shoulder. And then another bullet was
6 recovered from the body bag; so I'm not sure --
7 I do not know which perforating gunshot wound
8 that bullet belongs to.

9 Q. State's Exhibit 91, I believe that's the
10 bullet fragment?

11 A. Yes.

12 Q. And what you term bullet three, State's
13 Exhibit 90, was that recovered in association
14 with wound "H"?

15 A. Yes.

16 Q. And State's Exhibit 89 was termed bullet
17 one. That was from the bag?

18 A. That is correct.

19 SOLICITOR JENNINGS: Your Honor, we
20 would offer 89, 90 and 91 into evidence.

21 THE COURT: Any objection?

22 MR. LEIENDECKER: No objection.

23 THE COURT: Without objection 89
24 through 91 are admitted without objection.

25 (SO ENTERED AS STATE'S EXHIBIT 89)

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1 (SO ENTERED AS STATE'S EXHIBIT 90)

2 (SO ENTERED AS STATE'S EXHIBIT 91)

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR JENNINGS:

5 Q. The wounds -- the injuries associated with
6 entrance wound B that you've shown would have
7 been immediately fatal?

8 A. Yes.

9 Q. The bullet that went through the brain
10 stem and the spinal cord?

11 A. That is correct.

12 Q. As far as Ms. Devore's autopsy, did you
13 also perform what's commonly called a sexual
14 assault examination?

15 A. Yes.

16 Q. And part of that would be taking swabs
17 from her mouth.

18 A. That's correct.

19 Q. Obviously, the purpose would be for later
20 testing to determine if there was any sperm or
21 anything in those swabs?

22 A. That's correct. Those swabs are turned
23 over to law enforcement for testing.

24 Q. I'll show you State's Exhibit 65 which
25 is already in evidence. Is that the swab you

1 took?

2 A. Yes, sir.

3 Q. In your opinion all three victims, Ms.
4 Grant, Jatavius Devore and Deanne Devore,
5 you've labeled all of those deaths homicides?

6 A. That's correct.

7 Q. Thank you. If you would answer any
8 questions Mr. Sanders' attorneys have.

9 A. Yes, sir.

10 THE COURT: You may cross examine,
11 Mr. Leiendecker.

12 CROSS EXAMINATION

13 Q. Doctor, I'm Mark Leiendecker. I really
14 only have a very few or a couple of questions.

15 A. Yes, sir.

16 Q. In each of the diagrams that you were
17 discussing regarding the victims that you made
18 during the autopsy you mark or show stippling,
19 correct?

20 A. That is correct.

21 Q. At some of the wounds?

22 A. Right.

23 Q. And you told us in your testimony, if I
24 understood it, that that indicates a proximal
25 or close gunshot wound, correct?

1 A. Yes, sir.

2 Q. It's not a contact wound, but it's some-
3 where within a three-foot range, you say?

4 A. That is correct.

5 Q. And I think, if I understood your
6 testimony, you told us that you actually could
7 be more precise or correct in the distance if
8 you had the weapon or if a test fire of the
9 weapon were provided to you showing stippling
10 patterns and the distances, correct?

11 A. Yes. I wouldn't have performed that
12 testing, but it can be much more precise if
13 that testing is performed with the weapon
14 used and the type of ammunition used.

15 Q. And the way that works is they test fire
16 at distances and check the stippling on a test
17 pattern, correct?

18 A. That's correct.

19 Q. Then they would compare that to patterns
20 from the autopsy itself?

21 A. That's correct.

22 Q. And so having the weapon would be a
23 valuable asset in determining the distance of
24 the firing of that weapon?

25 A. Yes, you could narrow it down a great deal

1 with the weapon and the same ammunition.

2 Q. Thank you. No further questions.

3 THE COURT: Redirect?

4 SOLICITOR JENNINGS: No, sir.

5 THE COURT: You may step down. Do
6 you wish her to be excused?

7 SOLICITOR JENNINGS: Yes, sir.

8 THE COURT: Any objection, Mr.
9 Leiendecker?

10 MR. LEIENDECKER: No objection.

11 THE COURT: Thank you. You are also
12 free to leave.

13 (WITNESS STEPS DOWN)

14 THE COURT: You may call your next
15 witness.

16 SOLICITOR HILTON: The State would
17 call Detective Tim Morgan.

18 (WITNESS TAKES STAND)

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

22 DIRECT EXAMINATION

23 BY SOLICITOR HILTON:

24 Q. Thank you, Detective Morgan. You were
25 formerly with the Sheriff's Office, right?

1 A. That's correct.

2 Q. And when did you leave the Sheriff's
3 Office?

4 A. About two and a half weeks ago.

5 Q. And moved up to Virginia, I understand?

6 A. Yes, sir.

7 Q. How long were you with the Dorchester
8 County Sheriff's Office when you were there?

9 A. A little over -- about six and a half
10 years, from November of 2003 until about two
11 and a half weeks ago.

12 Q. While you were at the Sheriff's Office
13 were you one of the detectives assigned to
14 investigate the case against Mr. Sanders?

15 A. Yes, sir, I was.

16 Q. And as a detective what was -- because
17 there were many detectives. What was your role
18 in the investigation?

19 A. One of the primary roles I had in the
20 investigation was taking a look at all the
21 different phone records and obtain search
22 warrants and subpoenas for them and try to look
23 into all the information that was held
24 in the records.

25 Q. Let me back up just a little bit now to

1 ask you, how were you'all able to develop the
2 suspect originally in this case?

3 A. Originally, I believe we had an IBIS hit
4 off of some of the rounds that were recovered
5 that linked the rounds that have been fired
6 from the same weapon to a previous shooting.
7 We did have a suspect from a previous shooting
8 over at Hunters Ridge, I believe in March.

9 Q. That was Xavier Walker.

10 A. That's correct. And then when Mr. Xavier
11 Walker was brought in, he provided us with the
12 information about Mr. Sanders.

13 Q. And at that time did Mr. Walker provide
14 you with a telephone number for Mr. Sanders?

15 A. Yes, he did.

16 Q. Did he also provide his own cell phone
17 number?

18 A. Yes, he did.

19 Q. Were you'all able to obtain the records
20 based on those two telephone numbers?

21 A. Yes, we got the records from Suncom for
22 both telephone numbers.

23 Q. And you may have to look back in your
24 notes, but what were the numbers that were
25 given, to begin with with Xavier Walker?

1 A. The phone number for Xavier Walker was
2 843-270-5038.

3 Q. How about Anthony Sanders?

4 A. That phone number was 843-568-4913.

5 Q. And I think you said you were able to get
6 those records for the dates around July 9th and
7 July 10th and several days before and several
8 days after. Is that correct?

9 A. Yes, sir. For about a week's time with
10 the 9th and 10th right in the middle of that
11 week. I believe the 6th to the 12th is the
12 average time frame we looked at.

13 Q. With regard to Mr. Xavier Walker what were
14 you able to determine from his records?

15 A. Based on Xavier Walker's phone records we
16 determine that the phone was actually turned
17 off during the time that the homicides
18 occurred. The last call -- he actually called
19 his own phone number checking his voice mail on
20 July the 9th of 2007. That call was from
21 10:29.19 seconds to 10:30.42 seconds the night
22 of the 9th. And the phone was turned off until
23 -- the first call the following morning was an
24 incoming call from Mr. Sanders to Xavier Walker
25 at 8:46 a.m. on the 10th.

1 Q. So looking at Xavier's records there was
2 no phone activity from 22:30, which would be
3 about 10:30 at night, until 8:46 the next
4 morning. Is that correct?

5 A. That's correct.

6 Q. And how do we know that he just didn't
7 call anybody or didn't get any calls?

8 A. Because when we cross referenced Xavier
9 Walker's phone records with Anthony Sanders'
10 phone records, we see that Mr. Sanders actually
11 placed calls to Xavier Walker during that
12 timeframe. However, the phone calls don't
13 register on Xavier Walker's phone records,
14 which indicates that his phone was turned off;
15 which is why those phone calls wouldn't show up
16 on his records.

17 Q. So I guess it's safe to say that other
18 than knowing that his phone was turned off, we
19 can't really tell much from Xavier Walker's
20 records as far as his location or anything like
21 that. Is that right?

22 A. That is correct. Not during that time
23 frame. We can tell basically where he was when
24 the last call was made and again when the first
25 call came in. But during that time frame of no

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1 activity, there's no other information we can
2 glean from the records.

3 Q. Now let's go to Anthony Sanders' phone
4 records. Again, you were able to get a copy of
5 those?

6 A. Yes, sir, we were.

7 Q. And leading up to the time of the murders,
8 about 2:30 in the morning of July 10th, what --
9 kind of give a history of the phone activity.

10 A. Mr. Sanders was on his phone pretty
11 frequently. Numerous brief phone
12 conversations: thirty seconds, forty-five
13 seconds, two, three, four, five or six minutes;
14 you know, very brief conversations and a fairly
15 continuous phone use. There wasn't a whole lot
16 of gap in between the calls for the most part.

17 Q. But looking over them, there are some gaps
18 of ten or fifteen minutes or so?

19 A. Yes, sir, there were some time periods
20 within the timeframe of the murders in which
21 there were gaps in the phone calls.

22 Q. Turning your attention back to -- on my
23 numbers, start with call 375 up to about 367,
24 looking at the numbers on the left on the phone
25 records, the calls that were made at

1 approximately the time of the shooting, what
2 can we tell from those calls?

3 A. We can tell that there were calls that
4 were made at 1:41 a.m. on July the 10th, 2007 of
5 a minute and seventeen seconds, following by
6 another call at 1:45 a.m., another call at 1:46
7 a.m., another call at 2:04 a.m., 2:05 a.m.,
8 2:06 a.m., and then there's an eighteen-minute
9 gap from 2:06 a.m. until 2:24 a.m.

10 Q. And from your investigation as a detective
11 do you when the 9-1-1 calls started coming in?

12 A. The first 9-1-1 calls started coming in to
13 the Sheriff's Office at 2:24 a.m. that shots
14 had been fired.

15 Q. So phone activity all the way up until
16 about 2:05. Is that correct? Is that when
17 he made his last outgoing call?

18 A. That's correct. That's 2:05 and eleven
19 seconds, another three-second call that didn't
20 connect through, and that was to Xavier Walker.

21 Q. Then if I'm reading this correctly, he got
22 an incoming call, which may or may not have
23 been answered, forty seconds worth?

24 A. Correct.

25 Q. And then that's the gap that you're

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1 talking about, from 2:06:51 until 2:24:09?

2 A. Yes, sir.

3 Q. And then after that gap -- after that gap

4 at 2:24:09, it appears he called this number,

5 [REDACTED] 95 - it's either 84 or 64. My print is

6 weird. But whose phone number were you'all

7 able to determine that to be?

8 A. We determined that was the home phone

9 number of Madea Thompson, Anthony Sanders'

10 girlfriend, who resided at [REDACTED] Shagbark Trail

11 at Archdale Forest Apartments.

12 Q. I'm going to show you what's been marked

13 as State's Exhibit 1. Do you see [REDACTED] Shagbark

14 Trail on there?

15 A. Yes, I do.

16 Q. And is this it here with the initials

17 "M.R." beside it?

18 A. Yes.

19 Q. The victim's body of Deanna, that was

20 found right behind this apartment, right?

21 A. That's correct. It was approximately, I

22 believe, about ten yards or less from the back

23 porch of Madea Thompson's apartment.

24 Q. Were you'all able to make contact with

25 Madea?

1 A. Yes, sir. The chief detective did, and
2 Detective Garrison and myself interviewed her
3 during the investigation.

4 Q. Did she have any comment about the phone
5 call that was made to her?

6 BOYD YOUNG: Objection, hearsay.

7 THE COURT: The question was did she
8 have a comment. Don't tell me what she said if
9 she did answer the question.

10 THE WITNESS: Yes, sir, she did.

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR HILTON:

13 Q. Did Madea appear to be truthful to
14 you'all?

15 BOYD YOUNG: Objection.

16 THE COURT: I sustain the objection
17 under 602.

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR HILTON:

20 Q. Let me ask you this, after Anthony Sanders
21 called Madea, were there other calls that were
22 made?

23 A. Yes, sir, there were.

24 Q. And what other calls of any significance
25 were made after the time of the murders?

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1 A. There was a call -- it seems during the
2 course of the records some of the phone calls
3 became longer.

4 There's a phone call of eighteen minutes
5 and thirty-seven seconds, which was
6 significantly longer than normal, that was
7 placed at 2:25 a.m. to [REDACTED]-6759. That
8 number we determined to be the cell phone of
9 Shala Williams, one of Mr. Sanders' girlfriends
10 who lived in Goose Creek.

11 And then there were numerous calls to a
12 [REDACTED]-6116 which was Shakira Barrett
13 (phonetic) living up in the Roanoke, Virginia
14 area. Again, he was speaking with her on and
15 off through the course of the morning for a few
16 hours, with the timing of those calls fifty-one
17 minutes and fifty-five seconds placed at 3:24
18 a.m.

19 Q. With these phone records, is there any way
20 for you to tell the location that the call was
21 placed from?

22 A. Yes, sir. The third column from the left,
23 there's numerous four-digit numbers. Those
24 numbers coincide with the specific cell phone
25 tower that the call hit off of in within the

1 cellular network. And we can tell based on the
2 location of those towers the location of where
3 the call had been placed from.

4 Q. And looking at these records there's about
5 three towers. There's a 6141, a 6140, 6139.

6 Where are those towers located?

7 A. Tower 6141, I don't have the physical
8 address in front of me. I don't have the
9 actual list for that one. It's located at the
10 back of Stratton Capers Subdivision, which is a
11 mile and a half up Ashley Phosphate Road on the
12 left-hand side.

13 Tower 6040 is located at [REDACTED] Trade
14 Street. It's directly behind the Festival
15 Center, which is a big shopping center at
16 the intersection of Ashley Phosphate and
17 Dorchester Road.

18 Tower 6139 is located at [REDACTED] Yolanda
19 Drive which is also Cross County Road, down
20 Dorchester Road headed towards Charleston
21 County, a little bit further actually, in
22 Charleston County.

23 Tower 6024 is located at [REDACTED] Ashley
24 River Road, which is south of this area, just
25 on the other side of the river from these

1 locations here.

2 Q. The tower that's closest to Archdale
3 Forest Apartments, those apartments on the map
4 there, which tower is that?

5 A. That would be Tower 6040, located behind
6 the Festival Center, less than a mile away.

7 Q. And is that the tower that he was pinging
8 off of from -- let's see, from about 1:38 all
9 the way up until -- I believe the last call
10 made on that tower is 2:26. Is that correct?

11 A. That is correct. 2:26 and 2:27 is the
12 last one for that tower during this time frame.

13 Q. And then what can we tell about his
14 movements after that time, from 2:26 onward?

15 A. From 2:26 you see a phone call at 2:33,
16 and again at 2:34 which is pinging off of Tower
17 6139.

18 Then at 2:36, 2:37 he hits off of 6024.
19 He kind of toggles back and forth between 6024
20 and 6139 which would indicate that he was
21 heading ---

22 BOYD YOUNG: Objection. Calls for
23 speculation and opinion, which he hasn't been
24 qualified to give.

25 THE COURT: I'll allow that under

1 701. Overruled. You may answer the question.

2 THE WITNESS: It would indicate that
3 he's heading southeast in the general direction
4 of Popper Dam Creek, which is his mother's
5 apartment.

6 DIRECT EXAMINATION CONTINUED

7 BY SOLICITOR HILTON:

8 Q. This information about tower locations and
9 so forth, where did you get that from, the
10 actual locations of the towers?

11 A. That came from Suncom. I sent Suncom a
12 subpoena on July the 9th of 2008 for specific
13 physical locations of latitude and longitude of
14 the actual towers that were listed in these
15 records.

16 Q. In Mr. Sanders' phone records or Xavier
17 Walker's records were you able to cross-link
18 any of the victims' telephone numbers, to match
19 up any calls coming in or going from Mr.
20 Sanders' telephone?

21 A. No, we didn't have any of the victims'
22 numbers that appeared on either Mr. Sanders' or
23 Mr. Walkers' phone records.

24 Q. Let me ask you, because you didn't have
25 any of the victims' numbers, did you actually

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1 have their phone numbers?

2 A. We did have the phone numbers, the home
3 number and some cell phone numbers which we
4 also obtained records for. And we cross-
5 checked both their records against Mr. Sanders'
6 and Mr. Walker's records and then vice-versa.
7 We didn't have any connections there as far as
8 phone calls.

9 SOLICITOR HILTON: Your Honor, at
10 this time we'd offer State's 1 into evidence.
11 I don't think it's been moved until this point.

12 BOYD YOUNG: No objection.

13 THE COURT: Without objection
14 State's 1 is admitted.

15 (SO ENTERED AS STATE'S EXHIBIT 1)

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR HILTON:

18 Q. Please answer any questions the defense
19 may have for you.

20 A. Yes, sir.

21 THE COURT: You may cross.

22 CROSS EXAMINATION

23 BY MR. YOUNG:

24 Q. Good morning, Mr. Morgan.

25 A. Good morning.

1 Q. Let me start with Xavier Walker's phone
2 records. If you have those, I think that they
3 are the last page, or just one page of Xavier
4 Walker's telephone records, right?

5 A. I've only got this one. There were like
6 140 pages because we had gone back to the
7 previous shooting, back in March. So there's
8 only one call per page when the records are
9 that old. So this is the page that encompassed
10 the time around the homicides.

11 Q. So this encompasses July 9th over to July
12 10th?

13 A. Correct.

14 Q. And you talked about his cell phone was
15 turned off between 22:30 and 08:49. Is that
16 right?

17 A. 08:46, yes.

18 Q. 8:46. For that time. When somebody's
19 cell phone's turned off there's no way to know
20 where it was?

21 A. Correct.

22 Q. Previously in the day, if you'll look down
23 to charges 75 and 76, 79 and 80, 82 and 83,
24 what tower was those phone calls made from?

25 A. Tower 6040.

1 Q. That's the same tower that you were
2 talking about Mr. Sanders being on, around
3 Archdale?

4 A. Correct.

5 Q. Historical tracking of cell phones and
6 realtime tracking of cell phones are two
7 different things. Is that right?

8 A. Yes, sir. They have a different burden
9 -- obviously, there's a greater interest of
10 privacy with realtime compared to historical
11 data.

12 Q. On realtime cell phone tracking you can
13 triangulate the signal and actually pinpoint
14 a pretty small area of location. Is that
15 correct?

16 A. Yes, sir.

17 Q. Historically, all you know is what tower
18 it was.

19 A. You can determine down to the sector,
20 which would be direction or compass setting,
21 what sector within the tower. I don't have
22 that in this case because we didn't have the
23 knowledge at the time of the incident. So by
24 the time I subpoenaed the records there was no
25 sector information any more, so they couldn't

1 pinpoint it down.

2 Q. You could get a directional arrow off of
3 the tower? Today?

4 A. Correct.

5 Q. You didn't have that information for Mr.
6 Sanders' phone calls?

7 A. That's correct.

8 Q. All you know is that he hit off of a
9 particular tower?

10 A. Yes, sir.

11 Q. And then switched to another tower?

12 A. Yes, sir.

13 Q. And you're using that as your best guess
14 as to which direction he was going?

15 A. It's not a best guess. I would say
16 because of the way the network is set up, you
17 know, this indicates the direction he was going
18 if that's the tower that would be hit off of by
19 his cell phone that was being used.

20 Q. I refer to you to Mr. Sanders' records.
21 I'm looking at page seven of sixteen, and I'm
22 looking at -- there's a number of charges at
23 the bottom of the page, 382 to 379, that are
24 all the 6040 tower. Is that correct?

25 A. Yes, sir.

1 Q. And then there's one charge, number 378,
2 that's on the 6141 tower, right?

3 A. Yes, sir.

4 Q. Now, I'm trying to get an idea based on
5 what you're telling me is that at 1:27:46 he
6 makes a phone call for three minutes that's
7 hitting on 6040, right?

8 A. Yes, sir.

9 Q. So between the time 1:30:59 and 1:34:55 he
10 went from Dorchester over to the Charleston
11 tower, 6141?

12 A. 6141 is located at the back of Stratton
13 Capers off Ashley Phosphate.

14 Q. I thought that was 6139.

15 A. 6139 is the one that's down in Charleston
16 County off Cross County on Yolanda Drive. 6141
17 is located at the back of Stratton Capers,
18 which is in pretty close proximity to where the
19 6040 tower would be.

20 Q. Well, say, for the period of -- I'm trying
21 to get this right -- one minute and -- I'm
22 looking at the end time -- 1:34:59 is the end
23 time that he stops on the 6141 tower; right?

24 A. That is correct.

25 Q. And then it goes back to the 6040 tower

1 for a period of a minute and two seconds.

2 A. Yes, sir.

3 Q. There's different things that -- signals
4 overlap. Cell towers overlap. Is that
5 correct?

6 A. Yes, they transition for continuous
7 coverage.

8 Q. Right. When I'm driving down the road,
9 I make a call and my cell phone starts off of
10 one tower, but as I move further away from that
11 tower my call switches to other towers.

12 A. That's correct.

13 Q. That is not reflected in these records.

14 A. No, sir. The originating tower would be
15 the four-digit code representing where the call
16 was placed off of.

17 Q. And it wouldn't have any information about
18 the travel location between the time that the
19 phone call originated and the time that it
20 ended?

21 A. Not based on these records, no, sir.

22 Q. The call -- I believe you'all were
23 discussing the charge 355 which was the call to
24 the 540 number.

25 A. Yes, sir.

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- 1 Q. Do you see that call?
- 2 A. Yes, sir.
- 3 Q. You see that that number was also called
- 4 at -- it looks like 1:46 to me, charge number
- 5 373.
- 6 A. Yes, sir, it is.
- 7 Q. Was that number also called at 1:27,
- 8 charge 379?
- 9 A. Yes, sir.
- 10 Q. And it was also called at 1:16, charge
- 11 380?
- 12 A. Yes, sir.
- 13 Q. And again on 381 at 1:14?
- 14 A. Yes, sir.
- 15 Q. And again at 1:13?
- 16 A. That is an incoming call from -- yes, sir.
- 17 She called him at 1:13. Charge 382? Is that
- 18 the one you're referring to?
- 19 Q. Yes.
- 20 A. Yes.
- 21 Q. So there are a number of calls to that
- 22 number prior to the time of the murders?
- 23 A. Yes.
- 24 Q. The telephone number that was given to you
- 25 for Anthony Sanders, that came from Xavier

1 Walker, correct?

2 A. Correct.

3 Q. When you pulled the subscriber information
4 for the telephone number that Mr. Walker gave
5 you it didn't come back to Anthony Sanders, did
6 it?

7 A. Not specifically to Anthony, no, sir.

8 Q. What do you mean "not specifically to
9 Anthony?"

10 A. The subscriber records from Suncom came
11 back to Bernard Sanders, [REDACTED] Popperdam Creek
12 Drive, North Charleston, South Carolina 29418.

13 Q. And that's Mr. Sanders' brother?

14 A. Yes.

15 MR. YOUNG: Beg the Court's
16 indulgence.

17 THE COURT: Certainly.

18 CROSS EXAMINATION CONTINUED

19 BY MR. YOUNG:

20 Q. Thank you. That's all the questions I
21 have.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY SOLICITOR HILTON:

25 Q. Detective Morgan, these phone records,

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1 they're not -- you can't pinpoint the location
2 of Sanders or Xavier Walker or anybody based on
3 the information you have here. Isn't that a
4 fair statement?

5 A. That's correct, not down to within feet or
6 anything.

7 Q. And so the purpose of your cell phone
8 information was to kind of put him in an area.
9 Is that right?

10 A. That's correct. At the time, I believe
11 that the alibi he had provided was that he was
12 at his mother's house.

13 Q. There's been some question about whether
14 or not this is Mr. Sanders' phone number. And
15 we had talked about Madea Thompson. You had
16 talked about -- I think her name was Shakira
17 Barrett. You'all talked to those people,
18 right?

19 A. Yes, sir.

20 Q. Did they indicate who they were talking
21 to?

22 A. They did.

23 Q. And who was that?

24 A. Everybody that we interviewed based on
25 these phone records indicated they were

1 speaking with Mr. Sanders.

2 Q. Thank you.

3 SOLICITOR HILTON: Nothing further,
4 Your Honor.

5 THE COURT: Recross?

6 RECROSS EXAMINATION

7 BY MR. YOUNG:

8 Q. Mr. Morgan, you were in an interview
9 interrogation with Mr. Sanders when you were
10 present?

11 A. I don't believe I was actually present
12 when he was interviewed. I recall observing.
13 I wasn't one of the detectives that went into
14 the room, as I recall.

15 Q. I may have been mistaken. You observed
16 the interrogation?

17 A. Part of it. I believe I was home for the
18 night when he was actually arrested on the
19 traffic stop with Madea. I was home for that
20 night. I came in the next day, but I don't
21 believe I was one of the detectives that was
22 actually in the room with Mr. Sanders when he
23 was interviewed.

24 Q. Where are you getting this -- can you tell
25 me where you're getting this information that

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1 he provided an alibi?

2 A. I believe it was in the course of speaking
3 with Detective Garrison that his statement was
4 that he was at his mother's house.

5 Q. And Detective Garrison had put that into
6 his arrest warrant. Isn't that correct?

7 A. I don't recall. I do not recall the
8 warrant, sir.

9 Q. And you weren't here for Detective
10 Garrison's testimony.

11 A. No, sir.

12 Q. You were here when we did the *Jackson v.*
13 *Denno* hearing?

14 A. Yes.

15 Q. Were you present for Detective Garrison's
16 testimony?

17 MR. YOUNG: Your Honor, I guess I'm
18 kind of asking the Court for a little bit of
19 leeway here. I don't want to start recalling
20 people or rehashing the *Jackson v. Denno*
21 testimony. There's a transcript of it. I
22 guess I can reference that to clear up the
23 alibi.

24 THE WITNESS: I don't think he ever
25 said in the interview he was at his mom's

1 house.

2 MR. YOUNG: Okay.

3 RE CROSS EXAMINATION CONTINUED

4 BY MR. YOUNG:

5 Q. One more question. From 3:24 in the
6 morning - I think it's charge 355 - until close
7 to noon on the 10th, Mr. Sanders' cell phone was
8 consistently hitting off of tower 6040. Is
9 that correct?

10 A. That's correct.

11 Q. With one exception, and that was at 9:40
12 or 9:37:48. His cell phone switched to Tower
13 6141 for a period of ten minutes.

14 A. He goes for a period of two minutes and
15 thirty-two seconds. I guess the next call
16 ten minutes later would be back on 6040. He
17 continues on 6141 at 9:37 because, obviously,
18 we aren't sure at what point it transitions
19 over. At some point between 9:37 and 9:50 a.m.
20 on the 10th, he switched from 6141 back
21 to 6140.

22 Q. If I am standing equidistance from 6140
23 and 6141 what decides which tower my call
24 routes through?

25 A. It would be the mobile telephone switching

1 office, which is kind of the brains behind the
2 cell phone network, as to which tower it would
3 route to. Because both towers would be in
4 communication with the phone as well as being
5 in communication with the switch office. And
6 the switch office would make the determination.

7 Q. And they do that with algorithms to
8 preserve channel frequency and keep bandwidth
9 open and what's the most efficient direction of
10 traffic. All that stuff is factored in.

11 A. Correct. I don't know all that.

12 Q. Thank you.

13 THE COURT: Anything else?

14 SOLICITOR HILTON: No, sir.

15 THE COURT: You may step down.

16 (WITNESS STEPS DOWN)

17 THE COURT: Call your next witness.

18 SOLICITOR JENNINGS: Your Honor,
19 that's the evidence the State has to present.

20 THE COURT: Very well. Does Mr.
21 Sanders wish to present any testimony?

22 MR. LEIENDECKER: Your Honor, I'd
23 like a couple of minutes to confer with him.

24 THE COURT: If you will, because I'd
25 like to discuss with him his right to testify

1 if he wanted to. But I'll give you a few
2 moments to talk with him about that before I do
3 that. We'll be at-ease for about ten minutes.

4 MR. LEIENDECKER: Thank you.

5 (BRIEF RECESS)

6 (DEFENDANT PRESENT)

7 THE COURT: Mr. Young, are you ready
8 to proceed?

9 MR. YOUNG: Your Honor, we're ready.
10 Mr. Sanders is not going to testify with the
11 State's agreement that Mr. Sanders did not
12 provide an alibi. The defense rests.

13 THE COURT: Mr. Sanders, you've had
14 an opportunity to talk with your lawyers -- you
15 can be seated, if you want to -- about your
16 right to testify in this proceeding or not to
17 testify. Is that correct, sir?

18 MR. SANDERS: Yes, sir.

19 THE COURT: And you've had a chance
20 to reflect on that decision?

21 MR. SANDERS: Yes, sir.

22 THE COURT: And your decision is not
23 to offer testimony; is that correct?

24 MR. SANDERS: Yes, sir.

25 THE COURT: And you understand and

1 the same applies that I would certainly not
2 consider that against you in any fashion
3 because that's your Constitutional right and
4 privilege. You understand that?

5 MR. SANDERS: Yes, sir.

6 THE COURT: But it would be your
7 right to testify if you wanted to. You realize
8 that?

9 MR. SANDERS: Yes, sir.

10 THE COURT: Are you under the
11 influence of any alcohol or any medication here
12 today, sir?

13 MR. SANDERS: No, sir.

14 THE COURT: And do you know of
15 anything that's affecting your ability to
16 reason and make a decision of this nature?

17 MR. SANDERS: No, sir.

18 THE COURT: And you're comfortable
19 with your decision, sir?

20 MR. SANDERS: Yes, sir.

21 THE COURT: Very well. I find that
22 Mr. Sanders again has had the benefit of
23 competent counsel. He's indicated that he
24 fully understands and appreciates his rights,
25 and he's demonstrated that by his responses. I

1 find that he's made a conscious decision
2 to freely, voluntarily, knowingly and
3 intelligently desire not to offer testimony.
4 I find that, again, to be with certainly
5 competent legal advice.

6 That having been said, anything
7 further from the State by way of closing or
8 summary?

9 SOLICITOR JENNINGS: We would like
10 to make just a few comments.

11 THE COURT: Certainly. I'll be
12 happy to hear from you, Solicitor. Take your
13 time and take as long as you need, sir.

14 SOLICITOR JENNINGS: Thank you.
15 What strikes me about the case, Your Honor, is
16 that it is truly the quintessential who-done-
17 it. We've got a crime in the middle of the
18 night with no eyewitnesses. And what we're
19 left with is how so many attorneys phrase a
20 circumstantial evidence type case or even a
21 trial where you're putting together one piece
22 of a puzzle to form the picture of what
23 happened.

24 And that's what we end up with at the end
25 of the day in this case. By putting all these

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1 pieces of the puzzle together, we get a
2 conclusive picture of what happened, not only
3 in that apartment, but that apartment complex.
4 And while every piece of evidence, every piece
5 of the pie might be able to be nit-picked or an
6 effort made to explain away, when you look at
7 it in its totality it points, with no other
8 explanation, other than to Anthony Sanders as
9 the person that committed these three murders.

10 And it really starts with the time
11 line of when all this took place. I submit to
12 you my best theory on what happened is that Mr.
13 Sanders was in that apartment that night with
14 Deanna engaged in a sexual act. As to however
15 it happened, her brother or mother came in and
16 found them either returning to the home or was
17 there asleep and came downstairs. But that
18 initially Mr. Sanders shot Jatavius in the
19 face, and that Diane had made some effort to
20 get away. Obviously, her body was a little
21 closer to the front door. Her wound was to the
22 back of her head. Both were shot one time, and
23 their wounds would have been nearly instantly
24 fatal. Deanna was able to get out of the
25 apartment. As we know, probably had her

1 underwear, pants and panties in her hand as she
2 ran out after seeing her brother and her mother
3 shot nearly execution style.

4 And I think the timeline is
5 consistent. Because no 9-1-1 calls are
6 associated with those first shootings in the
7 apartment. And when you look at the first
8 calls coming in at 2:24, it really mirrors what
9 Dr. Schandl testified today. And I would
10 submit, Your Honor, that as Deanna is running
11 away, she's shot one time in the back and that
12 within seconds Mr. Sanders closes on her and
13 shoots her in the neck -- the next three shots,
14 which one killed her instantly. And that's
15 exactly in line with what the witnesses in
16 Apartment [REDACTED] in the other apartment building
17 heard: a shot, a scream, another series of
18 shots and no more sound.

19 When you line that up with the 9-1-1
20 calls at 2:24 and compare that to Mr. Sanders'
21 phone records where there's no activity leaving
22 up to right after 2:24, and the first call that
23 he makes is to his girlfriend, Medea Thompson
24 who lives not just in that apartment complex
25 but in the very apartment building behind which

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1 Deanna was killed. I think it cannot be
2 explained away as a coincidence that his phone
3 -- there's no activity while all these actions
4 are going on. Then immediately upon the 9-1-1
5 call being placed he makes a phone call --
6 almost immediately after, to his girlfriend who
7 lives in that apartment, whether trying to find
8 out what's going on or saying where he's going,
9 we'll never know. But, clearly, that
10 establishes what our timeline is.

11 And then look at the evidence in the
12 case. We have two .40 caliber shell casings
13 found in the apartment, and two gel lifts that
14 Lieutenant Asbill was able to recover. From
15 the area where Deanna's body was found we have
16 four .40 caliber shell casings. Five of the
17 six are .40 caliber Smith & Wesson Federal
18 brand, and the other is R&P.

19 We start looking at what evidence do
20 we have and what corroborates how that points
21 to Anthony Sanders and the detectives, several
22 weeks later, execute the search warrant at his
23 house in his bedroom. And what do we find
24 there? We find three .40 caliber Federal brand
25 shell casings. The exact same make and caliber

1 shell casings found at the scene, found in a
2 shoe box in his room. We find the .40 caliber
3 R&P round under his bed, which is the same as
4 the one shell casing from the crime scene.

5 And, significantly, we find a number
6 of size nine Nike Air Force Ones. And I think
7 the gel lifts are very important in the
8 apartment, as well as the shoe impressions that
9 are outside. Because while Nike Air Force One
10 is a very prevalent shoe, we're not dealing
11 with the global of all Air Force Ones. We're
12 dealing specifically with a size nine. We know
13 it's not a size ten. We know it's not a size
14 eleven because of the pairs of Jatavius's shoes
15 that are in the apartment. We're dealing with
16 a size nine which, just coincidentally, Anthony
17 Sanders has four
18 pairs of that are recovered from his room.

19 So we have shoes that match the shoe
20 impressions. We have bullets in his house
21 which match in caliber and brand with the shell
22 casings found at the scene.

23 And probably the most compelling and
24 the most condemning piece of evidence in this
25 case is we have his safe. We know it's his

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1 safe. It's got his photographs. It has his
2 correspondence, letters written to him, an
3 arrest warrant with his name on it. And it has
4 a newspaper article of this murder. And
5 I would submit to the Court there is no
6 explanation for that, as to why somebody would
7 keep that. I submit to you it's his trophy
8 case. And he's kept those things as mementos.
9 The photographs of different girls, the arrest
10 warrant and this newspaper article is his
11 memento from this -- what he did.

12 We also have the ammo box, the green
13 ammo box which originally when they executed
14 the search warrant was under the window and
15 then had been moved. It's the exact type of
16 ammo box which Richard Alexander told you he
17 had in his car, as well as a .40 caliber Smith
18 & Wesson handgun. Mr. Sanders clearly had the
19 opportunity to have that weapon. We don't know
20 where it is. I submit to you that that aspect
21 of it is a bit of a game. I think he's been
22 playing some cat-and-mouse with the detectives.
23 Clearly, his comments to Detective Garrison
24 asking him if he'd still like to know where the
25 gun is, I think is a bit of a game for him. I

1 submit to you that he got that weapon from
2 Richard Alexander,
3 had the ammunition, had the ammo box. Mr.
4 Alexander told you he couldn't say that that
5 was the specific ammo box that was in his car,
6 but he said that it looked just like it.

7 And in the same time period he has as
8 conversation with Mr. Alexander about DNA. And
9 it turns out that we recovered a DNA sample
10 from the mouth of Deanna Devore's oral swab
11 that matches Mr. Sanders' DNA. And they go the
12 extra step to send it to the company in Dallas
13 to do the Y-STR testing, and the profiles come
14 back identical.

15 We've looked at the ballistics
16 evidence. That was the first lead that we got,
17 matching these shell casings with the other two
18 casings from the shootings at The Anchor Bar
19 and at Hunters Ridge. And, yes, Xavier Walker
20 was at those two scene. Yes,
21 he was probably involved. But it's also,
22 I think, pretty clear that he was the
23 defendant's friend. And so those are the
24 people that you would expect him to be with.
25 And that was the reason why we didn't really

1 get into the Hunters Ridge incident in a lot of
2 detail. Because The Anchor Bar incident was
3 the most compelling.

4 Mr. Chavers testified, Your Honor, and
5 was forthright with the detective. He
6 identified Anthony Sanders as being the person
7 who fired the semi-automatic handgun. And that
8 was why we asked the question of Agent Thrower
9 that the markings on these shell casing are not
10 consistent with a Tec-9 or a Mac, which the
11 other person in the car had.

12 So I submit to you that the six shell casings
13 from that scene at the Anchor Bar, by the
14 markings on them, were fired by the handgun
15 which Mr. Chavers identified Mr. Sanders as
16 being the person shooting in the back seat of
17 that truck.

18 And, as you recall, he told you that
19 there was no doubt in his mind that that was
20 who it was. He got a good look at him and
21 picked him out of a very fair and impartial
22 photo lineup as being the person who was
23 shooting that night.

24 And, finally, as I mentioned already,
25 the oral swab I think conclusively places him

1 there. The DNA match that Agent Coy examined
2 and followed up with the DNA profile on the Y
3 chromosome. While you might be able to say
4 that any male in his family would have the same
5 chromosome, clearly no one has the connections
6 to the other shooting, nobody's phone records
7 show that they were in the area, nobody's
8 girlfriend who lived in the apartment building
9 that was directly in front of where Deanne
10 Devore was killed. And certainly, nobody was
11 out carousing at those hours of the night.

12 I think when you look at every piece
13 of this story and every piece of the puzzle, it
14 only points to one conclusion. And that is
15 that Anthony Sanders is guilty of these three
16 murders. Thank you.

17 THE COURT: I'll be glad to hear
18 from you, Mr. Leiendecker.

19 MR. LEIENDECKER: Thank you, Your
20 Honor. Your Honor, if it please the Court,
21 it's not just a question of a puzzle. It's not
22 a question of putting circumstantial evidence
23 together. It's not a question of can you make
24 a case that Anthony Sanders committed these
25 murders. You can. That's already been proven

1 by a magistrate and by a circuit court that a
2 warrant was signed. They found there was
3 sufficient probable cause for a grand jury
4 indictment.

5 So what we're left with when we come
6 to a trial and when we come to a murder trial
7 is that the State takes on the burden of
8 responsibility of not showing that it's
9 probable or likely that it was Mr. Sanders, but
10 that it was Mr. Sanders. And the State must
11 convince you beyond a reasonable doubt, to the
12 exclusion of other evidence, that it was Mr.
13 Sanders that committed these murders.

14 And a lot of things point in his
15 direction. But a lot of the things that they
16 say point in his direction don't add up to me.
17 The concept that the murder of Deanna Devore
18 took place behind [REDACTED] and that, in fact, [REDACTED]
19 Shagbark Trail is where one of Mr. Sanders'
20 girlfriends lived doesn't add up.

21 When they also say that their theory
22 of the case is the young lady ran out of the
23 apartment and was chased down. Now, she didn't
24 know where she was going and whoever followed
25 her and killed her that night - and to suggest

1 that it happened at a girlfriend's house
2 somehow points to Mr. Sanders is in and of
3 itself, Your Honor, a coincidence. Because it
4 couldn't have been planned and it wasn't
5 planned. Even by the State's theory it wasn't
6 planned that way.

7 They talk about a weapon. They talk
8 about a weapon that they say Mr. Sanders was
9 seen to have at The Anchor Bar in March of
10 2007. He was picked out of a lineup by Mr.
11 Chavers. Mr. Chavers said that Mr. Sanders was
12 in trouble or causing trouble that night, was
13 expelled from the bar and fifteen minutes later
14 got in a truck and two people shot out of that
15 truck. Now, what did he say, Your Honor? He
16 said that those two people shot out of that
17 truck and that Mr. Sanders was the man in the
18 back, he believed, and that Mr. Sanders shot
19 one time out of that truck. He said the
20 gentleman in the front, the gentleman with the
21 dreads or braids, shot maybe six times, or six
22 to eight times, I think he said, out of the
23 front.

24 I would suggest that if we are to
25 believe his testimony -- and I don't know why

1 he would be lying here today -- that what
2 happened was there were multiple shots out of
3 the front, as he described it. And those
4 multiple shots out of the front were with the
5 semi-automatic weapon. He's got the weapons in
6 the wrong hands, because the physical evidence
7 clearly contradicts what he says and
8 demonstrates that the shell casings showed
9 multiple shell casings from the semi-automatic
10 weapon, which would have been the multiple
11 shots out of the front of the truck, the man
12 with the braids and the dreads.
13 Coincidentally, who was with him that night?
14 Xavier Walker. We don't have any evidence that
15 Dorchester County shows him a picture of Xavier
16 Walker to pick out. He's not in the lineup,
17 and he has physical differences from Mr.
18 Sanders. But he's not shown anything to point
19 to Xavier Walker. That keeps bugging me.

20 And the whole time that I've worked on
21 this case I don't understand that, until I
22 start to add up that how do we get here?
23 We don't get here just because of ballistics.
24 We don't get here just because ultimately of
25 DNA. We get here and we get pointed in this

1 direction because of one individual and one
2 individual only, Xavier Walker.

3 Xavier Walker is arrested not long
4 after the incident in March at Hunters Ridge,
5 the second place that we see these shell
6 casings that SLED say match. Xavier Walker is
7 the only person identified by the victims of
8 that crime as the shooter at Hunters Ridge.
9 Xavier Walker, after he is arrested, then says,
10 'You know, whatever', and gets somehow a bond
11 to get out. Then when this murder comes down,
12 Xavier Walker, the person who had the gun at
13 Hunters Ridge, probably the person who had the
14 gun at The Anchor Bar, becomes cooperative at
15 another time and points a finger at Anthony
16 Sanders.

17 Xavier Walker, a person whose cell
18 phone was off during the time of the murder,
19 who wasn't in communication, who wasn't talking
20 to girlfriends and other people, --

21 And certainly if any of these
22 girlfriends that Mr. Sanders was talking to
23 that night had information that he said he
24 committed a murder, don't you think they would
25 have been on the witness stand today? I mean,

1 I certainly do, if the State's seeking to prove
2 this evidence. So the only thing that I can
3 conclude from that and I think the law requires
4 us to conclude is they didn't have any such
5 evidence, or the State would have brought it.

6 So these coincidences of the fact that
7 he's talking on his cell phone in an area which
8 is in close proximity to the apartment, but
9 isn't really out of proximity of where he lived
10 just on down Dorchester Road don't prove that
11 he committed a murder.

12 I'm also troubled with the fact that
13 we have DNA. We have DNA that begins with --
14 and only this conclusion can be drawn -- a
15 suggestion that Mr. Sanders provided that DNA.
16 A suggestion, I say, because the results
17 themselves, one in a couple hundred, when
18 extrapolated to the lowcountry as Mr. Young
19 suggested and was agreed to by the SLED expert,
20 leaves us with thousands of suspects, just in
21 the lowcountry. I also suggest it wasn't
22 enough for SLED because SLED didn't go with
23 that. They sent it for the Y chromosome test
24 done at the Orchid Cellmark in Texas lab
25 because they didn't feel comfortable with that

1 kind of number. And that Y chromosome test
2 tells us that Mr. Sanders -- yes? No, what it
3 tell us is - it doesn't tell us Mr. Sanders -
4 it tells us someone in the male lineage of Mr.
5 Sanders' family: dad, brothers, maybe even
6 cousins, uncles. Because that's how it's
7 passed down. Even though the SLED expert is
8 not the one who did those tests, she said
9 that's how it passes. And I don't understand,
10 she said, how it ultimately deviates or breaks.
11 But it is through the male lineage.

12 And the question was asked again and
13 again and over and over by Mr. Young and others
14 on the defense team:

15 'Did you take a sample from
16 Xavier Walker? Did you get a DNA sample?' The
17 answer, "no".

18 'Did you get footwear from Xavier
19 Walker?' The answer, "no."

20 'Do you know what size Xavier
21 Walker wears?' The answer, "no."

22 Do we know if Xavier Walker is in Mr.
23 Sanders' family lineage? I don't know the
24 answer to that, Your Honor. I don't know who
25 Anthony Sanders' dad is. Anthony has never had