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VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

ORIGINAL

In The Court of Appeals

APPEAL FROM AIKEN COUNTY

Clifton Newman, Circuit Court Judge

ANDERS
ANDERS RESPONSE BRIEF

THE STATE,

RESPONDENT,

V

CORNELL D TYLER,

APPELLANT

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SC Court of Appeals

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ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN) IN THE GENERAL SESSIONS COURT
SECOND JUDICIAL DISTRICT

The State of South Carolina,)
PLAINTIFF,) JURY TRIAL
-VS-) 2006-GS-02-550
Cornell Tyler, Jr ,) 2006-GS-02-551
DEFENDANT) 2006-GS-02-552
VOLUME I of II

BEFORE THE HONORABLE CLIFTON NEWMAN, JUDGE

JANUARY 7, 8, 9, AND 10, 2008
AIKEN, SOUTH CAROLINA

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1 Monday, January 7, 2008

2 (The defendant, together
3 with counsel, was personally present in the
4 courtroom.)

5 THE COURT Good afternoon, ladies and
6 gentlemen My name is Clifton Newman, and I am a
7 Circuit Court Judge And I have been assigned to
8 preside over this week's term of General Sessions
9 Court here in Aiken County

10 Those of you over here to my left have
11 been summoned to -- and I guess summoned to my right
12 as well -- appear for jury duty This is a one-week
13 term of Court, so your jury services are not
14 expected to last past this Friday

15 In order to serve on jury duty this week,
16 however, you must be qualified to serve on jury
17 duty And in just a moment, we're going to go
18 through the jury qualifications process I will do
19 all that I can this week to minimize the obvious
20 inconvenience to you for having to come and serve

21 But it is an essential part of our
22 judicial system, our criminal justice system, to
23 have jurors available and jurors serving on cases.
24 As part of the juror qualifications process, it is
25 necessary that I administer an oath to you. At this

1 time, therefore, I need you to stand and raise your
2 right hands to receive the oath

3 (Whereupon, the petit jury
4 panel was sworn and qualified)

5 THE COURT All right, ladies and gentlemen,
6 we'll proceed with jury selection at this time, if
7 you'll give the Clerk your attention

8 CLERK OF COURT Strikes ten?

9 THE COURT Strikes at five and ten

10 CLERK OF COURT As your name is called, please
11 come forward Bring your belongings with you.

12 Juror number 12, Edwin Blush

13 What says the State?

14 MR. WEEKS. Please seat Mr Blush

15 CLERK OF COURT What says the defense?

16 MR GIPSON Please excuse the juror

17 CLERK OF COURT You may return to your seat.

18 Juror number 52, Sandra Harp

19 What says the State?

20 MR WEEKS Please excuse Ms Harp from this
21 trial

22 CLERK OF COURT Yes, sir

23 You may return to your seat

24 Juror number 159, Daniel Willis

25 What says the State?

1 MR WEEKS Please present Mr Willis

2 CLERK OF COURT What says the defense?

3 MR GIPSON Please swear the juror

4 CLERK OF COURT You may have a seat in the
5 jury box to your left

6 Juror number 61, Roberta Hudson.

7 What says the State?

8 MR WEEKS Please present Ms Hudson.

9 CLERK OF COURT What says the defense?

10 MR GIPSON Court's indulgence Please swear
11 the juror

12 CLERK OF COURT. You may have a seat in the
13 jury box to your left

14 Juror number 36, Andrew Duke.

15 What says the State?

16 MR WEEKS Please present Mr Duke

17 CLERK OF COURT What says the defense?

18 MR GIPSON Please swear the juror

19 CLERK OF COURT You may have a seat in the
20 jury box to your left

21 Juror number 110, Kathryn Robinson

22 What says the State?

23 MR WEEKS Please present Ms. Robinson

24 CLERK OF COURT. What says the defense?

25 MR GIPSON Please excuse this juror

1 CLERK OF COURT You may return to your seat.

2 Juror number 130, Eric Thomas

3 What says the State?

4 MR WEEKS Please present Mr. Thomas

5 CLERK OF COURT What says the defense?

6 MR GIPSON Please swear him

7 CLERK OF COURT You may have a seat in the

8 jury box to your left.

9 Juror number 153, Marsha Hopkins.

10 What says the State?

11 MR. WEEKS. Please present Ms Hopkins

12 CLERK OF COURT What says the defense?

13 MR. GIPSON Court's indulgence Please swear

14 the juror

15 CLERK OF COURT You may have a seat in the

16 jury box to your left.

17 Juror number 152, Elizabeth Culler

18 What says the State?

19 MR WEEKS Please present Ms Culler

20 CLERK OF COURT What says the defense?

21 MR GIPSON Just a moment Please excuse the

22 juror

23 CLERK OF COURT You may return to your seat

24 Juror number 114, Bobbie Sapp

25 What says the State?

1 MR WEEKS Please present Ms. Sapp
2 CLERK OF COURT What says the defense?
3 MR GIPSON Please swear the juror.
4 CLERK OF COURT. You may have a seat in the
5 jury box to your left
6 Juror number 76, Phillip Lee
7 What says the State?
8 MR WEEKS Please present Mr Lee
9 CLERK OF COURT What says the defense?
10 MR GIPSON Please excuse the juror
11 CLERK OF COURT You may return to your seat
12 The State has exhausted one strike, the
13 defense, four
14 Juror number 157, Henry Summerall
15 What says the State?
16 MR WEEKS Please present Mr. Summerall
17 CLERK OF COURT What says the defense?
18 MR GIPSON Just a moment
19 Please excuse this juror
20 CLERK OF COURT: You may return to your seat
21 Juror number 60, Lee Horn
22 What says the State?
23 MR WEEKS Please present Mr Horn.
24 CLERK OF COURT: What says the defense?
25 MR GIPSON Please swear this juror

1 CLERK OF COURT You may have a seat in the
2 jury box to your left

3 Juror number 112, Susan Rowe

4 What says the State?

5 MR WEEKS Please present Ms Rowe

6 CLERK OF COURT What says the defense?

7 MR GIPSON Please swear the juror

8 CLERK OF COURT You may have a seat in the
9 jury box to your left

10 Juror number 133, James Upshaw

11 What says the State?

12 MR WEEKS Please present Mr Upshaw.

13 CLERK OF COURT What says the defense?

14 MR GIPSON Please swear the juror.

15 CLERK OF COURT You may have a seat in the
16 jury box to your left

17 Juror number 10, Carolyn Bates

18 What says the State?

19 MR WEEKS. Please present Ms. Bates

20 CLERK OF COURT What says the defense?

21 MR GIPSON Please swear the juror

22 CLERK OF COURT You may have a seat in the
23 jury box to your left

24 Juror number 32, Willie Curry

25 What says the State?

1 MR WEEKS Please excuse Mr Curry from this
2 case

3 CLERK OF COURT You may return to your seat
4 Juror number 27, Shirley Cooper
5 What says the State?

6 MR WEEKS Please present Ms Cooper.

7 CLERK OF COURT What says the defense?

8 MR GIPSON Please excuse the juror

9 CLERK OF COURT You may return to your seat
10 Juror number 129, Martin Taegar.

11 What says the State?

12 MR WEEKS Please present the juror

13 CLERK OF COURT. What says the defense?

14 MR GIPSON: Please swear the juror.

15 CLERK OF COURT. You may have a seat in the
16 jury box to your left

17 Juror number 95, Carol Myers

18 What says the State?

19 MR WEEKS Please present Ms Myers

20 CLERK OF COURT What says the defense?

21 MR GIPSON Please excuse the juror.

22 CLERK OF COURT. You may return to your seat
23 Juror number 23, Jared Cato.

24 What says the State?

25 MR WEEKS Please excuse Mr Cato from this

1 trial.

2 CLERK OF COURT. You may return to your seat.

3 Juror number 9, Brandon Baldwin

4 What says the State?

5 MR WEEKS Please present Mr Baldwin

6 CLERK OF COURT What says the defense?

7 MR GIPSON Please swear the juror

8 CLERK OF COURT You may have a seat in the
9 jury box to your left

10 Alternates, gentlemen?

11 THE COURT Strikes are one and two, two
12 alternates

13 CLERK OF COURT Alternate number one, juror
14 number 154, Grant Larlee

15 What says the State?

16 MR WEEKS Please present Mr Larlee

17 CLERK OF COURT What says the defense?

18 MR GIPSON Please swear the juror

19 CLERK OF COURT You may have a seat in the
20 jury box to your left.

21 Juror number 94, Stephen Murphy

22 What says the State?

23 MR WEEKS Please excuse Mr Murphy

24 CLERK OF COURT You may return to your seat.

25 Juror number 39, Scott Fortson

1 What says the State?

2 MR WEEKS Please present Mr Fortson

3 CLERK OF COURT What says the defense?

4 MR GIPSON Please excuse the juror

5 CLERK OF COURT You may return to your seat

6 Juror number 47, Natasha Green

7 What says the State?

8 MR WEEKS Please present Ms Green

9 CLERK OF COURT What says the defense?

10 MR GIPSON Please swear the juror

11 CLERK OF COURT You may have a seat in the

12 jury box to your left

13 THE COURT Are there any matters of law

14 regarding the jury selection?

15 MR WEEKS. Not from the State, Your Honor

16 MR GIPSON And may we approach a moment, Your
17 Honor?

18 THE COURT Yes

19 All right, ladies and gentlemen, you've

20 been selected to be the jury in the trial of this

21 case We're going to have you to go to the jury

22 room briefly while I speak to the other jurors

23 While you're in the jury room, do not talk

24 about this case in any form or fashion Talk about

25 anything else you might want to talk to, but not

1 about this case We're going to have you all come
2 back in just a few minutes

3 You're going to get a chance to get a Coke
4 while you're back there This will be very brief
5 But go to the jury room, if you will Thank you
6 (The petit jury panel left
7 the courtroom)

8 THE COURT All right, ladies and gentlemen, we
9 have gotten the jury And as you all can see from
10 all that we've had to do this afternoon to get to
11 this point, we needed all of you here to get to this
12 point

13 But we have gotten to this point, and we
14 have the jury selected in the trial of this case
15 And you probably can guess, based on the long number
16 of names that I called out, plus the type of case,
17 that it is a case that will take a number of days to
18 try

19 Of course, I can never predict the length
20 of any case Therefore, it's difficult for me to
21 give you any specific instruction concerning when we
22 are going to need you to come back So the best
23 that I can tell you is that we will not need you to
24 come in at all tomorrow

25 But we need you to call in after 6 p m

1 And after 6 p.m , we'll have a message on there
2 either telling you to call back after six the next
3 day or to come in. Certainly, if you have the type
4 of job that you can simply go to work, plan on going
5 to work

6 And if for some reason, the message is
7 that you have to come here the next day, then that
8 simply will be the message You're still on jury
9 duty until you get word that you've been excused.

10 It may be that this case will eat up so
11 much of this week that we will not be able to have
12 any more trials this week I don't know The best
13 I can tell you for right now is that we will not
14 need you tomorrow

15 We'll need you to call back after 6 p m
16 tomorrow, and we'll see what happens from there I
17 want to thank you for your cooperation, and you all
18 are free to go

19 (The jury panel was
20 dismissed at 5 29 p m)

21 THE COURT So scheduling-wise now, we're going
22 to bring this jury out And what time do you want
23 them back tomorrow to get started?

24 MR WEEKS Nine-thirty.

25 THE COURT Nine-thirty?

1 MR GIPSON That's fine with me

2 THE COURT Okay So let's bring them out.

3 (The jury returned to the
4 courtroom at 5 30)

5 THE COURT All right, ladies and gentlemen,
6 you have been selected to be the jury in the trial
7 of this case And I guess with the time now being
8 about 5 30 that we will not be able to do anything
9 further with this case this afternoon

10 We need you back at 9.30 tomorrow morning
11 And you will not come through the courtroom, but
12 you'll come through the direction that the Bailiffs
13 told you to go directly into the jury room I will
14 give you a more complete orientation into this case
15 and more extensive preliminary instructions tomorrow
16 morning.

17 But one thing that I can tell you right
18 now -- a few things I can tell you right now -- and
19 that is that once you have been selected to be on a
20 jury, you're not to discuss the case in any form or
21 fashion until I authorize you to do so, which will
22 be at the end of the case, which will be after you
23 have heard all of the evidence in the case and after
24 you have been given the complete instruction of the
25 law that applies to the case

1 That's very important And equally as
2 important is that you not be exposed to any
3 information concerning the case other than the
4 information that you receive in the courtroom So,
5 therefore, it is essential that you not read any
6 newspaper accounts

7 You know that two newspapers will
8 automatically be off-limits to you You know the
9 one would be the Aiken Standard, and number two
10 would be the Augusta paper You're not to read
11 those newspapers while on jury duty for fear of
12 being exposed to any outside information or
13 interpretation concerning the case, because when you
14 accept the oath tomorrow, you will be sworn to well
15 and duly try this case and decide the case based on
16 the evidence presented from the witness stand in
17 this case along with the other evidence, as well as
18 the law that I will instruct you

19 So we're counting on you to fulfill your
20 oath as jurors to faithfully comply with those two
21 instructions, and things will go a lot smoother for
22 you and for me So I'm going to let you all go, and
23 see you back tomorrow morning at 9 30

24 And I just mentioned those two forms of
25 media, but it applies equally to any other news

1 coverage, including television, radio, other
2 newspaper, Internet, or otherwise You're just to
3 not be exposed at all to any information other than
4 the information that you receive in Court of
5 witnesses who have been sworn to give testimony and
6 other evidence that I allow in concerning this case

7 And with that, I look forward to seeing
8 you all tomorrow morning at 9 30 and working with
9 you on this case

10 (The jury was dismissed for
11 the day at 5 34 p m)

12 THE COURT All right, we'll now hear the
13 matter involving any pending motions that may have
14 been filed in the case -- Mr Gipson

15 MR GIPSON May it please the Court, Your
16 Honor, if I may, this is in reference, first and
17 foremost, to the question we had made or at least
18 filed prior to this point with reference to a change
19 of venue. If I could approach, Your Honor, there
20 are some articles I was just going to hand up

21 THE COURT All right

22 MR GIPSON And, Your Honor, we made this
23 request pursuant to Code Section 17-21-8, which, as
24 the Court knows, is the change-of-venue statute that
25 applies in law cases, both criminal and civil.

1 And simply, Your Honor, just to kind of go
2 through a little bit of chronology with this case,
3 the Court will learn without question this was a
4 very heinous act that took place As we all know,
5 this is the second time we've had to try this case

6 Back in November of 2005, Your Honor, we
7 tried the case where essentially the jury returned
8 with -- basically, a mistrial was declared because
9 the jury could not come back with a verdict As a
10 result of the mistrial, Your Honor, I had an
11 opportunity to speak with one of the jurors who
12 actually sat on that case

13 And pursuant to the statute, she submitted
14 an affidavit It may be in the Court -- well, I
15 think it is in the Court file, but I can submit
16 another copy to Your Honor doesn't have one in front
17 of you. And she submitted a copy of her concerns
18 and her point of view based on what she experienced
19 during the trial, Your Honor -- the things that were
20 discussed by the jury, the things that she has heard
21 since that point in time based on her service as a
22 juror, Your Honor And she's broken it down into
23 three major points

24 First and foremost, one of her concerns --
25 and it's mine as well, Your Honor -- is my client's

1 ability to receive a fair trial just because of the
2 pre-trial publicity that's taken place here. Your
3 Honor, there are essentially two newspapers that
4 cover this area, although other newspapers in the
5 Midlands kind of pick up

6 Different news agencies like WIS out of
7 Columbia and WLTX pick up things as well But the
8 Aiken Standard is the main newspaper that has
9 covered this matter, Your Honor And as the Court
10 will learn, Ms Dorch, who is the decedent in this
11 case, Your Honor, the victim in this case, worked
12 for the Aiken Standard

13 She was a newspaper delivery person
14 Henderson Brewer, Your Honor, was her supervisor,
15 and he worked for the Aiken Standard as well After
16 this matter took place, Your Honor, there were a
17 series of articles that catalogued what happened and
18 different opinions as to what should happen as a
19 result of the death of Ms Dorch

20 There have been no fewer than 27 articles,
21 and those were just the ones that we could actually
22 pull There were other articles that listed
23 opinions as to what should happen There are mounds
24 of editorials that are still coming through, Your
25 Honor, from citizens in Aiken County and throughout

1 South Carolina But primarily Aiken County is what
2 we're concerned with

3 But those things have been -- it's been
4 one of the biggest things that's happened in this
5 area in terms of negative publicity for quite some
6 time, Your Honor There have been memorials that
7 have been placed in the paper, which, again, with
8 all due respect to the family, I understand some
9 memorials have been placed in the paper or in
10 memoriam to Ms Dorch

11 The paper has come out and expressed its
12 confidence in the Solicitor's Office and the fact
13 that they are going to get at the truth of the
14 matter And they've come out and said those things,
15 Your Honor

16 They were very proactive in stating their
17 position that this matter needs to be brought to
18 justice That in itself, Your Honor, is a full
19 understanding and an appreciation for the justice
20 system But they have taken such an approach that,
21 as you know, jury members and people who sat here
22 today they have read pieces about this

23 And some of them said they even followed
24 this And I counted I believe it was twenty who
25 actually came forward and spoke to the Court, which

1 is almost 25 percent of the jury venire that came
2 into today, and said that they had some exposure to
3 this case

4 Now, if we backtrack for a moment, I spoke
5 to you about a juror, Ms Catherine Thomas, who has
6 submitted an affidavit She mentioned that during
7 deliberations, people talked about the different
8 things that they had read about the case and their
9 opinions about those things

10 She mentions that there were jurors who
11 -- or a particular juror who was related by marriage
12 to the Sheriff and never stood and explained those
13 things to the Court She mentions people
14 questioning her about her vote for not guilty,
15 people on the street who've learned who she is

16 She mentions all of those types of things,
17 Your Honor, as reasons why she believes that this
18 case in Aiken County or at least with a jury pool
19 from Aiken County cannot be fair in this matter,
20 because they've been steeped in the information, and
21 has learned so much, and has been so much of a part
22 of the culture here, that she doesn't believe that a
23 fair trial can happen with a jury pool from Aiken

24 Your Honor, we'd ask that you consider
25 those things, because there are other alternatives

1 In the Second Circuit, Your Honor, you have Bamberg
2 County, Barnwell County And as the statute
3 mentions, a case can be moved within one of the two
4 counties here, Your Honor

5 Each of those counties are probably no
6 more than about 30 to 40 minutes away A pool could
7 be selected from there and brought to Aiken County
8 Or vice versa, we can move the case to one of those
9 counties At least in that situation, the Aiken
10 Standard is not the primary paper there, Your Honor,
11 and the jury pool would not have been exposed to the
12 27 or so -- plus articles that have come through
13 countless numbers of editorials, countless numbers
14 of having this appear in the newspaper -- excuse me,
15 and just things going around the Internet

16 It has been, Your Honor, one of the most
17 serious things that's happened negative publicity-
18 wise in Aiken County in quite some time And I
19 think that's the impetus behind making that motion
20 here today, Your Honor, because we just have a
21 concern

22 It's also a concern, as all the juror
23 members, I believe -- we want to believe that
24 everyone is going to be truthful about their
25 interaction and what they've learned about the case

1 Just based on what Ms Thomas, who was in the
2 deliberations in the last trial, can tell us, there
3 were people who knew a good bit about the factual
4 scenario just based on what the newspaper reports
5 said

6 It was interesting that one of the jurors
7 who we just questioned talked about how she followed
8 the case, and she went by -- at least three of them
9 kind of went through almost a frame-by-frame
10 analysis of how things happened, according to the
11 way that they were treated

12 And I would submit to the Court when
13 people can do those types of things that if it's
14 only three -- I would submit to the Court, there are
15 probably a lot who do that type of thing And we
16 run the risk of not having a fair -- a jury who can
17 fairly, and actually, and truly try this case
18 because of things that they've heard just because
19 they live in an area where the newspaper has
20 reported on these things, there are doubts So I
21 place that before the Court and request that you
22 consider a change of venue, Your Honor

23 THE COURT All right, Mr Weeks?

24 MR GIPSON And I apologize, Your Honor Ms
25 Thomas may be in the foyer, Your Honor, if the Court

1 needs to address her.

2 THE COURT All right Mr Weeks?

3 MR WEEKS Your Honor, a witness in the former
4 case involving this particular factual scenario?
5 There are two cases regarding change of venue, and
6 the law is basically very clear that -- and I think
7 we attempted to follow that procedure in questioning
8 the voir dire as to their knowledge of the case.

9 And there were a few people that stood up.
10 I didn't count them I accept Mr Gipson's counting
11 of twenty But in questioning them all individually
12 with extended voir dire at the bench, none of them
13 indicated -- or if anyone indicated they had a
14 problem with pre-trial press or had formed any kind
15 of opinion, Your Honor was quick to excuse those
16 people

17 And I don't remember but one based upon
18 just the memory of the people who came up there and
19 indicated they couldn't give a fair trial due to
20 something they had heard or maybe something that
21 they had read.

22 Certainly, with the jury venire in this
23 case, there was not an abundance -- with all but
24 five members of the jury panel standing up, and the
25 Judge qualified the jury, and there wasn't a

1 sufficient reason to change the venue in the case,
2 as well as they point -- the Supreme Court has
3 wisdom. Sometimes I can't figure out the merits of
4 it. But I know it, and I can read what it says

5 They point out that they didn't use all
6 their jury strikes in one of the cases And I point
7 out that Mr Gipson didn't use all his jury strikes
8 in this case in seeking this jury So if there was
9 some question as to bias or prejudice of potential
10 jurors that were seated, he certainly had more jury
11 strikes left from which to strike the jury.

12 That was the Supreme Court's argument I
13 don't think it would have been mine necessarily, but
14 I think that's the law He didn't use all of his
15 jury strikes in the case-at-hand. This is a brutal,
16 gruesome murder There is no question that it was
17 publicized that this lady was killed

18 But I think you almost got an opinion from
19 listening to the people that came up individually on
20 voir dire they didn't know who the defendant was
21 And the State's got to prove that, and I'm certain
22 you will go through nine thousand times telling them
23 about the presumption of innocence and the rights of
24 the defendant in this case And I believe that the
25 answers that the jury gave under oath in this case

1 doesn't rise to the level where the Court should
2 consider a change of venue Thank you

3 THE COURT Mr Gipson, anything further?

4 MR GIPSON Just briefly, Your Honor In this
5 county, Mr Tyler's name has become synonymous with
6 the Aiken Standard case, as a lot of people call it
7 It's interesting that, as you just mentioned
8 generally the facts of the case, a couple of people
9 stood up and said they kind of know a little bit
10 about it But the minute you said Aiken Standard,
11 more people stood up

12 And that in itself tells you that his name
13 is synonymous with this matter because of the
14 publicity that it's gotten There was a weeklong
15 trial, Your Honor, and after the trial, there was a
16 good bit of banter that went back and forth between
17 citizens of Aiken County and how they felt about
18 this situation and other situations.

19 And it has just continued to get more
20 corrosive, Your Honor, quite honestly Now, there
21 was a mention that Mr Weeks -- or Mr Weeks
22 mentioned -- I believe it's in the Adams case --
23 about the preemptory strikes True, we did not use
24 all of our strikes here, Your Honor But that's one
25 of those situations where you're d'd if you do and

1 d'd if you don't

2 I won't put the letters I won't curse in
3 court But if you use all of your strikes, then
4 there are other challenges that come up -- just
5 based on the breakdown of the jury in this
6 situation In other issues, Your Honor. And we
7 considered the lesser of two evils trying to get as
8 many people who did not seem to have as much
9 knowledge, because there are many sitting out there
10 who stood every time we mentioned something about
11 the Aiken Standard

12 So you end up in a sense almost being
13 forced to try to select the ones that didn't come up
14 because when you use up your five strikes, Your
15 Honor, and as we get deeper into the pool, all we
16 were going to come up with is people who had direct
17 knowledge from reading the paper

18 And we were getting very close to that
19 point where people who were still sitting in the
20 courtroom to be potential jurors whose names had not
21 been selected were those who had more extensive
22 knowledge of the facts of this case, Your Honor

23 THE COURT First, regarding the juror in a
24 previous case, I do not find it necessary or
25 appropriate to question her concerning what went on

1 in the previous case It has no bearing at all on
2 this case and this jury

3 Seventy-eight people were qualified for
4 jury service We're going to need 12 plus two
5 alternates We had an abundance of jurors to select
6 from to get a jury on this case The State had five
7 strikes and used three And the defense had ten
8 strikes and used six

9 The defense elected to put on the jury one
10 juror -- it may have been more than one But one I
11 believe was sat who indicates that she had some
12 prior exposure and knowledge concerning the case
13 Is that right?

14 MR. WEEKS Yes, sir

15 THE COURT And was sat who said she had been
16 exposed to the case, and the defense selected her as
17 the sixth juror seated in the case The parties
18 also had an opportunity to challenge for cause any
19 of the jurors who might have been -- whether there
20 was some basis to question whether or not they could
21 be fair and impartial, and no one chose to challenge
22 any juror for cause

23 The test in this case is whether or not a
24 fair and impartial juror can be seated Based on
25 all the information presented in court today, I find

1 that we have succeeded in sitting a fair and
2 impartial jury

3 The fact that the jurors may have heard
4 something about the particular case does not
5 automatically disqualify the juror from sitting in a
6 case, especially where the jurors indicate through
7 their representation to the Court that they can put
8 that information aside and decide the case solely
9 based on the law and the evidence of this case

10 Therefore, I respectfully deny the motion
11 And that's the order of the Court regarding that
12 particular motion

13 MR GIPSON Thank you

14 THE COURT I would point out that in many
15 counties you would certainly expect an informed
16 public to be aware of some community events And
17 based on the number of jurors standing here and the
18 number of jurors indicating that they subscribe to
19 the Aiken Standard, I don't find that to be an
20 extraordinarily high number at all

21 It seemed to be a rather low percentage of
22 the jury panel In fact, the public would generally
23 be more informed And I don't see where we have a
24 situation based on the number of subscribers to the
25 paper and based on those who have indicated they've

1 heard about it that you would have any particular
2 difficulty in getting a fair and impartial jury

3 And I believe that my extensive voir dire
4 that was indicated in this case as a result of has
5 resulted in our successfully seating a jury who can
6 hear and fairly and impartially determine this case
7 All right, anything else today?

8 MR WEEKS Your Honor, I'm going to pass up a
9 consent order The State and the defense have
10 agreed, along with the defendant, to substitute the
11 indictments that I had indicated earlier for use
12 during the trial of this case

13 THE COURT All right And you want to
14 substitute the indictment that was handed up to me?

15 MR WEEKS No, sir, the ones you've got are
16 the substitutes We've been relying on copies,
17 actually

18 THE COURT Well, the one that was handed up to
19 me says that possessor visibly displayed firearm or
20 visibly -- there's an "or " I didn't see it I
21 just saw the last part Is that correct, that you
22 consent to these indictments?

23 MR GIPSON Yes, sir, that's correct. And I
24 have spoken to my client about it, Your Honor. But,
25 again, Your Honor, we've been on notice about these

1 charges for some two years So there's nothing new
2 that I'm aware of

3 THE COURT Is that correct, Mr Tyler?

4 MR TYLER Yes, sir

5 THE COURT All right The indictment is
6 substituted with the substitute copy I'm just
7 going to sign this consent order addressing the
8 issue All right, that's done

9 MR GIPSON There's three things I'd like to
10 hand up concerning the last trial, just some motions
11 in limine, Your Honor And I understand you've got
12 to hear a lot of the testimony before you can rule
13 on some of those things, out of abundance of
14 caution, Your Honor

15 THE COURT All right Do you want to
16 highlight them now and let's see where we stand with
17 some of them?

18 MR GIPSON Yes, sir -- yes, sir The first,
19 which is labeled as number one, Your Honor, is
20 requesting that the Court -- or to request a refrain
21 from referring to the period of time between the
22 time when Ms Dorch was killed to the time when Mr
23 Tyler turned himself in

24 There will be testimony about the fact
25 that he was not Aiken County during that time. But

1 I think the term "flight" is more prejudicial The
2 jury determines whether he fled They can make that
3 determination But they call it flight, which I
4 believe is incorrect

5 THE COURT All right, Mr Weeks, what are your
6 thoughts there?

7 MR WEEKS On evidence of flight, constituted
8 evidence of, knowledge of an event It's not a
9 proper subject of a charge But I think the facts,
10 which you don't have knowledge of yet, will clearly
11 establish that that's exactly what Mr Tyler did,
12 was become involved in some type of disturbance,
13 whether it was killing Ms. Dorch or whatever, and
14 decided at that point in time, in the middle of the
15 night or early morning hours, to vacate to North
16 Carolina

17 And he wasn't apprehended or wasn't
18 turning himself in until a month later, when he
19 hired a couple of lawyers to get it all worked out
20 And I think it was flight And I think that the
21 witnesses that will testify during the course of the
22 trial will set that up

23 THE COURT Mr Gipson?

24 MR GIPSON It wasn't a month later, Your
25 Honor, first and foremost I believe once the facts

1 come out, if the jury determines they want to call
2 it flight, they can But if Mr Tyler chooses to
3 testify, he'll explain what happened, and the jury
4 can determine what they feel it was But to label
5 it flight prematurely and say, Yes, he fled, and he
6 went into hiding So it's mainly the phraseology
7 It can be called something other than flight

8 THE COURT What can it be called?

9 MR GIPSON It can be called leaving the area
10 It can be called simply leaving the area And
11 that's it

12 THE COURT Mr Weeks?

13 MR WEEKS Your Honor, I don't like the
14 concept of limiting the normal English language to
15 describe acts that everybody in two states, North
16 Carolina and South Carolina, would agree was flight
17 I don't know how to describe it otherwise

18 An action of taking off to North Carolina
19 and buying clothes after you get up there, after you
20 come back, if that ain't flight, I don't know what
21 is But I worry about motions in limine with
22 witnesses that I don't have and being able to
23 describe to them "Don't say `flight,'" -- you know,
24 "Don't say `run', don't say `hid', or don't say --
25 you know, those are normal English language, Your

1 Honor And I don't think that in the direct part of
2 this case that that will be the big thing

3 THE COURT What about in opening?

4 MR WEEKS I will intend to say in opening
5 argument that the defendant ran to the North
6 Carolina and hid, because that's exactly what he did
7 -- or tried to -- and then came back to South
8 Carolina and hid

9 THE COURT I heard you "ran and hid "

10 MR GIPSON It's not flight, Your Honor

11 THE COURT You don't want him to use the word
12 "flight "

13 MR GIPSON Yes, sir

14 MR WEEKS I'd probably be more likely to say
15 run and hid

16 MR GIPSON And when you say ran and hid? I
17 know it's semantics, Your Honor

18 THE COURT In the objection as to flight, you
19 say you plan to say "ran and hid" or something other
20 than that during opening The evidence is what the
21 evidence is So I have to rule, as far as the trial
22 testimony, based on the evidence being presented

23 Regarding opening statements, I think we
24 can set parameters It might be more susceptible to
25 my having some degree of control rather than the

1 testimony of witnesses So he says he's going to
2 say "ran and hid" and not "flight " So I'm going to
3 leave it at that

4 MR GIPSON And I have no objection to that,
5 Your Honor

6 THE COURT All right But if he doesn't say
7 "ran and hid," he might use some other phrase But
8 he won't say "flight "

9 MR GIPSON Thank you Secondly, Your Honor,
10 this is a request to the Court, if the Court would
11 refrain from calling -- at this point in time, with
12 regard to Ms Dorch, who was killed, as the victim

13 And, again, that's reality But I think
14 it again comes down to when juries hear those type
15 of things -- that there is a victim and they have
16 been victimized -- in Court, then the assumption is
17 that this is the person who victimized I know that
18 he's innocent until proven guilty, and he's cloaked
19 with innocence And I understand all of those
20 things

21 THE COURT How about "alleged victim"?

22 MR WEEKS Your Honor, I'd be real surprised
23 if they dispute that Ms Dorch and Mr Brewer were
24 victims of somebody's assault

25 THE COURT I think he says the Court calling

1 them victims

2 MR GIPSON Or deceased

3 MR WEEKS It says the State when referring to
4 the decedent

5 THE COURT The motion says the State, and in
6 your argument you said the Court

7 MR GIPSON I did say the Court, Your Honor

8 THE COURT So which one are you talking about?

9 MR GIPSON Essentially, the State, but also
10 with the Court as well, Your Honor, in terms of
11 calling the victims, the decedent -- you know,
12 alleged victim, something other than just victim,
13 because at this point, there's still an allegation
14 in terms of what you've alleged.

15 THE COURT The motion addresses to have the
16 Court and the State from referring to the decedents
17 as victims, and I would deny that motion Regarding
18 comments made by the Court, those comments would
19 speak for themselves. I can't issue a ruling
20 against myself

21 MR GIPSON I understand Now, moving on to
22 number three, Your Honor, I would like for the Court
23 to limit trying to -- unless, of course, the door is
24 opened in some way, shape, or form -- referring to
25 Mr Tyler as a drug dealer

1 And this goes into -- quite honestly, it
2 almost goes hand in hand with number four At this
3 point in time, again, Your Honor, I don't believe
4 that -- that characterization in itself is more
5 prejudicial than probative And, Your Honor, if
6 there is evidence, if the door is opened and
7 something comes in as a result of it, then I
8 understand that

9 But for them to just willingly refer to
10 him as a drug dealer, when he has had not had a
11 conviction on that, is problematic. He was
12 arrested, Your Honor, in July of 2007, and there's
13 an obligation again to tell them that that matter
14 has not been brought to completion at this point in
15 time

16 Mr Weeks has some problems with some
17 sheriff's deputies that are no longer with the
18 department So, Your Honor, again I'd ask that that
19 be something that's not done at this point in time

20 THE COURT All right Mr Weeks?

21 MR WEEKS Your Honor, it's not the State's
22 intention to elicit any testimony concerning Mr
23 Tyler's actions in 2007 when he was out on bond in
24 the arrest for the drug violations that he has
25 pending against him

1 It's not my intention to do that But
2 with regard to the motion in limine, number three,
3 and his request to limit the State from confronting
4 Mr Tyler as a drug dealer, I'm not going refer to
5 Mr Tyler as a drug dealer

6 But the allegation of drug manufacturing
7 and drug selling, the premise for these three
8 fellows going to Mr Tyler's residence was,
9 according to them, according to the testimony that
10 the State would like to elicit was to buy some dope
11 Specifically, one of them wanted to go buy some
12 cocaine

13 And that testimony was not flushed out in
14 the first trial of this thing But I feel like that
15 the witnesses' statements regarding their motive in
16 going to Mr Tyler's residence and then the
17 subsequent events that unfolded from that is
18 relevant

19 They went to attempt to buy some marijuana
20 or some cocaine And that was really the extent of
21 what the State was going to offer with regard to
22 testimony But I think it went to motive and mental
23 state of mind of the three participants, for lack of
24 a better word, in addition to Mr Tyler and his
25 brother, Tremaine Tyler, and the crime that was

1 committed or alleged to have been committed

2 THE COURT Are there co-defendants in the
3 case?

4 MR WEEKS. Yes, sir The co-defendants are
5 the driver of the car, a passenger in the car, and a
6 -- the allegation that Mr Tyler was a passenger in
7 the car And then there was a fourth party who was
8 also charged for imprisonment felony

9 THE COURT And this is anticipated testimony
10 by some of the co-defendants?

11 MR. WEEKS Yes, sir, one of the co-defendants

12 THE COURT. One of the co-defendants

13 MR WEEKS Actually, two of the co-defendants,
14 Mr Ware and Mr Walker -- and Mr Seawright, but
15 he's not charged

16 THE COURT You're asking me to strike the
17 testimony?

18 MR GIPSON No, sir, I'm not asking that the
19 testimony be stricken None of these things were
20 elicited in the first trial This stuff never came
21 up in any of the testimony of the witnesses, and now
22 all of a sudden it becomes an issue

23 And we feel like it's more of an
24 opportunity or an attempt to simply try to besmirch
25 his character in some way, shape, or form, when

1 before those things were not an issue And in the
2 testimony, in numerous statements that they gave, it
3 was never mentioned, never an issue, and never been
4 said in any way, shape, or form

5 THE COURT All right That's the thing about
6 a retrial You go back and maybe offer something
7 the second time that you didn't offer before, if you
8 think it helps So I don't know that that would
9 have a bearing on whether or not it should be
10 admitted because it wasn't admitted the previous
11 time

12 MR GIPSON Well, I think more so just the
13 prejudicial value versus the probative in this
14 situation

15 THE COURT Well, you're certainly on point
16 where the State seeks to place the defendant's
17 character into evidence where the defendant hasn't
18 had an opportunity to testify, on the one hand

19 But, on the other hand, the State has to
20 have a full and fair opportunity to present its case
21 and explain what happened and to raise relevant
22 evidence, including motive, to explain to the jury
23 what happened So I don't know that I can prohibit
24 testimony simply because some other criminal
25 activity But I'll look deeper into that and tell

1 you what I think about it

2 MR GIPSON Thank you, Your Honor

3 THE COURT All right

4 MR GIPSON. And the last thing, I promise,
5 Your Honor, is the last motion which is to try to
6 keep the State from entering into character
7 evidence I'd like to prevent the State from
8 mentioning any affiliation that Mr Tyler may have
9 with pit bulls I believe it's "terriers" on the
10 actual motion, Your Honor

11 It's supposed to be terriers I think
12 that type of information is absolutely prejudicial,
13 especially in light of were pit bull terriers --
14 start trying to make something out of it -- that
15 really has no place in this case, Your Honor

16 THE COURT All right Solicitor?

17 MR WEEKS Judge, I mean, I'm not intending on
18 trying Mr Tyler for having pit bulls And I'm not
19 going to characterize him as being a pit bull
20 fighter

21 There was a pit bull ring One of the
22 witnesses that has testified previously was he was
23 staying at the house to help feed the dogs But
24 there wasn't any pit bull fighting involved that
25 night or anything like that

1 Unless he opens the door, it's not my
2 intention to mention pit bull fighting. I'm not
3 going after Mr Tyler for fighting pit bulls or
4 whatever

5 -- alleged pit bulls or alleged fighting

6 THE COURT All right

7 MR WEEKS So, in answer to the question, it's
8 not our intention to present any testimony regarding
9 pit bulls or terriers

10 THE COURT All right That should resolve
11 that issue. Should there be something offered that
12 you think is objectionable concerning that, I'll
13 hear it

14 MR GIPSON And, actually, Your Honor, about a
15 potential witness?

16 THE COURT All right

17 MR GIPSON He's housed right now at Manning
18 Correctional over in Columbia

19 THE COURT He's a defense witness?

20 MR GIPSON Yes, sir I don't know that

21 THE COURT You're going to need him here while
22 the State is presenting their case?

23 MR GIPSON No, sir First thing Wednesday
24 would be fine.

25 MR WEEKS I don't have any objection to him

1 being brought down, but that's pretty short notice
2 for them to get him here tomorrow afternoon

3 THE COURT Would January 9th at 9 30 be fine?

4 MR GIPSON Yes, sir

5 THE COURT Anything else on this day?

6 MR GIPSON Nothing but just I always ask if
7 there's anyone from the newspaper who's reporting
8 I don't know how the Court feels about reporting in
9 the pre-trial Just in case somebody -- you know

10 THE COURT Say that again?

11 MR GIPSON I don't know if this matter -- if
12 anybody in the courtroom media -- if any media
13 outlets are here And sometimes they'll report with
14 the pre-trial Out of an abundance of caution,
15 sometimes jurors don't follow directions

16 THE COURT All right So what do you want me
17 to do?

18 MR GIPSON You could potentially -- I don't
19 know if a gag order would be proper, but at least in
20 terms of what's been entered in terms of pre-trial

21 THE COURT A gag order on the newspaper?

22 MR GIPSON Only on the portion where the pre-
23 trial was reported, maybe not report all of the
24 specifics that we talked about, because if the jury
25 reads that, they may start to -- again, when you get

1 information that's tainted, and we're trying to
2 properly limit exposure So, for instance, if they
3 start talking about "Well, they talked about dogs,
4 maybe there's some kind of dog allegation Maybe
5 there's some kind of drug allegation "

6 If those things are reported, that may be
7 a problem. I only say that because we just had a
8 trial in Orangeburg, and we had pre-trials, and the
9 next morning, it's just a list of everything that
10 was talked about and the things that are tried to be
11 kept out of the jury's hearing It just looks bad

12 THE COURT. All right. You sound like you comb
13 the newspapers pretty thoroughly

14 MR GIPSON Yes, Your Honor

15 THE COURT Go ahead, Mr Weeks What do you
16 say?

17 MR WEEKS I think the problem with a gag
18 order, being raised in the paper in any of the pre-
19 trial stuff I do not see anybody out there

20 Is anybody here from the Aiken Standard?

21 And I don't see anybody from the Augusta
22 Chronicle, so --

23 MR GIPSON It may not be an issue

24 MR WEEKS -- I'm not going to call them and
25 tell them , so I don't believe anybody else would

1 MR GIPSON. I won't

2 MR. WEEKS I think we'll be safe

3 THE COURT All right

4 MR WEEKS But I certainly have no objection
5 to voir diring the jury when they come in, whether
6 anybody's husband or wife forced them to read the
7 newspaper

8 THE COURT I see no basis to grant any such
9 order at this time

10 MR GIPSON. Thank you

11 THE COURT All right, it's 6 15 Anything
12 else today? All right, we'll be in recess till 9 30
13 tomorrow morning

14 -- End of Day --

1 Tuesday, January 8, 2008

2 (The defendant, together
3 with counsel, was personally present in the
4 courtroom)

5 THE COURT All we ready?

6 MR WEEKS The State is ready, Your Honor

7 MR GIPSON We're ready to proceed, Your

8 Honor

9 THE COURT All right Bring the jury

10 (Whereupon, the jury
11 entered the courtroom)

12 BAILIFF The jury is present, Your Honor.

13 THE COURT All right Ladies and gentlemen,
14 please make sure that all jurors are ready to come
15 out before coming out You may stand to be sworn

16 (Whereupon, The jury was
17 sworn)

18 CLERK OF COURT The jury has been sworn, sir

19 THE COURT All right Good morning, ladies
20 and gentlemen, and welcome back You have now been
21 selected and sworn to well and duly try this case
22 and render a true verdict according to the law and
23 according to the evidence

24 And the case that you've been selected on
25 is the case of State versus Cornell Devon Tyler, who

1 is here for trial in a case where the Grand Jury of
2 this county has indicted him for murder, assault and
3 battery with intent to kill, and possession of a
4 firearm during the commission of a violent crime

5 He has pled not guilty to these charges
6 He is presumed to be not guilty of these charges
7 He cannot be found guilty of these charges unless
8 the State convinces each and every one of you of his
9 guilt beyond a reasonable doubt

10 And the purpose of the trial is to
11 determine whether the State can meet that burden
12 Before we begin the trial, I want to tell you a few
13 things to let you know how we will operate

14 This trial probably will be different from
15 what you might expect in that many people do not
16 have a chance to attend actual court sessions but
17 rather develop their perception of court through
18 watching movies, reading books, or television shows

19 And during the course of those
20 proceedings, the trials are always full of high
21 drama and tense, riveting action and other such
22 circumstances. And while some of those things may
23 be true at times, this trial is not for
24 entertainment.

25 It is a fundamental part of our democracy

1 It is a search for the truth of the matter that will
2 be presented It is an effort to make sure that
3 justice is done between the parties before the
4 Court And searching for the truth and making sure
5 that justice is done is often more of a slow,
6 deliberate, and what may seem to be repetitive
7 process, the opposite of what you might see on
8 television or in movies or read in books

9 The Court is a place of honor and dignity,
10 and it's dedicated to the protection and
11 preservation of citizens' rights through what many
12 have called to be the greatest justice system in the
13 world

14 The attorneys appearing before you are
15 advocates for the parties that they represent But,
16 first and foremost, they are officers of the Court
17 sworn to uphold the integrity and fairness of our
18 judicial system and help you in your search for the
19 truth in this case

20 And you should expect for them to be
21 professional, competent, and ethical in the
22 representation of their clients and their respective
23 interests And you are to remember that you also
24 have taken an oath, the oath to try this case and
25 render a true, fair, and just verdict

1 And in that regard, you are also expected
2 to be professional, reasonable, and ethical Now,
3 your role as jurors is to find and to determine the
4 truth in this matter And you are to determine that
5 from the evidence that is presented from this
6 witness stand

7 Your purpose as jurors is to find and to
8 determine the facts of this case. And out of all
9 the other people who showed up for jury duty, out of
10 all the other people who live in Aiken County, out
11 of all the other people in the state of South
12 Carolina, out of all the other people in the United
13 States, out of all the other people in the world,
14 only the 12 of you who will deliberate can decide
15 the facts of this case

16 Therefore, it is quite apparent that you
17 have an important and essential role in our judicial
18 process And, therefore, it's important that you
19 perform your duties as jurors conscientiously and
20 diligently, because ordinarily there is no way to
21 correct an erroneous determination of the facts by a
22 jury

23 Now, just as only you can determine the
24 facts of this case, I, as presiding Judge, am the
25 sole judge of the law in this case And in that

1 connection, you must accept and apply the law
2 exactly as I state it to you, at this time, during
3 the trial, and at the end of the trial

4 And one of the most important rules that
5 we follow in court and that you are to follow as
6 jurors is that you are not to engage in any form of
7 premature deliberations or discussion concerning the
8 facts of this case until I authorize you to do so

9 That means you're not allowed to talk
10 about the case while it's going on with each other
11 or allow anyone outside of the courtroom to talk to
12 you about the case, and that includes family,
13 friends, and other folks.

14 If anyone attempts to discuss this case
15 with you at all, you must bring it to my attention
16 In addition to all of that, you are not to be
17 exposed to any information, through the media or
18 otherwise, concerning this case You're not to
19 read, listen, or watch any news reports concerning
20 this case That would be in violation of jurors to
21 do that

22 It's also important that you keep an open
23 mind and not decide any issue in this case until all
24 the evidence has been presented, and the parties
25 have made their closing arguments, and I have

1 instructed you as to the law that applies to this
2 matter

3 It is your solemn responsibility to
4 determine the guilt or the innocence of the
5 defendant as to the charges And the verdict must
6 be based solely on the evidence that is presented
7 during this trial as well as the law as I instruct
8 you

9 In just a moment, the Solicitor, Mr
10 Weeks, will make an opening statement in which he
11 will explain to you the issues in this case and what
12 he thinks the evidence will show in this case And
13 after he has done so, the defendant through counsel,
14 Mr Gipson, will have an opportunity to make an
15 opening statement, if he would like to do so

16 The burden of proof in this case rests
17 upon the State, it remains with the State, and the
18 State must prove beyond a reasonable doubt the guilt
19 of the defendant And should the State fail to do
20 that, then you must find him not guilty, giving him
21 the benefit of any and every reasonable doubt that
22 might arise from the evidence or lack of evidence.

23 I look forward to working with you on this
24 case, and I will do all that I can to make sure that
25 you are not unduly burdened by having to sit for

1 extraordinarily long periods of time We will stand
2 and stretch or take a break and do all that we can
3 to keep focused on the issues at hand

4 Mr Weeks

5 OPENING STATEMENT

6 BY MR WEEKS

7 MR WEEKS Thank you, Your Honor, may it
8 please the Court Good morning I know y'all have
9 didn't wake up Monday morning saying a silent prayer
10 that "Gee, I hope I get selected for a jury "

11 But whether it was just bad karma or good
12 luck, I don't But you're all here, and we've come
13 through kind of a lengthy process to select you as
14 jurors to be fair and impartial on behalf of Mr
15 Tyler and the State of South Carolina in this case

16 I do not know whether any of you have ever
17 served on juries before, but I'm certain most of you
18 have watched television And this ain't TV It
19 won't be TV Although we've got a big, pretty TV
20 here, the crime itself was not captured on TV in
21 this case

22 And it would be rare if it was -- maybe a
23 shoplifting, maybe something along those lines,
24 maybe in New York City where I hear they have 6,000
25 video cameras on street corners But there weren't

1 any cameras on Windsor Road or Union Academy Road in
2 Springfield, South Carolina, on the early morning
3 hours of August 27, 2005

4 Now, because most of you have never served
5 on a jury before and because our rules, and our
6 traditions, and all of our laws require certain
7 formalities to be done and certain procedures to be
8 followed, I want to kind of give you a game plan

9 And the Judge has done so to a little bit,
10 but I want to tell you a little bit about serving on
11 a jury and the role that you play. The defense
12 counsel, Mr Gipson, is an excellent lawyer The
13 police are here There will be experts that will
14 come in during the trial of this case to testify

15 And there's sophisticated -- to me,
16 sophisticated -- video recording equipment, and
17 there's a Judge with a black robe There's a lady
18 here taking down everything that's said by tape and
19 typing very fast in some fashion

20 And I'm the prosecutor for the State,
21 Solicitor as they've called me -- Solicitor as
22 opposed to in ancient or old England they had
23 barristers, which I think, as I understand it, kind
24 of didn't do trial work

25 When I went to school and got out of law

1 school at some point in time, I decided that I would
2 be a trial lawyer And in that regard, I've been
3 trained, and I have practiced for some time here in
4 Aiken County to follow the rules of the game

5 And the rules of the game, from my sports
6 background and all of that, I tend to analyze
7 everything It's kind of like a game It's not a
8 game, but to me this is probably the most serious
9 that you'll ever sit in judgment on or sit as a
10 referee on

11 But actually, in all aspects of this
12 trial, Judge Newman is the referee The defense
13 lawyer and myself are players in the game You are
14 spectators to some degree At the end of the trial,
15 you're going to get to go back there and analyze the
16 play of Bill Weeks and the State of South Carolina
17 and determine whether or not the State has met its
18 burden in proving Mr Tyler committed murder,
19 assault and battery with intent to kill, and
20 possession of a weapon during the commission of a
21 violent crime -- beyond a reasonable doubt

22 And during the course of this trial,
23 during the Judge's comments to you about the law,
24 his statements to you of the law, he'll explain some
25 of the legal terminology that you may hear come up,

1 that you may have heard come up during various roles
2 in your life

3 But some of the things I want to point out
4 to you in advance I never sat on a jury So it's
5 kind of unique that I spend my whole lifetime up
6 here talking to jurors and putting evidence in front
7 of jurors, but yet I never sat in that box

8 So, when you go back in that jury room,
9 you're going to be doing something that I personally
10 have never done But having stood here many times
11 and seen jurors reach verdicts in cases, my purpose
12 in telling you all this is because my role as the
13 State's prosecutor and your role as jurors is to
14 come into this courtroom and use your God-given
15 common sense, use your day-to-day skills, use your
16 life experiences in making decisions about the
17 State's evidence against Mr Tyler

18 And I think that during the course of my
19 career, I've come to a conclusion that sometimes
20 jurors get in the box and don't quite understand
21 their role. They somehow become Supreme Court
22 Judges, or they become authors, or they become
23 something else other than what we want y'all to be,
24 and that is representatives of the community

25 We want you to be peers of the people who

1 are charged with crimes in this state And "peers"
2 is a loose word. Peers encompasses a lot. It
3 doesn't mean y'all all have to live on Union Academy
4 Road

5 It means y'all have to be residents of the
6 community in which a case occurs And the reason I
7 bring all that out now is because when you are
8 listening to this testimony and tomorrow maybe,
9 you're not going to be listening as all of a sudden
10 we've appointed you to be Supreme Court Judges

11 You're going to be listening with the same
12 curiosity, with the same intelligence that you apply
13 to your everyday dealings, if you were going in to
14 buy a car, if you were going into a bank to open an
15 account, or if you were trying to decide whether
16 your child was telling the truth or a lie, or
17 whether your child was involved with something that
18 they shouldn't have been involved with

19 In other words, what I'm saying is the
20 mentality that we ask you to use is the mentality
21 that all of y'all use every day in deciding whether
22 something has occurred And that's exactly what you
23 do in a jury

24 It's not that you worry about what the law
25 is or should be or, you know, what you would like it

1 to be It's applying your common sense and your
2 everyday skills to what you see, what you hear, what
3 you are told happened on August 27, 2005

4 And I think it's important to tell people
5 that, because, like I said, having never sat on a
6 jury, I'm not sure what goes through your mind But
7 that's why there's 12 -- 14 now, but 12 in the end
8 -- who will deliberate and using all of your common
9 experiences and all of your life experiences to
10 determine whether Bill Weeks, the State of South
11 Carolina, is correct that Mr. Tyler murdered, and
12 assaulted Mr Brewer with the intent to kill him,
13 and possessed a weapon in the commission of a
14 violent crime

15 And that's what your job will be at the
16 end To get there, the State of South Carolina is
17 going to call witnesses, witnesses who were there
18 that night, witnesses who on August 27, 2005, made
19 some very poor judgment decisions

20 We're going to call witnesses to testify
21 that three people went down to the residence of
22 Cornell Tyler on August 27th, in the early morning
23 hours, and that those three people went down there
24 in a vehicle They go from Wagener

25 And, you know, I've lived in Aiken County

1 all my life and been out to the location of this
2 several times. And every time I go, I wonder if I'm
3 in the right place or not, because it is in the
4 country, as I call it

5 Having grown up in the country, that's
6 where this was But you get there somehow by coming
7 out of Wagener, or coming out of Aiken, or coming
8 out of Springfield It would be what I would say on
9 the eastern edge of Aiken County

10 And some of the evidence in your case
11 you'll understand in this case why I say that,
12 because it was confusing just where you're at,
13 whether you were in Aiken County, or whether you
14 were in Orangeburg County, or what town you were in,
15 because this is a rural area.

16 But the evidence is going to be these
17 three men from Wagener -- Salley/Wagener -- drive
18 down to Union Academy Road to see the defendant,
19 Cornell Tyler. Upon arriving at that residence,
20 they're there just a short while

21 And Mr Brewer, along with the deceased in
22 this case, a Ms Debra Dorch, working for the Aiken
23 Standard newspaper -- and that's why you were all
24 questioned about, you know, being fair to somebody
25 that worked at the Aiken Standard newspaper -- they

1 were working a paper route

2 They were coming up Union Academy Road
3 where Mr Tyler lives This was going to be in the
4 early morning hours I think the testimony will be
5 it was somewhere around 4 00 in the morning Coming
6 up the road, the testimony will be Ms Dorch, who
7 was new to the route, Mr. Brewer, who was sitting in
8 the passenger seat of Ms Dorch's truck, was looking
9 at, you know, what box needed a paper, and where
10 they were, and that sort of stuff

11 He's kind of instructing her She's only
12 been on the route a couple of days He's only
13 worked it a few times So, in conjunction with each
14 other, Mr. Brewer is using a flashlight because it's
15 dark, and they're delivering the Aiken Standard
16 newspaper to the tubes

17 When they pull up, deliver a newspaper in
18 a tube, and either Mr Brewer or Mr. Dorch realize
19 that they missed a box So, I mean, this is rural
20 country, two dirt roads They back up a period of
21 time Ms Dorch backs up, and there's a box sitting
22 over here on the right that they had missed

23 It was off the road So they pull in to
24 the box, Ms Dorch puts the newspaper in, and pull
25 out to proceed back down the road on which they were

1 coming And the testimony is going to be, the
2 evidence the State's going to present, is that Mr
3 Tyler came up to the door of the vehicle in the
4 early morning hours of August 27, 2005

5 Ms Dorch sees this man approaching Mr
6 Brewer is on the passenger seat Ms Dorch guns it
7 and goes down the dirt road Well, as she goes down
8 the dirt road, she passes the residence of Mr Tyler
9 and another co-defendant in the case

10 And as they get past the residence, shots
11 begin to ring out And they go down, and the
12 evidence is going to show you they hit Windsor Road
13 and take a left Windsor Road is a paved highway
14 and was a paved highway in August of 2005 And they
15 proceed down Windsor highway.

16 The evidence is going to be that Ms Dorch
17 has a cell phone and calls 911 You're going to
18 hear Debra Dorch's last words Mr Brewer, who's
19 the passenger in the seat, he's hearing all of this
20 They began being chased by people in an automobile,
21 a vehicle, down Windsor Road

22 Mr Brewer is going to testify that shots
23 were ringing out, that at some point Debra got hit
24 She says, "I'm hit," Mr Brewer is hit, by a bullet
25 Ms. Dorch gets hit again, and she slumps over

1 Mr Brewer says that the vehicle was going
2 at such a high rate of speed, he's trying to manage
3 to Debra Dorch's lifeless body, and he's got a big
4 chunk of newspapers sitting in his lap that they
5 were feeding these tubes with He's leaning over,
6 trying to drive her truck

7 He goes off the right side of the road,
8 overcompensates, comes to the left side of the road,
9 and then begins flipping He flips through and into
10 a pasture The pasture has got -- you'll see the
11 pictures, they're in the evidence presented by the
12 State in this case -- was surrounded by fencing

13 And it's wrapped all around the truck, and
14 you can just tell the truck was just rolled But
15 Debra Dorch was ejected Debra Dorch was dead She
16 was dead from the bullet wounds that she suffered,
17 which will be introduced into evidence

18 Mr. Brewer was hit at least once and was
19 not thrown clear of the car Debra Dorch was thrown
20 out of the car, out of the truck Mr Brewer -- you
21 will hear 911 recordings -- disoriented, confused,
22 been in a wreck, been shot, calling 911

23 Because it's country, and, you know, the
24 only time a cell phone doesn't work is when you need
25 it to And he's out there right at the cusp of cell

1 coverage, and he's right at the cusp of Orangeburg
2 and Aiken County.

3 And he don't know exactly what road he's
4 on right then, because he's not real familiar with
5 the area So he will get very frustrated, I
6 suspect, with Aiken County dispatch trying to, you
7 know, command that he tell them where they're at,
8 tell them where they're at

9 You know, it's just obvious when you hear
10 it that he's very disoriented Well, you'll see,
11 he's in a pasture It's dark He doesn't have his
12 light, can't find his light, couldn't find Debra
13 Dorch And, literally, he had to probably step over
14 her to get out of the truck

15 But ultimately he noticed her lifeless
16 body lying there Well, he goes down the road
17 further to the residence of a Ms Williams -- Ms
18 Valerie Williams -- who I anticipate will testify
19 also The evidence is going to show that Ms
20 Williams was confronted at four-something in the
21 morning with this man who's bleeding on her porch,
22 wanting to use her phone or wanting her to call 911,
23 call the police

24 You're going to hear those 911
25 transactions Mr Brewer, you know, satisfied that

1 help's on the way, he turns to go back up to where
2 this has occurred In the meantime, he's going to
3 testify as to seeing a car pull down real slow, and
4 turn around, and pull back, which he believes was
5 the people who had shot him, checking to see what
6 the status was -- don't know, he can't identify them
7 as such

8 And I think there were some other people
9 that might have come by and reported seeing this car
10 in the middle of a field in an obvious wreck But,
11 be that as it may, in spite of that, he heads back
12 up toward where he sees the deputies heading

13 He gets up there And Ms Williams gets
14 in her car and follows him up there and checks to
15 see that, you know, he's gotten to the authorities
16 and then goes back to her house, I think, and tells
17 the people that, you know, the fence is down, the
18 cows are going to get out, and then goes back up
19 there to check on him again.

20 Pretty much by the time they get the 911
21 recordings, law enforcement -- Officer Harding and
22 some others -- have found the location of this
23 wreck Well, at that point in time, criminal
24 investigation begins.

25 The first concern is Mr. Brewer's

1 injuries, Ms Dorch's body The police, Aiken
2 County Sheriff's Department, is called out SLED is
3 called out Mr Brewer is whisked away to the
4 hospital He's the only one alive and knows what
5 happened, so it's kind of stalled for a little
6 while

7 And then the investigators get there, and
8 it's about daylight They're trying to locate where
9 all this occurred at And Mr Brewer just couldn't
10 tell them He was dazed He was wounded
11 Fortunately, his wounds were not so severe that he
12 couldn't come back out there and show the police
13 where it occurred and what happened

14 And so they began processing the crime
15 scene which you will hear about in this case And
16 you're going to hear evidence in this case about
17 what the police discovered at the crime scene, as
18 well as you'll see the photographs they took showing
19 the area, showing the damage to the car, showing the
20 house where this all began at, the car that was
21 ultimately located that was used to transport the
22 person who killed Debra Dorch and assaulted with the
23 intent to kill Mr Brewer

24 And those people, I think, will testify --
25 the people that were in that car -- they're also

1 charged, one of them is also charged, both of them
2 are charged with the same crime that Mr Tyler is
3 charged with and that the State will be proving to
4 you beyond a reasonable doubt he committed

5 But all of that will transpire during the
6 course of this trial, probably toward the end
7 We'll probably try to group the experts who analyzed
8 some of the items that were found, as well as some
9 who processed the crime scene, after you hear from
10 the people that the State calls that were there,
11 that watched, saw, or participated in some fashion
12 in Debra Dorch's murder and in Mr Brewer's assault

13 As with everything, I mean, it's a slow
14 process And you'll be getting up and down, and
15 we'll be taking breaks And there'll be objections
16 and fouls called, and, you know, walkings called and
17 lane violations called, and all that sort of stuff
18 that I like to think about from my ballplaying days

19 It doesn't mean that the game is going to
20 end The game is going to continue to go on until
21 we show to you beyond a reasonable doubt that
22 Cornell Tyler was the one that murdered Ms Dorch.

23 I don't think for a minute that the
24 evidence will show -- and I don't believe that Mr
25 Gipson will be arguing -- that this wasn't probably

1 the most senseless, horrific killing that you will
2 ever be involved with, period There is absolutely
3 no reason in the world that Debra Dorch should be
4 dead today

5 And she's dead today from bullets -- seven
6 by a 62-caliber weapon, Russian ammunition, fired
7 from a rifle through the bed of the truck, through
8 the back of the bed of the truck, through the cab of
9 the truck, through the seat that Debra and Joe
10 Brewer were sitting in, and into the body of Debra
11 Dorch.

12 There's no reason for it It's not
13 anything that you can ever try to put a reason to
14 And Debra Dorch and Joe Brewer were doing what I
15 hope my newspaper carrier is going to do in the
16 morning, bring me my paper And that's what they
17 were trying to do, and she's dead

18 It's senseless But the State accepts the
19 burden and accepts the responsibility of proving to
20 you beyond a reasonable doubt that Cornell Tyler
21 participated, was the person who shot Debra Dorch

22 It's Cornell Tyler's day in court Other
23 defendants may come later, but it's Cornell Tyler
24 who has the day in front of you And as I
25 indicated, our system, our rules of Court, require,

1 allow, and really mandate that a person be
2 represented by competent counsel, and he will be.

3 But when this case is over with, I'm going
4 to come back before you, as our rules of Court
5 allow, and have closing arguments And I will say
6 more, probably more than you want to hear But I
7 will say more about what the evidence has shown and
8 why it's presented in the way it was

9 And I ask that you pay careful attention
10 I think, as the Judge will say, there will be
11 moments of excitement There will be a lot of
12 tedious shuffling around and in and out of the
13 courtroom But when it's all said and done, the
14 State is going to prove to you beyond a reasonable
15 doubt that Mr Tyler murdered Debra Dorch and
16 assaulted Mr Brewer with the intent to kill him and
17 possessed a weapon in doing so Thank you

18 THE COURT Mr Gipson?

19 OPENING STATEMENT

20 BY MR GIPSON

21 MR GIPSON May it please the Court, Your
22 Honor

23 THE COURT Yes, sir

24 MR GIPSON Ladies and gentlemen of the jury,
25 good morning

1 THE JURY Good morning.

2 MR GIPSON There's a proverb that I'm kind of
3 fond of, and it states that the witness who speaks
4 first seems correct until someone tells the other
5 side of the story and sets the record straight The
6 witness who speaks first seems correct until someone
7 tells the other side of the story and sets the
8 record straight

9 Quite obviously, we're here today to set
10 the record straight And before I go any further,
11 let me just echo part of Mr Weeks' sentiments when
12 I say that I do agree with the last thing that he
13 said -- well, part of the last things he said, which
14 is, number one, this is one of the most senseless,
15 cowardly acts that you will ever see

16 The perpetrator needs to be punished
17 They need to be brought to justice Debra Dorch's
18 family does not deserve this Mr Brewer does not
19 deserve this Nobody on that side of the courtroom
20 deserves to have to go through this.

21 Nobody should ever have to bury one of
22 their children It's senseless It's cowardly
23 And all of those things need to be punished. But as
24 I say that, I also need to let you know that Mr
25 Tyler is not the perpetrator of those acts

1 Our contention is you will meet the
2 perpetrator of those acts later in this trial
3 You'll have an opportunity to hear from that person
4 or those people as this trial continues But we're
5 going to set the record straight to let you know
6 that Mr Tyler is not the person who did these acts

7 He didn't plan these acts He didn't
8 participate in these acts He did not shoot Ms
9 Dorch He did not shoot Mr Brewer. We're here to
10 set the record straight

11 Now, as you know, my name is Byron Gipson,
12 and I represent Mr Cornell Tyler And I'm going to
13 try to briefly just outline how this case is going
14 to work You're going to be learning a good bit
15 about law and a good bit about how the process
16 works, so I'll try to streamline it for you as
17 quickly as I can so that we can begin to hear
18 evidence from the witness chair

19 First and foremost, this case came to you
20 by a process that Judge Newman mentioned to you
21 yesterday called an indictment process And
22 essentially that is a set of charging papers It's
23 somebody saying that something happened

24 And essentially an indictment is a ticket
25 that brings you into this courtroom and allows you,

1 the jury, to determine what really and truly
2 happened And with that indictment, it's an
3 allegation, and it means absolutely nothing unless
4 you, the jury, determine that it means something

5 And you've got to do that beyond a
6 reasonable doubt Now, there are a couple of
7 different definitions that you'll hear about
8 reasonable doubt And Judge Newman, who is the
9 judge of the law, will explain to you which
10 definition is applicable to this particular case

11 One definition is if you are firmly
12 convinced of a person's guilt, then that means
13 reasonable doubt does not exist, and you must find
14 them guilty But you have to be firmly convinced

15 Another definition of reasonable doubt is
16 the amount of doubt that causes any reasonable
17 person to hesitate to act And as jurors, if you
18 start to hear things and learn things in this case,
19 which I submit that you will, that will make you
20 hesitate to believe that Cornell Tyler, Jr , killed
21 Debra Dorch and assaulted Mr Brewer, then that is
22 reasonable doubt

23 One of the things that's been mentioned is
24 that the State has what's called the burden of
25 proof. So technically that means we could go and we

1 could sit over there, and as the Judge has mentioned
2 to you before, we could quite truly sit on our hands
3 and do absolutely nothing, and let Mr Weeks present
4 his evidence, and let him present his witnesses

5 We wouldn't have to ask a question We
6 wouldn't have to cross-examine anybody We wouldn't
7 have to do anything And ultimately Mr Tyler would
8 not have to testify if he chooses not to, because he
9 does not have to prove a thing. He is presumed
10 innocence unless, after you hear those -- the
11 information that comes from that witness chair, you
12 are convinced beyond a reasonable doubt that he did
13 the things that Mr Weeks says that he did

14 We're not going to do that We are going
15 to ask questions We are going to allow you to hear
16 all of the testimony that people have talked about.
17 One of the interesting things you'll see is as these
18 witnesses begin to testify, you're going to have an
19 opportunity to listen to them and to judge what type
20 of people you think they are

21 And you get to judge their credibility and
22 their believability And those are the types of
23 things that you do every day of the week Just like
24 right now, you're looking at me and trying to assess
25 my credibility, seeing if I'm a believable person,

1 seeing if the things that I say to you seem right

2 And you'll have an opportunity after you
3 hear the evidence to have a better opportunity to
4 judge my credibility And I ask that you wait till
5 the evidence comes in to do those things But
6 you'll have an opportunity to listen to, to hear
7 what they say and see if the things that they say
8 are plausible, listen to see if they're being
9 consistent, quite honestly, with what they've said
10 in the past.

11 This case is two and a half years old.
12 And I submit to you that what you hear today won't
13 be the first time that these people have come in,
14 put their hand on the Bible, and said that they're
15 going to be truthful with you. Listen to those
16 things, because those things are crucial, and that's
17 how you begin to see if somebody is going to be
18 credible or believable about the things that they're
19 going to say

20 As jurors, you're judges of the facts,
21 just as Judge Newman said And that means that as
22 you hear this information, that you hear the
23 evidence that comes from this witness chair, you'll
24 have an opportunity to decide exactly how they
25 happened based on what you hear

1 Nobody can come into this jury box and
2 say, "No, that's not how it happened " Once the 12
3 of you -- and that's no disrespect to the alternates
4 -- once the 12 of you decide how things took place,
5 that is indeed the evidence Those are the facts

6 Nobody can disturb those facts. But you
7 have to take the law as Judge Newman gives it to you
8 and apply the law to the facts and determine if the
9 State has proven its case beyond a reasonable doubt
10 And, again, it is our contention that they will not
11 do be able to do those things

12 Now, as you listen to the witnesses, I
13 believe you're going to hear from a lot different
14 types of witnesses First of all, you'll hear a
15 little bit from law enforcement and some SLED
16 witnesses as well Some of the law enforcement
17 witnesses will be from the Aiken County Sheriff's
18 Department.

19 You may see some from the Public Safety
20 Department You may see some from different
21 departments throughout the state. You may hear some
22 testimony from SLED officers -- South Carolina Law
23 Enforcement Division officers -- people who have
24 assessed forensic evidence, who have looked at
25 fingerprints, or shoe prints, or gunshot residue

1 You're going to hear those types of things
2 you hear a little bit about on CSI This is not a
3 CSI case, but you'll hear some of those types of
4 things in this case But one thing that I'm going
5 to ask you to do is to remember that they put their
6 pants on one leg at a time just like you and I do

7 And you are not to give them any
8 additional deference just because they're law
9 enforcement. Listen to their testimony Assess
10 whether it's believable, whether it's credible,
11 whether it seems right based on the circumstances
12 that you've learned about

13 And you determine the factual scenario and
14 then apply the law that Judge Newman gives to you
15 Second, you're going to hear from people who purport
16 to be eyewitnesses in this case Listen to what
17 they say Think about their ability to see what
18 they saw, hear what they heard, and to observe those
19 things

20 And think about when they provided
21 testimony, what they said, and, again, if it's
22 plausible, if it could have happened, if it's
23 reasonable, and, again, if it proves the case beyond
24 a reasonable doubt You're more than likely hear
25 from co-defendants in this case, people who have

1 been charged similarly to Mr Tyler.

2 Listen to them And I ask you to consider
3 motive What motive do they have to say the things
4 that they are saying? Listen to those things and
5 make the determination about their credibility and
6 believability based on those facts

7 Just because somebody gets up there and
8 says it doesn't make it so Listen to those things
9 Just like Mr. Weeks said in so many words, when you
10 came into jury duty this morning, you know, you
11 didn't park your car and leave your common sense out
12 in the car You brought it in here with you

13 That's why we went through that
14 painstaking process yesterday of asking you all 60
15 questions, asking you your blood type, where you're
16 from, what you had for breakfast, all that kind of
17 stuff We ask you all of those things so that we
18 can determine whether or not you can be fair and
19 impartial in a case like this

20 And that why it's crucial, that's why it
21 was crucial then But we picked you because we know
22 that you will be fair and impartial, and we know
23 that you will use your common sense as this case
24 develops to determine what really and truly happened
25 out there

1 Now, you're going to be introduced also to
2 different types of evidence as this case goes on
3 You'll more than likely view pictures You may see
4 casts of shoe prints, and you'll see an array of
5 pictures that the Solicitor's Office will put
6 together with this star board, as it's called

7 There are going to be two major types of
8 evidence that you'll be introduced to One is
9 direct evidence, the other is circumstantial
10 evidence Direct evidence is evidence that you can
11 see, that you can touch, that you can feel

12 Circumstantial evidence is evidence that
13 you can infer exists based on a series of facts
14 One of the common analogies that lawyers use when it
15 comes to circumstantial evidence is we're sitting
16 here in court right now If you go out at lunchtime
17 and you see snow all over your car, you've been
18 inside, you haven't seen outside, there's no way for
19 you to see what happened

20 But if you see snow and you see snow
21 tracks, you see tire tracks, you see whatever else
22 you see when it snows -- broken branches, things of
23 that nature -- you can infer that it snowed while
24 you were in the courtroom You may not have seen
25 it, but the evidence shows you based on a series of

1 facts that it showed

2 That's circumstantial evidence, and it is
3 just as powerful or credible as direct evidence
4 You may see a third type of evidence in this case,
5 which is evidence that we may stipulate to And
6 that's just another one of those legal words that we
7 use to say that Mr. Weeks and I may have agreed that
8 a certain type of -- that a certain piece of
9 evidence is uncontradicted and it's true

10 And if we stipulate facts, and we speak to
11 the Judge, and the Judge agrees to allow us to
12 stipulate to those facts, you're to take those facts
13 as if they're the gospel, as they're absolutely
14 true, and take those without question

15 Now, as you start to listen to the
16 witnesses, look at some of the evidence that's going
17 to be presented, you're going to start getting
18 pieces of things all over the place And I always
19 say it's almost akin to the old jigsaw puzzle that
20 you may have played with when you were younger, and
21 some still people use them

22 They're like the cuff links that I have
23 on, jigsaw puzzles And you remember those things,
24 you shake the board up, and dump it out, and throw
25 all of the pieces around And you start trying to

1 put that puzzle together little by little

2 And as you start to put the puzzle
3 together, you'll start to see the pieces, and you'll
4 start to get the bigger picture And as you start
5 to get the bigger picture, you can get an idea of
6 what happens

7 You may get a nugget of information from
8 one witness and a nugget from another witness. But
9 listen to all of those nuggets, because at the end
10 it should give you some type of picture of what
11 happened I submit to you that if, after putting
12 those pieces together, you don't have the pieces
13 that you need, then reasonable doubt exists

14 And that means that the State, represented
15 by Bill Weeks -- Mr Cotton, Ms Brisbane, whoever
16 else may have a part in this case -- has not proven
17 this case beyond a reasonable doubt One of the
18 more difficult things to do in a case like this is
19 to divorce yourself from the emotional aspect of the
20 case and deal with the reasonable aspect of the
21 case

22 This is a horrible situation to have to
23 deal with But the State wants you to get emotional
24 about it and start pointing a finger Resist the
25 urge and listen to the evidence That's why we

1 selected you, because we believe that you will
2 resist the urge to get emotional about this, and you
3 will listen to the evidence and do what's
4 reasonable, and what's right, and what should be
5 done in this case

6 And it's our contention that a verdict of
7 not guilty is what should be done in this case
8 Most importantly, as I said, this is a tragic
9 situation But it is also tragic for the Tyler
10 family, who has a son, who has a person who has been
11 charged with murder It's one of the most serious
12 charges you can have

13 And it's tragic for a person to be charged
14 with something that they did not do It's our hope
15 that, after you have listened to all the evidence,
16 listened to all the witnesses, and you've
17 deliberated, that you will return a verdict of not
18 guilty because the State has failed to prove that
19 Cornell Tyler shot Ms Dorch, shot Mr Brewer,
20 assisted or aided in the shooting of them, or tried
21 to collaborate or conspire to do those things We
22 ask that you come back with a verdict of not guilty
23 Thank you for your time

24 THE COURT Ladies and gentlemen, let's just
25 stand for a minute while we get ready for the first

1 witness

2 COURT REPORTER. Your Honor, for the record, I
3 have marked State's Exhibits One through Forty-
4 Eight

5 THE COURT Ladies and gentlemen, I'll have you
6 to step to the jury room for a few minutes, and
7 we'll bring you back in Please do not talk about
8 the case

9 (The jury left the
10 courtroom at 10 30 a m , after which the following
11 proceedings were had)

12 THE COURT All right, we'll be seated

13 Mr Gipson?

14 MR GIPSON Yes, sir Just as a housekeeping
15 matter, I'd ask that the witnesses be sequestered in
16 this case, Your Honor

17 THE COURT All right

18 Mr Weeks?

19 MR. WEEKS Your Honor, for the record, this
20 case has been tried once before, so all of these
21 witnesses have heard the testimony, received
22 transcripts and gone over them.

23 We would ask that to keep the chief
24 investigator, Ms Prince, as well as the victims to
25 the crime Anybody else, I don't have any problem

1 with them being outside the courtroom I don't
2 necessarily want them all housed together I don't
3 know if that's what he's asking, just not hearing
4 the testimony

5 MR GIPSON And, Your Honor, just not hearing
6 the testimony Whatever the normal procedure is in
7 terms of them being outside the courtroom, I don't
8 have a problem with that

9 THE COURT All right, the parties agree

10 MR WEEKS Anybody subpoenaed on behalf of the
11 State for this case have a seat outside Ms
12 Williams, you'll be the second witness So if you
13 would have a seat outside, I'll get you back in

14 THE COURT And regarding exhibits?

15 MR WEEKS Your Honor, the State has
16 tentatively marked at this point one through forty-
17 eight It's my understanding two through forty-
18 eight are without objection There is an objection
19 to what will be presented as State's Number One.

20 THE COURT Is that right, Mr Gipson?

21 MR GIPSON. That's correct, Your Honor

22 THE COURT. All right They're entered without
23 objection

24 (State's Exhibits Two, CD
25 (Sheriff's), and Three through Forty-Eight, Photos,

1 were entered in evidence)

2 MR WEEKS I also understand that the
3 prediction of the use of the star board to publish
4 these items is not objected to also, which is
5 something we would do also

6 THE COURT Is that right, Mr Gipson?

7 MR GIPSON That's without objection

8 THE COURT All right, without objection What
9 is number one?

10 MR WEEKS It's a photograph of the scene

11 THE COURT. All right Let the defendant use
12 the restroom, and let's be at ease for about two or
13 three minutes

14 MR GIPSON Yes, Your Honor.

15 (Court in brief recess)

16 THE COURT. You can bring the jury

17 (The jury returned to the
18 courtroom at 10 40 a m)

19 THE COURT The jury is back

20 First witness, please

21 MR. WEEKS May it please the Court, Your
22 Honor, the State would call Joseph Brewer

23 THE COURT Mr Brewer

24 CLERK OF COURT Mr Brewer, please come
25 forward and place your left hand on the Bible and

1 raise your right

2 (The witness was sworn)

3 CLERK OF COURT Please have a seat in the
4 witness box and state your full name for the Court,
5 and spell your last

6 MR BREWER Joe Brewer -- B-R-E-W-E-R

7 JOSEPH BREWER, having first been duly
8 sworn, testified as follows

9 DIRECT EXAMINATION

10 BY MR WEEKS

11 Q Joe, how old are you?

12 A Fifty-nine

13 Q And where do you live?

14 A We live in Windsor, at 761 Oak Ridge Club
15 Road

16 Q All right Who lives there with you?

17 A My wife

18 Q How long have you been married?

19 A Almost 25 years

20 Q And do you have any children?

21 A Two children, one 23 and one 21

22 Q What do you do for a living, Joe?

23 A I worked for Aiken Standard, and then I
24 just recently resigned I was teaching high school
25 -- teaching music, drama, and theater

1 Q Back in August of '05, where were you
2 working?

3 A Aiken Standard I was a supervisor

4 Q What were you doing there?

5 A I was -- basically, one of my jobs was
6 training new carriers

7 Q And in that capacity, were you training
8 someone involved in this case?

9 A Yes

10 Q All right Joe, if you would, take me
11 back to August 27, 2005 Just tell me generally,
12 first, how you go about delivering newspapers

13 A Basically, what we do, we have what's
14 called a route book You'll have a route book It
15 tells you the house numbers, street numbers, whether
16 you turn left or right And that's what we were
17 doing that night We were going through a route
18 book

19 Q All right Say you started, you know,
20 1:00 in the morning on August the 27th, could you
21 kind of take me through what you had done?

22 A I met Debbie -- Dee Dee -- at the paper
23 office

24 Q And who are you calling Dee Dee?

25 A Debra Dorch

1 Q All right
2 A She wanted to be called Dee Dee
3 Q Okay You met her where?
4 A At the Aiken Standard dock, paper office
5 Q Where is that located?
6 A It's on Rutland Drive
7 Q Across from the high school?
8 A Yes, sir
9 Q Okay And what time did you meet her
10 there, approximately?
11 A It was about 1 30
12 Q Okay And tell me what you did after you
13 met her, if anything
14 A We just loaded up our papers We also had
15 to load up another route, which we had to carry to a
16 store
17 Q Tell me how you load up papers.
18 A Just you have different -- we had bundles
19 They come in bundles of 50 And we put them in the
20 back of the pickup truck
21 Q Are they rolled up at that time?
22 A Not rolled up, no
23 Q Did they have those little blue cellophane
24 things on them?
25 A No, sir, they did not

1 Q All right What do you do?

2 A We just put them up Basically, you put
3 them in a tube or you either have to put a plastic
4 bag on them If they're tossed, we put a bag on
5 them.

6 Q When you say you loaded them, what did you
7 load them in?

8 A Loaded them in the back of the pickup
9 truck

10 Q Whose?

11 A Debra's

12 Q On August 27, 2005, was that the vehicle
13 you were using?

14 A Yes, sir

15 Q How many, approximately, newspapers did
16 you load up?

17 A Five hundred and something.

18 Q And what was the purpose in loading that
19 many newspapers?

20 A We had another route that we carried to a
21 store in Kitchens Mill for another carrier who
22 delivered in Wagener She picked up her papers at
23 there

24 Q What did you do, if anything, after you
25 left the Aiken Standard?

1 A Nothing We just sat there and talked
2 about the route and her, and about her life in
3 general

4 Q How long had Debra been working this
5 particular route?

6 A Three days

7 Q And how about you? How long -- had you
8 ever been --

9 A Two years

10 Q Had you ever been on the route before?

11 A I had only been delivering about a week

12 Q Now, what did you do after you left the
13 Aiken Standard after you had loaded your papers?

14 A We drove out to Kitchens Mill

15 Q And where did you go in Kitchens Mill?

16 A That store right there at the intersection
17 of Kitchens Mill

18 Q And what did you do there?

19 A We unloaded the other route, the bundles

20 Q Did you drop them off there?

21 A Uh-huh

22 Q Okay Did you meet a carrier or anything?

23 A No, sir

24 Q Where did you go from there?

25 A We proceeded on the route

1 Q All right

2 A Going north four

3 Q Going down Highway 4?

4 A Yes, sir

5 Q All right Where did you go from Highway
6 4?

7 A Different streets I couldn't tell you

8 Q About what time of the morning was this
9 now?

10 A This was actually right around three

11 Q Okay And did anything else happen that
12 night?

13 A Yes, sir

14 Q Okay If you would, tell me what led up
15 to why you're here

16 A We were delivering Union Academy Road, and
17 Debra had moved up and put a paper in a tube And I
18 was getting ready to tell her something, and she
19 said, "No, I missed one " So she very quickly
20 backed up

21 Q What time of the morning was this, Joe?

22 A This was right at four

23 Q And describe Union Academy Road to me, if
24 you will

25 A It's a dirt road

1 Q A long dirt road?

2 A Yes

3 Q Okay And how long had you been on it?

4 Had you already delivered any papers on it?

5 A Yes, we had. We had been on it something
6 like 15 minutes

7 Q Okay All right, Debra backed up.

8 A Uh-huh, she backed up And she proceeded
9 to -- it was like a little circular drive, and she
10 proceeded to pull up to the tube to put the paper
11 in, and then she pulled out

12 Q When she pulled out, what, if anything,
13 did she do then?

14 A When she pulled out, we were approached by
15 Cornell

16 Q When you say "Cornell," who do you mean?

17 A The defendant

18 Q How were you approached?

19 A He came up to the driver's send of the
20 truck

21 Q What happened?

22 A He tried to get in When I train a
23 carrier, I train a carrier always to keep the doors
24 locked.

25 Q What happened?

1 A She got very, very frightened and put her
2 foot down on the accelerator real fast and then sped
3 off

4 Q When she sped off, which direction did you
5 go?

6 A We went toward Windsor

7 Q Windsor Road, okay Did anything happen
8 then?

9 A I would say around 200, 300 feet down the
10 road, we heard shots We didn't feel anything or
11 didn't hear anything

12 Q Do you have any memory of how many shots
13 you might have heard?

14 A No, sir It was several

15 Q Okay What happened then?

16 A We proceeded to the stop sign Debra
17 looked out the rear-view mirror

18 Q Stop sign of what?

19 A Stop sign to the intersection of Windsor
20 and Union Academy

21 Q Okay What kind of road is Windsor Road?

22 A It's paved

23 Q All right And what did you do when you
24 got to the stop sign?

25 A We turned to the left

1 Q What was Debra's demeanor at this time?

2 A She was very nervous She was kind of
3 upset, because she looked through the rear-view
4 mirror and saw some car coming out And, of course,
5 I told her, "It's not him " This was the time of
6 deer season And I said, "Maybe they're out there
7 deer hunting "

8 Q What appeared to happen then?

9 A She sped down the road We were way down
10 the road, and then she saw a car or something turn
11 toward us But within seconds, the car was on our
12 tail and firing at us.

13 Q What did Debra do, if anything, then?

14 A She was very calm at first, and she got
15 her cell phone to call 911

16 Q Were you present when that call was being
17 made?

18 A Yes, sir.

19 Q Did you hear her make the call?

20 A Yes, I did

21 Q What was her demeanor at the time of the
22 call?

23 A Very composed But then the more we were
24 traveling, then the more the shooting and the
25 bullets hitting the side of the truck and hitting

1 the back of the truck, and then she was getting very
2 frightened

3 Q At any point, did she stop her
4 conversation with 911?

5 A Yes, she did

6 Q And when was that?

7 A This was when she dropped the cell phone
8 because he was trying to pass us We don't know
9 whether he was trying to get on her side, and she
10 wouldn't let him do it She sped up, and they tried
11 to get on my side, and she wouldn't let them get on
12 my side She just kept going She sped up

13 Q How far did y'all go, Joe?

14 A About two miles

15 Q And during this time, what, if anything,
16 was happening with the vehicle behind you?

17 A It was speeding up It was still firing
18 at us We couldn't understand why they were
19 shooting at us We didn't do anything

20 Q And what happened then?

21 A Before we got to the stop sign -- I can't
22 tell you the intersection -- but before we got to
23 the stop sign, Dee Dee had mentioned, "We've got to
24 stop " I said, "No, we're not going to stop Keep
25 going," I said "They're shooting at us " And then

1 right before we got to the stop sign, I got hit

2 And --

3 Q Where did you get hit?

4 A I got hit in the side

5 Q Did you know you had been hit with a
6 bullet at that time?

7 A I knew I felt something that was burning

8 Q What happened then?

9 A And then shortly past the stop sign, she
10 got hit, and she told me she got hit And then
11 shortly down further, she got hit again, and she
12 slumped over on me

13 Q When she slumped over on you, what did
14 you?

15 A The first thing I had to do was I had to
16 push her off of me And since I had the two bundles
17 on my lap, I had to try to reach the steering wheel
18 to control it I couldn't get her foot off the
19 accelerator So we were just going down the road,
20 and I was trying to guide the truck like it was, at
21 that high speed

22 Q And you say "at that high speed " Do you
23 have any estimate as to how fast you were going?

24 A When I looked at the accelerator, it was
25 going almost 100 miles an hour

1 Q What happened then?

2 A I could not control it I was going to
3 one side, and they never did stop firing the weapon
4 They never stopped firing at us And I kept going
5 from one side, and ducking, and all kind of things,
6 trying to figure out what was going on And I ended
7 up going out into a field, and the truck flipped

8 Q So you weren't able to control the
9 vehicle?

10 A No, sir

11 Q All right When the truck flipped, what
12 happened then?

13 A My head was spinning actually, it flipped
14 back up on its wheels And when I looked over, I
15 tried to find her And I kicked the door open,
16 because I was still in there And the air bag was
17 out on her side And I got out, trying to find her
18 basically

19 Q What were the lighting conditions right
20 then, Joe?

21 A Dark, dark

22 Q Did you have any type of lighting device
23 with you?

24 A Yes, there was -- I had a flashlight in
25 the truck The tail lights of the truck were still

1 going, and the flood lights or something on the
2 truck in the front were still going The headlights
3 were busted, so we didn't have those So that was
4 all the lighting.

5 Q Did you know where Debra was at the time?

6 A No, I went out to see, looking for her

7 Q What did you?

8 A I couldn't find her -- feeling with my
9 hands, trying to find her I went back to the truck
10 to see if I could find the flashlight, still
11 couldn't find the flashlight, and then tried to find
12 the cell phone My cell phone was destroyed And I
13 found Debra's, and it was low battery But I
14 managed to get a call through to Orangeburg

15 Q When you say you managed to get a call
16 through, who did you call?

17 A I called 911

18 Q What happened when you called 911, Joe?

19 A I called 911, and Orangeburg came up And
20 I was trying to tell them what was happening, and --

21 Q Let me stop you What was your condition
22 at that point -- physical condition?

23 A Confused

24 Q What about your physical condition?

25 A Probably scared because of what was going

1 on I was very confused I didn't know exactly
2 where I was, and I knew I had been shot

3 Q Tell me what happened when you called 911

4 A And I tried to talk to them, and then the
5 phone went dead I waited a couple of seconds and
6 then called back again, and they transferred me to
7 Aiken's 911 and was able to get help

8 And I told them -- at that point when I
9 called them, that's when I found Debra She was
10 under the car

11 Q Did she appear to be alive?

12 A I didn't know, because I tried to yell at
13 her to wake her up, or, you know, tried to wake her
14 to see if I could get any response, and I couldn't
15 And I told them then that I was going for help

16 Q What did you do then, Joe?

17 A I saw lights -- a street light -- within
18 about, I'd say, a quarter of a mile down the road.
19 And I walked down to the house and knocked on the
20 door And Ms Williams came to the door And I
21 know she had to be scared, because it was 4 00 in
22 the morning

23 Q Did you know this lady?

24 A No, I did not know this lady

25 Q Tell me what you did there at Ms

1 Williams' house

2 A At Ms Williams' house, I asked her would
3 she please call I said, "I'm hurt I've been
4 shot There's been a terrible accident Would you
5 please call 911?"

6 Q And did she?

7 A She called 911 for me

8 Q Joe, have you listened to the tapes of the
9 911 call --

10 A Yes, sir

11 Q -- that were recorded?

12 A Yes, sir

13 Q And are they accurate to the best of your
14 knowledge as to what was said that night?

15 A Yes, sir

16 Q Joe, at any time that night, did you have
17 any kind of weapon in the truck?

18 A No, sir We don't believe in carrying
19 weapons None of our carriers carried them.
20 They're not supposed to carry them

21 Q Were there any shots being fired from your
22 vehicle?

23 A No, sir

24 Q Now, you've obviously been to the scene
25 where this wreck occurred. What happened after you

1 got Ms Williams and got help on the way? What did
2 you do then?

3 A Well, my first thing was to try to find
4 out how Debra was doing So I left her porch, her
5 back porch. She told me to come around to the back
6 porch because the front porch was nailed shut

7 I came back there, and she wanted me to
8 take the phone I didn't want to take the phone
9 because my head was all messed up, and I didn't want
10 to bother her phone

11 And she said, "You take this phone " She
12 was a mother She said, "You take this phone, and
13 then you talk to 911 " And they told me then that
14 an ambulance was on the way and would be there
15 within two or three minutes As I was talking to
16 them, they drove by

17 Q And what did you do then?

18 A I gave the phone back to her, and then
19 left, and then walked back to the scene of the
20 accident

21 Q When you got there, what did you do then,
22 if anything?

23 A When I got there, basically the EMT and
24 all, they grabbed me and, you know, started working
25 with me And I was okay, and all of a sudden, then

1 I started getting very weak

2 Q Did you go to the hospital?

3 A Yes, sir.

4 Q Where had you been hit, Joe?

5 A I was hit in the side and then later found
6 out I had a bullet in my arm

7 Q Can you point out to the jury where that
8 was?

9 A The side, I was hit here in the side here,
10 and then I have a bullet in the arm -- I carry that
11 today

12 Q They weren't able to remove the bullet?

13 A The bullet was lodged in the muscle They
14 said by removing it, it could damage the muscle
15 more

16 Q Now, did you come back after going to the
17 hospital?

18 A Yes, I did They asked me would I
19 consider coming back They said, "You don't have
20 to," but would I consider coming back I said,
21 "Yes, please " I think my adrenaline was a little
22 bit high then And I came back and then gave them
23 some more information, exactly where it started and
24 ended

25 Q And have you been back to that location

1 with myself and my office since?

2 A Yes

3 Q Have you reviewed any photographs
4 regarding where this took place?

5 A Yes

6 Q Have you reviewed the 911 tapes? I think
7 I asked you that

8 A Yes, sir

9 MR WEEKS Your Honor, the State
10 would move to introduce what's been marked State's
11 Exhibit Number Two Actually, for the record, Your
12 Honor, State's Exhibits Number Two through Forty-
13 Eight are in without objection

14 THE COURT Yes, sir, admitted
15 without objection

16 Q Joe, you've listened to the 911
17 recordings?

18 A Yes, sir

19 Q The lady you mentioned today, can you
20 identify what's been marked State's Exhibit Number
21 One?

22 A Yes, sir, that's Dee Dee

23 Q And was this the lady you were with that
24 night?

25 A Yes, sir

1 Q And is that the lady that made the 911
2 call that's recorded on this tape?

3 A Yes, sir

4 MR WEEKS Your Honor, we move to
5 introduce this photograph as State's Exhibit Number
6 One

7 THE COURT What says the defense?

8 MR GIPSON I have an objection to that,
9 Your Honor

10 THE COURT Sir?

11 MR GIPSON I have an objection to that,
12 Your Honor

13 THE COURT. All right And what's the
14 objection?

15 MR GIPSON May we approach?

16 THE COURT Yes, sir

17 All right, Mr Gipson --

18 MR GIPSON Yes, sir

19 THE COURT -- is there an objection to
20 Exhibit One?

21 MR GIPSON Not to number one, Your
22 Honor

23 THE COURT All right, it's admitted
24 without objection

25 (State's Exhibit Number

1 One, Photo, was entered in the record)

2 MR WEEKS Your Honor, we'd like to
3 publish State's Exhibit Number Two at this point in
4 time

5 THE COURT All right, you may
6 (Whereupon, the jury
7 received evidence by playback of the tape-recorded
8 911 calls)

9 EXAMINATION CONTINUED

10 BY MR WEEKS.

11 Q Joe, could you step down here? I'd like
12 to publish what's been marked State's Exhibits
13 Number Three, Four, and Five

14 MR WEEKS This is a projector, Your
15 Honor

16 THE COURT Yes, sir, you can step
17 down.

18 Q Joe, do you recognize the scene that's
19 published on the projector as State's Exhibit Number
20 Five? Do you recognize that location?

21 A Yes

22 Q Could you come down here and point for the
23 jury, if you would, where that location is? What's
24 the location depicted there?

25 A This is Windsor Road

1 Q Union Academy?

2 A Union Academy is the dirt road.

3 Q All right And where were y'all at when
4 this ordeal began?

5 A Right along here.

6 Q And what began right along in there?

7 A That was when Cornell approached, and we
8 were traveling down the highway

9 THE COURT You'll have to speak
10 louder, sir

11 Q Speak up, if you would

12 A Okay We were traveling this direction

13 Q Which direction were you traveling?

14 A This direction

15 Q All right From this diagram here, when
16 you described you backing up and turning around,
17 where did that occur at, when you missed the tube?

18 A I'm thinking right here

19 Q When you said you proceeded down the road,
20 you proceeded this direction?

21 A Going toward Windsor.

22 Q Now, with regard to State's Exhibit Number
23 Five, have you reviewed this photograph, Joe?

24 A Yes, sir

25 Q Is 344 Union Academy Road right there?

1 A Yes

2 Q Can you kind of line out which direction
3 y'all took?

4 A We proceeded to go down this way and then
5 this direction.

6 Q Okay Where did you end up, Joe?

7 A We ended up in a field Right here is
8 another -- we were traveling so fast that we
9 traveled a long distance It felt like we traveled
10 a long distance.

11 Q Look at State's Exhibit Number Four, and
12 I'll ask if you can more specifically identify where
13 you ended up

14 A Let's see here This would be Windsor
15 Road here.

16 Q Is this the field you ended up in?

17 A This is the field

18 MR WEEKS I'm publishing for the
19 jury, Your Honor, State's Exhibit Number Six

20 Q Can you tell me what's depicted in that?

21 A That's the truck we were in

22 Q Is that where you ended up?

23 A Yes

24 Q In which direction did you come to get to
25 that point? Just point to which direction you came

1 from

2 A Here

3 Q Okay Now, State's Exhibit Number Seven,
4 Joe, can you identify what's depicted in that
5 photograph?

6 A That's Union Academy

7 Q Okay And what appears down in this
8 direction, what is that?

9 A That's a paper tube

10 Q Is that the one -- the last one y'all
11 delivered to?

12 A Yes, sir, it is

13 Q And you came back out this way and
14 photographed?

15 A Goes back this way, yes

16 Q Okay You mentioned in your testimony an
17 intersection where there was a stop sign that you
18 told her to run What is seen depicted in State's
19 Number Eight?

20 A That's the intersection I told her to run
21 the stop sign

22 Q Okay When you ran off the road?

23 A Further on down the road, yes.

24 Q What does that photograph depict, Joe?

25 A It shows the truck going off the side into

1 the field.

2 Q Is that the path you took into the field?

3 A Yes, sir

4 Q Is that the same scene that's depicted in
5 State's Exhibit Number Forty-Three?

6 A Yes

7 Q Tell the jury what the scene is depicted
8 in State's Exhibit Number Eleven

9 A It's the truck that we were in

10 Q Okay Where were you sitting in that
11 truck?

12 A Right here

13 Q And you pointed to the passenger seat?

14 A Yes.

15 Q And Debra Dorch was sitting in the
16 driver's seat?

17 A Yes, sir

18 Q Joe, have a seat back on the stand, if you
19 would. You were the assistant circulation manager
20 at the time?

21 A Uh-huh.

22 Q Was this route in Aiken County?

23 A Yes, sir

24 Q Was the location where you were attempting
25 to put the papers in the box, was that in Aiken

1 County?

2 A Yes, sir

3 Q Have you recovered completely from your
4 injuries, Joe?

5 A Yes, sir I still have pain from the
6 accident

7 Q What's depicted as State's Exhibit Number
8 Eleven, where you were sitting in this truck, where
9 did the bullets appear to have struck you? How did
10 they get in you?

11 A They came through the back of the pickup
12 truck

13 Q And I believe you said your right arm was
14 struck?

15 A Yes

16 Q Okay Were you bleeding from that?

17 A Yes

18 Q You just couldn't tell how bad you had
19 been hurt?

20 A No, I didn't even know that I was even hit
21 until the paramedics told me They thought I was
22 hit multiple times, but they couldn't tell

23 Q Joe, it's been two and a half years, is
24 that correct --

25 A Yes, sir

1 Q -- more or less? You said that Cornell
2 came to the door Do you see the Cornell in here
3 that came to your door that night?

4 A Yes, sir

5 Q Where is he?

6 A The defendant

7 Q Could you tell anything about the vehicle
8 that was following y'all?

9 A The only thing I could tell, it was more
10 of a darker vehicle and the type of shape It was
11 an older vehicle

12 Q How close did it get to you?

13 A Right on the tail

14 Q What, if anything, did it do with regard
15 to positioning behind y'all's vehicle?

16 A Several times it tried to pass us

17 Q Joe, answer any questions the defense has
18 for you

19 THE COURT: Yes, sir

20 CROSS-EXAMINATION

21 BY MR GIPSON

22 Q Good morning, Mr Brewer

23 A Good morning

24 Q You and I have met before, is that
25 correct?

1 A Yes, sir

2 Q And, quite frankly, we met in this
3 courtroom, correct?

4 A Yes, sir

5 Q We've never had a conversation aside from
6 in this courtroom, correct?

7 A No, sir

8 Q All right Now, you mentioned to -- well,
9 let me ask you this. You've come in here, and
10 you've promised to tell the truth, the whole truth,
11 and nothing but the truth, correct? I'll ask you
12 again And let me mention this now Since we have
13 a Court Reporter who's typing everything up, when
14 you nod your head, she can't take down a nod So
15 you just have to give an affirmative response. And
16 you can't say "uh-huh" or "huh-uh "

17 A Yes, sir

18 Q All right So if I ask you again, I'm not
19 trying to be nasty to you I'm just making sure
20 that she can take down everything we say Now, you
21 promised today to tell the truth, the whole truth,
22 and nothing but the truth, correct?

23 A Yes, sir

24 Q And you promised before when you testified
25 to tell the truth, the whole truth, and nothing but

1 the truth, correct?

2 A Yes, sir

3 Q And you also promised at least a time
4 prior to that -- well, right after this incident
5 took place back in 2005 -- to tell the truth, the
6 whole truth, and nothing but the truth, correct?

7 A Yes, sir

8 Q So on three different occasions, you've
9 promised to tell the truth?

10 A Yes, sir

11 Q And you've done that on each of these
12 occasions?

13 A Yes, sir

14 Q Now, you said that when this incident took
15 place in 2005, you had only worked for the Aiken
16 Standard for about two weeks or so, correct?

17 A Yes, sir

18 Q And you were in a supervisory role?

19 A Yes, sir

20 Q And, of course, just to rehash a little
21 bit of your testimony, is that you sometimes train
22 people who are going out on routes, correct?

23 A Yes, sir

24 Q And Ms Dorch was one of those people who
25 was going out on routes that you had to train?

1 A Yes, sir

2 Q Now, you had only traveled this particular
3 route about four times or so, is that correct?

4 A Yes, sir

5 Q All right So you were slightly familiar,
6 but you didn't know all the nooks and crannies
7 necessarily, right?

8 A Right.

9 Q So that's why you can say, "No, I don't
10 know exactly where I was," because this was kind of
11 a new area, correct?

12 A Yes, sir

13 Q Plus, at 4.00 or 3 00 in the morning in
14 Springfield, Wagener/Salley area, tell us what the
15 conditions are like at that time of the morning

16 A It was dark

17 Q Pitch dark, correct?

18 A Uh-huh -- yes, sir

19 Q And not a whole lot of street lights and
20 stuff like that out that way, right?

21 A No, sir

22 Q Okay And that's why you have to keep a
23 flashlight with you, so that you could look at your
24 route guide and kind of make sure that you're making
25 the turns in the correct places, correct?

1 A Yes, sir

2 Q All right Now, on August 27, 2005, who
3 was living at 344 Union Academy Road?

4 A I didn't know at the time

5 Q Okay But you know now, correct?

6 A Yes

7 Q Okay And who tried to open your door?

8 A Cornell

9 Q Cornell Tyler?

10 A Yes, sir

11 Q Seated in the courtroom?

12 A Yes, sir

13 Q All right Now, back on November 28,
14 2006, you testified, correct --

15 A Yes, sir

16 Q -- on or about November 28, 2006? And you
17 were aware that there was a Court Reporter that took
18 down everything you said, correct?

19 A Yes, sir

20 Q And you are aware that they make a
21 transcript of everything that you say, correct?

22 A Yes, sir

23 Q All right

24 MR GIPSON May I approach the
25 witness?

1 THE COURT Yes, sir

2 MR GIPSON Thank you

3 Q I'm going to show you a transcript of your
4 prior testimony

5 A All right

6 Q All right And I'd like for you to look
7 -- bear with me for a moment, please I'm showing
8 you page 33 of a previous transcript of your
9 testimony And I just want you to look, if you
10 will, beginning -- let's just read all of page 33

11 A Yes, sir

12 Q Now, would you like to read it, or do you
13 want me to read it?

14 A No

15 Q Okay So do you want me to read it to
16 you?

17 A No, I read it

18 Q Okay Now, let's just go line by line by
19 what your testimony was in 2006 Now, you said --
20 Question, "And Ms Dorch -- had Ms Dorch driven the
21 route before, to your knowledge?" Your answer,
22 "Yes, sir, but not by herself "

23 Line nine, "Okay And do you know how
24 many times? If you know, that's fine, and if you
25 don't know, that's fine " Your answer, "I'm not

1 sure I think three "

2 Question, "Now, do you know who lived at
3 344 Union Academy Road?" Your answer, "No, sir "

4 Question, line 14, "Do you know who tried to open
5 your car door?" Line 15, your answer, "No, sir "

6 Line 16, "Okay, I just want to be clear
7 You're not sitting here testifying today saying that
8 Cornell Tyler tried to open your car door?" Line
9 19, answer, "No, sir " That was your testimony --

10 A Yes, sir

11 Q -- in November of 2006, correct?

12 A Yes, sir

13 Q And that was your testimony that you gave
14 under oath, correct?

15 A Yes, sir, at the time.

16 Q And at the time, this was 14 or 15 months
17 after the incident took place, correct?

18 A Yes, sir

19 Q And at the time, 14 or 15 months later, it
20 was more recent than two and a half years later as
21 we sit here today, correct?

22 A Yes, sir

23 Q And at the time, you promised that you'd
24 be truthful, and you told us that you were truthful,
25 correct?

1 A Yes, sir

2 Q All right So your answer in court is
3 changed since November 2006, correct?

4 A Yes, sir

5 Q And isn't it true that in July 2005, right
6 after this took place, you gave a similar answer,
7 that you didn't know who approached your car?

8 A I didn't remember because it was a
9 traumatic experience

10 Q Okay

11 A And all this has come back since

12 Q It's all come back since?

13 A Yes, it has

14 Q Okay Now, when it came back to you, you
15 still told the Court that you didn't know who shot
16 you?

17 A No, this has just come back, within a
18 month I didn't even know it was raining It was
19 raining that night also. In the past month, it's
20 all come back

21 Q And now that it's just come back, did it
22 come back to after you met with Mr Weeks for a
23 period of time in preparation for this trial?

24 A It just came back A lot of things are
25 coming back in my mind, in my memory, that I just

1 blocked out

2 Q Okay And when those things came back to
3 you, did you write a statement and say, "Hey, you
4 know, the previous few times that you've met with
5 me, and the time that we prepared before, and all
6 those months before when I told you I didn't know
7 who approached the car, you know, it just hit me
8 You know, I think I know who approached the car"?

9 A I never did

10 Q Okay Now, let me ask you this Who shot
11 you?

12 A I don't know

13 Q Okay And you're not going to say that's
14 going to come back to you?

15 A I don't know

16 Q Okay Do you know who shot Ms Dorch?

17 A I don't know

18 Q Do you know who was in that car that
19 chased you both?

20 A No

21 Q Okay. Isn't it true that you testified in
22 the first trial that after you were shot, after the
23 car rolled over in the field, in the pasture that
24 we've talked about several times --

25 MR WEEKS Your Honor, I object

1 THE COURT All right Ladies and gentlemen,
2 I'll have you go to the jury room for just a few
3 minutes Please do not discuss the case

4 (Whereupon the jury left
5 the courtroom at 11 31 a m)

6 THE COURT Yes, sir

7 MR WEEKS Your Honor, I'm certainly not
8 objecting to him cross-examining the witness with a
9 transcript of a previous court appearance But for
10 him to talk about the first trial is objectionable,
11 and I ask that some sort of curative instruction be
12 given in that he's not allowed to talk about the
13 first trial in this matter

14 Any further than impeaching witnesses with
15 transcripts, I don't have a problem with that But
16 when you talk about what happened in a previous
17 trial, I do not feel it is proper

18 THE COURT All right, Mr Gipson?

19 MR GIPSON Your Honor, he testified before
20 Many of these jurors, as we questioned, are aware
21 that there was a previous trial If the Court would
22 like me to just say his transcript, I will frame it
23 that way

24 THE COURT You said many of which jurors said
25 what about what?

1 MR. GIPSON Some of the witnesses during the
2 voir dire said that they were -- they had been
3 tracking this case and reading about this case, that
4 they were aware of some of the occurrences But,
5 Your Honor, if I need to refrain from it and just
6 say "from your previous testimony that was taken
7 down by a Court Reporter," I'll refrain

8 THE COURT Well, I'm unaware of any jurors in
9 this case having stated at any time during these
10 proceedings this week that they're aware of a prior
11 trial in this case

12 MR. GIPSON And, Your Honor, there's at least
13 one who said that she tracked it very thoroughly as
14 far as reading and knowing some of the incidents
15 based on the paper But, Your Honor, I'll refrain
16 from saying "prior trial."

17 THE COURT. Okay

18 MR. GIPSON I'll refrain

19 THE COURT I understand what you're saying I
20 also want the record to be clear --

21 MR. GIPSON Yes, sir

22 THE COURT -- concerning the matter During
23 voir dire, I didn't ask any juror whether they were
24 aware of a prior trial

25 MR. GIPSON Yes, sir

1 THE COURT In the comments of the jurors, none
2 of them stated that they were aware of a prior trial
3 or various prospective jurors indicated that they
4 were familiar with the incident

5 MR. GIPSON Yes, sir

6 THE COURT Go ahead, Mr Weeks

7 MR WEEKS Your Honor, I just want to make it
8 clear that I don't agree with his recollection of
9 the voir dire -- never mention that there was a
10 prior trial You know, when he was cross-examining
11 and talking about the Court Reporter, that could
12 have been a lot of things

13 But when you start specifically saying
14 "prior trial," -- and that's kind of where I'm at
15 I don't what else?

16 THE COURT Well, certainly, the defense has
17 the right to confront witnesses with prior
18 testimony, with prior inconsistent statements,
19 whether the inconsistent statements be through
20 testimony or otherwise

21 If it is something that's just quite
22 apparent to the jury that there was a prior trial,
23 that this matter has been tried before and is now
24 being tried again, then it at some point may become
25 inescapable The question is whether it needs to be

1 nipped in the bud at this point in time or whether
2 there are other incidents that are going to make it
3 obvious that there was a prior trial

4 MR GIPSON And, Your Honor, if I may, I
5 believe it's quite obvious, based on a lot of the
6 scenarios And if I misspoke, I apologize But my
7 recollection of the answers given during the voir
8 dire was that at least a couple of those jurors said
9 that they had tracked it even through court

10 And I took "court" as being tried. So if
11 I misspoke, I apologize for that, Your Honor I
12 think it's something -- I mean, it's the pink
13 elephant in the room, so to speak They know it's
14 there But, Your Honor, if you don't want me to
15 mention it, I will not

16 THE COURT I don't want you to be the one to
17 bring the elephant in the room improperly

18 MR GIPSON Yes, sir

19 THE COURT During the venue hearing yesterday,
20 you brought in an affidavit from a prior juror and
21 wanted me to talk to a prior juror about what
22 happened in the prior trial And all of that is
23 irrelevant

24 This is a new jury, another trial, and
25 this trial, I could care less about the last trial,

1 except that you have the right under the rules to
2 question the witnesses concerning any prior
3 inconsistent statements and prior testimony, if the
4 prior testimony is inconsistent We're not here to
5 rehash what you all did during a prior trial

6 Anything else on this matter?

7 MR WEEKS At this point in time, I'm not sure
8 -- I'm not asking for a curative instruction I
9 would withdraw that request I just want to remind
10 us not to go into the prior trial at this point in
11 time or in further proceedings

12 I think it would call too much attention
13 to it right now, unless it was a general statement
14 that the jury is to only be concerned with what
15 occurs in this trial or this -- I don't know how to
16 say it It's hard to un-ring that bell. I don't
17 know.

18 THE COURT All right, Mr Gipson, anything
19 further?

20 MR GIPSON No, sir

21 THE COURT All right

22 MR GIPSON I'll just call it prior testimony,
23 Your Honor

24 THE COURT All right, very well Let's take a
25 little stretch while the jury is out

1 (Court in brief recess)

2 THE COURT All right, let's come to order
3 You may be seated We'll have the jury come in,
4 after the defendant comes in

5 Bring the jury

6 (The jury returned to the
7 courtroom at 11 40 a m)

8 THE COURT All right, you may proceed

9 MR GIPSON And may the witness step down
10 briefly, Your Honor?

11 THE COURT Yes

12 EXAMINATION CONTINUED

13 BY MR GIPSON

14 Q And, Mr Brewer, I'm referring now to
15 State's Exhibit Number Seven

16 COURT REPORTER Could you have him stand
17 on the side?

18 MR GIPSON Sure, I can

19 Could you come over, if you could,
20 Mr Brewer? Thanks

21 Q And I'm referring to State's Exhibit
22 Number Seven Would you show the jury where the
23 person approached the car here?

24 A Approached the car?

25 Q Yes, sir -- or tried to get in the car or

1 the truck in which you were riding

2 A Back down there

3 Q Okay

4 A This is the tube that we serviced

5 Q All right So that --

6 COURT REPORTER I'm sorry It was
7 the two you serviced?

8 A Tube -- tube we serviced, paper tube

9 Q So back down in this direction?

10 A Yes

11 Q All right You may have a seat Now, you
12 mentioned during your direct testimony with Mr
13 Weeks that the car that Ms Dorch was driving
14 eventually flipped in the field, correct?

15 A Yes, sir

16 Q And that was as a result of you over --
17 basically, you tried to control the vehicle the best
18 that you could --

19 A Yes

20 Q -- and it eventually went into the
21 pasture, correct?

22 A Yes, sir

23 Q All right. Now, when you were out in the
24 pasture, did anything happen out in the pasture that
25 you observed at that point in time that just seemed

1 a little odd to you?

2 A There was a car that came by real slow,
3 looking over at the wreck

4 Q All right

5 A He didn't see me Whoever was in the car
6 didn't see us

7 Q But looking into the pasture?

8 A Right

9 Q And how many people did you see in that
10 car?

11 A I couldn't see It was pitch dark

12 Q Now, again, you acknowledge that you have
13 prior testimony?

14 A Yes

15 Q And back on or about November 28, 2006,
16 correct --

17 A Yes, sir

18 Q -- or, excuse me, 2005?

19 A Yes

20 Q -- to the record to a page I'd like you to
21 take a look at, if you will. If you could look
22 beginning at page 34, starting at line 16, and just
23 kind of read through that, if you will

24 MR. WEEKS Your Honor, I don't
25 object to the content of what he's doing But the

1 form in which he's doing it, I think the procedure
2 by which he's doing it is improper

3 THE COURT. The objection is
4 sustained

5 Q Well, if you'll take a look at it and see
6 if you recognize what you said before, and then I'll
7 ask you questions about it specifically But don't
8 read aloud, please

9 A Yes, sir

10 Q Okay Now, isn't it true at that point
11 that you said that you saw a vehicle pass by, and
12 you saw two people in that vehicle?

13 A I saw several people I don't know how
14 many

15 Q You didn't say it was two people?

16 A I don't remember what I said. I just said
17 I saw heads, darkness, forms

18 Q Okay So today you saw heads, and
19 darkness, and forms, not two people?

20 A I just -- I don't remember what I said.

21 Q Well, let me just have you read through on
22 page 35 down to the bottom, and I'll ask you that
23 question again

24 A Yes, sir

25 Q Isn't it true that you testified that you

1 saw two people?

2 A Yes, sir

3 Q Okay You didn't see heads, darkness, and
4 forms, you saw two people, correct?

5 A Two forms

6 Q Two forms in the shape of people?

7 A Well, two forms in a car I wouldn't know
8 what would be in a car driving

9 Q All right, Mr Brewer And you said that
10 it was curious to you, a little odd to you, that
11 this car would pass by a couple of times, looking
12 into the field and not asking to assist or try to
13 assist, correct?

14 A Very much so

15 Q All right And, again, you felt that that
16 was odd enough to mention that to law enforcement,
17 correct?

18 A Yes, sir

19 MR GIPSON That's all my questions,
20 Your Honor

21 THE COURT. Redirect?

22 REDIRECT EXAMINATION

23 BY MR WEEKS

24 Q Joe, this occurred on August 27, 2005?

25 A Yes, sir

1 Q Since that time, obviously, Cornell Tyler
2 has been arrested, is that correct?

3 A Yes, sir

4 Q Have other people been arrested in this
5 case?

6 A Yes, sir

7 Q Have other people been charged in this
8 case?

9 A Yes, sir

10 Q Have you had the opportunity to observe
11 all of those people now?

12 A Yes, sir.

13 Q And did that have anything to do with
14 whether or not you now think it was Cornell?

15 A No, sir

16 Q What caused you to think it was Cornell?

17 A Because I remember him coming to the
18 window I saw him through the driver's side window
19 I had a flashlight, and I saw him

20 THE COURT Mr Gipson?

21 RE CROSS EXAMINATION

22 BY MR GIPSON.

23 Q And in that darkness, you flashed the
24 flashlight in his face?

25 A I flashed in the direction, yes

1 Q And, again, in statements you've never
2 talked about it before?

3 A I've never talked about this before

4 MR GIPSON That's all my questions, Your
5 Honor

6 THE COURT All right, sir, you may step down

7 MR WEEKS The State calls Valerie Williams to
8 the stand

9 CLERK OF COURT Ms Williams, I need for you
10 to come forward Place your left hand on the Bible
11 and raise your right

12 (The witness was sworn)

13 CLERK OF COURT Please have a seat in the
14 witness box, spell your full name for the Court, and
15 spell your last

16 MS WILLIAMS Valerie Williams Williams is
17 spelled W-I-L-L-I-A-M-S

18 VALERIE WILLIAMS, having first been
19 duly sworn, testified as follows

20 DIRECT EXAMINATION

21 BY MR WEEKS

22 Q Thank you, Ms Williams. Ms Williams,
23 where do you live?

24 A Salley

25 Q Salley?

1 A Uh-huh

2 Q What's the address of your home?

3 A 108 Dean Swamp Road

4 Q How long have you lived there?

5 A About 34 years

6 Q Do you still?

7 A Yes, sir

8 Q And this is where you lived back on August
9 27, 2005?

10 A Yes, sir

11 Q Do you remember something happening in the
12 early morning hours that day?

13 A Yes, sir

14 Q Tell the jury what brought this to your
15 attention on that evening

16 A About -- I guess about a quarter to five
17 that morning, my doorbell rang And when I went to
18 answer it, the man on the porch had blood all over
19 him And he said that he needed to call 911

20 Q What had you been doing?

21 A I was asleep Waking me up that time of
22 morning, you know, and I'm looking out my window at
23 somebody like this, kind of skeptical about opening
24 the door So when I looked at him, I said, "Well, I
25 guess I need to call 911 because he's on my porch

1 bloody Ain't no telling what might be " So I got
2 the phone and dialed 911

3 I dialed 911, and they said was there an
4 accident or something And I said, "I don't know "
5 I said, "But there's a man on my porch that said he
6 had been shot, and he has blood all over him " So
7 he said, "Yes, that's Mr. Brewer He said, "He
8 tried to call us, but his cell" --

9 MR GIPSON Your Honor, this would
10 be hearsay

11 THE COURT Ma'am, just tell us what
12 you said

13 A When he asked me, and I called 911, I told
14 them that he was on the porch So they said could
15 they talk to him, and I gave him the phone

16 Q And what happened next after he talked to
17 them?

18 A And after he talked to them, then I hung
19 And he told me there was an accident So I said,
20 "Well, let me take you back up to the accident "
21 And he said, "No, I'll walk " I got in my truck,
22 and I went up to the accident

23 And, you know, I looked, and I turned
24 around and came back, because the fence was down
25 And David's cows was out there So I didn't want

1 the cows to get out, because I didn't want another
2 accident to happen

3 Q You keep talking about where the accident
4 happened How far from your house is that?

5 A It wasn't that far, just right across the
6 field

7 Q And was it dark outside at the time?

8 A Yes, it was

9 Q Did you see anything in the field?

10 A When I got there, I saw a truck
11 overturned.

12 Q And then after you saw the fence down,
13 what did you do?

14 A I went back and called David And then I
15 went back, and they had come And I told him that I
16 had called David to come and get the cows When I
17 went back to the house, I never did go back down
18 there.

19 Q Other than Mr Brewer, did you speak to
20 anyone else that evening?

21 A Nobody but James

22 Q Please answer any questions Mr Gipson may
23 have for you

24 CROSS-EXAMINATION

25 BY MR. GIPSON

1 Q Good morning, Ms Williams

2 A Good morning

3 Q Now, at any point in time during this
4 ordeal, did Mr Brewer tell you who shot him?

5 A He did say he was shot He didn't know
6 who did it

7 Q And you said you called 911?

8 A Yes, I did

9 Q And did he talk to you about anybody, the
10 number of people involved or anything like that?

11 A He said --

12 MR WEEKS Objection, calls for
13 hearsay

14 THE COURT Mr Gipson

15 MR. GIPSON I'll move on.

16 THE COURT All right

17 MR GIPSON I'll move on

18 Q And you didn't see anything in particular
19 that evening, correct, other than Mr Brewer
20 appearing, correct?

21 A That's all

22 Q And you're not coming in here testifying
23 that anyone in particular did anything in
24 particular, correct?

25 A No.

1 Q And you didn't see anything particularly
2 other than Mr Brewer appeared at your door,
3 correct?

4 A Correct

5 Q Now, you mentioned this pasture that is --
6 I guess it's kind of diagonal from your house?

7 A Right

8 Q Do you know who tends to that pasture, who
9 keeps the cows?

10 A David Hall

11 Q David Hall?

12 A Uh-huh.

13 Q Anyone else that you're aware of?

14 A No, except only myself When the cows get
15 out, I try to put them back in

16 Q All right

17 MR GIPSON That's all the questions,
18 Your Honor --

19 THE COURT: Anything else?

20 MR GIPSON -- thank you

21 MR WEEKS We'd ask the witness be
22 excused, Your Honor

23 THE COURT All right, thank you, ma'am
24 You are excused

25 Your next witness?

1 MR WEEKS The State would call Wayne
2 Harding

3 CLERK OF COURT Place your left hand on
4 the Bible and raise your right

5 (The witness was sworn)

6 CLERK OF COURT Please have a seat in the
7 witness box, state your full name for the Court, and
8 spell your last

9 MR. HARDING Deputy Wayne Harding -- H-A-
10 R-D-I-N-G

11 WAYNE HARDING, having first been duly
12 sworn, testified as follows

13 DIRECT EXAMINATION

14 BY MR WEEKS:

15 Q Deputy Harding, where are you employed?

16 A I'm employed with the Aiken County
17 Sheriff's Office

18 Q And how long have you been so employed?

19 A Since July 26, 1996

20 Q On August 27, 2005, were you employed with
21 the Sheriff's Department then?

22 A Yes, I was

23 Q What was your role with the sheriff at
24 that time?

25 A I was assigned to the uniformed patrol

1 division as a sheriff

2 Q Tell me what you did as a result of your
3 employment What were you doing being on uniformed
4 patrol on this shift? What was your job?

5 A At that time, we were assigned patrol
6 units I was was assigned to patrol the area which
7 I was assigned to

8 Q Okay And on August 27, 2005, in the
9 early morning hours, where were you assigned?

10 A I was assigned to the -- as I recall, I
11 was assigned to the Aiken area

12 Q Did you receive some sort of call to go
13 somewhere that night as a result of your employment?

14 A Yes, sir, I did

15 Q And where did you proceed to go?

16 A Dispatch dispatched myself, along with
17 Sgt Christy Eagerton and Deputy Bruce Fox to an
18 area outside Salley, South Carolina, on Windsor Road
19 in Aiken County, South Carolina

20 Q And when you arrived there, what did you
21 find?

22 A When I arrived there, sir, Deputy Fox and
23 Sgt Eagerton had already arrived I also noticed
24 there were some first responders. Also, there was a
25 field out there with a truck that looked like it had

1 been wrecked and gone through the fence

2 Q I'm going to hand you State's Exhibits
3 Six, Nine, Seventeen, Eighteen, and Nineteen and ask
4 you if you can identify the areas that are depicted
5 in each one of those photographs And if you would,
6 identify the photograph you're describing and then
7 say "yes" or "no "

8 A Exhibit Nine is Windsor Road

9 Q Okay.

10 A Exhibit Six is the vehicle which I
11 observed in the field right off of Windsor Road
12 which appeared to be wrecked Exhibit Seventeen
13 seems to be the same truck, in a close-up Exhibit
14 Eighteen also happens to be the same truck with the
15 -- it looks the tires are wrapped around there
16 Exhibit Nineteen seems to be the same truck

17 Q And when you arrived in reference to
18 State's Exhibit Number Eighteen, what is it that
19 appears to be covered by a sheet?

20 A It appears to be that of a female

21 Q And was she later identified?

22 A Yes, sir

23 Q And was that the condition you found when
24 you arrived?

25 A It was motionless And when I walked over

1 the area, that's where the body was laying, and it
2 was covered up

3 Q What did you do as a result of your job?
4 Did you do anything at the scene?

5 A It was confirmed as being a vehicle
6 accident And once I got there, I was directed by
7 Sgt Eagerton to stop roping off that particular
8 area of the crime scene So, therefore, I got the
9 yellow Sheriff's Office crime scene tape and started
10 roping it off And then I completely notated what's
11 referred to as a crime census with all the names of
12 the people who were there

13 Q In doing that, did anybody come up to the
14 truck and look in it, or peer in it, or do anything
15 to it?

16 A No, sir, not unless they came up and then
17 I signed in to the crime census first

18 Q Like an investigator or something?

19 A Once they arrived, they took over the
20 incident

21 Q Answer any questions that Mr Gipson may
22 have

23 THE COURT Mr Gipson?

24 CROSS-EXAMINATION

25 BY MR GIPSON.

1 Q Mr Harding, you were essentially the
2 first responder?

3 A No, sir As far as the Sheriff's Office
4 personnel, I was the last one who arrived there
5 Sgt Eagerton and Deputy Fox got there shortly
6 before I did

7 Q You said Deputy Fox, and who's the other
8 one?

9 A Sgt. Christy Eagerton

10 Q What was their role when they arrived?

11 A When they got there, her role was making
12 contact with the Sheriff's Office Deputy Fox was
13 there and also helping to secure the crime scene

14 Q And your role was to secure the scene as
15 well?

16 A Yes, sir And also, like I said, I also
17 started -- my role also was to start a crime scene
18 census, which I did

19 Q Sometimes known as a crime scene log?

20 A Yes, sir, of all the persons entering the
21 roped-off area

22 Q Okay, and you got that started And
23 anybody from that point in time after you arrived,
24 even Deputy Fox and Deputy Eagerton, would have
25 signed the role so that they can show that they came

1 to the scene?

2 A Yes, sir, I believe so

3 Q And that's one way that you try to ensure
4 that the scene doesn't get contaminated, correct?

5 A That is correct

6 Q And it just kind of keeps people from just
7 walking through, and peeking in, picking up things,
8 and touching things that they shouldn't touch,
9 correct?

10 A That is the primary role of a crime scene
11 census, yes, sir

12 Q And that was your sole involvement with
13 this case?

14 A That was it, sir

15 Q And you're not here saying that Cornell
16 Tyler shot anybody?

17 A No, sir Once we get there, we secure it
18 And once investigation gets there, they take over
19 the incident for further investigation That's
20 their job

21 Q And you're not saying he shot anybody or
22 that he ran after anybody, chased anybody? You're
23 not saying any of those things, are you?

24 A No, sir

25 MR GIPSON That's all my questions, Your

1 Honor

2 THE COURT Anything further?

3 MR WEEKS No further questions of this
4 witness, Your Honor

5 THE COURT All right You may step down, sir

6 MR WEEKS Just for logistics, may we
7 approach, Your Honor?

8 THE COURT Yes

9 MR WEEKS Your Honor, the State calls Kendall
10 Seawright

11 CLERK OF COURT Place come forward, place your
12 left hand on the Bible, and raise your right

13 (The witness was sworn)

14 CLERK OF COURT Please have a seat in the
15 witness box, state your full name for the Court, and
16 spell your last

17 MR SEAWRIGHT My name is Kendall Seawright
18 My last name is S-E-A-W-R-I-G-H-T

19 DIRECT EXAMINATION

20 BY MR WEEKS

21 Q Kendall, I'm going to ask you to speak up
22 How old are you?

23 A I'm 25

24 Q And where do you live?

25 A 321 Hunter Branch Road.

- 1 Q And where is that at?
- 2 A Salley
- 3 Q Are you from the Salley area out there?
- 4 A Yes, sir
- 5 Q Are you employed?
- 6 A No, sir.
- 7 Q Back in August of 2005, were you employed
- 8 then? August 27, 2005, were you working then?
- 9 A Yes, sir
- 10 Q And where had you been working up until
- 11 recently?
- 12 A Doing a little lawn care.
- 13 Q For who?
- 14 A Mr Davenport
- 15 Q Okay And how far did you go in school?
- 16 A Graduated
- 17 Q From?
- 18 A Wagener-Salley High School
- 19 Q When did you graduate?
- 20 A 2001
- 21 Q Do you have any children?
- 22 A Yes, sir
- 23 Q How many?
- 24 A Four.
- 25 Q And what's the oldest?

1 A Five

2 Q Kendall, I'm going to ask you, do you know
3 the defendant, Cornell Tyler?

4 A Yes, sir

5 Q How do you know him?

6 A We went to school together

7 Q And you went through high school or
8 further back?

9 A All the way from kindergarten, all the way
10 through

11 Q Now, on August 27, 2005, did you know a
12 fellow named Willie Ware?

13 A Yes, sir

14 Q What, if anything, did you have to do with
15 Willie Ware that night?

16 A We had rode together

17 Q All right Can you tell me what time you
18 first met up with Willie Ware?

19 A I don't know the exact time

20 Q Was it during the nighttime?

21 A Yes, sir

22 Q And approximately where was that at?

23 A Where at? Like to one of our friend's
24 house --

25 Q All right

1 A -- right by the schoolhouse
2 Q Right by the schoolhouse?
3 A Yes, sir, I believe they were on Staley
4 Road
5 Q Was Willie with anybody when you met him?
6 A Head Walker
7 Q Head?
8 A Yes, sir
9 Q Does he have another name? Do you know
10 it?
11 A Edward Walker
12 Q Okay And what do they call you? What's
13 your nickname?
14 A Weasel
15 Q How long have you had that nickname?
16 A As far as I remember -- as far as I can
17 remember
18 Q And how about Cornell? Did he have a
19 nickname?
20 A Duce
21 Q All right How about Willie?
22 A Woo I call him Woo
23 Q Now, you don't remember what time you met
24 up with him But where were you at when you met?
25 A At the schoolhouse

1 Q And did you hang out with him? What, if
2 anything did you do with him at that point?

3 A We went down to Dean Swamp

4 Q And what do you call it down there? Do
5 y'all call it a location?

6 A The swamp

7 Q Okay Do you know what time you went to
8 the swamp?

9 A I don't know the exact time

10 Q Was it dark?

11 A Yes, sir

12 Q And who was with you?

13 A Me, Head, and Willie

14 Q All right How were y'all riding?

15 A In Willie's car

16 Q What kind of car did he have?

17 A I believe it's a Buick

18 Q All right Would you recognize it if you
19 saw a picture of it?

20 A Yes, sir

21 Q Okay And where were you riding in the
22 car?

23 A On the way down there, I was in the back
24 seat

25 Q And who was in the front seat?

1 A Willie was driving Head was on the
2 passenger side

3 Q Anybody else in the car?

4 A No, sir.

5 Q Were y'all carrying anything with you?

6 A Not as I know

7 Q And where did you go when you left
8 Wagener?

9 A We went to Dean Swamp

10 Q Okay Did you make any stops anywhere
11 before you got there?

12 A We had stopped at I believe a dude named
13 John's house, and we were headed back towards
14 Wagener And Head told Willie to carry him to
15 Cornell's house where he said they'd do a spark I
16 didn't know what they were talking about, but that's
17 where we ended up to

18 Q That's what?

19 A That's where we ended up to

20 Q To whose house?

21 A Cornell's house

22 Q All right Had you been to Cornell's
23 house before?

24 A Yes, you know

25 Q You knew where Cornell lived?

1 A Yes

2 Q And do you have an approximate idea of
3 what time in the morning it was y'all got there?

4 A I know it was late

5 Q Was it after midnight or before?

6 A After

7 Q Up to that point in the night, before you
8 met up with Willie, what had you been doing?

9 A Playing pool, playing video games

10 Q And did you stop on the way to Cornell
11 Tyler's house?

12 A I told you we stopped by a dude named
13 John's house

14 Q How far is that from Cornell's house?

15 A About a mile, I guess.

16 Q Did you stay there long?

17 A No, sir

18 MR GIPSON Excuse me, Your Honor, I
19 just wasn't able to hear him

20 THE COURT Speak louder, sir

21 Q Did you stay there long?

22 A No, sir

23 Q What did you do when you got to Cornell's
24 house?

25 A Head got out and went and knocked on the

1 door

2 Q Who?

3 A Head Walker

4 Q All right And what did you do?

5 A I sat in the car Then afterwards, I got
6 out to see what Head was doing

7 Q All right How about Willie? What did he
8 do?

9 A Well, he was sitting along with me And
10 after, you know, I got out to see what Head was
11 doing, I guess Willie got out to tell us -- tell
12 everybody to come on, because we were trying to tell
13 Head to come on.

14 Q All right What, if anything, happened
15 after you got out of the car?

16 A Can you repeat?

17 Q What, if anything, happened after you got
18 out of the car?

19 A What you mean?

20 Q Did you get out of the car when you got to
21 Cornell Tyler's house?

22 A I did

23 Q What, if anything, happened after that?

24 A Well, Cornell was telling Head like, "Why
25 you come down here this time of night?" like that

1 there

2 Q Okay Did you see anything else happen?

3 A After a little time passed, then we seen a
4 car -- a truck -- out there in the middle of the
5 road

6 Q All right What happened then?

7 A Cornell asked him who that was, and I
8 ain't say nothing, and I ain't heard nobody else say
9 nothing. So he went out there to see who it was

10 Q Who did?

11 A Cornell

12 Q All right And when you say "out in the
13 road," what are you taking about, Union Academy
14 Road?

15 A I don't know the name of the road

16 Q The dirt road going to his house?

17 A Yes, sir

18 Q Okay When you got out there, did you see
19 him take anything?

20 A I seen something long, looked like a
21 firearm

22 Q What, if anything, happened then?

23 A He went to the truck, and the truck just
24 pulled -- you know, kept going or whatever

25 Q All right Did you see who was in the

1 truck?

2 A After when the truck speeded by, we were
3 going to get in the car And they must have had an
4 inside light on, and I could see a woman and a man,
5 after they had done speeded down the road

6 Q Could you tell anything about their race?

7 A Like I could see the black woman was on
8 the passenger side

9 Q Do you know -- did you know anybody in
10 that truck? Did you recognize that truck or
11 anything?

12 A No, sir

13 Q Now, was there any kind of lighting in the
14 yard at that point in time?

15 A I can't really remember, unless a street
16 light was on

17 Q What, if anything, happened next after
18 they passed by?

19 A After that, Jermaine had went out there in
20 the middle of the road

21 Q Who? You said "Jermaine " You mean
22 "Tremaine"?

23 A Yes, Tremaine

24 Q All right Who is he?

25 A Cornell's brother

1 Q All right And where was he staying?

2 A He come out of the house

3 Q Okay What did he do?

4 A He had ran out there in the middle of the
5 road and started shooting behind the truck

6 Q Did you see what he was shooting?

7 A It looked like a handgun

8 Q What, if anything, did you guys do then?

9 A After that, they went down the road

10 Q How did that happen?

11 A Cornell was like, "Carry me down the road
12 to see who's in the truck " He told Willie to carry
13 him down the road and follow the truck

14 Q What did you do?

15 A Once I had got in, when they got ready to
16 pull off, I had jumped out of the car

17 Q Why did you jump out?

18 A I don't know

19 Q Who was in the car when you jumped out?

20 A I believe it was Willie and Cornell, as
21 far as I could see

22 Q All right Where was Head?

23 A Head? He was on the top of the car.

24 Q How did he get on top of the car?

25 A I don't know Everything happened so

1 fast. He might have gotten in the back seat, too
2 I had got in the front on the passenger side So if
3 he got in on the other side, I didn't see him

4 Q Where did you last see him -- Head?

5 A When he came back in the yard

6 Q And where was he then?

7 A On top of the car

8 Q All right Where was Cornell sitting when
9 he left the yard?

10 A All I know, he went in the back seat

11 Q On which side?

12 A If I'm not mistaken, he was on my side,
13 behind the passenger

14 Q And when he got back, what seat did he get
15 out of?

16 A I can't remember

17 Q When he got in the car, did you see him
18 with anything?

19 A Like I said, it looked a gun, long -- it
20 was kind of long Like I say, I ain't got a full
21 glance at it

22 Q Did you see anybody else with any guns or
23 what appeared to look like a gun?

24 A No, sir

25 Q Did y'all take any guns down there?

1 A No, sir

2 Q Did you ever see Edward Walker with a gun?

3 A No, sir

4 Q What?

5 A No, sir

6 Q Did you have one?

7 A No, sir

8 Q What did Tremaine Tyler do after you saw

9 the shooting in the road?

10 A He just stayed out there in the yard

11 Q What did you do?

12 A Stayed out there in the yard

13 Q What, if anything, happened after that?

14 After you jumped out of the car, what, if anything

15 happened?

16 A They went down the road

17 Q All right Which way?

18 A Straight up the dirt road

19 Q Would that be toward Windsor Road, toward

20 the paved road?

21 A Yes, sir

22 Q Did you see or hear anything after that?

23 A I heard a couple of shots down the road

24 Q Could you tell what direction they were

25 coming from?

1 A It just sounded like a loud echo
2 Q How long -- what happened next?
3 A Then they came back
4 Q How long were they gone?
5 A It wasn't that long, probably about three
6 or four minutes, something like that
7 Q Who came back?
8 A Cornell, Head -- well, Edward -- and
9 Willie Ware
10 Q Where was Willie when they got back?
11 A Willie was driving
12 Q Where was he when they left?
13 A He was driving
14 Q Where was Cornell when they got back?
15 A I know he had to be in the passenger in
16 the back
17 Q So where was Head?
18 A He was on top of the car
19 Q All right What was unusual about the top
20 of this car?
21 A What was unusual?
22 Q Was there anything unusual about the top
23 of the car?
24 A About him hanging on? It was just hanging
25 on I don't know what he was hanging on

1 Q Did it have a sun roof?

2 A Yes, sir

3 Q Okay And the car they left in was the
4 same one they came back in?

5 A Yes, sir

6 Q Mr Seawright, I'll hand you what's marked
7 State's Exhibit Number Fourteen and ask you if you
8 can tell us what's shown in that photograph, if you
9 can

10 A Cornell's house

11 Q Is that where y'all were at that night?

12 A Yes, sir

13 Q Okay And if you could, step down here a
14 minute

15 MR WEEKS Is that okay, Your Honor?

16 THE COURT Yes

17 Q On the screen there, Kendall, there's
18 State's Exhibit Number Fourteen Could you step
19 over here for me? Could you point out roughly where
20 the car was parked that night that you referred to
21 when you first got there?

22 A I believe it was like parked in the
23 driveway going like this way right here.

24 Q All right. And at some point when that
25 car left without you in it, which way did it come?

1 A It must have like backed up and come out
2 this driveway right here

3 Q All right Where did you bail out, as you
4 indicated?

5 A I jumped out right here

6 Q Step back a little bit and point

7 A Right here, at the edge of the road.

8 Q All right The item that's depicted in
9 State's Exhibit Number Twelve, what is that?

10 A Willie Ware's car

11 Q Is that the car y'all were in that night?

12 A Yes, sir

13 Q And --

14 A That's the same car

15 Q -- you indicated State's Exhibit Fifteen
16 is the same car as well as State's Number Thirteen
17 That car right there, is that the same car?

18 A Yes, sir

19 Q All right The sun roof you indicated, is
20 it depicted in that photograph?

21 A Yes, it's up to the top

22 Q Okay And when you said you saw Head on
23 the roof, what was he doing?

24 A He was like hanging on the inside of the
25 sun roof

1 Q All right Show me where his hands would
2 have been

3 A His hands were like probably like right
4 there, holding on, grabbing

5 Q Did you see him at any time ever standing
6 in that sun roof?

7 A No, sir

8 Q Kendall, did you hear any shots there at
9 the house?

10 A What you mean, when they went down the
11 road?

12 Q Yes

13 A I heard something echo

14 Q Okay Did you hear any shots when
15 Tremaine was in the middle of the road?

16 A Yes, sir

17 Q Do you know how many times?

18 A It was more than five

19 Q And further down the road, did you hear
20 more shots after Willie had left?

21 A Yes, sir

22 Q Do you have an idea about how many you
23 heard then?

24 A It was a couple of them

25 Q You said a couple of them. What do you

1 mean by a couple?

2 A Probably about five

3 Q Now, when they got back to the house, what
4 did you see, if anything, that the people were
5 carrying?

6 A I couldn't really see All I heard is
7 somebody said, "Clean up " I don't know who said it
8 or what

9 Q Clean up?

10 A Yes, sir

11 Q Did you see Edward Walker carrying
12 anything?

13 A No, sir.

14 Q Did you see Cornell carrying anything?

15 A Not at that time

16 Q Later on, did you see him carrying
17 anything?

18 A When they were getting out, when I was
19 coming back towards the car, I couldn't hardly see
20 nothing So I just went and sat in the car

21 Q Did you see him carrying anything? You
22 said "later on " What did you mean?

23 A What you mean?

24 Q Did you see Cornell with anything when
25 they got back?

1 A No, sir

2 Q When you got -- what happened when they
3 got back, after you heard that "Clean up" thing?

4 A I went and got in the car, and Head got in
5 the car, and we drove off

6 Q All right What seat did you get in when
7 you left?

8 A I was in the back, sitting in the back
9 beside the passenger

10 Q Okay And where was Head?

11 A Head got in the front, in the passenger
12 side

13 Q Where was Willie?

14 A Willie was driving

15 Q Prior to going down there to Tyler's house
16 that night, did y'all shoot any guns?

17 A No, sir

18 Q Did you see any guns being shot?

19 A No, sir

20 Q Did anybody in the back seat that you know
21 of have a gun?

22 A No, sir

23 Q Where did you go when you left?

24 A We went to Wagener.

25 Q And where did you go?

1 A Well, they dropped me out, and I went
2 home I don't know where they went

3 Q Kendall, when you first saw the truck, you
4 talked about two people in it How far were you
5 away from the truck when you first saw it?

6 A I was a pretty good distance

7 Q And when it came by the yard there, where
8 were you at?

9 A I was like going over there on the side of
10 the car, where I said the car was parked at

11 Q You were still a pretty good ways from the
12 road?

13 A About halfway The first time I seen it,
14 yeah, halfway

15 Q Okay And you mentioned a Tremaine Tyler
16 When is the first time you saw him?

17 A When he came outside to go out there in
18 the dirt road

19 Q Did he have any conversation with anybody
20 or anything before he went to the dirt road?

21 A No, sir

22 Q What's the first thing you saw him doing
23 in the dirt road?

24 A He ran out in the dirt road and shot a
25 couple times at the truck

1 Q Did you see what direction he was pointing
2 the gun?

3 A He was just pointing down the road

4 Q What did you see Tremaine Tyler do at that
5 point?

6 A He just came back in the yard after

7 Q And what, if anything, did you see Cornell
8 do at that point?

9 A That's when they went down the road

10 Q That's when he went down the road?

11 A Yes

12 Q Kendall, you weren't charged with
13 anything, were you?

14 A No, sir

15 Q How did law enforcement get a hold of you?

16 A I don't know They just came and picked
17 me up at my girlfriend's house

18 Q How long after this incident?

19 A I believe about a day or so -- yes, a day
20 or so

21 Q Did you talk to them when they picked you
22 up?

23 A Yes, sir

24 Q Any time that evening, did you ever see
25 Willie Ware with a gun?

1 A I ain't been around him that evening

2 Q Okay That early morning hours, did you
3 ever see Willie Ware with any gun?

4 A You're talking about before this happened?

5 Q No, the morning it happened

6 A No, sir

7 Q Did you see anybody else there that night
8 at the house?

9 A Yes After they had done went down the
10 road, I seen Johnny Miles outside

11 Q After who had went down the road?

12 A After Willie, Head, and Duce had went down
13 the road.

14 Q Okay And what, if anything, did Johnny
15 Miles do when you saw him?

16 A When I see him, he walked beside the
17 trailer I don't know where he had come from or
18 whatever.

19 Q Did you ever see Johnny Miles shooting or
20 do anything like that?

21 A No, sir

22 Q Now, who is Johnny Miles? Did you know
23 him before this?

24 A Yes, I heard of him

25 Q You heard of him But had you ever met

1 him?

2 A Yes

3 Q All right And where had you met him at?

4 A Back up town or something

5 Q Did you know whether or not he was staying
6 there that night?

7 A I don't know

8 Q Answer any questions for Mr Gipson

9 THE COURT Mr Gipson?

10 MR GIPSON Court's indulgence for a
11 moment

12 CROSS-EXAMINATION

13 BY MR. GIPSON

14 Q Mr. Seawright, I am going to ask you a
15 series of questions about your testimony here today
16 And what I'll ask you to do is just to speak a
17 little bit more loudly --

18 A Yes, sir

19 Q -- because you tend to be a little bit
20 soft-spoken Now, as I ask you questions, I will
21 ask also that you not say "uh-huh" or "huh-uh,"
22 because it's hard for us to determine whether or not
23 that means "yes" or "no " And if you nod your head,
24 if you'll say "yes" or "no," and then you have time
25 to explain your answer, if you will, okay?

1 A Yes, sir

2 Q Thank you Now, it's uncomfortable for
3 you to be here, is that correct?

4 A Yes, sir

5 Q Okay And if you could, just speak a
6 little louder for me

7 A Yes, sir

8 Q And that's because you know Willie Ware,
9 correct?

10 A Yes, sir

11 Q You know Edward Walker, correct?

12 A Yes, sir

13 Q And you know Mr Tyler, correct?

14 A Yes, sir

15 Q Now, tell us how you know Mr Ware and Mr
16 Walker

17 A Me and Ware went to school together, too
18 And I know Head because, you know, we live out in
19 the same community It's a little town

20 Q And when you say "Head," again, you're
21 referring to Mr Walker, correct?

22 A Yes, sir

23 Q Isn't it true that they're related?

24 A Yes, sir

25 Q Okay How are they related, Head and

1 Willie Ware?

2 A They are first cousins

3 Q And you know this just from living in the
4 community and being around the two of them that
5 they're first cousins?

6 A Yes, sir

7 Q Now, the night that this thing took place,
8 you were out playing pool, correct?

9 A Yes, I went to the pool hall, and they
10 picked me up around the corner

11 Q And did you all plan to meet around the
12 corner for them to pick you up?

13 A No, sir

14 Q How did that happen?

15 A They just had came over to one of my
16 friend's house That's how I seen them

17 Q Where did they come from directly before
18 picking you up?

19 A I don't know where they come from

20 Q You don't know where they came from?

21 A No, sir

22 Q What they had been into?

23 A No, sir

24 Q Had they been drinking?

25 A I don't know

1 Q Do you know what was in the car at all
2 times?

3 A No, sir

4 Q Now, you have testified under oath before,
5 have you not?

6 A Yes, sir

7 Q And isn't it true that you said that you
8 saw a gun in the car prior to this point in time?

9 A Before when?

10 Q You saw a gun in this car at some time
11 prior to arriving at Dean Swamp Road

12 A I don't remember

13 Q Okay You're not saying you didn't say,
14 you're just saying that you don't remember at this
15 point in time?

16 A No

17 Q And did you have access to the trunk of
18 the car?

19 A To what?

20 Q Trunk of the car?

21 A No, sir

22 Q Did you sit in the front seat of the car?

23 A Yes, sir

24 Q Okay You sat in the front seat -- the
25 front passenger seat?

§

1 A The front passenger seat? Oh, no, no I
2 got it mixed up

3 Q Okay You sat in the back seat, correct?

4 A Yes, sir

5 Q And Head Walker was sitting in the front
6 seat?

7 A Yes, sir

8 Q Did you have an occasion to sit in the
9 front seat?

10 A Just when they were about to pull off to
11 go down the road I had got in and jumped out

12 Q Okay

13 A That's the only time

14 Q All right Riding to the swamp, as you
15 call it, you didn't have an opportunity or an
16 occasion to sit in that front seat, did you?

17 A No, sir

18 Q And can you attest to what was in the
19 front seat of that car? Can you tell us what was in
20 the front seat of that car?

21 A No, sir

22 Q All right Now, you said that Ware picked
23 you up, as you said, from a friend's house?

24 A Yes, sir

25 Q And you all went down the road to Dean

1 Swamp You stopped at a house before that, correct?

2 A Yes, sir

3 Q And you said Johnny's house, correct?

4 A I believe the dude's name was John

5 Q Would it be John Hartwell? Would that be
6 who that is?

7 A Yes, sir

8 Q You said that is John Hartwell?

9 A Yes, sir

10 Q And what did you do at John Hartwell's
11 house?

12 A Well, Head went in the house When he
13 came back out, you know, we headed towards Wagener
14 And Head told Willie to come to a spot, so I guess
15 he already knew what spot he was talking about

16 Q So, as a result of Mr Walker, you ended
17 up going down to Mr Tyler's home?

18 A Yes, sir

19 Q When you got -- and how far, again, is Mr
20 Hartwell's house from Mr Tyler's home?

21 A I'd say about a mile

22 Q And were there other people at Mr
23 Hartwell's house when you got there?

24 A I ain't seen nobody else there

25 Q Okay No one outside?

1 A All I can remember, one person walked up
2 -- all I can remember

3 Q Do you know who that person was?

4 A A dude named Killer Bee That's what I
5 know him as

6 Q Killer Bee?

7 A Yes, sir

8 Q And would that person also be known as
9 James Gleaton?

10 A Yes, sir

11 Q Okay So Killer Bee is James Gleaton?

12 A Yes, sir

13 Q And you saw him that evening at Johnny
14 Hartwell's house?

15 A That night?

16 Q Yes, sir, that night, that morning --
17 early that morning And you saw Killer Bee, James
18 Gleaton, at Johnny Hartwell's house prior to going
19 down to Mr Tyler, Duce's house, correct?

20 A Yes, he just walked through the yard

21 Q Okay Did you have any conversation with
22 him?

23 A No, sir

24 Q All right So you all went from there
25 down to Mr Tyler's house, correct?

1 A Yes, sir

2 Q Now, tell us about that area A lot of
3 street lights out there, it's pretty well lit, isn't
4 it?

5 A I don't really think so I don't think
6 there's that many street lights

7 Q It's in the country, correct?

8 A Yes, sir

9 Q And to be quite honest, it's very dark out
10 there, right?

11 A Yes, sir

12 Q And we're talking about around 3 00, 3 30
13 in the morning?

14 A Something like that.

15 Q Wee hours of the morning, as people call
16 it?

17 A Yes, sir

18 Q It was pitch dark out there, wasn't it?

19 A Yes, sir

20 Q All right And you felt comfortable going
21 to Cornell Tyler's house that early in the morning?

22 A No, sir I ain't never talked to him I
23 ain't know we were going

24 Q You were just essentially along for the
25 ride, correct?

1 A Yes, sir

2 Q Now, you said you pulled up to Cornell's
3 house --

4 A Yes, sir

5 Q -- and Edward Walker got out of the car?

6 A Yes, sir

7 Q At what point in time did you first see
8 the lights of the truck that we've been speaking
9 about?

10 A After Cornell was asking him what he's
11 doing here, then I was getting out to go tell Head
12 to come on And then by the time I got on the
13 porch, then I, you know, seen the headlights

14 Q And you saw headlights?

15 A Yes, sir

16 Q And you testified that Mr Tyler --
17 Cornell Tyler -- went outside, and then he went back
18 to the house?

19 A He was standing to his door, talking to
20 Head, asking him what he was doing here, like that
21 Then he spotted the lights.

22 Q Okay. And you said he went out, and then
23 he came back to the car -- came back to the house?

24 A Yes He came to the yard

25 Q Okay So you said --

- 1 A He went to the truck
- 2 Q Yes, sir
- 3 A Then he came back, walked back in the
- 4 yard
- 5 Q All right And you're claiming that he
- 6 went all the way out to the road to the truck?
- 7 A Right to the edge He ain't actually
- 8 stepped foot in the dirt road
- 9 Q Okay, never touched the dirt Did he go
- 10 into the truck?
- 11 A No, sir
- 12 Q Okay And then from there, what happened?
- 13 A That's when the truck speed first past
- 14 Q Okay Did you see Cornell Tyler shooting
- 15 at the car at that point?
- 16 A No, sir
- 17 Q Did you ever see Cornell Tyler shooting at
- 18 the car?
- 19 A No, sir
- 20 Q All right. You said that you got into
- 21 Willie Ware's car, correct?
- 22 A Yes, sir
- 23 Q And you got ready to leave, correct?
- 24 A Yes, sir
- 25 Q And you got out of the car?

1 A Yes, sir

2 Q Why did you get out of the car?

3 A It's just happened to jump out

4 Q What proof do you have that Mr Tyler
5 didn't get out of that car?

6 A I ain't got no proof right there in the
7 yard I don't know what happened down the road

8 Q So you cannot come up here, put your hand
9 on the Bible, and tell this jury that Cornell Tyler
10 did not get out of that car, correct?

11 A I can't say that

12 Q All you can say is that you say you saw
13 him get in the car?

14 A Yes, sir

15 Q Now, what proof do you have that he had a
16 firearm that he took out there?

17 A I ain't really got no proof It just
18 looked like it to me, you know what I'm saying --
19 ain't no real evidence, you know what I'm saying

20 Q And you said you went outside, you saw
21 him, and you are sure -- standing before this jury,
22 you are a hundred percent sure you saw him with a
23 firearm get in that car?

24 A I ain't exactly a hundred percent, but it
25 looked like it

1 Q And did you see him get out of the car
2 with a firearm of any sort?

3 A I didn't see any when he come back

4 Q Okay And you didn't see him when he came
5 back?

6 A I ain't seen no gun or nothing, but I seen
7 him.

8 Q Okay And you never saw a gun when he
9 came back, never saw him carrying anything?

10 A Not when he came back

11 Q Did you see him going up the road with
12 anything?

13 A We left from there --

14 Q Okay

15 A -- before he got in the house or wherever
16 he went

17 Q All right Now, you said that there was a
18 gentleman named Johnny Miles there, correct?

19 A Yes, sir

20 Q Is he about your age?

21 A He's an older fellow.

22 Q He's an older fellow, you said?

23 A Yes, sir

24 Q And you said the first time you saw him
25 was after the people got in the car and went down

1 the road, correct?

2 A Yes, sir

3 Q You never saw him prior to that point?

4 A No, sir

5 Q All right And did you stand on the porch
6 and have a conversation with Johnny Miles?

7 A No, sir

8 Q All right And when was the last time you
9 saw Johnny Miles on that particular date?

10 A When we were out there in the yard.

11 Q How was he dressed when he came up?

12 A I can't remember

13 Q How was Duce dressed that morning?

14 A I can't remember the actual clothes or
15 nothing like that

16 Q Now, you say that Edward Walker was on top
17 of the car the entire time?

18 A Yes, when they came back

19 Q Okay How about when they went up the
20 road?

21 A I can't honestly remember

22 Q Okay But he was inside of that car?

23 A I guess so I can't hardly remember.

24 Everything happened so fast

25 Q Isn't it true that he was hanging out of

1 that window when he took off out of that car --

2 A I can't --

3 Q -- when he took off down the road?

4 A I can't hardly remember I was in the
5 front passenger and jumped out

6 Q But did you find it odd that he was
7 hanging on top of the car when he got back?

8 A Yes, sir

9 Q And why is that?

10 A Just wondering why he's on the top

11 Q And you learned later that there had been
12 some shooting, correct?

13 A Yes, sir

14 Q And you find it odd that he was hanging
15 out of the top of that car?

16 A Yes, sir

17 Q You still determined that you were going
18 to get back in that car and ride back with them,
19 correct?

20 A That was my only ride -- yes, sir

21 Q Okay And Willie Ware -- do you have a
22 phone?

23 A I didn't at that time

24 Q Okay Willie Ware, who you essentially
25 grew up, and Head Walker, his cousin, the three of

1 y'all rode back together?

2 A Yes

3 Q What did you talk about on the way home?

4 A We didn't talk about nothing

5 Q All of these things happened the way that
6 you say they happened, and y'all didn't discuss
7 anything on the way home?

8 A It was complete silence The only thing
9 he said was, "Where you want me to drop" -- drop me
10 off at when we got to Wagener

11 Q And you say that the two of them rode off
12 together afterwards?

13 A Yes, sir

14 Q Where did they go?

15 A I don't know

16 Q Now, have you ever been to a movie or a
17 football game with friends?

18 A Yes, sir

19 Q Now, you go to the movies or a football
20 game, whatever it is When you get back in the car,
21 what is it that you do?

22 A You talk about the game

23 Q Okay So it's your testimony that all of
24 these gruesome things took -- all of these things
25 happened in the car, something -- people running

1 down the road, shooting guns, all this kind of stuff
2 -- and you never said a word about it to anybody
3 riding back home?

4 A No, sir

5 Q Okay Have you spoken to Edward Walker or
6 to Willie Ware since?

7 A Well, like when they brought me up there
8 for questioning

9 Q And when did they bring you up for
10 questioning?

11 A Like probably before the trial or
12 whatever, to get stuff clear before the trial

13 Q Have you seen anybody at this table
14 before?

15 A Yes.

16 Q Let me ask you this In the last month,
17 have you spoken to Willie Ware or Edward Walker?

18 A Nothing but when they were questioning
19 about the trial

20 Q Okay Who was questioning you about the
21 trial?

22 A You know, they was getting things in order
23 or whatever

24 Q And how is it that you spoke with Willie
25 Ware and Edward Walker?

1 A I guess getting everybody's testimony
2 straight or whatever, making sure everybody was on
3 the same page or whatever

4 Q Where did that happen?

5 A Where at?

6 Q Yes, sir

7 A In the courthouse

8 Q So right in here?

9 A No, sir

10 Q Or somewhere in this courthouse?

11 A Yes, sir

12 Q And you met with Edward Walker and Willie
13 Ware?

14 A Yes, sir

15 Q Okay Together in the same room?

16 A Yes, with everybody there

17 Q Okay

18 MR GIPSON Ask the Court's
19 indulgence very briefly, Your Honor

20 Q And, again, it's your testimony that you
21 cannot say that you did -- that Cornell Tyler did
22 not get out of that car, correct?

23 A Say what?

24 Q You cannot tell this jury that Cornell
25 Tyler didn't get out of that car?

1 A Not when they went down the road

2 Q All right

3 MR GIPSON That's all my questions

4 REDIRECT EXAMINATION

5 BY MR WEEKS

6 Q And, Kendall, I'm confused You didn't
7 see Cornell Tyler come back in the yard in the car?

8 A Yes, sir He was talking about when they
9 went down the road

10 Q After they got down the road, you couldn't
11 see what happened, could you?

12 A No

13 Q So you don't know whether he got out and
14 run around the car naked, do you?

15 A No, sir

16 Q When he got back in the yard, where was
17 he?

18 A He was in the car

19 Q Now, when you got back in the car, was
20 there any guns in the car that you saw?

21 A I ain't seen none

22 Q Okay When you got out of the car, were
23 there any guns in the car?

24 A I ain't seen none

25 Q Now, you saw what appeared to be a long

1 gun?

2 A Yes, sir

3 Q And who was the only person you saw with
4 that?

5 A Cornell

6 Q Y'all didn't bring anything down there
7 that looked like that?

8 A Not as I know

9 Q Did anybody go in the trunk?

10 A Not as I know

11 Q Were you out there where you would have
12 seen them?

13 A Yes, sir

14 MR WEEKS No further questions

15 THE COURT Anything further, Mr. Gipson?

16 MR GIPSON No further questions, Your Honor.

17 THE COURT. All right, sir, you can step down

18 We're going to break for lunch now

19 Ladies and gentlemen, we're going to take a lunch

20 break, and you can leave We'll need you back in

21 the jury room at 2.00, an hour and 15 minutes for

22 lunch Please be back at 2 00 Please do not

23 discuss the case or allow anyone to discuss it with

24 you or in your presence

25 (The jury left the

1 courtroom at 12 48 p m for lunch recess)

2 THE COURT Are there any matters before
3 we break?

4 MR WEEKS Not that I'm aware of

5 MR GIPSON. No, sir

6 THE COURT All right We'll be in recess
7 till 2 00.

8 MR WEEKS Thank you

9 (Court in recess until 2 00
10 p m)

11 THE COURT: Thank you Please be seated Any
12 matters before the jury comes out?

13 MR WEEKS Nothing, Your Honor

14 MR GIPSON. Your Honor, nothing major, just
15 logistically I think we're going to get to the point
16 where we're going to need access to playback video
17 I think we're there

18 THE COURT All right, let's bring the jury

19 (The jury returned to the
20 courtroom at 2:05 p m)

21 THE COURT All right, very good Welcome
22 back

23 Solicitor, your next witness?

24 MR WEEKS Thank you, Your Honor The State
25 would call Bernice Wingard

1 THE COURT Ms Wingard, come forward

2 CLERK OF COURT Place your left hand on the
3 Bible, and raise your right

4 (The witness was sworn)

5 CLERK OF COURT Please have a seat in the
6 witness box, state your full name for the Court, and
7 spell your last

8 MS WINGARD Bernice Wingard -- W-I-N-G-A-R-D

9 BERNICE WINGARD, having first been
10 duly sworn, testified as follows

11 DIRECT EXAMINATION

12 BY MR WEEKS

13 Q Ms Wingard, where do you live?

14 A 2579 Windsor Road

15 Q Windsor Road And were you living there
16 on August 27, 2005?

17 A Yes

18 Q In relationship to Union Academy, which is
19 a dirt road, is that right --

20 A Yes

21 Q -- and your house and the four-way stop
22 sign, where is your house in the picture?

23 A It's close to the four-way stop sign

24 Q Okay Union Academy?

25 A Yes

1 Q Now, on August 27, 2005, were you living
2 there?

3 A Yes

4 Q Were you home that morning?

5 A Yes

6 Q Did you hear anything in regard to this
7 case?

8 A I heard shots that morning

9 Q Okay And tell me how you came about
10 hearing shots

11 A I had to be work at five that morning I
12 usually leave like 4 20 or 4 30 And I was about to
13 walk out the back door when I heard the shots going
14 down the road

15 Q You heard shots going down the road?

16 A Yes

17 Q Would that be headed --

18 A Towards the four-way

19 Q Okay What did you do at that point?

20 A I stepped back in the door I called 911,
21 because I had to go that way, and my baby was in the
22 house. And I asked them did they know what was
23 going on

24 Q Okay

25 A To be on the safe side, because I knew I

1 had to go down that road.

2 Q Did you hear any vehicles?

3 A I heard a car, yes It was driving fast
4 going down the road and stuff

5 Q Did you see anything?

6 A No

7 Q Could you tell whether there was more than
8 one car?

9 A Not really

10 Q Okay. When you left for work, which way
11 did you go?

12 A Towards the four-way

13 Q Okay. And did you see anything down that
14 way?

15 A Once I got down there, I saw tail lights
16 of a vehicle out across the field

17 Q What do you mean when you say "out across
18 the field"?

19 A It's a field down right beside the
20 four-way crossing, which is where I saw tail lights
21 I couldn't tell whether it was a car or a truck

22 Q Okay Did you see anything to indicate
23 how it got there?

24 A No

25 Q Okay What did you do at that point?

1 A Well, when I left out of my yard, I kind
2 of sat in the yard, you know, assuming -- thinking
3 the car would come back up the road, you know And
4 after I did see car lights and car lights coming
5 back up the road, I sat in the yard for another five
6 minutes

7 Then I turned my headlights, and I pulled
8 out But once I got to the stop sign and looked
9 back up the road towards Union Academy, I saw
10 headlights So, like I said, not knowing what was
11 going on, I'm thinking, you know, this could have
12 been whoever was shooting So I kept going I
13 didn't stop till I got to work

14 Q Okay When you said you saw the
15 headlights, was that after you had passed the truck
16 in the field?

17 A No, when I left out of my yard

18 Q Okay And which way did you see those
19 headlights coming?

20 A They were coming from back up towards
21 Union Academy

22 Q Okay Now, what time of the morning was
23 this?

24 A Between 4 20 and 4 30

25

1 Q Do you have any estimate as to the number
2 of shots you heard?

3 A It was just constant shooting.

4 Q And when you went down the road, you say
5 you went toward the four-way Did you cross through
6 the four-way?

7 A Yes

8 Q And you went down What's the next road
9 you come to?

10 A I don't remember the name of that road

11 Q But before you got to that road, did you
12 pass the --

13 A The vehicle in the field

14 Q -- vehicle in the field?

15 A Yes

16 Q Thank you, Ms Wingard Answer any
17 questions the defense has

18 THE COURT Yes, sir

19 CROSS-EXAMINATION

20 BY MR GIPSON

21 Q Good afternoon, Ms Wingard Now, you
22 said that upon hearing these shots, you called 911?

23 A Yes

24 Q Okay. And about what time period between
25 the time that you called 911 and actually left your

1 home?

2 A I think it was probably like 4 00 or 4 40,
3 or something like that

4 Q So was that right after you called 911, or
5 two minutes, or ten minutes?

6 A It was like five or ten.

7 Q Now, do you go to work by yourself?

8 A I had to go to work that morning by
9 myself

10 Q Okay So when you passed by the actual
11 deal where all of these things -- where you saw
12 headlights in the pasture, correct?

13 A Yes

14 Q And you were by yourself -- you were the
15 only one in the car, correct?

16 A Yes

17 Q Now, you said you heard a car coming back
18 down, and you thought that could have been the
19 shooter or whomever was firing the shots, correct?

20 A Yes

21 Q Did you see the car?

22 A No, I just saw the headlights.

23 Q Just saw headlights. And you couldn't see
24 the occupants or anything like that?

25 A No

1 MR GIPSON That's all my questions, Your
2 Honor

3 MR WEEKS No further questions, Your Honor
4 I'd ask that she be excused

5 MR GIPSON No objection

6 THE COURT All right Thank you, ma'am You
7 may go

8 Solicitor?

9 MR WEEKS The State calls Edward Walker

10 THE COURT Edward Walker

11 CLERK OF COURT Mr Walker, place your left
12 hand on the Bible and raise your right.

13 (The witness was sworn)

14 CLERK OF COURT· Please have a seat in the
15 witness box, state your full name for the Court, and
16 spell your last

17 MR. WALKER My name is Edward Walker -- last
18 name W-A-L-K-E-R

19 EDWARD NATHANIEL WALKER, having first
20 been duly sworn, testified as follows

21 DIRECT EXAMINATION

22 BY MR KODMAN

23 Q Mr Walker, if I could, if I could ask you
24 to speak up so everybody can hear you, okay?

25 A My name is Edward Nathaniel Walker My

1 last name is W-A-L-K-E-R

2 Q Thank you Do you have a nickname?

3 A Head

4 Q Head?

5 A Yes, sir

6 Q Why do they call you that?

7 A They've been calling me that since I was

8 little

9 Q And where did you grow up at, Mr. Walker?

10 A In Salley

11 Q Do you know the defendant in this case,

12 Cornell Tyler?

13 A Yes, sir

14 Q Do you see him here in the courtroom?

15 A Yes, sir

16 Q Could you put him out to the jury?

17 MR WEEKS. Your Honor, let the
18 record reflect that he has identified the defendant
19 in this case

20 THE COURT. The record so reflects

21 Q And do you know if the defendant in this
22 case has a nickname?

23 A Yes, sir

24 Q What's his nickname?

25 A Duce

1 Q Now, are you charged in this case as well?

2 A Yes, sir

3 Q What are you charged with?

4 A Murder and assault and battery with intent
5 to kill

6 Q Has anybody made you any promises
7 regarding you testifying here today?

8 A No, sir

9 Q Has anybody from the Solicitor's Office --
10 myself or Mr Weeks -- made any promises to you
11 about what's going to happen with your case?

12 A No, sir

13 Q Has anybody from law enforcement made any
14 promises to you about what's going to happen with
15 your case?

16 A No, sir

17 Q Mr Walker, isn't it true that you've had
18 some run-ins with the law in the past? Isn't that
19 true?

20 A Yes, sir

21 Q In fact, isn't it true in 1997 you were
22 convicted of burglary, third degree?

23 A Yes, sir

24 Q And in 1999 you were convicted of use of a
25 vehicle without owner's consent?

1 A Yes, sir

2 Q In 2000, you were convicted of common law
3 robbery and failure to stop for a blue light, is
4 that correct?

5 A Yes, sir

6 Q In 2004, you were also convicted of grand
7 larceny, is that correct?

8 A Yes, sir

9 Q Now, do you know an individual by the name
10 of Willie Ware as well?

11 A Yes, sir

12 Q How do you know Willie Ware?

13 A That's my little cousin

14 Q That's your cousin Does he have a
15 nickname?

16 A Yes, sir

17 Q And what does he go by?

18 A Woo

19 Q And about Kendall Seawright? Do you know
20 Kendall Seawright?

21 A Yes, sir

22 Q And do you know if he goes by a nickname
23 as well?

24 A Yes, sir

25 Q What nickname does he go by?

1 A Weasel

2 Q Weasel?

3 A Yes, sir

4 Q I'll take you back to August 27, 2005 Do
5 you remember the early morning hours meeting up with
6 your cousin?

7 A Yes, sir

8 Q Tell the jury how you came to meet up with
9 Willie Ware that night

10 A We met at the Salley apartment complex
11 And I was going to see a female in the same
12 apartment complex that he was already in So when
13 we got down there, she wasn't home. So I see him
14 standing outside, and I asked him where he was going
15 after he leave there

16 And he said Wagener So I was like, "Can
17 I catch a ride?" and he was like, "Yes " So a few
18 minutes after that, me and him left and went to
19 Wagener But on our way to Wagener, we stopped for
20 a period to one of my uncle's girlfriend's house
21 So we stopped and talked to them for a while, for a
22 few minutes

23 And after we left there, we went to
24 Wagener When we got to Wagener, we stopped by some
25 more friends' house that went to school with my

1 little cousin Willie And the guy that he was going
2 to talk to there, he wasn't home But it was some
3 more people there, so we talked to them for a few
4 minutes or whatever

5 And when we got ready to leave, Kendall
6 had walked up and he asked Ware would he take him to
7 the swamp So he asked me would I ride with him,
8 and I said yes So me, Ware, and Kendall Seawright,
9 we went to the swamp And when we got to Dean
10 Swamp, we stopped to John Hartwell's house

11 Q Let me ask you this Where is the swamp?
12 What are you referring to when you say "the swamp"?

13 A It's a little area on the outside of
14 Wagener

15 Q And whose idea was it to go to the swamp?

16 A Kendall wanted Ware to take him down
17 there

18 Q Okay Who was driving?

19 A Ware

20 Q Whose vehicle was it?

21 A Ware

22 Q When you say "Ware," you mean Willie Ware,
23 your cousin?

24 A Yes, sir

25 Q And where was everybody seated in the car

1 when you were riding down there?

2 A Ware was driving, I was sitting on the
3 passenger side, and Kendall was sitting behind me

4 Q Why did Kendall want to go down to the
5 swamp?

6 A He said he wanted to go down there to
7 speak to Tyler or whatever

8 Q What's the first place that y'all went to
9 when you got down there to the swamp?

10 A John's house -- John Hartwell's house

11 Q And what happened there?

12 A We stopped and talked to Hartwell for a
13 few minutes and then after that went to Cornell's
14 house

15 Q Did you see anybody there at that house
16 when you stopped?

17 A No, sir

18 Q About what time of the day was it?

19 A It was at nighttime

20 Q It was dark out?

21 A Yes, sir

22 Q Was it late?

23 A Yes, sir

24 Q And y'all went to Cornell's house?

25 A Yes, sir

1 Q Tell me what happened when you got to
2 Cornell's house

3 A When we pulled in the yard, it was like no
4 lights on It was just like TV lights on, and there
5 was no cars in the yard And so Ware was like,
6 "Ain't nobody here " So I was like this, "Let me
7 relieve myself I've got to relieve myself "

8 So me and Kendall Seawright got out of the
9 car, and Kendall was like, "I'm going to see if one
10 of these guys is up " So I was like headed towards
11 the side of the house, and Kendall was going like
12 around the car so he can up on the porch Somebody
13 came to the door, which was Cornell, and asked, "Who
14 that is?" like that

15 So Kendall told him who I was or whatever.
16 So I went -- it's some woods between that separates
17 the two houses, Cornell's house and the next-door
18 house So I'm going on that side to relieve myself,
19 to use the bathroom

20 So a few minutes -- a few seconds after I
21 had started using the bathroom, there was some more
22 headlights that like hit the woods to let me know
23 there was another car that had pulled up in the
24 yard

25 Q So you were using the bathroom on the side

1 of the house?

2 A Yes, sir

3 Q What happened next?

4 A And as I was -- as the car lights had come
5 up and pulled up on the side of the -- up in the
6 yard or whatever, a few seconds later I heard a
7 couple of gunshots I really can't say how many it
8 was, but it was more than one So I zipped my pants
9 up or whatever

10 And as I came back around, it started
11 again all the commotion or whatever I see Tremaine
12 was standing like in the middle of the road shooting
13 at a vehicle that was passing by And I see Ware
14 kind of like rushing to back up, rushing to back up
15 So I ran his car down and like jumped on the back of
16 it just before they got out of the driveway

17 And I pulled myself up on the car, and I
18 hollered till he saw me. I was like, "Man, what the
19 f's going on?" that way, "Stop," or whatever And
20 as I'm telling him this, I see Cornell sitting in
21 the back seat of the car with a gun laying on his
22 lap

23 So we chased the car, or we followed the
24 car behind the car or whatever When we got on
25 another road, I'd say probably like minutes later or

1 whatever, after we got down the road, I see Cornell
2 coming out the side of the window shooting at this
3 car, the vehicle that's in front of us or whatever
4 And he shot it probably like more than like three or
5 four times or whatever I really can't say how many
6 times it was.

7 Q Where were you at when all this was going
8 on?

9 A Laying on top of the car, on the sun roof

10 Q You were outside the vehicle?

11 A Yes, sir

12 Q On top of the car?

13 A Yes, sir

14 Q And what happened next?

15 A He shot a few times or whatever And I'm
16 looking at him shooting at this car in front, but
17 then he stopped But then moments later, he shot a
18 few more times The second time he started shooting
19 at the car, I looked up, and I see the car like
20 going down the side of the road like this here

21 And when it came back up in the middle of
22 the road, it swerved a little bit And that's when
23 the speed of our car had slowed down a little bit.
24 After the vehicle that he was shooting at had came
25 back in front of our car, it started going towards

1 the left side of the road

2 And as it started going towards the left
3 side, it started flipping And that's when I like
4 snapped my face away or whatever and was like,
5 "Man " So we drove on

6 Q The car that you all were following, what
7 kind of car was it? Do you remember?

8 A It was a truck

9 Q And how close to that truck did you get
10 while y'all were following it?

11 A Probably from here -- probably like a car
12 and a half, something like that

13 Q About a car and a half length?

14 A Yes, sir

15 Q How close were you to the car in front of
16 you when the shots were being fired?

17 A The first time, when he first started --
18 started to fire or whatever, I really couldn't see
19 the distance But the second time when he started
20 shooting, we was probably like from here -- probably
21 from here to you up on the car

22 Q And where in the road was - the vehicle
23 that you were on, where in the roadway was it
24 traveling?

25 A What you mean?

1 Q Was it on the right-hand side of the road,
2 left-hand side of the road, middle of the road?

3 A It was like kind of like in the middle of
4 the road

5 Q So it wasn't -- was this a two-lane road?

6 A No, sir, it's -- it had two different
7 sides or whatever

8 Q Just two cars can go by at the same time,
9 correct?

10 A Yes, sir

11 Q What happened as you saw the truck start
12 to swerve?

13 A After it started -- well, when it came up
14 out of the ditch on the right side of the road, it
15 got like in the middle It was attempting to go to
16 the left side of the road And as it attempted to
17 go to the left side of the road, it started flipping
18 or whatever And then's what I like snapped my face
19 away from looking at it

20 And that's where the car had stopped It
21 ain't made a complete stop It kind of like slowed
22 down and turned around or whatever and went back up
23 to Cornell's and them's house When we got back up
24 to Cornell's house, I was like slammed off the back
25 of the car

1 Cornell was getting out of the right side
2 of the car, coming around and he was telling his
3 brother to "Come on, man, we've got to clean up "
4 So me, and Kendall, and Ware -- me and Kendall got
5 back in the car with Ware, and we left Then we
6 dropped Kendall off, and he dropped me off

7 Q So was Kendall Seawright in the car when
8 y'all were chasing that truck?

9 A No, sir

10 Q Did you see anybody else fire any shots
11 other than Cornell Tyler?

12 A No, sir.

13 Q Did you have a gun that night?

14 A No, sir

15 Q Before y'all got to Cornell Tyler's house,
16 did you see any guns in Willie Ware's vehicle?

17 A No, sir

18 Q What happened next?

19 A That was it, whenever they dropped me off
20 or whatever

21 Q Where did y'all go --

22 A When?

23 Q -- when you left Cornell's.

24 A Dropped Seawright off Then he dropped me
25 off around where we first -- the first house we got

1 to when we got Kendall

2 Q Had you been to Mr Tyler's house before?

3 A Yes, sir

4 Q Had you been there in the days leading up
5 to this incident?

6 A Yes, sir

7 Q When had you been there?

8 A Probably like earlier that day -- earlier
9 that day sometime, standing out there in the road
10 talking to him, talking to another homeboy that was
11 at their house already

12 Q And Mr Tyler's brother's name is Tremaine
13 Tyler?

14 A Yes, sir.

15 Q Does he have a nickname?

16 A Main

17 Q Main?

18 A Yes, sir

19 Q And you've been over to their house
20 before?

21 A Yes, sir

22 Q Had you ever seen any weapons in their
23 house before?

24 A Yes, sir

25 Q What kind of weapons have you seen?

1 A Like all kinds

2 Q What kind of weapons had you seen Main
3 with before?

4 A A 9-millimeter

5 Q Was that a handgun?

6 A Yes, sir

7 Q Anything special about the handgun you had
8 seen with him?

9 A Yes, he had a 9-millimeter with infrared
10 beam on it with extended clip that shoots like 40
11 rounds

12 Q What other kind of guns did you see inside
13 the house?

14 A All kind of shotguns, some other kind of
15 handguns and stuff like that

16 MR KODMAN Beg the Court's
17 indulgence, Your Honor

18 Q Mr Walker, I'm going to hand you what's
19 in evidence as State's Exhibit Fifteen and ask you
20 if you can identify that

21 A Yes, sir

22 Q What is that a picture of?

23 A My little cousin's car, Ware

24 Q Is that the car that you were riding in
25 and on top of on August 27, 2005?

1 A Yes, sir

2 MR KODMAN May I have permission to
3 have the witness come down from the stand

4 THE COURT I understand Step down

5 Q I'm showing you a picture, what's been
6 marked in evidence as State's Exhibit Fifteen Can
7 you show the jury how you were holding onto that
8 vehicle on August 27, 2005?

9 A I was holding like way up in here.

10 Q Where was your body at?

11 A Like this way

12 Q Was the top of that roof open on that
13 night?

14 A Yes, sir

15 Q At any time, your feet or your body, was
16 it hanging down in there?

17 A No, sir It's impossible, because I would
18 have been standing on Ware if I was standing up in
19 there on something.

20 Q Mr Walker, do you remember having a
21 meeting with myself, Mr Weeks, and Kendall
22 Seawright, and Willie Ware up here at the
23 courthouse?

24 A Yes, sir

25 Q At that meeting, did anybody at that

1 meeting tell you how to testify when you came in
2 here to court?

3 A No, sir

4 Q In fact, you don't have to testify today,
5 do you?

6 A No, sir

7 Q Whose decision is it to testify in this
8 case?

9 A Mine.

10 Q Have you been made any promises by our
11 office to testify in this case?

12 A No, sir

13 Q Please answer any questions Mr Gipson may
14 have for you.

15 MR GIPSON May it please the Court,
16 Your Honor

17 THE COURT Yes, sir

18 CROSS-EXAMINATION

19 BY MR GIPSON

20 Q Now, Mr Walker, my name is Byron Gipson,
21 and I represent Mr. Tyler And I'm going to ask you
22 a series of questions about your testimony and
23 things that you've said regarding this case on prior
24 occasions, okay?

25 A Yes, sir

1 Q And one thing I'm going to ask that you do
2 is -- and I'm going to raise my voice a little bit
3 to encourage you to speak up some, because you need
4 to speak loud enough so that the last juror here can
5 hear everything that you say And you have to be
6 careful, too, because when you nod your head like
7 that, the Court Reporter may not be able to
8 determine whether or not you're saying "yes" or
9 "no" --

10 A Yes, sir

11 Q -- okay? So you'll have an opportunity to
12 -- I just need you to speak up and to answer my
13 questions with a "yes" or a "no," and then you can
14 explain yourself if you feel a need to do so Now,
15 you've promised during every occasion to be truthful
16 here, haven't you?

17 A Yes, sir

18 Q And that's what you're doing here today?

19 A Yes, sir

20 Q Absolutely truthful?

21 A Yes, sir

22 Q And by putting your hand on the Bible,
23 swearing to tell the truth, the whole truth, and
24 nothing but the truth, you've confirmed that you're
25 going to do that?

1 A Yes, sir

2 Q Okay I can't hear you, sir

3 A Yes, sir

4 Q Okay And that is indeed what you have
5 done so far --

6 A Yes, sir

7 Q -- and you're going to continue to do
8 that?

9 A Yes, sir

10 Q You're telling this -- well, have you
11 under any occasion said anything different than
12 exactly what you've said here today?

13 A No, sir I might said some -- said more
14 detail, yes

15 Q But the testimony that you gave today is
16 exactly what you stated the entire time?

17 A Yes, sir

18 Q The entire two and a half years, correct?

19 A Yes, sir

20 Q All right Now, you say that you know the
21 people involved in this case?

22 A Yes, sir

23 Q Okay So you know Cornell Tyler?

24 A Yes, sir

25 Q You know Kendall Seawright?

1 A Yes, sir
2 Q You know James Gleaton?
3 A Yes, sir
4 Q Does he have a nickname?
5 A Killer Bee.
6 Q You know Killer Bee You know Willie
7 Ware, of course?
8 A Yes, sir
9 Q And you know him because he's your first
10 cousin, correct?
11 A Yes, sir
12 Q You know Johnny Miles?
13 A Yes, sir
14 Q Okay And do you know Frederick Scott --
15 Duggie?
16 A Yes, sir, yes
17 Q Okay You know Keisha Scott?
18 A Yes, sir
19 Q Now, you, again, have been charged with
20 murder and assault and battery with intent to kill,
21 correct?
22 A Yes, sir, I received warrants
23 Q You received warrants, okay. Which means
24 you've been charged with these crimes as well,
25 correct?

1 A Yes, sir

2 Q And it's your testimony that you didn't do
3 those things?

4 A Yes, sir

5 Q And, essentially, you haven't done
6 anything wrong, correct?

7 A Right

8 Q Okay Now, while you were in jail, have
9 you had an opportunity to be in contact with Willie
10 Ware, your cousin?

11 A No, sir

12 Q Never?

13 A No, sir

14 Q You have not been housed in the same pod
15 at any point in time for the last two and a half
16 years?

17 A They've got like these little lockdown
18 areas, you know, in each pod, but it's impossible
19 for me and him to talk

20 Q So it's your testimony that you have not
21 had contact directly with Willie Ware --

22 A Yes, sir

23 Q -- until the two of you, or the three,
24 along with Kendall Seawright, sat in the same room
25 together with Bill Weeks and others a couple of

1 weeks ago?

2 A Yes, sir

3 Q How many times did you do that?

4 A Do what?

5 Q Sit in the same room with Kendall

6 Seawright, Willie Ware, Bill Weeks, and others

7 regarding this case?

8 A One time

9 Q Okay When was that?

10 A I really can't say the exact date

11 Q Ten days ago, twenty days ago?

12 A I can't say

13 Q A month ago?

14 A I can't tell you the exact date

15 Q Okay Was it this year, the calendar year

16 of 2008, or was it last year, 2007?

17 A It was like 2000 -- it was like around the

18 beginning of this year

19 Q Beginning of this year?

20 A I think so

21 Q Okay So since Christmas time?

22 A I think so

23 Q Okay And you came to this courthouse?

24 A Yes, sir

25 Q You sat in here with the people we just

1 talked about --

2 A Yes, sir

3 Q -- some of which are also co-defendants in
4 this case ?

5 A Yes, sir

6 Q -- correct?

7 A Yes, sir

8 Q All right Have you ever been housed with
9 James Gleaton, Killer Bee?

10 A Yes, sir, he's been in the same pod or
11 room, but it's on a different level

12 Q Okay But you were housed with him at
13 some point in time, correct?

14 A Yes, sir

15 Q And had some contact with him, correct?

16 A No, sir

17 Q Never had any contact with him?

18 A No, sir

19 Q Never spoke with him, never said a word to
20 him?

21 A No, sir -- well, he tried to say something
22 to me or whatever, and I told the officer that me
23 and him was like in the same case or whatever, and
24 they separated us

25 Q Okay But you had no contact with him?

1 A No, sir

2 Q Did you ever have any contact with Willie
3 Deshawn Smith?

4 A No, sir.

5 Q Never spoken to him?

6 A No, sir Well, when we first got locked
7 up, he was in the intake area

8 Q Okay So the "No, sir" is now a "Yes,
9 sir," you have had contact with him?

10 A When we first got locked up, we was in
11 intake together

12 Q Okay So that's a definite "yes" to that
13 question?

14 A Yes, sir

15 Q Now, I want you to listen to my questions
16 carefully, because I don't want to try to put words
17 in your mouth Did you at any point since August
18 27, 2005, the date this incident took place, discuss
19 any matters regarding this case with anyone other
20 than your attorney?

21 A No, sir

22 Q And you're sure about that?

23 A Yes, sir

24 Q Did you discuss any matters regarding this
25 case with your cousin, Willie Ware?

1 A No, sir

2 Q James Gleaton, also known as Killer Bee?

3 A No, sir

4 Q Willie Deshawn Smith?

5 A No, sir

6 Q Frederick Scott?

7 A No, sir

8 Q Keisha Scott?

9 A No, sir

10 Q Kendall Seawright?

11 A No, sir

12 Q Never said anything about anything

13 regarding this case?

14 A Never

15 Q Have you ever admitted to anybody in this

16 case that you shot Debra Dorch or Joe Brewer?

17 A No, sir

18 Q Have you ever admitted to anyone that you

19 were involved in the killing of Debra Dorch or the

20 shooting of Joe Brewer?

21 A No, sir

22 Q Have you ever at any point admitted to

23 trying to hide a gun?

24 A No, sir

25 Q Have you ever asked anybody to help you

1 hide a gun?

2 A No, sir

3 Q Have you ever asked or tried to coerce
4 James Gleaton to change his story around and testify
5 on your behalf?

6 A No, sir

7 Q Have you ever asked him to hide a gun on
8 your behalf?

9 A No, sir

10 Q Have you ever asked Kendall Seawright to
11 change his testimony --

12 A No, sir

13 Q -- or to hide a gun on your behalf?

14 A No, sir

15 Q Have you ever asked Frederick Scott to
16 change his story?

17 A No, sir

18 Q To help you hide a gun?

19 A No, sir

20 Q To help you hide out?

21 A No, sir

22 Q Have you ever asked Willie Deshawn Smith
23 to help you hide a gun?

24 A No, sir

25 Q To change his story to help him out --

1 excuse me, to help yourself out?

2 A No, sir

3 Q Have you at any point since August 27,
4 2005, ever asked James Gleaton or admitted to James
5 Gleaton that you fired a gun --

6 A No, sir

7 Q -- on that night --

8 A No, sir

9 Q -- on that morning?

10 A No, sir

11 Q Okay And you never admitted that to
12 Kendall Seawright, Willie Smith --

13 A No, sir

14 Q -- Frederick Scott, or Willie Ware?

15 A No, sir

16 Q And you're still telling the truth?

17 A Yes, sir

18 Q Okay Now, if we focus on the incident,
19 the night that that took place, you were on Union
20 Academy Road, correct?

21 A Yes, sir

22 Q And you were at Cornell Tyler's residence,
23 correct?

24 A Yes, sir

25 Q And you went down there with your cousin,

1 correct?

2 A Yes, sir

3 Q And with Kendall Seawright?

4 A Yes, sir

5 Q All right

6 MR GIPSON Court's indulgence very
7 briefly, Your Honor

8 Q I'm going to show you --

9 MR GIPSON May I approach the
10 witness, Your Honor

11 THE COURT- Yes

12 Q I'm going to show you what's been marked
13 as State's Exhibit Number Fourteen Does that look
14 familiar to you?

15 A Yes, sir

16 Q Okay And would you tell the jury what
17 that is?

18 A That's the residence of Cornell and
19 Tremaine

20 Q You said this is the residence of Cornell
21 and Tremaine Tyler, correct?

22 A Yes, sir

23 Q And that, again, is State's Exhibit Number
24 Fourteen that I just showed you I'm showing you
25 State's Exhibit Number Ten Does this look familiar

1 to you at all?

2 A Yes, sir

3 Q And what is this? Will you identify it,
4 please?

5 A This is Mr. Hartwell's house It's the
6 house next door to Cornell

7 COURT REPORTER. Mr who?

8 MR WALKER Hartwell

9 COURT REPORTER. Hartwell?

10 MR. WALKER Yes, ma'am

11 Q So Mr Hartwell's house, and he lives next
12 door to the Tylers?

13 A Yes, sir

14 Q Okay And State's Exhibit Number Seven, a
15 similar picture to the one that I just showed you?

16 A Yes, sir It's like on the right side or
17 whatever

18 Q Okay You said State's Exhibit Seven is
19 the right side of their home, is that correct?

20 A Yes, sir

21 Q Now, you said and you pulled -- when your
22 cousin drove up, pulled into Mr Tyler's residence,
23 you said that you got out of the car and relieved
24 yourself Essentially, you urinated on the side of
25 the house, correct?

1 A Yes, sir

2 Q And that's the only place you went in that
3 yard?

4 A Yes, sir

5 Q I can't hear you You need to speak up

6 A Yes, sir -- yes, sir

7 THE COURT Where are the mikes in
8 this court?

9 COURT REPORTER It's right there in
10 front of him

11 THE COURT Say it again?

12 COURT REPORTER. It's right there in
13 front of him

14 THE COURT Speak into the mike
15 Pull your chair up some and speak louder

16 A Yes, sir, that's the only place I went

17 Q And that's the only place that you went?

18 A Yes, sir

19 Q What were you wearing that evening?

20 A Some shorts and some Timberland boots

21 Q Okay Some shorts and some Timberland
22 boots?

23 A Yes, sir

24 Q Can you tell us about those Timberland
25 boots you were wearing?

1 A Just Timberland boots

2 Q What did they look like?

3 A Red, green, and white

4 Q Okay And isn't it true that law
5 enforcement took those boots from you at some point
6 in time?

7 A Yes, sir

8 Q Okay. And those were the boots you were
9 wearing that night?

10 A Yes, sir

11 Q Did law enforcement take anything else
12 from you?

13 A No, sir

14 Q Now, is it your testimony that the only
15 place -- again, I'm making sure that I have this
16 right -- the only place that you went regarding the
17 Tylers' home was to the side to use the bathroom,
18 and then you jumped on top of the car?

19 A Yes, sir

20 Q Okay Now, you had an opportunity
21 somewhere right around the time that you were
22 arrested to make a statement, correct?

23 A Yes, sir.

24 Q And you made a statement to police,
25 correct?

1 A Yes, sir

2 Q And they taped the interview, correct?

3 A Yes, sir

4 Q And you're aware that they taped the
5 interview?

6 A Yes, sir

7 Q And when they taped the interview, they
8 gave you -- they read you your Miranda rights,
9 correct?

10 A Yes, sir

11 Q And they let you know you had the right to
12 remain silent, you had a right to an attorney --
13 they let you know all of those things, correct?

14 A Yes, sir

15 Q And you chose to speak to them freely and
16 voluntarily?

17 A Yes, sir

18 Q And you told them that you said what you
19 believe happened that particular day, correct?

20 A I told them what happened

21 Q And it's exactly what you've told us
22 today?

23 A Yes, sir

24 Q All right

25 MR GIPSON Your Honor, I'd like

1 to --

2 MR KODMAN Your Honor, I have a matter
3 of law to take up regarding this issue

4 THE COURT Regarding what issue?

5 MR KODMAN He's impeaching the witness
6 by use of a videotape

7 THE COURT All right Ladies and
8 gentlemen, I'll have you go to the jury room for a
9 bit Please do not talk about the case while you're
10 there.

11 (The jury left the
12 courtroom at 2 40 p m., after which the following
13 proceedings were had)

14 THE COURT Yes, sir

15 MR KODMAN Judge, the defendant in this case
16 -- well, I'm not sure what particular portions that
17 Mr Gipson is presumably saying that is
18 contradictory with his testimony today in terms of
19 what's wanting to publish to the jury. I'll need
20 some clarification from Mr Gipson as to
21 specifically what he's wanting to get into on the
22 statement

23 THE COURT All right, Mr Gipson?

24 MR GIPSON Your Honor, he's stood up or he's
25 testified at this point that everything that he's

1 said and testified to at this point is consistent
2 with what he's always said, and it's not.

3 THE COURT He said what?

4 MR GIPSON It's not consistent There are
5 parts that are not consistent, and there are -- I've
6 asked him a series of questions about where he was,
7 what he did, those types of things And I think
8 that's rightful impeachment at this point, if he has
9 answered those things in the negative, Your Honor

10 THE COURT Rightful impeachment through what
11 means?

12 MR GIPSON Well, he's given prior
13 inconsistent statements And, Your Honor,
14 unfortunately in this case, nobody has written
15 anything -- nobody wrote a statement They're all
16 videotape. So in these videos, some of those things
17 are talked about, and he gives answers to questions
18 that law enforcement asked him

19 THE COURT. So what is it that you plan to do
20 or want to do?

21 MR GIPSON Well, just to show that he's not
22 being truthful, quite honestly, Your Honor

23 THE COURT I know that that's the ultimate
24 objective in the trial Specifically, what is it
25 that you -- the Solicitor is objecting to something,

1 and I'm not exactly sure what he's objecting to, and
2 I'm not exactly sure what you're attempting to do
3 That's why I'm asking the question

4 MR KODMAN I think that's kind of what I
5 want, Judge I'm not sure what the objection is
6 going to be, because I'm not clear what he wants to
7 play

8 THE COURT We have a rule regarding prior
9 statements of witnesses

10 MR GIPSON Yes, sir

11 THE COURT And the rule is rather clear as to
12 the procedure to be used in dealing with this
13 particular issue And I guess the question raised
14 by the Solicitor in the objection is that you're not
15 following that procedure So what is it that you're
16 about to try to do?

17 MR GIPSON Well, Your Honor, at this point
18 we're trying to get into the fact that he has told
19 law enforcement different pieces of information that
20 he's, you know, conveniently said today that "No, it
21 didn't happen " You want me to get into the
22 specifics of what he's --

23 THE COURT Well, your position is he has given
24 prior inconsistent statements

25 MR GIPSON. Yes, sir

1 THE COURT And you want to play the statement
2 to show --

3 MR GIPSON Yes, in order --

4 THE COURT -- that he has given prior
5 inconsistent statements?

6 MR GIPSON Yes, sir, to show that he's given
7 prior inconsistent statements

8 THE COURT All right

9 And what's the State's position concerning
10 that?

11 MR KODMAN Judge, there are two things I
12 think that you'll find playing that tape One is
13 there's a comment by law enforcement to Mr Walker
14 about a polygraph I don't think that's admissible
15 or a relevant issue to play for the jury.

16 In addition, there is some questioning
17 that goes on with Mr Walker with regard to growing
18 marijuana down there at Mr Tyler's house, and I
19 don't think Mr Gipson would want that to come in
20 And those things concern me in terms of what's on
21 that tape in his interview

22 THE COURT: So you're objecting on his behalf
23 to that or the State's behalf?

24 MR KODMAN· I certainly don't want something
25 to come in the jury is not supposed to hear, Your

1 Honor

2 THE COURT But it's the defense that's
3 offering it

4 MR KODMAN Specifically, the polygraph part
5 is what we would object to Where he's questioned
6 and told he might be subject to a polygraph, I don't
7 think is relevant for the jury to hear

8 MR GIPSON And, Your Honor, we haven't
9 broached that portion of it yet, but I've done what
10 I can to write down the particular times of
11 particular things that were said, Your Honor

12 THE COURT So you do not intend to play the
13 entire --

14 MR GIPSON No, I do not I mean, for
15 instance, this question about the marijuana took
16 place 68 minutes into the interview, and it lasted
17 30 seconds So that could be easily stopped prior
18 to that

19 THE COURT: Let's review the rule on prior
20 statements of witnesses It's Rule 613

21 MR GIPSON Yes, sir

22 THE COURT Subsection (b), "Extrinsic evidence
23 of prior inconsistent statement of witness" says
24 that "Extrinsic evidence of a prior inconsistent
25 statement by a witness is not admissible unless the

1 witness is advised of the substance of the
2 statement, the time and place it was allegedly made,
3 and the person to whom it was made, and is given the
4 opportunity to explain or deny the statement

5 "If a witness does not admit that he made
6 the prior inconsistent statement, extrinsic evidence
7 of such statement is admissible However, if a
8 witness admits making the prior statement, extrinsic
9 evidence that the prior statement was made is
10 inadmissible And this provision does not apply to
11 admissions of a party opponent as defined in Rule
12 801(b) (2) "

13 At this point, you've asked him, "Did you
14 make a statement, and did you tell the truth when
15 you made those statements "

16 MR GIPSON Yes, sir

17 THE COURT But you have not confronted him
18 with anything inconsistent to his testimony and
19 given him an opportunity to admit that he said that
20 before, or deny it, or explain it, or anything It
21 appears that you want the statement to speak for
22 itself to establish the inconsistency without giving
23 him an opportunity to explain, deny, or anything.

24 MR GIPSON Your Honor?

25 THE COURT That was a previous objection made

1 by Mr Weeks as to the previous witness, that you
2 handed a page to read and then asked them some
3 questions I guess in this instance, it's the
4 video So I want to be clear on where we are, where
5 we're going, and who's objecting to what regarding
6 this particular rule

7 And the Solicitor's objection is what?
8 I'll tell you what. We'll take about five
9 minutes --

10 MR GIPSON Yes, sir

11 THE COURT -- and let you all talk with each
12 other We'll take a quick comfort break

13 MR GIPSON Yes, Your Honor

14 THE COURT We'll be in recess about five
15 minutes

16 You can step down, sir, but you can't talk
17 to anyone while you're down

18 (Court in brief recess)

19 THE COURT All right, issue resolved, more
20 problems -- what do we stand?

21 MR. GIPSON I think it's resolved, more or
22 less. We'll ask a few more questions, and if
23 necessary after that, then we'll play the tape But
24 we have an understanding that we'll see, and then
25 we'll play the tape if necessary

1 THE COURT. All right. Okay, let's bring the
2 jury back

3 (The jury returned to the
4 courtroom at 3 01 p m)

5 THE COURT All right, the jury is back You
6 may proceed

7 EXAMINATION CONTINUED

8 BY MR GIPSON

9 Q Mr Walker, picking up where we left off,
10 let me ask you this Did you have any conversations
11 with Cornell Tyler that night?

12 THE COURT All right, just a moment As
13 I understand, the jurors are having problems
14 hearing. We need everyone to speak up, talk louder
15 All right, if you'll restate the question, please

16 Q Did you have any conversations with
17 Cornell Tyler that evening on his porch?

18 A No, sir

19 Q Did you knock on his door that evening?

20 A No, sir

21 Q Is it your testimony that Cornell Tyler
22 didn't peek outside and ask why you were at his
23 house that time of morning?

24 A Well, he looked out the door and asked
25 Kendall who that was

1 Q And he never said, "Why are you my house
2 this time of morning?"

3 A No, sir

4 Q What's the relationship that you have with
5 Tremaine Tyler?

6 A He's all right

7 Q What does "all right" mean?

8 A We see each other, talk, speak, whatever

9 Q So was there a reason why Cornell Tyler
10 would not want you in his house?

11 A No, sir, not that I can think of

12 Q You had never had any kind of rift with
13 his brother, any kind of "beef," any kind of
14 negative history with his brother that would cause
15 you not to be welcome inside of that house?

16 A No, sir

17 Q Now, as it relates to your arrest, you
18 were arrested, and you gave statements to the
19 police, correct?

20 A Yes, sir

21 Q Isn't it true that you never in any
22 circumstance talked about the guns being all
23 throughout the Tyler house?

24 A What you mean?

25 Q Guns being all throughout the Tyler house.

1 You never talked about seeing guns all inside of the
2 house, did you?

3 A To who?

4 Q The police, when you gave a statement to
5 them

6 A No, sir, not that I can remember.

7 Q You never said that to them?

8 A Not that I can remember

9 Q Okay And today, your day in court, that
10 all of a sudden is a major part of your testimony.

11 A Because the question was asked. It wasn't
12 asked during the time that I made a statement to the
13 police in the beginning

14 Q So it's not important to you that there
15 are guns all throughout this house allegedly and
16 that you see shotguns, guns with infrared scopes,
17 all of these types of things --

18 A I just answered the questions

19 Q -- none of that stuff is important to you
20 in a shooting case?

21 A I just answered the question.

22 Q You just answer what's asked

23 A So when they came, they asked me about it
24 or whatever, and I answered the questions

25 Q And so there was never any discussion with

1 you saying "Yes, I've see guns all through the house
2 all the time" -- never thought about that, never
3 said it, because it wasn't important to you?

4 A I answered the questions that came to me,
5 sir

6 Q Now, again, you said that you never
7 entered that roadway, correct?

8 A Sir?

9 Q You never entered the roadway, correct?

10 A No, sir

11 Q And you've never discussed the particulars
12 of your testimony with anybody other than you
13 lawyer, correct?

14 A Yes, sir

15 Q All right Now, let's get to the chase
16 You said that at some point in time, you heard some
17 gunshots, correct?

18 A Yes, sir

19 Q And the car starts pulling off --

20 A Yes, sir

21 Q -- correct?

22 A Yes, sir

23 Q And your first instinct is to run and go
24 jump on top of the car?

25 A No, my first instinct was to see what was

1 going on I mean, Tremaine, he'll shot anytime It
2 ain't no telling It could be for not any need to
3 shoot So when I first heard the gunshots or
4 whatever, my first reaction was, "What's Tremaine
5 trying to shoot?"

6 That's what I'm thinking Well, when I
7 get around the house, I see all this commotion going
8 on I see Tremaine still shooting, and I don't know
9 what's going on I see my only ride leaving

10 Q So you say you hear this commotion You
11 never heard anything leading up to the commotion?

12 A What you mean?

13 Q You never testified that you heard
14 anything leading up to the commotion -- all of a
15 sudden, these gunshots break out in the middle of
16 the night?

17 A Yes, sir. Like I say, I wasn't around at
18 the front of the house when all of this stuff was
19 going on

20 Q Then you ran and jumped on the top of your
21 cousin's car?

22 A Yes, sir

23 Q And y'all took off down the road?

24 A Yes, sir -- no, they was already in the
25 process of leaving That's my only ride I wasn't

1 about to get left out there

2 Q And you jumped on top of the car --

3 A Yes, sir

4 Q -- and held on?

5 A Yes, sir

6 Q How fast was he driving?

7 A How fast he was driving?

8 Q Yes, sir

9 A I really can't say It was pretty fast,
10 though

11 Q So this entire time, you're holding onto
12 the car, just kind of "yee-haw," just holding onto
13 the car, riding on the top of the car, down the
14 road --

15 A Yes, sir

16 Q -- while someone's firing out of the car?

17 A Yes, sir

18 Q Now, isn't there a stop sign at the end of
19 that road?

20 A Yes, sir.

21 Q So when he stopped the car, you didn't
22 flip off the car and hit the ground?

23 A He didn't stop, sir He like slowed down
24 or whatever and kept going

25 Q Okay So he slowed down and kept going

1 straight through the stop sign?

2 A Yes, sir

3 Q All right And at no point in time did he
4 stop so that you could get back in that car, is what
5 you're testifying to the Court?

6 A Yes, sir

7 Q Isn't it true that you were hanging out
8 the side of the road -- excuse me, out the side of
9 the car, and at some time later, you climbed on top?

10 A No, sir

11 Q So you were never inside that car, hanging
12 out of the car?

13 A No, sir

14 MR GIPSON Court's indulgence for
15 one moment, Your Honor

16 THE COURT Yes, sir

17 Q And you say while you're riding on top of
18 this car, going however fast you're going, holding
19 on, didn't stop at any of these stop signs, so you
20 didn't have a chance to fly off the car --

21 A No, sir

22 Q -- but you could sit there and look and
23 watch what was going on inside the car?

24 A Well, I only looked inside the car when I
25 first got on top of the car

1 Q Okay

2 A I was asking him to stop

3 Q So you're going down a dirt road, however
4 fast, trying to catch up, and you have time,
5 worrying about what's going on, looking inside the
6 car, figuring out what's going on inside the car?

7 A I wasn't figuring out I was just
8 basically yelling "What the `f'?" and asking him to
9 stop

10 Q And you said that you were yelling down at
11 your cousin, "What the `f? is going on?"

12 A Yes, sir.

13 Q Okay So you had time to hold a
14 conversation with him as well?

15 A No, I did not have a conversation I was
16 just asking him what's going on -- asking him what's
17 going on and to stop the car

18 Q And he never stopped that car for you, did
19 he?

20 A No, sir

21 Q And all of these go on You say you get
22 back still holding onto the top of the car?

23 A Yes, sir

24 Q There's never falling off, never slipping
25 off, never sliding off, never getting blisters on

1 your hands, cutting your hands, none of those
2 things?

3 A No, sir

4 Q None of those things You pull back in to
5 the house, to the back of the Tylers' house, and
6 y'all just say, "All right, I'll see y'all later"?

7 A No, he said that He said, "All right,
8 man, I'll see y'all boys later."

9 Q Okay. So it was just like just a day at
10 the office

11 A Sir?

12 Q It was just like a day at the office

13 A That's what you want to say

14 Q Now, you got back in that car with your
15 cousin, Willie Ware, you got back in the car with
16 Kendall Seawright

17 A Yes, sir

18 Q Okay. And where did y'all go next?

19 A To drop Kendall Seawright off and drop me
20 off

21 Q And what did you discuss in the car?

22 A Nothing

23 Q Now, have you ever been to a movie before?

24 A Yes, sir.

25 Q Ever been to a football game?

1 A Yes, sir

2 Q Do you ever go with friends?

3 A Yes, sir

4 Q All right And after the game, what's the
5 first thing you do when you get back in the car?

6 A A bunch of different things

7 Q Okay What's one of the things that you'd
8 expect to do when you get back in the car with your
9 friends after going to see a game, going to see a
10 movie?

11 A I'd smoke a cigarette

12 Q Okay You'd talk about the game or the
13 movie that you just viewed?

14 A No, I'd probably think about what I'm
15 going to do next or whatever

16 Q So you don't discuss that with your
17 family, your friends, or whoever's in the car with
18 you?

19 A No, because I ain't really a sports fan

20 Q How about a movie? You may be a movie
21 fan.

22 A I'm not really a movie fan.

23 Q What kind of fan are you?

24 A Laid-back type person

25 Q Okay, laid-back What is it that you do

1 in your free time?

2 A Talk on the phone

3 Q So let's say the woman that you said that
4 you were going to see at the projects, which you
5 went to go see, when you get back in the car, you
6 don't discuss that --

7 A No

8 Q -- the conversation you had?

9 A No, that's between me and her.

10 Q Okay So you just don't talk to anybody
11 about anything?

12 A There's different things we talk about

13 Q Okay You're a private person You don't
14 share your innermost matters with anybody, do you?

15 A No I mean, what me and you talk about,
16 nobody else should know.

17 Q I'm sorry, I missed that

18 A I said what you me and you talk about,
19 nobody else should know

20 Q Okay So what the two of us talk about,
21 no one else should know?

22 A They wasn't there to get in the
23 conversation or anything

24 Q Okay So, again, there was no other
25 conversation, never discussed this?

1 A No, sir

2 Q And you say you never discussed anything
3 with this case with -- anything about your case to
4 any of the people who you were housed in the Aiken
5 County Detention Center with, did you?

6 A No, sir

7 Q Willie Smith?

8 A No, sir

9 Q Kendall Seawright?

10 A No, sir

11 Q Willie Ware

12 A No, sir

13 Q Never talked about anything?

14 A No, sir

15 Q And when you came to this courthouse, in
16 one of those rooms over there and discussed how you
17 all were going to testify, you still didn't talk
18 about anything?

19 A No.

20 Q Okay And even you never discussed
21 anything with Frederick Scott?

22 A No, sir

23 Q Never discussed anything with Keisha
24 Scott?

25 A No, sir

1 Q Okay

2 MR GIPSON. I'd ask the Court's
3 indulgence very briefly

4 THE COURT All right.

5 Q And, lastly, you never came on that porch
6 that night, did you?

7 A No, sir

8 Q In direct, you just talked very briefly
9 about -- a little bit about your history You were
10 convicted of burglary, third?

11 A Yes, sir

12 Q Convicted of use of a vehicle without
13 consent?

14 A Yes, sir

15 MR KODMAN Objection, it's already
16 been brought into evidence

17 THE COURT The objection is
18 overruled

19 Q Convicted of common law robbery?

20 A Yes, sir

21 Q And that was back in 2003 Grand larceny
22 in 2004?

23 A Yes, sir.

24 Q Okay And those are your only
25 convictions?

1 A Yes, sir

2 MR GIPSON That's all my questions, Your
3 Honor

4 THE COURT Any redirect?

5 REDIRECT EXAMINATION

6 BY MR KODMAN

7 Q Mr Walker, you testified earlier you were
8 in intake with Willie Smith, is that correct?

9 A Yes, sir

10 Q Describe for the jury what the intake is
11 when you get arrested

12 A Oh, intake is like when you first come in,
13 you get booked? That's where they hold you at until
14 you get booked

15 Q How long were you in intake with Mr
16 Smith?

17 A Probably like a couple of hours.

18 Q Just a couple of hours?

19 A Yes, sir

20 Q And did you discuss your case or your
21 testimony with Mr. Smith during that time?

22 A No, sir.

23 Q You testified earlier that you had been to
24 the Tylers' house earlier on the day of this
25 incident, is that correct?

1 A Yes, sir

2 Q Were you wearing your Timberland boots
3 earlier that day?

4 A Yes, sir

5 Q And where had you gone when you went to
6 his house earlier that day?

7 A I was standing like out there in the
8 roadway But really I was like going to another
9 home, so I had to walk past their house or whatever
10 to get to the other home where I was going to go
11 check on something But in the process of that, you
12 know, I had spoke to another homeboy that was
13 standing in his yard earlier that day or whatever.

14 Q And Mr Gipson asked you the only person
15 you talked to about this case in the preparation of
16 this case was your attorney But, in fact, you have
17 met with myself and Mr Weeks in preparation of this
18 case, haven't you?

19 A Yes, sir

20 Q Have we ever asked you to lie or change
21 your testimony in any way when you come to court?

22 A No, sir

23 Q In fact, what have we asked you to do?

24 A Tell the truth

25 Q Have you done that?

1 A Yes, sir

2 Q Thank you

3 MR GIPSON No further questions, Your Honor

4 THE COURT All right, sir, you may step down

5 MR WEEKS Your Honor, the State would call

6 Willie Ware

7 THE COURT Mr Willie Ware.

8 CLERK OF COURT I need for you to place your
9 left hand on the Bible and raise your right.

10 (The witness was sworn)

11 CLERK OF COURT Please have a seat in the
12 witness box, state your full name for the Court, and
13 spell your last

14 MR WARE My name is Willie Lee Ware III

15 THE COURT Spell your last name

16 MR. WARE. W-A-R-E

17 WILLIE LEE WARE III, having first
18 been duly sworn, testified as follows

19 DIRECT EXAMINATION

20 BY MR WEEKS

21 Q Now, talk up loud where everybody in the
22 courtroom can hear you You understand that -- yes,
23 sir?

24 A Yes, sir

25 Q How old are you?

1 A I'm 25

2 Q And where do you live?

3 A Salley, South Carolina

4 Q Where did you go to school?

5 A Wagener-Salley High

6 COURT REPORTER Where?

7 Q You're going to have to speak up

8 A Wagener-Salley High

9 COURT REPORTER Whiteside?

10 MR WARE Wagener

11 MR WEEKS Wagener-Salley High

12 Q Lean toward that microphone up there,

13 Willie Did you graduate from Wagener-Salley?

14 A Yes, sir

15 Q Did you school with a Cornell Tyler?

16 A Yes, sir

17 Q How about with Tremaine Tyler?

18 A Yes, sir

19 Q Kendall Seawright?

20 A Yes, sir

21 Q And were they about the same class as you,

22 or different classes, or what?

23 A About the same class

24 Q Okay Prior to going to jail, Willie,

25 where were you working?

1 A Carolina Culinary in West Columbia

2 Q All right, you're going to have to speak
3 louder These folks over here have got to hear you
4 And I'm having a hard time, and I know what you're
5 going to say

6 THE COURT Mr Ware, your purpose
7 for being here is to testify so people can hear what
8 you say So you must talk in such a way that we can
9 hear you You understand?

10 MR WARE Yes, sir

11 THE COURT All right

12 Q Carolina Cutlery?

13 A Culinary, in West Columbia

14 Q Culinary, okay What do you do there,
15 Willie?

16 A I'm a machine operator

17 Q Were you working there on August 27, 2005?

18 A Yes, sir

19 Q What were you doing there then?

20 A Machine operator

21 Q How long had you been doing that?

22 A Two to three years

23 Q On August 27th, what time did you get off
24 work?

25 A Early that morning

1 Q When you say "early that morning," what
2 time do you mean?

3 A Like 12 00, 1 00

4 Q Midnight?

5 A Yes, sir

6 Q You worked second shift?

7 A Second shift.

8 Q Okay What did you do when you got off
9 work on August the 27th?

10 A I had left from work and went to one of my
11 friends' house in Salley Apartments

12 Q How did you get there?

13 A I had drove

14 Q What did you drive?

15 A Buick Regal

16 Q Was it yours?

17 A Yes, sir

18 Q What did you do when you got to the
19 friend's house?

20 A I had went to a friend's house, and me and
21 him was outside talking And as we were talking,
22 Mr Walker had walked up

23 Q Who's Walker?

24 A My cousin

25 Q Is he Edward Walker?

1 A Yes, sir

2 Q Goes by Head?

3 A Yes, sir

4 Q What's your nickname?

5 A Woo

6 Q All right Mr Walker came up What
7 happened then, if anything?

8 A When I was talking to my friend, and he
9 asked me could I take him to Wagener and drop him
10 off

11 Q All right, that's Mr Walker Did you
12 proceed to take him to Wagener?

13 A Yes, sir

14 Q Where did you go?

15 A When we got back to Wagener, we went over
16 to some more friends' house, over by -- I can't
17 think of the name

18 Q How long were you there?

19 A From 30 to 45 minutes

20 Q Where did you go from there?

21 A We was over there to a friend's house, and
22 Mr Kendall Seawright had walked over and had asked
23 if we would take him to Windsor Road

24 Q Windsor Road, is that where Mr Tyler
25 lived?

1 A Yes, sir
2 Q All right Did he say take him to the
3 swamp?
4 A Yes.
5 Q All right Who went with you?
6 A Mr Seawright and Mr Walker
7 Q Did you go right then?
8 A Yes, sir
9 Q All right Where was Mr Seawright
10 sitting?
11 A He was sitting on the back passenger
12 Q And Mr Walker?
13 A He was sitting in the front passenger
14 Q Tell me what you did, Willie, when you got
15 down to Windsor Road?
16 A When we first arrived at Windsor Road, we
17 had went up to John Hartwell's house
18 Q How long did you stay there?
19 A Probably about five minutes
20 Q Did you get out and go in?
21 A No, sir, I just stayed in the vehicle
22 Q You did?
23 A Yes, sir
24 Q All right Did you see anybody there?
25 A Yes, as we was leaving, Mr James Gleaton,

1 he had walked up

2 Q Okay Did you have any conversation with
3 him?

4 A Yes, sir. He had called me aside and was
5 talking to me When he was talking to me, he had
6 asked me did I have anything to drink or anything
7 So I had given him some beer from out of my trunk,
8 vehicle

9 Q Was it a cold beer?

10 A No, sir

11 Q How long had you had it in your trunk?

12 A For a couple of days

13 Q Had you been drinking any of it that
14 night?

15 A No, sir.

16 Q Had you had anything to drink that night?

17 A No, sir

18 Q What did you with Mr Gleaton after you
19 gave him the beer?

20 A I had give him the beer On our way
21 leaving out of Mr Hartwell's yard, Mr Seawright
22 and Mr Walker had asked me to take them up to the
23 Tyler residence

24 Q Is the Tyler residence far from Mr
25 Hartwell?

1 A No, sir

2 Q All right How far was it approximately?

3 A I'd say about a half a mile

4 Q Now, Mr Hartwell lived on Windsor Road?

5 A Yes, sir

6 Q Okay So to leave his house, you would go

7 down and take a right on Union Academy, is that

8 correct?

9 A Yes, sir.

10 Q And Union Academy, what kind of road is

11 it?

12 A Dirt road

13 Q And how far do you go down to get to Mr

14 Tyler's?

15 A You're talking about from Mr Hartwell?

16 About half a mile

17 Q Okay What did you do -- did you go to

18 Mr. Tyler's house?

19 A Yes, sir

20 Q And which Mr Tyler's house?

21 A Cornell's house, Tremaine's house

22 Q And Tremaine?

23 A Yes, sir.

24 Q All right. The Cornell you're referring

25 to, is he in the courtroom?

1 A Yes, sir
2 Q Where is he?
3 A That's him
4 Q At the defense table?
5 A Yes, sir
6 Q Now, what happened -- tell me, did you go
7 to Mr Tyler's residence?
8 A Yes, sir
9 Q What did you do when you got there?
10 A When we arrived at the Tyler residence,
11 Mr Seawright and Mr Walker had got out of the
12 vehicle I stayed inside the vehicle And after a
13 few minutes, I had got out, walked behind the
14 vehicle, and used the restroom After I got done
15 using the restroom, I asked them was they ready
16 Q Asked them what?
17 A I asked them was they ready, Mr
18 Seawright.
19 Q Tell me about the situation in the yard
20 Were there any cars in the yard?
21 A No, sir
22 Q Was there any lights?
23 A Only the street light
24 Q Okay And where did you park?
25 A I had parked on the side, in front, before

1 you get to the porch

2 Q Was your car facing the porch?

3 A Yes, sir

4 Q All right Tell me what happened then,
5 after you spoke to Mr Seawright

6 A I had went back inside the vehicle Me
7 and Mr Seawright was waiting on Mr Walker. And we
8 had seen some car lights coming down the dirt road
9 And then Tremaine Tyler ran out to the road
10 Cornell Tyler followed him, and we heard some shots
11 Cornell Tyler had ran to the vehicle

12 Q Ran to what vehicle?

13 A To the vehicle I was driving

14 Q Prior to him running to the vehicle, where
15 did you go see Mr Cornell Tyler go?

16 A To the side of the road

17 Q When you say "the side of the road," what
18 are you talking about?

19 A Union Academy Road, the dirt road

20 Q Did you say Tremaine went out there, too?

21 A Yes, sir

22 Q Where did he go out there?

23 A He had ran out there first

24 Q Did you see Tremaine with anything?

25 A Yes

1 Q What?

2 A I had seen him with a gun

3 Q What about Mr Tyler -- Cornell Tyler?

4 A I saw him with a gun, too

5 Q What kind of gun?

6 A A rifle

7 Q Did you see Mr Cornell Tyler shoot any

8 while he was at the road?

9 A No, sir

10 Q And did you see Mr Tremaine Tyler shoot

11 some?

12 A Yes, sir

13 Q And do you know how many times he shot?

14 A It was over five times

15 Q Did you say it was over five times?

16 A Yes, sir

17 Q Where were you sitting during this period

18 of time?

19 A I was sitting in the driver's side of the

20 vehicle

21 Q Was it running?

22 A Yes, sir

23 Q Where was Mr Seawright?

24 A On the passenger's side in the back

25 Q What happened after you heard the

1 shooting?

2 A Mr Tyler had -- Mr Cornell Tyler had
3 came to the vehicle and had jumped in the vehicle

4 Q Where did he jump in the vehicle at?

5 A On the passenger's side Mr Seawright
6 had got out, and he had jumped in and had told me to
7 drive the vehicle, to follow the truck that Tremaine
8 was shooting at

9 Q What did you do?

10 A At the time, I ain't thought I had no
11 choice but to drive, so I followed the vehicle

12 Q How did you leave the yard?

13 A Had to back up and went out of there the
14 same way I came in

15 Q At what point did Mr. Seawright jump out?

16 A Soon as Mr Tyler had jumped in, he just
17 jumped out

18 Q Mr Tyler?

19 A Uh-huh

20 Q Was Mr. Seawright in the front passenger
21 seat or the back passenger seat?

22 A The back passenger seat

23 Q Okay And he jumped out of the back
24 passenger seat?

25 A He got out on the driver's side

1 Q The driver's side?

2 A Yes, sir

3 Q Passenger Have you got two seats in your
4 car, Willie?

5 Q When Mr Tyler -- Cornell -- had jumped
6 into the passenger side, Mr Kendall Seawright had
7 slid over behind the driver's seat

8 Q Mr Seawright had what?

9 A Got out of the back driver's seat.

10 Q Back seat on the driver's side?

11 A Yes, sir, and jumped out

12 Q Okay So did you follow this truck down
13 the road?

14 A Yes, sir

15 Q Had you seen anybody in the truck?

16 A No, sir.

17 Q What happened next?

18 A As we followed the vehicle, as we got past
19 Stonemint Drive, a couple of shots had went off

20 Q Let me ask you this Before you get to
21 that point, take me back to Mr Walker Where was
22 he?

23 A As we was going down -- as we was leaving
24 out of the driveway, Mr. Walker had jumped on top of
25 the vehicle

1 Q What do you mean, jumped on top of the
2 vehicle?

3 A As I was leaving, he had jumped on top of
4 it.

5 Q The front or the back?

6 A He had jumped on -- he was on top of the
7 vehicle I ain't know he was on top of there until
8 we had got to Union Academy Road

9 Q So you leave and go down Union Academy,
10 toward the paved road?

11 A Yes, sir

12 Q Is the paved road Windsor Road?

13 A Yes.

14 Q Where is Mr Cornell Tyler at that time?

15 A In the back passenger.

16 Q And where is Mr Walker?

17 A On top of the vehicle

18 Q All right Do you have a sun roof,
19 Willie?

20 A Yes, sir

21 Q Was it open?

22 A Yes, sir, it was cracked

23 Q Now, when you're going down Union Academy
24 toward Windsor, do you see a vehicle in front of
25 you?

1 A Not at the time, not until we had made the
2 left to go down Windsor Road

3 Q When you went down Windsor Road, you were
4 headed toward the four-way stop sign?

5 A Yes, sir.

6 Q What were you doing then?

7 A As we were going down Windsor Road, after
8 we passed Stonemint Drive, I heard a couple of
9 rounds go off

10 Q What do you mean, you heard a couple of
11 rounds go off? Tell me what that means

12 A Mr Cornell Tyler was in the back
13 passenger seat, and I had heard a couple of rounds
14 go off I had seen sparks coming from the
15 passenger's side of the vehicle

16 Q Passenger side of whose vehicle?

17 A From the vehicle I was driving

18 Q Did you hear the gunshots?

19 A Yes, sir

20 Q What happened then?

21 A As we went on down to the four-way, I
22 heard a couple more shots go off And the vehicle
23 in front of us, the truck, had went off the road
24 twice And the third time, they had went off to the
25 left side and flipped over in the process. And I

1 was turning around at the four-way

2 Q How close did you get to the truck?

3 A Probably about a car and a half

4 Q And at the time you were a car and a half
5 from it, what was happening?

6 A I heard gunshots

7 Q Did you see anything happening to the
8 truck?

9 A Yes, I saw sparks coming from the
10 tailgate

11 Q In reference to the truck, were you
12 following dead behind it?

13 MR GIPSON Objection, leading, Your
14 Honor

15 THE COURT. The answer is "yes" or
16 "no "

17 A Yes, sir

18 Q How fast did you end up getting?

19 A Probably about 75

20 Q And was there any conversation by Mr
21 Cornell Tyler with you while you were in the car, if
22 any?

23 A Yes At the time, as we were following
24 the vehicle, as we passed Stonemint --

25 Q What are you saying? After you passed

1 what?

2 A Stonemint Drive

3 Q Stonemint Drive?

4 A Yes, sir

5 Q Is that a road that intersects?

6 A Yes, sir

7 Q Okay

8 A As we passed Stonemint Drive, Mr Tyler
9 was trying to tell me to go up, go around, and get
10 on the side of the vehicle But I never got a
11 chance to go on the side

12 Q Did you try to go left?

13 A Yes, sir

14 Q When you went left, what was Mr. Tyler
15 doing?

16 A I heard a gun. I heard shots

17 Q Do you know many times he shot, all total?

18 A No, sir

19 Q Did you ever see or hear Mr. Walker shoot
20 anything?

21 A No, sir

22 Q When Mr -- tell me what happened when Mr.
23 Tyler got in the car. Did you see him with
24 anything?

25 A Yes, sir

1 Q What?

2 A A gun, a rifle

3 Q All right How about when he got out of

4 the car?

5 A The same thing, a rifle.

6 Q Did you ever see Mr Walker have a gun?

7 A No, sir

8 Q When y'all were going down there, when you

9 went to the swamp -- you, and Mr Seawright, and Mr

10 Walker -- did anybody have a gun?

11 A No, sir

12 Q Did you have a gun?

13 A Yes, I had a gun inside the vehicle at the

14 time

15 Q What was it?

16 A A three-eighty

17 Q What's a three-eighty?

18 A A handgun

19 Q Is it a pistol?

20 A Yes, sir

21 Q Where did you have it?

22 A In the glove compartment

23 Q And did you ever take that pistol out of

24 the glove box that night?

25 A No, sir

1 Q Did any of the other guys know it was in
2 there?

3 A I don't think so

4 Q Were there any long guns in your car?

5 A No, sir

6 Q Had anybody shot any weapons in your
7 car --

8 A You're talking about --

9 Q -- before that night?

10 A No, sir

11 Q After that night, before the police got
12 the car, did anybody shoot anything?

13 A No, sir

14 Q I'm handing you what's been marked State's
15 Exhibits Twelve and Thirteen Do you recognize
16 what's depicted in those pictures or what's shown in
17 those pictures?

18 A Yes, sir

19 Q What is it?

20 A The vehicle I was driving the night of the
21 incident

22 Q And when did the police get their hands on
23 that vehicle?

24 A August the 29th.

25 Q And that would have been the morning or

1 the afternoon of August the 29th?

2 A The morning

3 Q Is State's Exhibit Number Fifteen also a
4 picture of that vehicle?

5 A Yes, sir

6 Q And what is depicted in the top of the
7 vehicle?

8 A Sun roof

9 Q You said something about the sun roof was
10 cracked What do you mean by "cracked"?

11 A It wasn't open all the way

12 Q All right Is it an area where somebody
13 could be gripping and holding on?

14 MR GIPSON Objection to leading,
15 Your Honor

16 THE COURT The objection is
17 sustained

18 Q At what point -- where was the crack when
19 the thing was open?

20 A Like a third open

21 Q Does it open in the front or the back?

22 A Front.

23 Q When it's open in the front, where does
24 the glass slide to?

25 A From the side to there

1 Q Okay Did you have any conversation with
2 Mr Walker while this was going on?

3 A No, sir

4 Q Did you have any more conversation with
5 Mr Tyler?

6 A Not till on the way going back

7 Q When you say "going back," where were you
8 going?

9 A After the vehicle had turned and it had
10 went on the left side of the road, it had went off
11 the side of the road and had flipped or whatever, we
12 had turned around and came back to Union Academy
13 Road And once we got down the road, Mr Tyler was
14 like, "We ain't heard nothing We ain't saw
15 nothing " And then that's the first time And the
16 second time, I had said, "Yes "

17 Q Second time, what?

18 A I had said "yes" when he said, "We ain't
19 heard nothing We ain't saw nothing."

20 Q And where did he say that at?

21 MR GIPSON: I can't hear him, Your
22 Honor

23 THE COURT Just a moment, sir.
24 Counsel cannot hear you. Restate the question,
25 please, and speak slower, speak louder

1 Q What did Mr Tyler say, if anything, to
2 you on the way back to Union Academy?

3 A He had said that "We ain't heard nothing
4 We ain't saw nothing " I did not respond the first
5 time The second time, I responded to him

6 Q The second time to what?

7 A When he said, "We ain't heard nothing We
8 ain't saw nothing "

9 Q Where was Mr Walker during this time?

10 A He was still on top of the vehicle

11 Q Where was Mr Walker when you arrived back
12 in the yard with Mr Tyler?

13 A Still on top And once we got back in the
14 yard at the Tyler residence, Mr Tyler had got out
15 And Mr. Seawright and Mr Walker had got in, and we
16 had left

17 Q Got in what?

18 A The vehicle

19 Q Your vehicle?

20 A Yes, sir

21 Q And where did y'all go?

22 A Went back to Wagener And once we got
23 back to Wagener, Kendall Seawright had asked me to
24 drop him off on -- I forgot the name of the road,
25 but he had told me to drop him off

1 Q Did you do that?

2 A Yes, he told me to drop him off on Seiver
3 Road, so I had dropped him off And Mr Walker
4 asked me to drop him off back over to the house he
5 was at before we left town

6 Q And did you do that?

7 A Yes, sir

8 Q Did y'all talk about what had happened on
9 the way back?

10 A No, sir

11 Q Nobody talked?

12 A No, sir

13 Q When was the first time the police
14 approached you about this?

15 A On August the 29th.

16 Q And where was that at?

17 A Church Road

18 Q Is that your residence?

19 A Yes, sir

20 Q All right Did you go with the police at
21 that time?

22 A Yes, sir

23 Q Did you give them the handgun that you had
24 had in the car earlier?

25 A Yes, sir

1 Q Did they get the car?

2 A Yes, sir

3 Q The handgun you had in the car, where did
4 you have it that day?

5 A Yes, sir.

6 Q Where did you have it that day?

7 A It was at my mother-in-law's house

8 Q Where was it in the house?

9 A Where was it in the house? I had it in
10 the living room

11 Q Where in the living room?

12 A It was on the couch

13 Q Okay Did you volunteer that gun to the
14 police?

15 A Yes, sir

16 Q Why?

17 A Because my girlfriend, her sister and
18 brother was coming home from school, and I didn't
19 want to leave it where they could get their hands on
20 it and hurt themselves or something

21 Q Now, did you fire that gun at all that
22 night --

23 A No, sir

24 Q -- or the day before --

25 A No, sir

1 Q -- or the day after this incident?

2 A No, sir

3 Q Had anybody fired any kind of weapon in
4 your car until that night?

5 A No, sir

6 Q When the police got your car that night,
7 what happened to it? That day, when the police got
8 your car on the 29th, where did they take it?

9 A I guess --

10 Q Do you know?

11 A I guess they had took it to -- they towed
12 it somewhere, to the pound or something

13 Q You didn't have it anymore?

14 A Oh, no, sir

15 Q Mr Ware, you're charged with crimes in
16 this case, too, aren't you?

17 A Yes, sir

18 Q What are you charged with?

19 A Murder and assault with intent to kill

20 Q Okay Has anybody promised you anything
21 to get you to testify about your charges?

22 A No, sir

23 Q Have you met with us to discuss your case
24 and to prepare for trial?

25 A Yes, sir

1 Q Was your lawyer present?

2 A Yes, sir

3 Q You understand you don't have to testify
4 here today, don't you?

5 A Yes, sir

6 Q And none of those charges which you've
7 been held on since you were arrested on August 29,
8 2009 [sic] -- are they the same ones? The charges
9 you have today, are they the same ones you were
10 picked up on?

11 A In 2005?

12 Q 2005 Did I say 2009?

13 A Yes, sir

14 Q We ain't there yet, are we?

15 A No, sir

16 Q Are those the same ones?

17 A Yes, sir

18 Q Willie, have you ever owned a rifle?

19 A No, sir

20 Q Was there anybody in your car going down
21 there that night that had a rifle?

22 A No, sir

23 Q Could you tell what the vehicle was y'all
24 were chasing?

25 A Not until we had approached it

1 Q Could you tell who was in it?

2 A No, sir

3 Q Thank you Answer any questions the
4 defense has, please

5 THE COURT Yes, sir, Mr Gipson

6 MR GIPSON Thank you, Your Honor

7 CROSS-EXAMINATION

8 BY MR GIPSON

9 Q Now, Mr Ware, you have an interest in
10 this case, correct?

11 A Yes, sir

12 Q And what is your interest in this case?

13 A I've been charged with the same thing that
14 everybody else is

15 Q And being charged with the same thing
16 everyone else is, it may benefit you to get in here
17 and testify today, right?

18 A I don't have no idea

19 Q You have no idea Let me ask you this
20 Have you ever -- you said you worked at Carolina
21 Culinary, correct?

22 A Yes, sir

23 Q And how were you paid at Carolina
24 Culinary? Not how much Was it weekly? Were you
25 paid weekly? Were you paid every two weeks? Were

1 you paid monthly?

2 A Weekly

3 Q Weekly So you performed the job, and
4 then, at the end of the week after you performed
5 that work, they paid you, correct?

6 A Yes, sir

7 Q All right So here you have not been
8 promised anything is what you say, correct?

9 A No, sir.

10 Q Okay And you don't expect because you've
11 been charged with murder, assault and battery with
12 intent to kill, and possession of a gun in the
13 commission of a violent crime, you don't expect to
14 receive some kind of benefit for what you're doing
15 here today?

16 A I don't have no idea

17 Q Okay And isn't it true that your cousin,
18 Edward Walker, also known as Head, was in that car
19 that day, correct?

20 A Yes, he was on top of the vehicle

21 Q He was on top of the vehicle?

22 A Yes, sir

23 Q Now, you've testified in this -- and
24 you've given statements in this case before, haven't
25 you?

1 A Yes, sir

2 Q And you've given statements to law
3 enforcement, haven't you?

4 A Yes, sir

5 Q And some of them are sitting in this
6 courtroom today, aren't they?

7 A Yes

8 Q All right And the statements that you
9 gave to law enforcement immediately after being
10 arrested were videotaped, weren't they?

11 A Yes, sir.

12 Q And you promised that you were going to
13 tell them the truth, the whole truth, and nothing
14 but the truth, didn't you?

15 A Yes, sir

16 Q And did you do that then?

17 A Yes, sir

18 Q And are you doing that now?

19 A Yes, sir

20 Q And there's nothing that you've said today
21 that contradicts what you said when you were
22 initially arrested, is there?

23 A No, sir, just more detail

24 Q More detail?

25 A Yes

1 Q Isn't it true that you said that your
2 cousin, Edward Walker, had a gun, or a pistol, or
3 something like that?

4 A No, sir

5 Q You never said that -- never in your prior
6 testimony or in any of those statements that were
7 videotaped?

8 A No, sir

9 Q Okay, you never said he had a gun or
10 something like that You never said you heard shots
11 coming from up top?

12 A No, sir

13 Q You never said that both were firing?

14 A I said that --

15 Q Well, first, if you'll give me a "yes" or
16 a "no," then we'll get into your explanation You
17 never said that both were firing?

18 A I said I ain't had no idea

19 Q Okay, you said you didn't have no idea
20 But did you say that both were firing?

21 A It sounded like it

22 Q Sounded like it?

23 A Yes, sir.

24 Q All right So, as you start to modify the
25 testimony that you're giving today, you mentioned

1 that it sounded like both were firing Who are the
2 "both"? Who are the two people in the car?

3 A Mr Tyler was inside the car, and Mr
4 Walker was on top of the car

5 Q All right And so if it sounded like both
6 were firing, that would mean Mr Tyler and Mr
7 Walker, wouldn't it?

8 A The shots -- the shots that I heard

9 Q Well, first you can answer "yes" or "no,"
10 then explain your answer If both were firing,
11 "both" means two, doesn't it?

12 A Yes, both means two.

13 Q And it sounded like both were firing
14 That means your cousin as well, doesn't it?

15 A When I said both, it sounded like both

16 Q Both what?

17 A When I said it sounded like both was
18 firing, it was multiple shots that I heard It
19 sounded like both was firing, but both of them
20 wasn't firing

21 Q So that's your testimony today?

22 A But it's been more in detail

23 Q Okay And the more detail you go into,
24 the more times you talk to the Solicitor's Office,
25 that detail gets to be a little different than the

1 detail before you spoke with them, correct?

2 A Well, on the first, I didn't went on in
3 detail with, you know, any detail and stuff

4 Q You went in detail the second time And
5 you didn't go into detail when you testified that he
6 had a gun or something like that -- talking about
7 "he" meaning your cousin, Head?

8 A I never said he had a gun.

9 Q Okay Now, you said that prior to all of
10 this, you stopped at Johnny Hartwell's house,
11 correct?

12 A Yes, sir

13 Q And you had an opportunity when you
14 stopped at Johnny Hartwell's house to go in -- you
15 said James Gleaton walked up?

16 A Yes, sir

17 Q And you had a conversation with James
18 Gleaton, correct?

19 A Yes, sir

20 Q And he's also known as Killer Bee,
21 correct?

22 A Yes, sir

23 Q Have you had any other conversations with
24 James Gleaton since that day?

25 A No, sir

1 Q Never talked to him -- since?

2 A Yes, he was located in the same pod inside
3 the Aiken County Detention Center, but I never
4 discussed the case with him

5 Q Okay So you were in the same pod at
6 Aiken County Detention Center?

7 A Yes, sir

8 Q And it's your testimony you didn't discuss
9 anything with him regarding this case?

10 A No, sir

11 Q Were you housed with Willie Deshawn Smith?

12 A Yes, sir

13 Q And isn't it true that you had
14 conversations with him while you were at Aiken
15 County Detention Center?

16 A Yes Yes, we were in the same pod, but we
17 didn't discuss nothing about the case

18 Q Okay So, again, that somebody else who
19 you have never discussed anything with Now, isn't
20 it true you didn't testify that way before? You
21 said that you've talked to him about some things in
22 your case?

23 A You're talking about Shawn Smith?

24 Q Yes, sir

25 A I ain't never talked to him about the

1 case He tried to talk to me about stuff, but I was
2 distant and I ain't made a response

3 Q Will you just be straight with us for a
4 minute? Just answer the question I ask It seems
5 like I have to pry these things out of you If I
6 have to pry them, I'll pry them

7 MR WEEKS Objection

8 THE COURT The objection is
9 sustained

10 MR GIPSON I'm sorry

11 THE COURT Argumentative Please
12 restate the question

13 MR GIPSON Yes, sir

14 Q You had conversations with Willie Deshawn
15 Smith, didn't you?

16 A Yes, he tried to talk to me about it

17 Q And you told -- in testimony you swore
18 that you had some conversations with him, didn't
19 you?

20 A He tried to talk to me about it.

21 Q Okay And during those conversations, you
22 talked about your role in this crime, didn't you?

23 A No, sir.

24 Q You never mentioned that your cousin was
25 shooting?

1 A No, I didn't

2 Q You never mentioned that Cornell Tyler was
3 not in that car?

4 A Yes, he was in the car

5 Q Did you ever mention that Cornell Tyler
6 wasn't in the car to Willie Deshawn Smith?

7 A No, sir

8 Q Did you ever mention to Mr Gleton --
9 Killer Bee, as he's also known -- that Cornell Tyler
10 wasn't in that car?

11 A No, sir

12 Q Did you ever mention that your cousin,
13 Head, was shooting?

14 A No, sir

15 Q And that you were a little bit afraid to
16 go against him because he's family?

17 A No, sir

18 Q Now, once you left Hartwell's house, you
19 said you went down to the swamp, basically to Mr
20 Tyler's house?

21 A Yes, sir

22 Q Okay And at some point in time, you had
23 an occasion to park your car, go on the side of the
24 car -- go on the side of the house and relieve
25 yourself, urinate?

1 A Yes, sir

2 Q Okay Who were you with when you were
3 urinating?

4 A I was by myself

5 Q Where was Head?

6 A Mr Seawright and Mr Walker were there

7 Q And you see these lights, correct?

8 A Yes, sir

9 Q And you jump in the car and go after them?

10 A I seen the lights when I was there I
11 didn't see that car or any car

12 Q Okay So you pull off, and you say Mr
13 Tyler got in the car with you. That's what you
14 said, correct, and today that's what you say?

15 A Yes, he had got inside the vehicle

16 Q And you said today you didn't even realize
17 your cousin was on the top of the car until you got
18 a little ways down the road?

19 A Yeah

20 Q You didn't hear your cousin on top of your
21 vehicle while you were riding?

22 A No, sir, because Mr Tyler was talking in
23 the back

24 Q Is that because he was in the car with
25 you?

1 A No, sir

2 Q All right So it's your testimony your
3 cousin never sat in that car with you and fired a
4 gun?

5 A No, sir

6 Q And never stood through that sun roof and
7 fired a gun?

8 A No, sir

9 Q Okay Now, you said you drove 75 miles an
10 hour down Union Academy Road and down other roads
11 throughout Aiken County that night, right? And your
12 cousin was holding onto the top of that car,
13 correct?

14 A Yes, sir

15 Q And when you stopped at the stop sign, he
16 didn't go flying off the top of that car, did he?

17 A No, sir

18 Q That's because he was in the car, wasn't
19 he?

20 A No, sir

21 Q Okay. So you sped up again, 75 miles an
22 hour, chasing somebody down the road -- well, excuse
23 me It was a dirt road at first that you were
24 riding down So that's a lot of control you've got
25 to have of that vehicle, wasn't it?

1 A I wasn't going 75 miles an hour down a
2 dirt road

3 Q Oh, you just got to 75 when you got on the
4 main road?

5 A Yes

6 Q Okay And slowed down, he never went
7 tumbling, never anything, he just held on, nothing
8 happened, and held conversations with him And you
9 heard what he was talking about and heard what Duce
10 was talking about?

11 A I ain't heard Mr Walker say nothing, not
12 him

13 Q Okay But you just heard the different
14 shots that sounded like some were coming up top and
15 some that weren't?

16 A I just heard multiple shots

17 Q Okay

18 MR GIPSON Court's indulgence for a moment,
19 Your Honor

20 THE COURT. Yes, sir

21 MR GIPSON. And, Your Honor, I may have a
22 matter of law that needs to be taken up outside the
23 jury's presence, very briefly

24 THE COURT: All right, ladies and gentlemen,
25 we'll have you go to the jury room And I think I

1 want to have the jurors begin thinking about who you
2 want to be the foreperson of the jury and have the
3 jury select a foreperson

4 You don't have to do it right now You
5 don't have to lobby for the position either But
6 I'll have you all just think about who you think
7 among your number, the first 12, should be the
8 foreperson Please go to the jury room Please do
9 not discuss the case

10 (The jury left the
11 courtroom at 3 54 p m , after which the following
12 proceedings were had)

13 THE COURT Yes, sir

14 MR. GIPSON Your Honor, it's a simple
15 situation A direct question that was asked of him
16 is, "Have you ever mentioned that your cousin had a
17 gun?" or something like that, and he said no And
18 it's directly in his testimony, Your Honor

19 It's directly in here I asked if he
20 mentioned that he heard both of them shooting, and
21 he said no, and it's directly in his prior
22 testimony

23 THE COURT Mr Weeks?

24 MR WEEKS I don't know about the first part
25 If you're talking about the second part, I think Mr

1 Gipson was hearing what he wanted to hear I think
2 Mr Ware was trying to explain what he meant by he
3 heard shooting

4 Multiple shots is what he ended saying at
5 the end But I don't have any objection if he wants
6 to go to that part If he's got it marked, we can
7 probably get close

8 I don't know The way these DVDs, it
9 ain't like the old VCR where you just wind it to a
10 spot So we might need a minute to try to find what
11 he's talking about

12 THE COURT All right

13 MR WEEKS My disks don't reflect what he's
14 talking about, but perhaps his is better than mine

15 THE COURT Okay

16 MR GIPSON I can go right to it, Your Honor

17 THE COURT All right

18 (Whereupon, the defense
19 attorney plays the DV to find the witness' previous
20 testimony on the DVD)

21 MR GIPSON And, Your Honor, just for
22 clarification purposes, that point is about 6 40 and
23 then again at 7 45 -- excuse me, 7 55 -- are the two
24 points in time when he directly states the different
25 shots.

1 THE COURT What says the State?

2 MR WEEKS I don't object to playing the
3 specific portion I think he's allowed to do it, if
4 he's contradicting Now, I think, to be honest,
5 Your Honor, before we get into this and while the
6 jury is out, I think he's got to specifically ask
7 him, "Did you say this?" and then go with that
8 answer. If he says, "Yes, I said that," then that
9 tape don't come in

10 MR GIPSON Your Honor, I believe I asked him
11 that direct question, and he said no

12 THE COURT You asked him what direct question?

13 MR GIPSON I asked him the question, "Did you
14 say that both of them were shooting?" And he said
15 no I asked him, "Didn't you say in your testimony
16 to the police after the day" -- "the day that you
17 were arrested that your cousin, Head, had a gun, or
18 a pistol, or something like that?" and he said no

19 And I phrased it like, with a rifle, with
20 a gun, or something like that -- pistol or something
21 like that, and he said no

22 THE COURT That conversation on that
23 particular issue he had with the police almost for
24 the entire period of time they were standing there
25 talking about who was shooting, how many were

1 shooting, and how did he know who was shooting So
2 you want to pull one sentence out of everything that
3 he was explaining to the police regarding who was
4 shooting and where they were?

5 MR GIPSON Yes, in the sense that he has come
6 in here today and said he did not say those things
7 He said he didn't say them And, Your Honor, quite
8 frankly -- I know you don't want to hear it -- he's
9 done this before And I know that doesn't concern
10 you necessarily, but he's -- that exact portion he's
11 contradicted himself on before, and it's right here
12 where he said he did not do that.

13 THE COURT Mr Weeks?

14 MR WEEKS If he can pinpoint where he said
15 that But I heard him explain --

16 THE COURT When you have something that is a
17 document of completeness, if someone is expressing a
18 thought and explaining something --

19 MR GIPSON: Yes, sir.

20 THE COURT -- then to allow one sentence or
21 portion of one sentence to be extracted from that as
22 a contradiction --

23 MR GIPSON Yes, sir

24 THE COURT -- without allowing the entire
25 colloquy to be played to the jury could have the

1 effect of misleading the jury, because the context,
2 the complete context, in which or under which he has
3 given his estimation may need to be played to the
4 jury

5 But you don't want that You just want to
6 be able to highlight one sentence out of a -- I
7 don't know how long the conversation might have
8 taken place. But that's the result you want.

9 MR GIPSON. Your Honor, it was about a 16-
10 minute conversation What he said, my feeling is
11 it's absolutely relevant and necessary because he
12 was asked the direct question, and he answered that
13 direct question

14 I feel like it ended that particular
15 portion of the colloquy when he said, you know, that
16 he had a gun or something like that You know, he
17 had a pistol or something like that ended that
18 question. He answered, "Yes, he did " And so I
19 think the colloquy --

20 THE COURT Didn't he go on to further say that
21 he didn't who was shooting, or "I don't know if
22 Willie had," or "I couldn't tell," because they also
23 wanted some clarification saying that the officer is
24 asking "Logistically, how can this be?" meaning "How
25 can the person be on the top of the car, holding on,

1 while shooting a gun?"

2 And it appeared that the officer sought
3 some explanation concerning that, and it appeared
4 that the responses sought to answer some of those
5 questions And there are just some dangers in
6 putting isolated statements out of a complete
7 colloquy

8 Now, if there is no objection by the
9 State, then I have no problem in doing exactly what
10 you want to do

11 MR GIPSON Yes, sir

12 THE COURT But if there is, then the entire
13 portion of it in which the officer is discussing it
14 with this defendant about who was shooting, and
15 where they were, and how does he know about what he
16 was talking about concerning who was shooting, then
17 that would have to be played

18 MR GIPSON Yes, sir

19 MR WEEKS It's kind of like a transcript,
20 Your Honor, like a deposition If he points out one
21 sentence in a deposition and then the person who was
22 the deponent explains it for 15 pages thereafter,
23 then I get to ask about the 15 pages

24 And that's my contention. But if he wants
25 to narrow it to one thing, that's fine But then,

1 quite honestly, I'm going to be asking to play the
2 rest of the tape to explain it, because he keeps
3 hearing it differently than I'm hearing it And I
4 think that's just something that's factual

5 THE COURT: All right Well, if you are
6 examining him at this point, and you want to play
7 the portion for impeachment purposes, you have the
8 right to do that, based on what appears to be
9 vacillating by the witness

10 MR GIPSON Yes, sir

11 THE COURT And you have a right to do that
12 I'm just giving clear bits and pieces of the State's
13 position, which appears that when you do that, then
14 the State will seek to introduce the broader
15 discussion --

16 MR GIPSON: Yes, sir.

17 THE COURT -- under the --

18 MR GIPSON Completeness

19 THE COURT -- completeness doctrine or just
20 under the basic evidentiary rules which would allow
21 the remainder of the thought to be expressed

22 MR GIPSON Yes, sir

23 THE COURT And if that's where we stand,
24 that's where we stand

25 MR GIPSON Yes, sir And there are two

1 portions, so I can be clear, that I'm eliciting And
2 another which you've mentioned is that theory, Your
3 Honor I think that thought will run through 7.55,
4 I believe it is, or around that eight-minute mark

5 THE COURT. And what does the other one
6 concern?

7 MR. GIPSON The other thought is where he says
8 both were shooting, as you mentioned where the
9 investigators tried to elicit some more information
10 into multiple shootings And I think all of that,
11 you know, under the more completeness document you
12 mentioned would accomplish those things

13 But I'm looking specifically at 6 45,
14 which -- where he says that Head had a gun or
15 something like that, and 7 55 where it says both
16 were shooting Those are -- and when asked direct
17 questions about those incidents, he referred to both
18 in the negative

19 THE COURT. All right So you want played
20 before the jury maybe about two seconds of his --

21 MR. GIPSON Probably about a ten-second clip

22 THE COURT. Ten seconds, all right You can
23 find what you want, and then we'll bring them in,
24 and we'll press on

25 MR. GIPSON Thank you, Your Honor

1 THE COURT All right Meanwhile, we'll all
2 stand and kind of get a good stretch

3 You can stand up if you want to
4 (Brief recess in court
5 proceedings)

6 THE COURT Mr Ware -- Willie Ware -- wants to
7 talk with his lawyer Is there an objection?

8 MR GIPSON Just that he not talk about his
9 testimony

10 THE COURT All right, Mr Solicitor?

11 MR WEEKS I'm not sure what he's talking
12 about, Your Honor I think he was asking to talk to
13 his lawyer?

14 THE COURT Yes

15 MR WEEKS Thank you, Your Honor

16 THE COURT All right

17 MR WEEKS I'll do that in cross-examination

18 I have an idea about what he wanted to talk to
19 me about I wouldn't discuss his testimony.

20 THE COURT All right

21 UNIDENTIFIED SPEAKER I'm here -- I came in to
22 protect his rights in this matter, but I have an
23 idea what he wants to speak to me about at this
24 time

25 THE COURT All right Well, unless it relates

1 to his privilege against self-incrimination, then he
2 cannot discuss -- he can discuss anything relating
3 to --

4 MR WEEKS Hasn't he kind of waived that,
5 though, at this point?

6 THE COURT Maybe he has I don't know if he
7 has or not He says that he hasn't incriminated
8 himself, but I don't know

9 What's on your mind? What do you want to
10 discuss with him -- in general, not specifically?

11 MR WARE I don't know

12 THE COURT You just want him to come hold your
13 hand?

14 Just come and shake his hand, You can do
15 that

16 MR GIPSON It's going to be just one more
17 moment, Your Honor

18 THE COURT All right When the jury comes in,
19 I'm just going to highlight Rule 106 of the Rules of
20 Evidence which states in full, "When a writing or
21 recorded statement or part thereof is introduced by
22 a party, an adverse party may require the
23 introduction at that time of any other part or any
24 other writing or recorded statement which ought in
25 fairness to be considered contemporaneously with

1 it "

2 This issue is more specifically addressed
3 in the case of State versus Cabrera-Pena, talking
4 about the rule of completeness that provides an
5 adverse party may require the admission of other
6 portions to ensure that partial statements are not
7 taken out of context, but that only that portion or
8 remainder of any statement which explains or
9 clarifies previously admitted portions should be
10 introduced

11 And that's the ruling of the Court
12 concerning this matter Whether it makes any sense
13 to highlight ten seconds and then back on redirect
14 additional, you all are trying the case But that's
15 the law applicable to what you're talking about

16 MR WEEKS Just so the record will be clear,
17 he's introducing this piece of this tape on his side
18 of the case, correct?

19 MR GIPSON Absolutely, Your Honor

20 THE COURT Yes, sir This is evidence being
21 offered?

22 MR. WEEKS· Yes, sir

23 MR. GIPSON: It is, yes, sir

24 THE COURT: And it has been marked?

25 MR. GIPSON It's not marked yet, but we're

1 about to do that while we're waiting, Your Honor

2 THE COURT All right

3 MR GIPSON. And actually I'll just ask if we
4 can go ahead and pre-mark it as Defendanse Exhibit
5 Number One

6 THE COURT Defense Exhibit Number One

7 COURT REPORTER Your Honor, what is the name
8 of that case that you just quoted?

9 THE COURT State versus Cabrera -- C-A-B-R-E-
10 R-A -- dash Pena -- P-E-N-A.

11 COURT REPORTER C-A-B-R-E-R-A

12 THE COURT Carbrera-Pena.

13 COURT REPORTER Thank you, sir

14 THE COURT It was one of Judge Wyatt Saunders'
15 cases.

16 You've offered a Defense Number One?

17 MR GIPSON Yes, sir And I'll do it
18 properly, yes, sir We've laid the foundation, but
19 we will ask that Defense Exhibit Number One be
20 admitted

21 THE COURT And the State's position?

22 MR WEEKS For the portions we have discussed,
23 no objection

24 THE COURT All right

25 MR GIPSON: And for the record, Your Honor,

1 the portions that we have discussed, the minute
2 markers are at 6 25 to 6 50 and then subsequently
3 7 45 to eight minutes, are the two portions

4 THE COURT Is that correct?

5 MR WEEKS Yes, sir

6 THE COURT All right, so admitted

7 MR GIPSON Subject to your ruling, of course,
8 the completeness I'm sorry, 6 20 to 6-59

9 (Defendant's Exhibit Number
10 One, Two Portions of DVD, was entered in the
11 record)

12 THE COURT All right Let's get the jury to
13 come back See if they'll come back.

14 COURT REPORTER What was the second part?

15 MR GIPSON Seven forty-five

16 MR. WEEKS Six-twenty to six-fifty and seven
17 forty-five to 8 00

18 COURT REPORTER Seven forty-five to eight

19 (The jury returned to the
20 courtroom at 4 23 p m)

21 THE COURT The jury is back

22 Mr Gipson?

23 MR. GIPSON Thank you, Your Honor

24 EXAMINATION CONTINUED

25 BY MR GIPSON

1 Q Now, I asked you a few moments ago or
2 several minutes ago whether or not you at any point
3 in time said that your cousin, Edward Walker, also
4 known as Head -- whether or not you told law
5 enforcement that he had a pistol or something like
6 that And your answer to that was "no," is that
7 correct? Your answer to that was "no," is that
8 correct?

9 MR WEEKS Your Honor, I'm going to
10 objection I'm afraid Mr Gipson didn't phrase the
11 question the same way

12 THE COURT All right Your
13 objection is to?

14 MR WEEKS Form of the question

15 THE COURT All right, your objection
16 is sustained

17 Q I asked you whether or not you mentioned
18 that your cousin -- that you stated --

19 MR WEEKS I'm going to object
20 again That's testimony

21 MR GIPSON. That's a question, Your
22 Honor

23 THE COURT Let's hear the question
24 so I can rule on the objection.

25 Q You answered several questions for me a

1 moment ago, correct?

2 A Yes, sir

3 Q One of those questions was whether or not
4 you told law enforcement upon arrest that your
5 cousin had a gun, correct?

6 A Yes, sir

7 Q And you answered that question "no,"
8 correct?

9 A Yes, sir

10 MR GIPSON Your Honor, I'd like to
11 again -- and I think it's already admitted into
12 evidence But I'd like to play a portion of
13 Defendant's Exhibit Number One

14 THE COURT All right, you may
15 proceed

16 (Whereupon, the jury was
17 presented videotaped testimony by playing a portion
18 of a DVD, Defendant's Exhibit Number One)

19 EXAMINATION CONTINUED

20 BY MR GIPSON

21 Q In your statement to the investigator, you
22 said, "Head had a pistol or something like that "

23 A It sounded like it

24 Q Excuse me?

25 A Sounded like it

1 Q You said that he had a pistol or something
2 like that, didn't you?

3 A Yes

4 Q Why is it that you come into this
5 courtroom and you start playing around with the
6 truth? Isn't it true that you're trying to protect
7 your cousin?

8 A No, sir

9 Q Isn't it true that you told him these
10 things and you've told him -- and you've told people
11 other things throughout this case that are
12 contradictory to what you're saying today?

13 A No, I haven't told other people nothing

14 Q Okay But you're just lying about that
15 one thing that you just talked about just now?

16 A What?

17 Q About the gun or something like that.

18 A It sounded like he had it.

19 Q I'm talking about the gun or something
20 like that that you just mentioned in your testimony
21 You put your hand on the Bible, and you --

22 THE COURT You asked a question
23 Your last question, your response, sir?

24 A Can you repeat the question?

25 Q You said that he had a gun or something

1 like that, correct?

2 A Yes, sir

3 Q Today you said he did not have a gun,
4 correct?

5 A Yes, sir

6 Q In one of those statements, you're lying,
7 correct?

8 A No, sir

9 Q You're not lying in either one?

10 A I said in the videotape that it sounded
11 like he had a gun by the multiple shots

12 Q So now you're saying that you didn't say
13 that?

14 A Yes, sir

15 Q Okay, that's fair enough And you put
16 your hand on the Bible, and you said that you were
17 going to tell the truth, the whole truth, and
18 nothing but the truth, correct?

19 A Yes, sir

20 Q And you're saying that you're doing that
21 right now?

22 A Yes, sir

23 Q Okay Now, later in the investigatory
24 tape in the investigation, you said that -- we'll
25 strike that I asked you before, "Isn't it true

1 that you said it sounded like both of them were
2 shooting?" I asked you that question, didn't I?

3 A Yes, sir

4 Q And you said "no," correct?

5 A Yes, sir

6 (Whereupon, the jury was
7 presented videotaped testimony by playing a portion
8 of a DVD, Defendant's Exhibit Number One)

9 Q "Yes, both of them were shooting. Seems
10 like both of them were shooting " You're saying you
11 didn't say that in that tape?

12 A It sounded like multiple shots, both of
13 them shooting

14 Q Okay So that's a "yes" or a "no," you
15 didn't just say that?

16 A Yes, sir, it sounded like it was two

17 Q Okay And, again, you put your hand on
18 the Bible today and said you'd tell the truth, the
19 whole truth, and nothing but the truth, didn't you?

20 A Yes, sir

21 Q And you're saying that you are saying the
22 exact same thing today that you said two and a half
23 years ago when you were being questioned by
24 investigators. Is that what you're saying?

25 A No, sir, in more detail

1 Q How often have you rehearsed this
2 testimony?

3 A Not really

4 Q What you're saying today, "No, sir, in
5 more detail", "No, sir, in more detail "

6 A I just -- when I first made the video or
7 whatever, it wasn't all the detail

8 Q Okay So when you first made it, you just
9 left out a few details But now, two and a half
10 years later, you realize some of the details you
11 left out are a little different now?

12 A Yes, sir

13 Q Okay And that's your story, and you're
14 sticking to it, correct?

15 A Yes, sir

16 Q All right And it's also your testimony
17 that you didn't discuss particulars of your case
18 with Willie Deshawn Smith, correct?

19 A No, sir

20 Q You didn't discuss particulars of your
21 testimony with James "Killer Bee" Gleaton, correct?

22 A No, sir.

23 Q And the only people that you have
24 discussed your testimony with is the people at this
25 table, generally the Solicitor's Office, and in your

1 meeting with the Solicitor's Office when your cousin
2 and Kendall Seawright were there planning testimony,
3 correct?

4 A Yes, sir

5 Q I'm sorry?

6 A Yes, sir

7 Q Okay

8 MR GIPSON I ask the Court's
9 indulgence for a moment, Your Honor.

10 Q And let me ask you this specifically one
11 more time. I just want to make sure I've got this
12 straight You said you didn't talk to him about
13 anything, correct?

14 A He tried to talk to me

15 Q And you didn't speak to him about
16 anything?

17 A I just know what he was saying

18 Q Okay Now, again, you've testified under
19 oath before, have you not?

20 A Yes, sir

21 Q All right And on or about November 28,
22 2005, you testified under oath, is that correct?

23 A It was in November sometime

24 Q November sometime?

25 A I don't know the exact date

1 Q Okay You don't remember the exact date,
2 you said?

3 A No, sir

4 Q Now -- I'm sorry, 2006 Now, let me ask
5 you this specific question When you were giving
6 testimony in November of 2006 and asked the question
7 whether or not Willie -- excuse me, you shared any
8 of your -- anything about your case with Willie
9 Deshawn Smith, is it your testimony that you said
10 no, you didn't say anything to Willie?

11 A I didn't say nothing to him

12 Q All right Now, did you on November 5,
13 2005 -- excuse me, November 2006 -- did you tell
14 Willie Smith -- excuse me, did you tell -- under
15 direct testimony, did you tell me that you shared
16 with him just the stuff that was in your statement?

17 A He was telling me about stuff that he had
18 heard, and he was talking about the case

19 Q Did you say "the same stuff that was in my
20 statement," that you shared with him the same stuff
21 that was in your statement?

22 A Yes, sir, he was trying to tell me what he
23 heard about the case

24 Q Let's make sure you have it clear Let me
25 ask you verbatim Did you say -- after being asked,

1 "Did you ever share anything with him?" did you say,
2 "No, just the same stuff, just that I stated in my
3 statement"? Did you make that statement?

4 A Yes, sir

5 Q That's a little bit different than saying
6 "No, I didn't say anything to him," isn't it?

7 A Just "How is the case?" and I never paid
8 him no attention

9 Q So it's just some of those details that
10 you keep talking about that you just kind of keeping
11 adding, correct?

12 A No, sir

13 MR GIPSON No further questions

14 THE COURT Mr Weeks?

15 MR WEEKS Thank you, Your Honor

16 REDIRECT EXAMINATION

17 BY MR WEEKS

18 Q Edward Walker, do you know what he's
19 charged with?

20 A Yes, sir.

21 Q What?

22 A Murder and assault with intent to kill

23 Q And why would you be trying to help Edward
24 Walker?

25 A I'm not trying to help him

1 Q Now, on the day you gave this statement to
2 the police, had Edward Walker been arrested, to your
3 knowledge?

4 A Repeat the question again?

5 Q The day you gave this statement, the
6 videotaped statement, had Edward Walker been
7 arrested?

8 A No, sir

9 Q Did -- was Cornell Tyler arrested?

10 A No, sir

11 Q In fact, you were the very first one
12 arrested in this case, weren't you?

13 A Yes, sir

14 Q And you gave this statement after being
15 given Miranda rights and voluntarily doing that?

16 A Yes, sir

17 Q And to the best of your knowledge, did you
18 lie to the police that day?

19 A No, sir

20 Q What were you saying, if you can explain,
21 about the shooting coming from the top of the car?
22 I'm not sure exactly what you meant by that?

23 A What I was trying to say is like most of
24 the shots, it sounded like two people shooting

25 Q Okay Did you ever tell the police that

1 Edward Walker had a rifle?

2 A No, sir

3 Q Did you say, "I think he must have had a
4 pistol"?

5 A No, sir

6 Q On the videotape there that we listened
7 to, were you assuming that he had a gun?

8 A Yes, sir.

9 Q Why?

10 A Because it sounded like multiple shots

11 Q Do you know what kind of rifle Mr Tyler
12 was shooting?

13 A I saw a rifle

14 Q Just a rifle Do you know how many shells
15 it would hold?

16 A No, sir

17 Q Okay Going down there that day, is it
18 still your testimony and the same thing you told
19 them that day that Edward Walker didn't have a gun?

20 A Yes, sir.

21 Q Is that still your testimony?

22 A Yes, sir.

23 Q During the time when you were in the car,
24 when would Mr Walker have had time to go acquire a
25 gun?

1 A I don't think he had time to do it. I
2 ain't never saw him with a gun

3 Q And why did you tell them --

4 MR GIPSON: That's out of the scope,
5 Your Honor

6 THE COURT Your objection is
7 overruled

8 Q Why did you tell them you thought he must
9 have been firing if you say today you don't think he
10 had time to get a gun?

11 A I was assuming because I heard multiple
12 shots at the time were shot

13 Q You were assuming he must have had a gun
14 in his pocket or something earlier?

15 A I was assuming, but I did not see him with
16 a gun

17 Q Clearly, I mean, would you have seen him
18 with a long gun, a rifle, when he was going down
19 there with you that night?

20 A No, sir

21 Q My question is, would you have seen him if
22 he had a long gun or a rifle that night?

23 A Yes, I would have

24 Q And did you see him with a long gun?

25 A No, sir

1 Q Thank you

2 THE COURT Mr Gipson?

3 RECROSS EXAMINATION

4 BY MR GIPSON.

5 Q Now, you said you don't know if he had a
6 gun Did you shake him down, did you pat him down
7 when he got in the car?

8 A No, sir

9 Q Did you pat him down when you picked him
10 up?

11 A No, sir

12 Q And you mentioned that this was an assault
13 weapon How do you know that?

14 A Because I had it on assault

15 MR GIPSON That's all my questions, Your
16 Honor

17 THE COURT All right, sir, you may step down

18 Next witness

19 MR. WEEKS Clay Adams, Your Honor --

20 Investigator Clay Adams

21 THE COURT Investigator Adams

22 CLERK OF COURT Place your left hand on the
23 Bible and raise your right

24 (The witness was sworn)

25 CLERK OF COURT Please have a seat in the

1 witness box, and state your full name for the court
2 and spell your last

3 MR ADAMS Marvin Clay Adams -- A-D-A-M-S

4 MARVIN CLAY ADAMS, having first been
5 duly sworn, testified as follows

6 DIRECT EXAMINATION

7 BY MR WEEKS.

8 Q Clay, where are you employed?

9 A Aiken County Sheriff's Office.

10 Q And how long have you been employed at the
11 Aiken County Sheriff's Department?

12 A Seven years

13 Q What's your job there, Clay?

14 A I'm a sergeant in forensic investigations
15 for the sheriff

16 Q All right Could you give me some of your
17 educational background as far as college and
18 training?

19 A I have a bachelor's degree in science --
20 well, an associate's degree in science. I hold a
21 national certification by investigations I have
22 numerous classes from the Police Academy in crime
23 scene latent fingerprint identifications, latent
24 print processing, as well as certified law
25 enforcement

1 Q Okay You say certified law enforcement
2 That means you did what?

3 A I went through the basic academy as well
4 as law enforcement

5 Q And how long a course is that?

6 A It's eight weeks

7 Q Okay And since acquiring that, have you
8 been for further forensic training --

9 A I have

10 Q -- further training in forensic
11 techniques?

12 A Yes, sir

13 Q Tell me about your fingerprint experience
14 What kind of experience have you had in taking
15 latent prints and analyzing and testifying
16 concerning it?

17 A I have taken extensive classes in latent
18 fingerprint identification as well as development
19 I've testified numerous times in court on latent
20 fingerprint identification And I'm an active
21 member of the International Association for
22 Identification

23 Q Have you been qualified in this area of
24 latent fingerprint identification or fingerprint
25 identification in Circuit Court?

1 A I have

2 Q And were you asked in this case to conduct
3 some fingerprint identifications?

4 A I was

5 MR WEEKS Your Honor, I'm going to
6 move to qualify Mr Adams as an expert in latent
7 fingerprint identifications

8 THE COURT What says the defense?

9 MR GIPSON Without objection

10 THE COURT. All right. He's admitted
11 without objection

12 Q Clay, let me take you back -- now that I
13 did that, let me take you back to August 27, 2005,
14 and ask you, where were you employed?

15 A With the Aiken County Sheriff's Office

16 Q And in your capacity there, what were you
17 called upon to do in the early morning hours of
18 August 27th?

19 A To -- we were called out for a shooting
20 incident

21 Q Do you know what -- where did you go, or
22 where did you respond to?

23 A Initially, I responded to -- initially, I
24 responded to an area of the highway where there was
25 a motor vehicle wreck but then was sent to Union

1 Academy Road

2 Q And tell me what you did when you got
3 there, to the Union Academy Road location

4 A When we first arrived at Union Academy
5 Road, what we did was we shut down the road It's a
6 dirt road We were concerned with any possible
7 evidence that could be in the road, tire wear,
8 footwear, shell casings We didn't know exactly
9 what we had at that point in time, so we just shut
10 the road down so that we could do a more extensive
11 search

12 Q And about what time of day was that when
13 you arrived? Was it after daylight?

14 A Yes, sir

15 Q Did other officers arrive before you?

16 A Yes, sir

17 Q What kind of processing did you do of that
18 location?

19 A The first thing that we do when we go to a
20 crime scene is take a picture -- take pictures of
21 everything that way we can show how it was when we
22 arrived So my first order of business would have
23 been to document the scene using photography

24 Q Okay And in that capacity, did you take
25 some photographs?

1 A I did

2 Q You took all the photographs that day that
3 we've been playing with here today, didn't you -- or
4 did SLED take some, too?

5 A Correct

6 Q All right Now, were you told any kind of
7 story at that point about what might have happened
8 so you could be kind of pointed in the right
9 direction as to what to do?

10 A I had a little bit of a briefing I was
11 informed that there was a shooting incident, so we
12 were looking for shell casings would be the evidence
13 most specifically that we were dealing with

14 Q Were you able to find some shell casings
15 on the scene?

16 A I did

17 Q What do you mean by shell casings?

18 A Spent cartridges fired from a weapon.

19 Q And were you able to locate some at that
20 location at 344 Union Academy Road?

21 A I did

22 Q Did you photograph them?

23 A I did

24 Q How many did you find?

25 A I recovered seven 9-millimeter Luger

1 shell casings

2 Q You mean by 9-millimeter Luger shell
3 casings -- can you explain what you mean by that?

4 A Luger being the brand name of the shell
5 casing, 9-millimeter being the caliber

6 Q All right I'm going to hand you what's
7 marked State's Thirty-Two, Thirty-Three, Thirty-One,
8 and Thirty, and ask you if you can identify what's
9 portrayed in those photographs

10 A I can

11 Q And did you take those photographs?

12 A I did

13 Q What's portrayed in them? And refer to
14 the number, if you would

15 A State's Exhibit Thirty is a photograph
16 that I took with the numerical marker number four on
17 it In the picture, there are shell casings in the
18 background of it

19 State's Exhibit Thirty-Two is a little bit
20 closer, same marker four, depicting a little bit
21 closer angle of the shell casings and how they lay

22 Q Clay, could you step down here and go
23 through these photos?

24 MR WEEKS May the witness approach,
25 Your Honor?

1 THE COURT Yes

2 Q Point out where you're talking casings on
3 them

4 A This is a shell casing This is a shell
5 casing There might be a couple more in there

6 Q All right, hang on a minute, Clay
7 State's Number Twenty-Seven, can you ascertain
8 what's in that one?

9 A Yes, I can.

10 Q Okay What is that?

11 A State's Exhibit Number Twenty-Seven is a
12 different angle as to where marker four is depicted,
13 showing the residence at 344 Union Academy Road --

14 Q Okay

15 A -- in the background Marker number four
16 is going to be in this area

17 Q Is that where you found the 9-millimeter
18 Luger shell casing?

19 A Yes

20 Q Along about this area?

21 A Right up in this area, right here

22 Q It's referred to as State's -- what's the
23 number?

24 A State's Exhibit Thirty-Two

25 Q What else did you do in that area in going

1 on back down the road toward -- away from Windsor
2 Road?

3 A We tried to identify any possible
4 footprint impressions

5 Q Okay Were you able to locate any?

6 A We did

7 Q And in looking at these photographs that
8 have previously been entered, what did you do when
9 you find a footwear that you thought you might can
10 cast or take an impression of -- State's Number
11 Twenty-Nine

12 Q What we do, it's called painting a
13 footwear impression A footwear impression is a
14 negative impression in the soil or whatever medium
15 that we locate it at And what I do is I take a
16 spray paint basically, and I give a false shadow
17 So that way it develops it so that you could see it
18 with the naked eye a little bit better

19 Also by painting the footwear impression,
20 the spray paint will bond the sand a little bit
21 better to hold it in place, so when I do pour the
22 casting material on it, the sand doesn't shift quite
23 as much

24 You can see evidence of this in this
25 photograph The dark spots are where I spray-

1 painted the the footwear impression to give it that
2 shadow effect

3 Q And, Clay, on August the 27th do you know
4 whether those footprints had anything to do with
5 this case?

6 A No

7 Q All right When you go out there, you're
8 just trying to document items that you see, is that
9 correct?

10 A Yes, sir

11 Q And at that point in time, did you have
12 any idea who those footprints may or may not have
13 belonged to?

14 A No, sir

15 Q Do you still have any idea today who they
16 may or may not belong to?

17 A No, sir

18 Q What else did you do at the scene that
19 day, Clay? You can take a seat back up there I'll
20 hand you some more photographs probably

21 A At the 344 Union Academy scene, I poured
22 three footprint casts of unknown footprints that
23 were in and around the area I also collected a
24 Mossberg 508 12-gauge shotgun, Serial Number R, as
25 Romeo, 189591

1 Q Where did you find that?

2 A That was located in the woods behind 344
3 Union Academy Road

4 Q Okay And what else did you collect there
5 -- anything else?

6 A The seven 9-millimeter Luger shell
7 casings

8 Q The casts that you referred to, I'll hand
9 you what's been offered into evidence as State's
10 Forty-Seven Is that one of the casts you took?

11 A This is a clean -- a photograph of a clean
12 impression

13 Q And you send these off -- you send them to
14 SLED for comparison --

15 A I do

16 Q -- with known footwear of people?

17 A Yes, sir

18 Q Okay And did you do that in this case?

19 A I did

20 Q There are a number of photographs
21 essentially of the same thing that you took, the
22 area surrounding these 9-millimeter shell
23 casings --

24 A Yes, sir

25 Q -- is that right? And you collected all

1 those that you found that day at the corner of the
2 yard?

3 A Yes, sir

4 Q And you have sent those on for further
5 processing, is that correct?

6 A I did

7 Q Where do you send those, Clay?

8 A We also send those to the State Law
9 Enforcement Division, SLED commonly known as

10 Q And what's the purpose of sending those up
11 there?

12 A SLED has the capability of doing a
13 ballistic comparison as well as other comparisons --
14 DNA, latents

15 Q And you said they were 9-millimeter Luger
16 shell casings because that's kind of pretty
17 obviously stamped on there, isn't it?

18 A Yes, sir

19 Q On the shell casings?

20 A Yes, sir

21 Q The purpose of sending them on to SLED is
22 for microscopic examination I'll hand you what's
23 going to be marked State's Number Forty-Nine, if my
24 memory is correct, and ask you if you can identify
25 what's contained in that envelope

1 A These are -- State's Exhibit Forty-Nine is
2 marked as seven 9-millimeter casings taken from 344
3 Union Academy Road.

4 Q So you basically just collect them from
5 the road, nobody there, identify them, and send them
6 off --

7 A Yes, sir

8 Q -- for further analysis And that's what
9 you did that day?

10 A Yes, sir

11 Q You were called upon to process a vehicle
12 later on in the investigation. On the 29th, is that
13 when you processed it, or is that when it was
14 collected?

15 A August the 29th, yes, sir

16 Q Of 2005?

17 A Of 2005

18 Q And what do you do in regard to processing
19 an automobile, Clay?

20 A We treat the automobile the same as any
21 other crime scene -- photograph it first, then do a
22 brief walkthrough through the vehicle And then we
23 process it for latent fingerprints

24 Q Okay Now, did you take photographs of
25 the vehicle that was involved in this case?

1 A Yes, sir

2 Q Have you seen those photographs --

3 A Yes, sir

4 Q -- at some point? What did you do to the
5 vehicle to process it for fingerprints?

6 A The process we use is brushing powder
7 It's a micromatic powder, which means on a dark-
8 colored surface the powder adheres to the
9 fingerprint, which gives it kind of a light
10 appearance so that you can see it

11 And transversely, on a light-colored
12 vehicle it would appear black By using powder,
13 we're basically developing the print so that it can
14 be seen with the naked eye and also be lifted using
15 tape and transferring it to a card so that we can
16 then look at it and compare it

17 Q And State's Twelve, Thirteen, and Fifteen,
18 are these photographs from the car you processed?

19 A Yes

20 Q And other than taking lifts out of the
21 car, what else did you do to it?

22 A A gunshot residue kit was performed inside
23 the vehicle

24 Q What is that?

25 A A gunshot residue kit is looking for

1 metals that are consistent with the metals found in
2 gunpowder. In our kits, there is two types of tests
3 all in one One is a simtab, which is kind of a
4 sticky tab, and the other one is a common
5 absorption. In the case of the vehicle, we can only
6 use a simtab method

7 Q For lack of a better word, is that like
8 putting a piece of tape on lint?

9 A It is

10 Q Okay What do you do with that?

11 A What we do is we take it, and like it's
12 got a little sticky tab to it And we blot the
13 areas that we are interested in finding out whether
14 or not there's any gunshot residue. Once we get
15 done collecting it, we package it up and send it to
16 SLED for examination

17 Q Okay And did you do that in this case?

18 A I did

19 Q Did you take samples at some time later
20 than you would ordinarily have done?

21 A Yes, sir, the gunshot residue kit was
22 done

23 Q All right When was it done, Clay? Well,
24 let me just ask you this Was it done a year later?

25 A Yes, sir

1 Q All right And were the -- was the car in
2 possession of the Sheriff's Department the entire
3 time?

4 A It was

5 Q Where was it located?

6 A It was located in our impound lot, which
7 is a secured area

8 Q And after you sent those to SLED, what
9 else did you do with regard to the car? Maybe you
10 did this before you did that?

11 A Right. I photographed and then processed
12 for latents.

13 Q Did you find anything else as far as
14 bullets in the car? Was anybody else assisting you
15 in this processing on the 29th of August?

16 A Bear with me I believe Chris Scott was
17 with me at the time

18 Q Okay And you didn't process the truck
19 that was involved --

20 A No, sir

21 Q -- in this incident? To be clear, when
22 you got there, you tried to barricade it off The
23 area was kind of barricaded off, and you started
24 looking for stuff in the dirt, stuff at the house?

25 A Yes, sir

1 Q And the items that you collect as a
2 forensic investigator are then sent on or either
3 processed by you?

4 A Correct

5 Q Now, were you able to identify any
6 fingerprints on the car after taking latent lifts?

7 A The only identification that I made was of
8 Wallow Lee Ware

9 Q And were you informed that that's whose
10 car it was?

11 A Yes, sir

12 Q Were you able to lift any of the other
13 people that were ultimately charged in this case,
14 prints off the car?

15 A No, sir

16 Q Did you compare them to known prints of
17 the other people that were charged?

18 A I did

19 Q And I believe you said this car was
20 brought to you for processing on August the 29th?

21 A Yes, sir.

22 Q Clay, if you would, step down here for a
23 minute In looking at what's marked State's Exhibit
24 Number Five that's up on the screen here, this would
25 be Mr Tyler's residence previously identified,

1 where did you find the shotgun in relation to there?

2 A The shotgun was found right inside the
3 wood line, approximately here

4 Q Okay You're pointing back behind the
5 house?

6 A Back behind -- it was by the back left
7 side of the house, in the woods

8 Q And point out, if you would, where you
9 found the spent shell casings for these .9-
10 millimeter

11 A The spent shell casings would have been
12 right about here, on the right side driveway that
13 kind of loops in.

14 Q I don't know We'll try some kind of --
15 let's see if I can get this thing to work. Make a
16 circle around the shotgun, and make a little oblong
17 thing around where you found the shotgun, if you
18 would.

19 A The shotgun was in the woods The shotgun
20 was in the woods, right about there

21 Q What about the shell casings?

22 A The shell casings, right in there

23 Q Okay Now, in this direction is Windsor
24 Road, the paved road?

25 A The paved road is in this direction

1 Q That's all I have Thank you

2 A Okay

3 THE COURT Any cross-examination?

4 MR WEEKS Just one second, Your
5 Honor, if you would I want to just double-check
6 something before -- that's all right Thank you,
7 Your Honor

8 MR GIPSON Yes, sir, may it please
9 the Court

10 CROSS-EXAMINATION

11 BY MR GIPSON

12 Q Now, Mr Adams, you've been declared what
13 we call an expert in the areas that you spoke about,
14 correct?

15 A Yes, sir

16 Q And that means that you've had extensive
17 training, correct?

18 A Yes, sir

19 Q And you've gone to several classes about
20 fingerprints, latent prints, you belong to several
21 organizations, you've read extensively And you may
22 have even written some on fingerprints Have you
23 done any writings?

24 A No, sir

25 Q But you've read extensively, and there's

1 not much about fingerprints you don't know and
2 latent fingerprints, correct?

3 A Yes, sir, I know a pretty good amount

4 Q You've probably forgotten more about
5 fingerprints -- latent fingerprints -- than I know
6 But, quite honestly, you've done a good bit with
7 this, correct?

8 A Yes, sir

9 Q And when you're asked to come out to a
10 scene, you do that so that you can begin to
11 memorialize what you find, correct?

12 A Yes, sir

13 Q When we say "memorialize," that's just the
14 word that we use Basically, you want to save the
15 stuff that you find, correct?

16 A Yes, sir

17 Q And you went out there early on the
18 morning of the 27th, right around the daylight
19 hours, correct?

20 A Yes, sir, right around the daylight hours

21 Q Okay So somewhere near daybreak, you got
22 the call, and you went out and started to do your
23 due diligence in order to preserve the evidence,
24 correct?

25 A Yes, sir

1 Q And one of the first things that you learn
2 to do is just to block the area off, correct?

3 A Yes, sir

4 Q And you want to do that because you want
5 to keep things from being tainted, quite honestly?

6 A Yes, sir

7 Q And you want to make sure things are not
8 going to be moved around, and you want to try to
9 save as much as you can, right?

10 A Yes, sir

11 Q What was the weather like that day?

12 A It was real foggy Other than that, the
13 day turned out to be sunny

14 Q Okay And was it raining when you
15 arrived?

16 A I believe there might have been a light
17 drizzle, but I can't quite remember.

18 Q So rather than speculating, you'll just
19 say you're not sure?

20 A Right

21 Q Okay Now, when you arrived, you began to
22 just -- how do you start? If you'd just kind of in
23 your own terms Did you just start to look around,
24 just kind of look to find out where things may be?

25 A Yes, sir What we did was when we blocked

1 off the roads, we found a safe path of travel In
2 this case, we noticed that the center of the roadway
3 was clear of any type impressions So we were able
4 to walk the roadway and basically made ourselves a
5 corridor until we could figure out what was of
6 relevance and what wasn't

7 Q And when you say "walk the corridor," you
8 do that so that all of the footprints would be in
9 one area Then law enforcement or whoever else
10 comes to the scene would be just walking in one
11 particular area so as not to taint or disturb any of
12 the evidence, correct?

13 A That's what we try, yes, sir

14 Q Okay And you do your best to do that
15 kind of thing Now, you said that after you got out
16 there, you looked around and you found several shell
17 casings, correct?

18 A Yes, sir

19 Q And you found, you said, some 9-
20 millimeter shell casings as you looked around, and I
21 believe you said the number of that was maybe seven?

22 A Yes, sir

23 Q Okay And those were seven 9-millimeter
24 -- were they Ruger shells, I believe you said?

25 A Yes, sir, 9-millimeter Ruger shell

1 casings

2 Q And you marked those, and you talked about
3 those in some of the different exhibits, for
4 instance, State's Exhibit I believe that's twenty-
5 nine and thirty-one You did those things so that
6 you could -- again, when you took pictures -- so you
7 could memorialize the scene of the evidence,
8 correct?

9 A Yes, sir

10 Q Now, I'm going to show you what's been
11 marked as State's Exhibit Number Twenty-Nine Does
12 that ring a bell to you?

13 A Yes, sir.

14 Q In fact, that's a picture that you
15 actually took, correct?

16 A It is

17 Q Okay Could you explain to the jury what
18 that white stuff is right there in the middle of the
19 road?

20 A The white stuff in the middle of the road
21 by marker number two is the actual cast of a
22 footwear impression

23 Q And when you say "cast of a footwear
24 impression," you said that you kind of spray the
25 foot impression first in order to -- so that you can

1 see it better, quite honestly?

2 A Yes, sir It gives it a false shadow

3 Q Okay And when you say a false shadow,

4 that's again, as you mentioned, these dark black --

5 I guess dark patches on State's Exhibit Number

6 Twenty-Nine are the false shadows of other footwear?

7 A Yes, sir

8 Q Okay And once you do that, you put some

9 kind of plaster on it, almost like a plaster cast, a

10 little bit more professional than that?

11 A Actually, what we use is dental stone

12 Q Okay

13 A It's the same ingredients used by dentists

14 to make a cast

15 Q So when you're at the dentist and they

16 take a cast of your teeth, it's that similar kind of

17 thing?

18 A That is dental stone

19 Q Okay So you use that dental stone. And

20 when you use the dental stone, that preserves the

21 footwear, and it gives you a fair and accurate

22 representation of what the footwear looked like at

23 that particular time, correct?

24 A Yes, sir

25 Q Okay And you took that cast shown at

1 marker two in State's Exhibit Number Twenty-Nine
2 You took that cast and sent that off to SLED,
3 correct?

4 A Yes, sir

5 Q All right. So you don't actually process
6 the footwear You send it over to SLED so that they
7 can process it, correct?

8 A Basically --

9 Q Or compare it?

10 A -- to compare it, yes, sir

11 Q And when I say "compare," what they'll do
12 is they'll take a known quantity, meaning a -- or
13 they'll take a shoe, for instance, and they'll
14 compare the shoe, the bottom of the shoe, the print
15 or I guess the tread.

16 A With the out-sole

17 Q With the out-sole of the shoe and compare
18 it to the plaster cast, and see if that shoe matches
19 the plaster cast, correct?

20 A In a way

21 Q Please straighten me out

22 A The best way to explain it is a cast wear
23 of a foot impression is a three-dimensional object
24 And you can only compare three-dimensional to three-
25 dimensional So if you have a picture of a footwear

1 impression, that's a two-dimensional So could only
2 do a comparison of the two-dimensional to the two-
3 dimensional

4 So in this case, since I poured a cast,
5 basically the examiner would have to take the
6 unknown and then take a known footwear impression,
7 make an impression, make a cast, and then compare
8 three-dimensional to three-dimensional

9 Q So you take a cast of the print and a cast
10 of the shoe?

11 A The examiner does

12 Q I'm sorry, the examiner And then the
13 examiner will compare the two casts and see if they
14 match?

15 A Or --

16 Q Okay

17 A -- he can take a cast and make it a two-
18 dimensional and compare a two-dimensional to a two-
19 dimensional It's all his preference

20 Q And in this case, you just made the cast,
21 and then you sent it to SLED for comparison?

22 A Correct

23 Q All right

24 MR GIPSON Court's indulgence,
25 please

1 Q Now, you also took fingerprints You also
2 took latent prints, or you dusted for latent prints
3 as well, correct?

4 A Of the vehicle, yes

5 Q The vehicle prints And, again, that
6 vehicle was in your custody somewhere around the
7 29th, basically a day or so after the shooting,
8 correct?

9 A That is correct

10 Q And as you actually dusted for prints, you
11 went through the process You dusted for process
12 And did you make comparisons for the prints that you
13 actually dusted for?

14 A I did

15 Q Okay And in that manner, is there
16 anywhere that you found prints in that vehicle other
17 than Wallow Ware?

18 A Yes, other fingerprints were found

19 Q And who did they belong to?

20 A They were unidentified

21 Q Okay So you cannot come in here and say
22 you found the prints of Cornell Tyler in that car,
23 can you?

24 A No, I cannot

25 Q Okay And you have spoken about your

1 expertise, the different procedures that you use for
2 latent prints, and after going through the
3 procedures that as an expert you felt were best for
4 this particular situation, you could not say that
5 Cornell Tyler, based on the prints, was in that car?

6 A Based on the prints, no, sir.

7 Q Okay Now, let's backtrack for just one
8 moment I'm going to show you what's been marked as
9 State's Exhibit Number Forty-Seven Does that look
10 familiar to you?

11 A Yes, sir

12 Q Okay And can you tell the jury what that
13 is and show that to the jury, if you will?

14 A State's Exhibit Forty-Seven is the
15 cleaned-off portion of the cast wear

16 Q There's actually a larger one If you'll
17 bear with me, I can give you that one, if you'd like
18 -- State's Exhibit Twenty-Eight

19 A State's Exhibit Twenty-Eight, this is the
20 top section of the footwear impression cast
21 State's Exhibit Forty-Seven is the underside of it
22 This is what's actually in the dirt This is a
23 negative, because this print doesn't sit like this
24 It actually sits like this, so it's a reversal But
25 this is a cleaned-off section, the cleaned-off

1 underside of the cast that was poured

2 Q And, again, that's what you submitted to
3 SLED, is that correct?

4 A That is correct

5 Q And you don't have any -- since you did
6 not do the analysis, you cannot tell us who that
7 belonged to That would be left to the analyzer
8 with SLED, is that correct?

9 A That is correct

10 MR GIPSON That's all my questions,
11 Your Honor

12 MR. WEEKS: Your Honor, the State
13 moves to introduce State's Forty-Nine I don't
14 think I actually moved to introduce the shell
15 casings

16 THE COURT What says the defense?

17 MR GIPSON No objection

18 THE COURT Admitted without
19 objection

20 (State's Exhibit Number
21 Forty-Nine, Envelope with Shell Casings, was entered
22 in evidence)

23 REDIRECT EXAMINATION

24 BY MR WEEKS

25 Q Clay, tell me about the fact that you only

1 took three casts out there We've heard the story
2 about people running and jumping into cars, and
3 driving cars, and going up to the porch and
4 everything. Why didn't you get more footprints?

5 A There are -- there were more footprints
6 out there The ones that I casted showed the
7 greatest amount of detail

8 Q Okay And did that have anything to do
9 with the fact that they were on a particular surface
10 as opposed to the yard?

11 A The yard, it does -- the yard being grass
12 or packed sand typically will not hold a well enough
13 impression as would looser soil, as in the red clay
14 road, mud A softer medium will hold the impression
15 a lot better than a hard medium And, of course,
16 grass, leaves, pinestraw, you're not going to be
17 able to see details in the footwear impression that
18 we need to see to make identification

19 Q And how about sand, walking down the
20 beach? That's what I think of sand, or sugar sand
21 down where I live

22 A Well, that, again, is in a soft, a super-
23 soft, medium to where when you step in it, as soon
24 as you leave the impression, with the weight it'll
25 kind of cave itself in so it doesn't hold the

1 impression like mud, or clay, or a finer type of
2 medium like that

3 Q Will anything destroy footprints? I know
4 it's a pretty obvious question

5 A Footprints are just like fingerprints
6 They are on a medium that can be wiped away If you
7 walk on it, if you -- wind, the elements, any other
8 kind of surface come in contact, it's going to
9 destroy those means of evidence

10 Q Rain, would that be an element?

11 A Yes, sir

12 Q How long can fingerprints last on the
13 outside of a car, like the one in question in this
14 case?

15 A We are not able to date prints

16 Q What is a fingerprint?

17 A A fingerprint is basically 90 percent
18 water The rest are amino acids and other acids
19 that are in your body But it is a liquid And
20 when in extreme heat, it's going to act like any
21 other liquid It's going to evaporate, as well to
22 the same amount of cold It will freeze

23 Q When it does that, can you lift it, can
24 you analyze it?

25 A No, sir

1 Q It'll evaporate?

2 A It'll evaporate

3 Q Okay Fingerprints in closed containers
4 or closed areas or what not, can they last longer?

5 A They can

6 MR WEEKS No further questions.

7 Thank you

8 THE COURT Yes, sir

9 RECROSS EXAMINATION

10 BY MR GIPSON

11 Q And none of those long-lasting
12 fingerprints that were found inside Mr Ware's car
13 belonged to Mr Tyler, did they?

14 A No, sir

15 MR GIPSON No further questions, Your Honor

16 THE COURT All right, you may step down, sir

17 Do you have any short witnesses at this
18 stage, Mr. Solicitor?

19 MR WEEKS We don't, Your Honor

20 THE COURT All right, ladies and gentlemen,
21 we'll quit now for today We'll start back at 9 30
22 tomorrow morning Please be back in the jury room
23 at that time

24 Please remember you're not to observe any
25 media accounts regarding this case, not to discuss

1 the case with family, friends, or anyone else, or
2 allow anyone to discuss it with you or in your
3 presence We'll see you tomorrow morning at 9 30

4 (The jury left the
5 courtroom at 5 25 p m)

6 THE COURT Are there any other matters
7 regarding this matter today?

8 MR WEEKS No, sir

9 THE COURT Yes, sir

10 MR GIPSON This I guess is for scheduling
11 purposes Do you have a procedure like when I am to
12 submit jury charges, things of that nature?

13 THE COURT Yes, sir, as soon as you have them
14 available I usually request them when we get to
15 the defense's case to know --

16 MR GIPSON Yes, sir

17 THE COURT -- how long that may take You can
18 submit them whenever you have them

19 MR GIPSON Yes, sir

20 THE COURT At 9 30 tomorrow morning, we'll be
21 back

22 - End of Day -

1 Wednesday, January 9, 2008

2 (The defendant, together
3 with counsel, was personally present in the
4 courtroom.)

5 THE COURT Okay, Mr Weeks?

6 MR WEEKS Your Honor, prior to bringing the
7 jury in, we do have an issue that's going to come up
8 with the first witness, I anticipate

9 The first witness will be SLED Agent Ira
10 Parnell, who did some fire markings and did some
11 bullet analysis for us in this case He's actually
12 being called out of order because of a family
13 situation that's going on and just the scheduling of
14 Dr Sexton, who was going to come before him, as to
15 that objection, as I understand it

16 The other thing is I've asked Agent
17 Parnell to bring a weapon that would fire that type
18 caliber of bullet that he's going to identify that
19 was taken from the victim and out of the victim's
20 truck in this case It is not the firearm that was
21 used

22 That will be made clear But it is for
23 demonstrative evidence to show what type of firearm
24 fires this caliber round and how the bolt action on
25 the rifle or how the rifle action works to leave the

1 marks on the cartridge case and to leave the marks
2 on the bullet facing of the bullets that are left to
3 allow this man to conduct the scientific expert
4 testimony or the scientific experiments or whatever
5 to come into court and give that expert testimony

6 And the only way to really do that is to
7 use a weapon We did not recover a weapon in this
8 case I bring this up because it was objected to
9 last time Byron has told me it's going to be
10 objected to again at this time

11 THE COURT All right, Mr Gipson?

12 MR GIPSON May it please the Court, Your
13 Honor As the Court knows, Mr Parnell is an expert
14 in this field, without question He has testified
15 about firearms.

16 My position in this, Your Honor, is that
17 bring in a gun that is not the gun that actually
18 fired the shots that we're talking about gets to be
19 a situation where the prejudicial value outweighs
20 the probative nature, Your Honor

21 A picture could do just as well A
22 picture of both sides of the gun, where the ejection
23 areas are, and how the gun works, that's fine. But
24 essentially when you bring into -- in a case like
25 this, if you bring in a firearm that's not a part of

1 the case, you wave it in front of a jury, there is a
2 shock value that the jury has when they see the
3 firearm, and if you're cocking the gun, the sounds
4 that it makes, all these types of things, and it's
5 not the gun that we're talking about

6 One of the things that was interesting to
7 me is the SLED officer's report, in the last
8 paragraph -- well, one of the last paragraphs of the
9 report said that "based on general rifle firing
10 characteristic signs 11, 12, and 14, a list of
11 firearms and/or origins of firearms that may have
12 fired these items but is not limited to the
13 following "

14 Then he lists four different types of guns
15 that could have fired them But he says it's not
16 limited to that So essentially what we're doing is
17 saying, "All right, this is any gun out of many
18 other types that could have done it, but we're just
19 going to bring this in and show you, you know, what
20 a rifle looks like, so you can see what a rifle
21 looks like

22 "And Ms Dorch was killed by a rifle, and
23 Mr Brewer was injured with a rifle, and it could
24 look like this " That could be accomplished with a
25 picture as opposed to bringing in a gun that was not

1 the weapon and one that we don't even know if that
2 was really the type that was fired. It was one of
3 many that could be fired

4 THE COURT All right The State has the right
5 to present its evidence in the manner that it sees
6 fit, provided that it does not prejudice the
7 defendant's right to a fair trial

8 I do not find that utilizing a weapon for
9 demonstrative purposes deprives the defendant of his
10 right to a fair trial I do not find that such
11 would mislead the jury where it's clearly explained
12 to the jury that this is not the weapon, that it's
13 used solely for demonstrative purposes And I will
14 allow it

15 MR WEEKS. Thank you, Your Honor

16 MR GIPSON Thank you, Your Honor

17 THE COURT All right, let's bring the jury

18 (The jury returned to the
19 courtroom at 10 19 a m)

20 THE COURT Good morning

21 THE JURY. Good morning.

22 THE COURT All right, ladies and gentlemen, we
23 had a few other matters to tend to unrelated to this
24 case and some other matters here that we also had to
25 tend to We're now ready to proceed with this

1 matter

2 Solicitor -- the State is presenting its
3 case -- your next witness

4 MR WEEKS Thank you, Your Honor The State
5 would call Ira Parnell

6 CLERK OF COURT Place your left hand on the
7 Bible and raise your right

8 (The witness was sworn)

9 CLERK OF COURT Please have a seat in the
10 witness box, state your full name for the Court, and
11 spell your last

12 MR. PARNELL My name is Ira Byrd Parnell, Jr
13 -- P-A-R-N-E-L-L

14 IRA BYRD PARNELL, JR , having first
15 been duly sworn, testified as follows

16 DIRECT EXAMINATION

17 BY MR WEEKS

18 Q Ira, where are you employed?

19 A I'm employed by the South Carolina Law
20 Enforcement Division, also known as SLED

21 Q And how long have you been employed there?

22 A Thirty-five years

23 Q Could you take me back through your
24 background in law enforcement and prior to that,
25 actually, your background as far as education?

1 A I received my degree from University of
2 South Carolina in the field of criminal justice,
3 both an associate's as well as the continued program
4 as a four-year degree It actually took me five
5 years, but I was also employed at SLED during the
6 latter part of that college career, during which
7 time I received training from the three court-
8 qualified firearms examiners who were working in the
9 Firearms Lab at that time

10 Upon completion of my college career, I
11 attended the South Carolina Criminal Justice
12 Academy I've attended the FBI National Academy,
13 numerous specialized courses held nationwide. I'm a
14 member of the Association of Firearm and Tool Mark
15 Examiners, which is an international organization of
16 examiners who look at firearms and tool marks and
17 the marks that they leave

18 I've made many, many thousands of
19 individual comparisons using microscopes and other
20 optical aids and have testified approximately 585
21 times as a firearms examiner

22 Q Are you qualified as an expert in the
23 state courts and federal courts of this country?

24 A Yes, sir, as well as North Carolina State
25 Court.

1 Q And can you tell me what all is involved
2 in firearms identification, as you've described it?

3 A Firearms identification is a field
4 endeavor that involves the examination of fired
5 bullets and fired cartridge cases, along with
6 firearms. At certain times, we also examine unfired
7 cartridges for certain marks that are left there by
8 firearms in which they were loaded into and
9 extracted from without being fired

10 But our main focus is microscopic markings
11 left on fired components by the firearm in which
12 they were shot. These markings are unique and
13 individual to the individual firearm that they're
14 fired in.

15 Q I want to interrupt you there. Is there
16 any other thing in that field regarding trajectory
17 of bullets and distance of bullets that are involved
18 in that field?

19 A Certainly. The study of firearms also
20 involves the study of their flight, the trajectories
21 that are involved in certain cases. A lot of times
22 we do reconstructions of flights of bullets to
23 determine their point of origin.

24 MR. WEEKS Your Honor, at this time the State
25 would move to qualify Ira Parnell as an expert in

1 the field of firearms identification as he's
2 indicated that field contains

3 THE COURT: What says the defense?

4 MR. GIPSON: Without objection

5 THE COURT: He's admitted as an expert in that
6 field

7 Ladies and gentlemen, when a witness is
8 admitted as an expert witness, the Rules of Evidence
9 allow that witness to offer opinion testimony to the
10 extent that other witnesses are not allowed to do
11 so And you can give the testimony whatever weight
12 you believe that it should receive

13 You may proceed

14 MR. WEEKS Thank you, Your Honor.

15 EXAMINATION CONTINUED

16 BY MR. WEEKS

17 Q Ira, were you submitted items in the case
18 we're here before this jury on for examination?

19 A Yes, sir, I was

20 Q And what kind of items were you submitted
21 to examine?

22 A I was submitted a fired cartridge case and
23 three fired bullets These are portions of bullets
24 or mostly whole bullets

25 Q Okay And were you able to make some

1 comparison with those items --

2 A Yes, sir, I was

3 Q -- and draw some conclusion?

4 A I was

5 Q Okay Let me kind of lead you through
6 this part The items that were submitted to you,
7 I'll hand you what's been marked State's Exhibit
8 Fifty and ask you if you can identify what those
9 items were?

10 A First of all, I recognize the writing
11 that's on the outside of the package Each one
12 bears my case number, specimen number, and initials
13 They have other certain writings on there

14 The items contained in State's Exhibit
15 Fifty consist of two individual fired bullets, both
16 of which have separated into their individual lead
17 core and copper jacket, or steel jacket in this
18 case, one in each container, and both contained in
19 State's Exhibit Number Fifty I have examined both
20 of these items

21 Q Okay The item marked State's Exhibit
22 Fifty-One

23 A State's Exhibit Fifty-One is a fired 7 62-
24 by-39-millimeter caliber cartridge case, and I have
25 also examined this item

1 Q Okay State's Exhibit Fifty-Two

2 A State's Exhibit Fifty-Two is a fired
3 bullet jacket, and I have also examined this item
4 It bears my case number, specimen number, and
5 initials

6 Q Ira, were you able to reach a conclusion
7 regarding the items submitted to you as to their
8 origin?

9 A The three fired bullets or portions of
10 bullets contained in State's Exhibit Fifty, both of
11 these bullets and jackets and cores, as well as the
12 fired bullet jacket in State's Exhibit Fifty-Two,
13 were all fired through one gun barrel, based on
14 microscopic comparisons of the individual marks left
15 on the outside of these bullets or bullet fragments
16 by the gun barrel in which they were fired

17 Q Ira, if you would -- because I'm quite
18 sure all of these jurors don't have a familiarity
19 with guns that you have Did I ask you to bring a
20 gun to demonstrate how those markings are made?

21 A Yes, sir, you did.

22 Q And would you step down here for me,
23 please?

24 MR. GIPSON. Your Honor, I object to the use,
25 based on my previous objection

1 THE COURT Yes, sir

2 MR PARNELL May it please the Court, Your
3 Honor?

4 THE COURT Yes, sir

5 And, ladies and gentlemen, the weapon used
6 by this witness is being used solely for the purpose
7 of reflecting the question for demonstrative
8 purposes to elicit testimony regarding a particular
9 matter It's not in any way intended to give you
10 the impression that this is the actual weapon used
11 in the alleged offenses

12 MR WEEKS Thank you, Your Honor That's
13 correct

14 Q Ira, I know that weapon is disarmed, but
15 if you would point out to me the different parts of
16 the weapon regarding the clip, the bolt, the action,
17 and the barrel

18 A As His Honor indicated, this is not the
19 gun involved in this case This is an exemplar.
20 This is maybe like the gun that could have fired
21 these bullets and cartridge cases

22 This is a Rinko 7 62-by-39-millimeter
23 semiautomatic rifle This type of firearm is listed
24 in my report as a possibility There are four
25 others listed, and they come in many, many

1 configurations -- short stocks, collapsible stocks,
2 long magazines

3 This type of magazine, this is a ten-round
4 magazine that loads from the top There's a spring
5 on the inside, and when it's fully loaded and there
6 are cartridges in it, it will fire ten times once
7 the person pulls the trigger

8 The fired cartridge case is extracted and
9 expelled or ejected out of the ejection port, which
10 is right here. A fresh cartridge is picked up by
11 the bolt, which is this part right here, and fed
12 into the barrel

13 Each time the trigger is pulled, it cycles
14 itself and is operated as a semiautomatic rifle up
15 to the time that the weapon is empty Cartridge
16 cases could be expelled in any different direction
17 but mainly out to the right of the shooter at the
18 time of the shot

19 The bullet, as it travels down the barrel,
20 it comes out of the muzzle, which is here, and is it
21 is engraved by the markings left inside the gun
22 barrel by the manufacturing process These type of
23 firearms have four lands and four grooves

24 I'm going to be real brief on the
25 explanation of lands and grooves, because it can get

1 pretty tedious Lands and grooves are basically
2 areas within the barrel that are equidistant from
3 each other that grip a bullet as it goes down a
4 barrel, and it causes them to spin

5 Just like when a quarterback throws a
6 football, it spirals The bullet spirals as it's
7 coming out of the barrel This is done to stabilize
8 the bullet and help it to go straight

9 If you throw a football sideways, it
10 waffles around and doesn't go straight If you
11 spiral it, it goes straighter and farther -- same
12 principle with a bullet

13 These marks are unique to this gun, and
14 each gun that is manufactured has unique markings
15 within its barrel that are transferred to each
16 bullet that's fired through it -- the same thing
17 with cartridge cases

18 Cartridge cases can be marked in five
19 different areas by the gun in which they were fired
20 the firing pin, which causes it to fire; the breech
21 face, which is the area around the firing pin on the
22 base of the bolt, chamber marks, which come from the
23 back end of the barrel, extraction marks, which are
24 put there by the extractor, the device that pulls
25 the cartridge case out, and the ejector, the device

1 inside the gun on the bolt that actually throws the
2 cartridge case out

3 Only one cartridge case was examined in
4 this case But if we had a gun, we may be able to
5 identify that fired cartridge case to that gun

6 Q Now, is that a guarantee --

7 A No

8 Q -- in and of itself, Ira?

9 A Not at all Seven point six-two by
10 thirty-nine is a caliber which the ammunition that
11 is mostly gotten over here -- I say "over here"
12 because it's predominantly a European cartridge
13 designed by a Russian, Mikhail Kalashnikov, which is
14 neither here nor there

15 But the cartridge cases and the bullet
16 jackets are mainly steel and also lacquered heavily
17 The cartridge cases have a heavy coating of lacquer,
18 which keeps it from getting affected by weather
19 It's a military cartridge So there's no guarantee
20 that we would be able to identify a cartridge
21 casing, if we had a gun

22 Q The cartridge case that you were submitted
23 in this case, your opinion is going to be that it
24 was fired from that caliber of gun?

25 A The actual gun, no It could have been

1 one like this It could have been something that
2 looked totally different

3 Q Just because those numbers are not a
4 common number, that seven point --

5 A Seven point sixty-two by thirty-nine

6 Q What's that comparable to in American-made
7 firearms?

8 A The bullet size, the actual projectile
9 size, is similar to or the same as a 308, 306
10 Any 30-caliber rifle cartridge that y'all may be
11 familiar with has the same diameter as the bullet
12 fired from the 7 62-by-39 The cartridge case is
13 much shorter

14 Q Now, did you bring any bullets that are
15 loaded --

16 A I brought one

17 Q -- for demonstrative Ira, while you're
18 finding that, can the -- the guns that fire that
19 particular type of round, can they hold more bullets
20 than ten?

21 A Yes, sir There are extended magazines
22 such as this 30-round magazine High-capacity
23 magazines can be adapted to any number of the 7 62-
24 by-39 firearms

25 They go from this one, which has a ten-

1 round capacity that's barely visible, go twenty
2 rounds, which is a little longer, to thirty or forty
3 rounds There's many different configurations, but
4 the cartridge remains the same.

5 This is an unfired 7.62-by-39 caliber
6 cartridge It's very short But the hammer to the
7 bullet goes the same as the 30.06 or 308 that some
8 of us are commonly familiar with

9 Q Is that a round that's typically fired in
10 a handgun?

11 A Not typically, no, sir

12 Q Now, explain to me what you were saying
13 about the steel and the jacket and all that, with
14 regard to the demonstrative bullet

15 A The outside, the sheathing, of this
16 bullet, this is one that we pulled out without
17 firing The outside of these bullets are steel
18 They're colored like copper, but it's just a copper
19 gilding or just a jacket -- not a jacket, but a
20 copper wash. The jacket itself is steel

21 Q And what's the significance of that in a
22 bullet?

23 A It's much harder than the copper jackets
24 that we have on most of our cartridges here

25 Q Does it affect the penetration ability of

1 the bullet?

2 A It typically -- typically, a bullet with a
3 steel jacket would typically be damaged less by
4 contact with anything it happens to hit after it's
5 fired So consequently it has the potential to
6 penetrate deeper or more deeply than a copper-
7 jacketed bullet, which is softer and will expand and
8 deform quicker with less resistance

9 Q Now, I'll ask you to set that down and
10 come over here and take a look at a couple of
11 photographs for me Do you recognize the items that
12 are depicted in State's Thirty-Four and Thirty-Five?

13 A Yes, sir, I do The photographs that are
14 numbered State's Exhibits Thirty-Four and Thirty-
15 Five are photographs that I recognize as being of
16 the two fired bullets contained in State's Exhibit
17 Fifty in this case

18 Q Okay And on the screen here, point out
19 to the jury what you were talking about with regard
20 to the jacket and core and that sort of stuff

21 A The jacket is the covering around the lead
22 core or inside Lead is very soft, and the jacket
23 is required to hold it together The lead is
24 required to give the jacket or the bullet weight
25 So the combination of the two, you have a jacketed

1 bullet.

2 The lead part, as I said, is inside and
3 gives the whole projectile weight so that as it is
4 fired and goes down range, that it maintains
5 momentum. If the jacket had no core, then it would
6 weigh relatively little and be very much affected by
7 crosswind or any other effects that might weigh on
8 that bullet. It would not go very far, since it
9 would probably weigh maybe less than 30 or 40 grams
10 in weight.

11 The total weight of an unfired 7.62-by-39
12 bullet, the weight of the jacket and the core, is
13 approximately 120 grams.

14 Q Now, what are the striations or the lands
15 and grooves? How do you identify those when you do
16 your examination?

17 A When I was talking about lands and grooves
18 earlier and didn't really explain it, the marks that
19 you see here, this area here that's indicated where
20 the red dot is at, from this edge to this edge is a
21 land impression.

22 A land impression is caused by a slightly
23 raised area inside the gun barrel. The raised area
24 on the bullet as we're looking at it here -- this
25 border to this border -- is called a groove.

1 impression Inside the barrel, there has been metal
2 removed

3 So what happens is where the metal is
4 removed, the bullet flows up into it and makes a
5 raised area. The land grips the bullet, causes it
6 to spin, and any tool marks that are left inside
7 that gun barrel by any of the manufacturing
8 procedures that are done to make that barrel are
9 transferred to the outer surface of the bullet in a
10 random and unintentional fashion

11 And gun manufacturers do not intentionally
12 leave burrs or rough places on their tools It just
13 is a fact of having been utilized to cut steel
14 Little burrs, just like your scissors change their
15 mark from time to time or get wear and little nicks
16 in them, your pliers or any other tool, the inside
17 of this gun barrel wears a little

18 These individual marks are transferred to
19 the outside of this jacket and are pretty well
20 stable so that every bullet fired through that
21 barrel will have essentially the same microscopic
22 markings manifested in the form of linear marks as
23 they are fired out of the gun barrel

24 These scratches embed themselves into
25 that, the outside of the bullet jacket, and they're

1 visible microscopically to a trained examiner And
2 we look for similarities between or differences
3 from, whether it's the correct gun or a different
4 gun, or whether the fired components were fired from
5 the same gun barrel as in this case

6 State's Exhibits Fifty and Fifty-Two,
7 three total bullet jackets, were all marked in
8 essentially the same way by the inside of the gun
9 barrel through which they were fired So
10 microscopically I could determine by examining these
11 marks that these bullets had in fact gone out of --
12 had been fired out of one gun barrel

13 Q You indicated that the two items, one and
14 two now on the screen, State's Exhibit Thirty-Five,
15 were fired from the same weapon What were you
16 comparing to make that determination?

17 A I was comparing in this case -- in the
18 other case, the bullet prior to this, the bullet was
19 laying horizontally In this case, it was vertical
20 But the same markings occur

21 No matter what it looks like here to you,
22 the land impressions are here, the groove
23 impressions are here And by microscopically
24 comparing the individual linear markings that are
25 present in the land impressions on the two bullets

1 from State's Exhibit Fifty and those from State's
2 Exhibit Fifty-Two, I found sufficient similarities
3 to determine that they all fired through one gun
4 barrel based on the individual markings that were
5 left

6 Q The third item, the bullet that you
7 examined indicated in State's Exhibit Number Forty,
8 is that the third bullet you examined?

9 A It appears to be, yes, sir

10 Q So your indication, when you checked your
11 records, as the third bullet?

12 A Correct

13 Q Now, these little pictures here, when I
14 watch CSI, they have about half of the screen like
15 this and about half of that screen like that, and
16 they do this little wiggle thing and line them up to
17 show people on TV Why can't you do that for me?

18 A Well, CSI is entertainment What we
19 generally deal with is reality The processes that
20 they profess to utilize on television are pretty
21 well based in fact We do, in fact, have a
22 microscope that enlarges the images of fired
23 bullets

24 And we do have a screen on our computer
25 that we can look it up or look on it and take

1 photographs and present those But we don't have
2 the capability to do matching the address of the
3 person who owned the gun that may have fired it and
4 all those other nice things

5 Q And so basically what you're doing is
6 saying that you've looked at those items under the
7 microscope, not just from these two pictures --

8 A Actually, yes, sir

9 Q -- and made that determination based on
10 your 35 years of experience?

11 A Absolutely, from the many markings that
12 I've viewed

13 Q Okay Now, while you're down there, Ira,
14 you indicated something about trajectory as part of
15 your expertise, bullet trajectory Just give me a
16 brief idea about how that works

17 A The trajectory of a projectile or a bullet
18 as we're talking about here is the path that that
19 bullet follows from the time it leaves the muzzle
20 till the time it comes to rest

21 The trajectory is generally an arc and
22 path, depending on how far away the bullet winds up,
23 that the bullet follows That particular study in
24 some areas is known as ballistics

25 And firearms identification or examination

1 is sometimes miscalled ballistics. Firearms
2 identification is one thing, ballistics is a totally
3 different field

4 We don't do anything with rockets or
5 anything to do with that type of ballistics Where
6 the study of trajectory comes in, in our field, is
7 simply what I explained earlier as it's the path
8 that a bullet follows from the time it comes out of
9 the muzzle to the time it winds up

10 Normally, what happens is when a bullet is
11 fired out of a barrel, depending on the angle that
12 that barrel is pointed in at the time of discharge,
13 the trajectory will either be flatter or more
14 arcing, depending on how the gun is situated

15 The flatter the barrel is, the straighter
16 the trajectory will appear, but the quicker that
17 gravity will take over and pull that bullet to the
18 ground in a shorter distance Whereas the optimum
19 manual, if I remember correctly, is approximately 33
20 degrees to get the maximum trajectory for most
21 firearms that we're familiar with

22 So if I held it about here and shot it,
23 that little thing that's on the end of the cartridge
24 box that says, "Be careful, range one mile," that's
25 about the angle it would have to be fired at under

1 optimal, ideal conditions for that projectile to go
2 that distance

3 Q Is part of your expertise of how you
4 render opinion as to that type of bullet as to what
5 it would penetrate?

6 A I can speak in general terms, yes, sir

7 Q I want you to tell me, a bullet of that
8 caliber, can it go through metal? Or a cartridge of
9 that caliber, can it project a bullet through metal?

10 A Certainly, depending on the thickness of
11 the metal

12 Q Okay Well, let's talk about a car or a
13 truck

14 A Absolutely.

15 MR GIPSON I have an objection,
16 Your Honor He has not been qualified as an expert
17 in terms of the thickness of the metal, Your Honor,
18 only in the firearms field We haven't talked about
19 this particular vehicle and what this particular
20 vehicle was made out of

21 THE COURT It goes to the weight.

22 Q Ira, have I asked you to look at some
23 photographs of the vehicle in this case?

24 A Yes, sir.

25 Q I'll ask you to look at what's been marked

1 State's Exhibit Number Eleven And I point your
2 attention down to the bottom here, to that
3 particular area What is that protruding from
4 there?

5 A It's a wooden dowel

6 Q Can a bullet of that caliber go through
7 metal as depicted in that truck, in your opinion?

8 A Yes, sir

9 Q Could it go through the tailgate of the
10 truck, into the seat of the truck?

11 A I have seen and examined bullets,
12 recovered bullets, and also been involved in crime
13 scene searches where fired projectiles did penetrate
14 the amount of metal that you indicated

15 Q And what type distance -- do you have an
16 opinion as to the type of distance away from an
17 object like that it would have to be for a bullet
18 fired of that caliber, or would that vary?

19 A It could vary pretty widely

20 Q Okay I'm handing you State's Exhibits
21 Four and Five

22 MR. WEEKS Just for the record, Your
23 Honor, of course we've discussed Mr Parnell's being
24 called a little out of order so the indications on
25 this photograph can be explained a little bit more

1 Q But if those items protruding from that
2 tailgate are identified later as dowels marking
3 entrance holes of bullets, and comparing it to what
4 you previously saw, can a bullet go through that
5 tailgate without losing height and go through the
6 bed of the truck?

7 A Yes, sir

8 Q Give me an idea about the speed that a
9 bullet like that would go at

10 A The muzzle velocity of a 7.62-by-39 bullet
11 is in the vicinity of 22 to 24 hundred feet per
12 second approximately, which is not exceedingly fast
13 But it is considered a high-powered rifle, and the
14 trajectory is relatively flat within, say, a hundred
15 yards, a hundred and fifty yards After that --

16 Q Explain that to me a little bit more
17 What do you mean by the trajectory is flat?

18 A Okay Shooting approximately parallel to
19 the ground, and I don't know whether you caught it
20 earlier, but I said that gravity takes hold of it a
21 little quicker the flatter the barrel is as opposed
22 to being up here

23 So the trajectory is going to be flatter
24 In other words, it's going to go straighter for a
25 period of time, but it's also going to go down a

1 little quicker than if you had the muzzle at a 33-
2 degree optimal angle

3 So, if the entrance hole or a hole in the
4 tailgate lines up with the hole in the back of the
5 cab, their relative height to each other would
6 indicate a general trajectory If we have two areas
7 to examine, we can give a general idea of the
8 relative position of the gun barrel or the flatness
9 of it

10 What I was saying here while we looked at
11 these photographs, the bullet holes indicated or the
12 holes in the tailgate roughly line up with those in
13 the back of the cab, which would indicate to me that
14 the trajectory was relatively flat In other
15 words --

16 Q And the closer you are to the truck when a
17 bullet is fired versus the further away might make a
18 difference after you get a hundred yards or so away
19 with a caliber of rifle like that?

20 A Certainly The effect of gravity takes
21 effect and slows the bullet down, which would in
22 effect decrease its capacity to penetrate So
23 generally the closer to the muzzle, where the muzzle
24 velocity is the highest, then the potential for
25 penetration is greater

1 Q And, Ira, even with your experience,
2 there's no way you can say whether or not those
3 bullets came from that cartridge casing that you
4 examined, can you?

5 A No, sir

6 Q Okay Why is that?

7 A Well, the process of loading a cartridge
8 or putting a bullet, fitting a bullet, into a
9 cartridge case when that cartridge is manufactured
10 leaves heavy marks on the outside of the bullet.
11 And when the bullet is fired out of the barrel,
12 those marks are marked over or replaced by the lands
13 and groove marks, which pretty much eliminate the
14 likelihood of being able to identify a fired bullet
15 to a fired cartridge case

16 And besides that, the tooling that is used
17 to do the loading doesn't change as rapidly as that
18 that is used for rifling So the markings, you may
19 have fired cartridge cases from a totally different
20 area that are in that same batch. But you couldn't
21 match fired cartridge cases from another place that
22 was simply loaded at or near the same time and by
23 the same manufacturing facility

24 Q Okay. Ira, are you familiar with
25 different types of handguns?

1 A Yes, sir, I am

2 Q And were you asked to examine any casings
3 submitted in this case --

4 A Yes, sir

5 Q You were?

6 A I was

7 Q I'll hand you what's marked State's
8 Exhibit Forty-Nine and ask you if you can identify
9 that

10 A I recognize the packaging, the initials,
11 and the markings as being the ones that I put on
12 State's Exhibit Number Forty-Nine, also, the smaller
13 package, State's Exhibit Fifty

14 Q This would be State's Exhibit Forty-Nine
15 that you put the marking on the outside of

16 A Okay

17 Q This is Exhibit Forty-Nine I'm opening
18 further

19 A Contained in State's Exhibit Fifty, in a
20 smaller envelope, are seven fired 9-millimeter
21 Luger caliber cartridge cases which each bear my
22 case number, specimen number, and initials And I
23 have examined these items also

24 Q And what were you examining those items
25 for?

1 A First of all, to determine whether or not
2 they were all fired in one firearm -- and as a
3 result of microscopic comparisons, I was able to
4 determine that they were all fired in one firearm

5 And then to compare to any other firearms
6 that might have been submitted in connection with
7 this case, I did examine one firearm and determined
8 that it was not associated with these fired
9 cartridge cases here

10 Q All right And those cartridge casings
11 came from what type of weapon?

12 A They came from a 9-millimeter firearm
13 By examining the markings that were left on them, it
14 was most likely a semiautomatic firearm of some
15 description It would be my opinion it would be
16 probably a semiautomatic pistol

17 Q Tell me about the types of pistols that
18 would fire bullets like that

19 A The list is very long, and the physical
20 descriptions are from one end of the spectrum to the
21 other They could be very small, very large, high-
22 capacity with a big magazine, small-capacity with a
23 small magazine Any number of firearms are capable
24 of firing 9-millimeter Luger caliber ammunition

25 Q Now, you said that those came from the

1 same weapon How could you determine that?

2 A In explaining the 7 62-by-39 rifle, I
3 indicated that one of the five areas of comparison
4 is the breech face And the breech face is the area
5 around -- through which the firing pin protrudes
6 when the trigger is pulled

7 The firing pin actually is spring-loaded,
8 and it shoots out from a little hole in the center
9 of the bolt face The area where that firing pin
10 protrudes is called the breech face

11 And if any of you have ever fired a
12 firearm, you know that there is certain recoil
13 associated with firing a weapon When you pull the
14 trigger, the firing pin goes forward, strikes the
15 primer, which ignites the powder, which shoots the
16 bullet out of the barrel

17 Well, when that bullet is fired forward,
18 the inertia required to get it started gives some
19 recoil, a little kick, push backward When that
20 happens, the cartridge case is actually impressed by
21 the face of the bolt, the area around the firing
22 pin

23 And the signature is called the breech
24 face markings, because it picks up the imperfections
25 that are there by manufacture and holds them

1 Generally, on a semiautomatic firearm in 9-
2 millimeter caliber, the cartridge case is extracted
3 and ejected or thrown away from the gun and a fresh
4 cartridge is fed in

5 So these cartridge cases really have no
6 other activity or any other forces other than the
7 firing that act on them so that the signature of the
8 breech face is one of the five areas of
9 identification that we utilize

10 Q How do you tell whether it's a Luger, or
11 Remington, or Winchester?

12 A Well, there are certain characteristics
13 that we see after examining thousands and thousands
14 of firearms that are common to various brands of
15 firearms And it's simply an associative process
16 where, you know, if I see the same type signature on
17 50 guns, then I can kind of tell you that it looks
18 like it was fired in that type of gun as opposed to
19 something -- another weapon that has a totally
20 different behavior

21 Q All right Are you saying that it was
22 fired from a Luger --

23 A No, sir

24 Q -- or it's the brand of ammunition?

25 A That's the caliber of the ammunition

1 Q Okay The brand of the ammunition is who
2 made it The caliber is the style or the type of
3 gun that it was designed to be fired in Nine-
4 millimeter Luger is the same as nine-millimeter
5 Parabellum, which is a military cartridge It's a
6 9-millimeter diameter bullet

7 And the rest of it has to do with the
8 cartridge case length There are any other number
9 of 9-millimeter caliber cartridges, but only one
10 9-millimeter Luger caliber I'm not saying a Luger
11 fired it necessarily, but that's just the caliber of
12 the firearm, like a 308 Winchester or a 375 Holland
13 and Holland It's a designation of caliber only

14 Q All right But those types of casings
15 that were submitted to you were all, in your
16 opinion, fired from the same weapon?

17 A That's correct, all fired in one gun

18 Q Could any one of the items you examined
19 have been fired by a 380-caliber handgun?

20 A No, sir

21 Q Answer any questions the defense has for
22 you

23 THE COURT Ladies and gentlemen, let's stand
24 for just a moment before Mr Gipson comes

25 Cross-examination?

1 MR GIPSON Thank you, Your Honor

2 CROSS-EXAMINATION

3 BY MR GIPSON.

4 Q Mr Parnell, you mentioned that as you
5 actually analyzed the cartridge shells, bullets,
6 things of that nature, you actually put a report
7 together as well, correct?

8 A Yes, sir

9 Q And you wrote the report so that you could
10 make sure that you memorialized it and that you put
11 down your impressions of what you saw as you
12 analyzed those things, correct?

13 A Well, the report is actually to convey
14 information to folks such as yourself and the
15 Sheriff's Department, the Solicitor's Office --

16 Q Yes, sir

17 A -- to know and -- how did you put it,
18 memorialize? -- to keep, you know, what the results
19 of my report were. And the notes I took are
20 summarized, I guess is a good way, on the report
21 But, yes, I did write the report

22 Q And one of the interesting things about
23 your position with the South Carolina Law
24 Enforcement Division is you just look at the
25 information, and you analyze it, and you put it

1 there It's not for one side or the other You
2 just explain what you find

3 A Exactly I just deal with the facts as
4 best I can

5 Q Yes, sir And you don't come in as an
6 advocate for the Solicitor's Office or an advocate
7 for the defense, do you?

8 A No, sir, I like to think of myself as a
9 friend of the Court, just somebody to convey
10 information

11 Q Yes, sir And as you conveyed information
12 in this case, one of the things you've been clear
13 about, I believe, in your direct is that when you
14 talk about the rifle that you brought into this
15 court as demonstrative evidence, that, of course, is
16 not the rifle that was used in this case, correct?

17 A That is correct That is not the gun that
18 is involved in this case at all

19 Q And you mentioned that the type of rifle
20 that was fired, that the bullets and their casings
21 that we've talked about here, the type of rifle that
22 could do those things could be the one that you
23 brought, which I think you said was a Rinko?

24 A Yes, sir

25 Q Okay But it's not limited to a B-West,

1 is that correct?

2 A That's correct

3 Q And what's a B-West?

4 A It's another rifle or semiautomatic rifle
5 that fires that 7 62-by-39 cartridge And it may
6 look in one of its physical manifestations like the
7 rifle that I brought, or it may look different in a
8 different length, different length of stock,
9 different length of barrel But the common
10 denominator is, is the rifling pattern inside the
11 barrel is the same size in the four brands that I
12 indicated in the report

13 Q Yes, sir

14 A And they all fire 7 62-by-39, but their
15 physical appearance may be different

16 Q And you mentioned the physical appearance
17 being different Now, you said longer or shorter

18 A Yes, sir

19 Q How much shorter?

20 A Unaltered -- in other words, not sawed off
21 or changed in any way -- I have seen rifles or
22 semiautomatic rifles firing 7.62-by-39 that were
23 probably 30 inches They may be even shorter Some
24 of them have a collapsible or a folding stock, but
25 the action in the cartridge is the same as is the

1 rifling pattern

2 Q And when you say 30 inches, less than
3 three feet?

4 A Yes, sir

5 Q Essentially, two and a half feet?

6 A Yes, sir

7 Q So the demonstrative -- the rifle that you
8 brought for demonstrative purposes, about how long
9 is that?

10 A It's probably closer to 40 or 45 inches

11 Q Okay

12 A It's a rifle, actually a rifle, what you'd
13 think of your mind when you say "rifle "

14 Q Yes, sir And it could be as short as,
15 you say, again, 30 inches or so?

16 A Yes, sir

17 Q Okay And, again, without having the
18 actual firearm that fired this, you cannot say
19 whether or not it was indeed one that could present
20 itself as 30 inches, could you?

21 A Absolutely not I have no idea of what
22 the physical description of the gun that fired them
23 looks like It could be anything that we've talked
24 about

25 Q Yes, sir Now, you mentioned also a

1 Chinese rifle and also an arsenal rifle?

2 A Absolutely They're simply different
3 manufacturing facilities for a very similar-looking
4 firearm They all have the semiautomatic style
5 action, and they fire the 7 62-by-39 cartridge with
6 four lands and grooves with a right twist in the
7 barrel

8 Q Yes, sir

9 A But they maybe look physically a little
10 different

11 Q All right And each of them makes a
12 firearm that could be 30 inches up to 45, maybe
13 longer?

14 A Yes, sir There are any number of kits
15 that are available to change the appearance of your
16 7 62-by-39 rifle.

17 Q And you mentioned something that was
18 interesting You said sometimes people actually saw
19 barrels off of these things?

20 A Normally, the barrel is left the same
21 length They will saw the stock off The barrel is
22 dependent on the gas operation of the firearm

23 Q Yes, sir

24 A If you cut the gas tube and you decrease
25 the length that the gas has to act on the bolt -- I

1 know it's technical, but if you cut the barrel off,
2 it may not fire right So most of the time, the
3 stock is what's removed, if anything is done to
4 shorten it

5 Q And if you could step down, could you show
6 us where the stock is? Someone may not be as
7 familiar with a firearm Thank you

8 A The stock portion is normally held against
9 the shoulder This is a butt stock, shoulder stock
10 And sometimes they cut them off here simply for
11 easier concealability or maneuverability

12 Q And let me ask you this As we talked
13 about the rifle that you said is approximately 30
14 inches or so, if that stock was sawed off at the
15 top?

16 A Right, normally, it's already at its
17 shortest at about 30 inches

18 Q Okay

19 A You could cut the barrel of this firearm
20 off, but the amount of barrel that is required to
21 produce the amount of gas that comes back through
22 the gas-operated system has been calculated quite
23 carefully That's why I said if you cut this off,
24 it may not operate properly

25 Q Okay

1 A But normally that 30-inch is about the
2 shortest that I can recall having examined or seen

3 Q Yes, sir Thank you

4 A Yes, sir

5 Q Now, you mentioned the magazine That's
6 what actually holds the actual bullets, is that
7 correct?

8 A Yes, the magazine is the storage facility
9 for the cartridges

10 Q And you mentioned that they can come in
11 sizes, but you said ten is standard?

12 A Ten is pretty well standard, which is what
13 this firearm here is showing, a ten-round magazine
14 It's barely protruding out of the bottom It comes
15 in a 20-round, 30-round, 40-round, and probably a
16 drum that will hold 50 or more

17 Q And you're not expressing an opinion as to
18 what the magazine in this particular case would have
19 been?

20 A No idea, no, sir

21 Q Okay, no idea Now, there was a question,
22 and I just want to make sure I could get some
23 clarification on that You said that -- I'm trying
24 to make sure I phrase it correctly I'm just trying
25 to make sure I understood what you said

1 You said that rifles normally are the
2 types of firearms that fire these bullets in
3 question, correct?

4 A Yes, sir, normally

5 Q Is there anything other than a rifle that
6 could fire that particular bullet?

7 A Thompson Center, which is a manufacturer
8 of firearms, I don't independently know that they
9 make a barrel that fires 7 60-by-39, but they very
10 well could And that would be the only handgun that
11 I would be familiar with It's usually a single
12 shot with a lever breakdown, normally associated
13 with hunting or target shooting with a fairly long
14 barrel --

15 Q Yes, sir

16 A -- a pretty good-sized firearm, and
17 it's, as I said, a single shot I'm not aware of any
18 other handguns that fire that particular cartridge

19 Q And for lack of a better analogy, you see
20 a long barrel almost like a Dirty Harry type gun, a
21 gun with long barrels?

22 A Right, but Dirty Harry had a Model 29 --

23 Q Yes, sir

24 A -- revolver This would be a single shot

25 Q Okay So you'd have to load individually

1 each shot?

2 A Each shot individually.

3 Q Okay Now, in terms of trajectory of the
4 actual flight of the bullet, you're not necessarily
5 -- you're not here to testify necessarily about the
6 trajectory You're explaining what optimal
7 conditions are necessary for a bullet to fly in a
8 straight pattern, correct?

9 A As looking at the photographs that the
10 Solicitor provided, just expressing the possibility
11 or the potential of what the trajectory might have
12 been

13 Q And did you actually physically go down
14 and take a look at the truck?

15 A No, sir, I did not

16 Q All right Would that be helpful in a
17 situation like this?

18 A It's always better to look at the actual
19 item However, a scale photograph in basically the
20 same condition in which it was found is almost as
21 good I'm not telling you that it was, you know,
22 ten degrees, twelve degrees. I'm not making a
23 really close analysis, because I can't do that

24 Q Yes, sir

25 A I'm just indicating that the damage that

1 was there was probably caused by fired bullets, and
2 they 'could penetrate that far And they weren't
3 greatly different in their point of entrance and,
4 you know, continuing trajectory That's all I'm
5 saying

6 Q Yes, sir And ultimately you cannot
7 express an opinion as to who fired these shots, can
8 you?

9 A No, sir

10 Q Only that the shots were fired and the
11 types of guns that could have fired the actual
12 shots?

13 A And one gun fired the three bullets

14 MR GIPSON That's all my questions

15 MR WEEKS Nothing further, Your Honor We'd
16 ask that Ira be excused

17 THE COURT All right, very well

18 MR. GIPSON Without objection

19 THE COURT. You may step down

20 MR PARNELL Thank you, Your Honor

21 THE COURT Yes, sir

22 MR WEEKS. It's going to be a little lengthy,
23 too, if you want to go ahead and --

24 THE COURT All right

25 All right, ladies and gentlemen, we'll

1 take a break at this time When you all come back,
2 I'd like for you all to let me know which of the
3 first 12 jurors you think should be the foreperson

4 (The jury left the
5 courtroom at 11:14 a m.)

6 THE COURT All right, we'll take about ten
7 minutes

8 (Court in recess)

9 THE COURT Thank you Please be seated Is
10 there anything before we bring the jury?

11 MR. WEEKS Exhibits 50, 51 and 52 are in, Your
12 Honor, without objection

13 MR GIPSON Nothing from the defense, Your
14 Honor

15 THE COURT: All right, let's bring the jury
16 (The jury returned to the
17 courtroom at 11 35 a m)

18 THE COURT All right, who is our foreperson?

19 MR TAEGAR Jury 129

20 THE COURT Juror number 129

21 MR TAEGAR Yes, sir

22 THE COURT All right, sir, you will be the
23 foreperson of the jury And as the foreperson of
24 the jury, your job will be to serve as a
25 spokesperson for the jury in any communication that

1 the jury might need to have with the Court; also to
2 preside over the jury deliberations

3 At the end of the case when the jury
4 deliberates, you will be the presider over the
5 deliberations And also your job will be to
6 complete the verdict form representing the unanimous
7 verdict of the jury, once the jury reaches a
8 unanimous verdict

9 Of course, as foreperson, you have no more
10 authority or vote as opposed to the other jurors,
11 which you are in charge of the jury Thank you for
12 accepting that responsibility

13 Okay, next witness

14 MR WEEKS Thank you, Your Honor The State
15 would call Joe Powell

16 CLERK OF COURT Please come forward and place
17 your left hand on the Bible and raise your right

18 (The witness was sworn)

19 CLERK OF COURT Please have a seat in the
20 witness box, state your full name for the Court, and
21 spell your last

22 MR POWELL Thank you

23 CLERK OF COURT Thank you

24 MR POWELL My name is Joseph D Powell -- P-

25 O-W-E-L-L

1 JOSEPH D POWELL, having first been
2 duly sworn, testified as follows

3 DIRECT EXAMINATION

4 BY MR WEEKS

5 Q Joe, where are you employed?

6 A I'm currently employed as a supervisor of
7 the Trace Evidence section at the South Carolina Law
8 Enforcement Division, commonly known as SLED

9 Q And how long have you been employed there,
10 Joe?

11 A Twenty-seven years

12 Q In what capacities have you worked for
13 SLED?

14 A I originally was hired on at SLED in
15 what's called the Chemistry Department Then within
16 the Chemistry Department was drug evidence, analysis
17 of it, as well as what's called trace evidence

18 After working there for approximately
19 seven years, the Trace Evidence Department was
20 separated out, and I went with the Trace Evidence
21 Department Within two years after that, I became
22 supervisor of the department and have remained
23 supervisor ever since

24 Q And how long has that been -- ever since?

25 A Oh, that would have been, what the last 14

1 or 15 years

2 Q Okay Have you conducted analysis in
3 trace evidence during this time?

4 A Yes, sir I have received and continue to
5 receive even to this day evidence submitted to me
6 from various counties where they were sending
7 evidence that's involved with trace evidence That
8 may be either paint, fibers, explosives, gunshot
9 residue, distance determination from a shooting,
10 accelerants, and other types of trace evidence
11 analysis

12 Q Tell me what your educational background
13 before coming to SLED was

14 A I originally received my Bachelor of
15 Science degree in chemistry from the University of
16 Southern Mississippi Along with my degree in
17 chemistry, I've attended numerous courses around the
18 country involving trace evidence, specifically
19 towards instrumentation and methodology

20 And recently in my career, I've been
21 allowed to be a teacher in various symposiums,
22 various scientific meetings, where I instruct others
23 on the use of these instruments, the technology and
24 techniques

25 Q And what type of instruments do you

1 typically use in making and rendering opinions
2 regarding trace evidence?

3 A We use a large array of instrumentation,
4 which are basically instruments which are used to
5 measure They look at various components of
6 materials. For example, a scanning electron
7 microscope allows us to take a sample and be able to
8 magnify it to high magnification and look at very,
9 very subtle details

10 Also, we can determine what it's made of,
11 what is the chemical makeup of it We also use
12 instruments that will tell us elemental composition,
13 how things are bonded together We have about 13
14 different scientific tools that we use to be able to
15 make our determinations

16 Q Joe, were you submitted various samples in
17 this case to make a determination?

18 A Yes, sir, I was

19 Q And what type samples were you submitted
20 in this case?

21 A In this case, I was submitted several
22 types of samples to look at The ones of primary
23 interest were what is called gunshot residue
24 samplers, which are nothing more than a flattened
25 piece of aluminum which has a sticky adhesive on it

1 We use it to be able to pick up any type
2 of gunshot residue that may have been deposited on
3 someone's hands. As I'm kind of demonstrating on
4 the back of my hand, there'll be like a cloud of
5 material coming out of the weapon, will deposit
6 itself either on the hands, clothing, or on the
7 face.

8 And these sticky lifters can pick this
9 smoke or these particles up They can also be used
10 on such things as lining of automobiles or other
11 inanimate objects to pick up any debris or material
12 that may be there also

13 MR WEEKS Your Honor, I would move
14 at this time to allow Investigator Powell to testify
15 as an expert in the trace evidence field

16 THE COURT. What says the defense?

17 MR GIPSON Without objection, Your
18 Honor.

19 THE COURT: He is admitted without
20 objection.

21 Q Joe, can you tell me, were you able to
22 render any opinion with regard to the evidence
23 submitted to you as to whether it contained gunshot
24 residue?

25 A Yes, sir I had several items that were

1 submitted to me over several periods of time which I
2 analyzed, and some of them did have gunshot residue
3 on them

4 Q Okay Now, you're going to have to give
5 me and this jury a primer course in, what does
6 gunshot residue come from?

7 A Yes, sir When you discharge a weapon,
8 you pull the trigger The hammer will release and
9 strike the back of a cartridge case In that
10 cartridge case, it could either be what's called a
11 rim fire, which means that the trigger will strike
12 the edge of it, causing a chemical inside to self-
13 ignite

14 They're shock-sensitive, if you will
15 This material, which is commonly known as gun
16 primer, will then ignite the gunpowder, and the
17 combination will cause the bullet to separate or the
18 cartridge separate into the bullet and the spent
19 cartridge case

20 The bullet goes towards its target The
21 cartridge case is either expelled or retained by the
22 weapon The smoke that comes out of that weapon --
23 and the smoke is going to be a mixture of both the
24 primer residue as well as vaporized lead coming off
25 of the bullet as it's passing down the barrel --

1 will come out of this weapon and will deposit itself
2 on anything that is near -- as I described earlier,
3 your hands, face, clothing, any object you may be
4 around

5 If I discharge a weapon inside of this
6 wooden structure, there would be material on the
7 surface of it So this material will come out
8 It's just the smoke that you would see coming out of
9 a weapon

10 This is true for both a rim fire as well
11 as a center fire. The only difference between a rim
12 fire and a center fire is that a center fire has a
13 small container of this primer in the very middle of
14 the cartridge case so that the hammer will strike
15 the middle portion But the reaction and the
16 results are the same

17 Q An example of a rim fire would be a 22
18 bullet?

19 A Yes, sir The majority of rim fires are
20 going to be a small-caliber weapon The majority of
21 the center fires are going to be from 25s all the
22 way up to the large-caliber weapons

23 Q Okay Now, how long will this type of
24 material stay on a human?

25 A Well, it depends. If you are alive, once

1 this smoke gets on you, the material will be
2 retained until it has been, if you will, removed
3 either by (a) heart action

4 If your heart is beating, it's constantly
5 pumping blood around, and you have a small amount of
6 sweat or perspiration which will come out of the
7 pores of your hands that will tend to dissolve or
8 remove this material

9 We have found for someone who is alive six
10 hours is a maximum window that you can expect to
11 retain this material However, if you're looking at
12 clothing, there is no loss from perspiration

13 You have to have somebody to physically
14 launder the garment so it can be removed So
15 inanimate material on a person such as a garment
16 will remain until washed; on hands, up to six hours

17 If someone is deceased, the heart is not
18 pumping Someone else would have to physically
19 remove the material It can be retained for several
20 days on a deceased person until decompensation will
21 occur, because there's nothing to remove the
22 material

23 Q If I shoot a gun today and I go about my
24 business for a couple of days, am I going to have
25 gunshot residue on my hands from shooting?

1 A No, sir And after six hours, the
2 material will be gone And if you happen to go and
3 wash your hands after discharging a weapon, the
4 material is gone immediately after that So six
5 hours if you do nothing to remove it Washing your
6 hands, it's gone

7 Q Now, what type of samples were you
8 submitted in this case, Joe?

9 A I was submitted -- several gunshot residue
10 kits were submitted to our laboratory One kit was
11 on a Joseph Brewer, and we also have a set of
12 samples that was submitted from a passenger side
13 rear headliner There was also other samples
14 submitted from other areas of the automobile also

15 Q Were you able to determine that Joe Brewer
16 had some type of gunshot residue on him?

17 A Yes, sir On his hands, I did find some
18 of the components that are found in gunshot residue

19 Q Okay And you mentioned something about
20 the vapor coming out of the barrel when you were
21 describing how gunshot residue can be transmitted
22 Where does that -- where can that go?

23 A Well, the residue, the material, can be
24 projected out of a weapon if someone fires it up to
25 maybe six feet or so for a pistol A rifle may be a

1 little bit further

2 A shotgun can project it up to 15 to 20
3 feet, because it's just so much more energy So it
4 could push it way out But then once the initial
5 vapor has disappeared, the bullet will travel on

6 If it strikes a hard object, it can then
7 revaporize some more material, and you can actually
8 get some gunshot residue deposited right where it
9 strikes The bullet has to strike a hard object and
10 become -- and break apart for this phenomena to
11 occur

12 Q The bullet has to break apart?

13 A Yes, sir If it is an encased bullet with
14 copper, the copper has got to actually have
15 shattered or broken so that you can begin to have
16 the lead inside begin to vaporize

17 Q And specifically what did you find on Joe
18 Brewer? Was it lead particles?

19 A Yes, sir The principal component that I
20 found was lead particles I compared this to a
21 sampling that was taken from the bullet casing
22 itself, and I found that it was very similar

23 It is my opinion that the material that
24 was found on him is not from him firing a weapon as
25 much as it could be in the proximity of a bullet

1 that is actually fragmented or tearing apart. He
2 became contaminated by being shot at

3 Q And that's based on what, Joe?

4 A That's just based upon looking at what I
5 found from the cartridge case when it was vaporized
6 and comparing with what I found on his hands I
7 cannot rule out that he did not fire a weapon But
8 it's most consistent with a bullet fragmenting and
9 contaminating his hands

10 Q And when you say the bullet fragmenting,
11 you mean the jacket coming loose from the core?

12 A That is correct The inside of a bullet,
13 we call it the core And it's usually lead that's
14 used to fill up the void around the copper.

15 When the jacket begins to peel off, the
16 lead, which is very soft, upon impact will vaporize
17 because of the energy or the heat that's produced
18 And so this what happened The core will begin to
19 vaporize and can contaminate someone

20 Q Now, you indicated you received some
21 samples from a passenger compartment in the vehicle?

22 A Yes, sir

23 Q What do those samples contain?

24 A There were several samplings in the
25 automobile that was taken The sample that was

1 taken from the passenger side right rear headrest,
2 the driver's side rear seat headliner, and driver's
3 side rear seat headrest was negative

4 I found no gunshot residue on any of those
5 three areas The area in the passenger side rear
6 headliner, I found lead particles there. This is,
7 again, consistent with gunshot residue

8 This material could have been deposited by
9 someone discharging a weapon near the liner of the
10 automobile, causing it to be contaminated with
11 gunshot residue

12 Q And you were submitted those items
13 sometime after August 27, 2005, weren't you?

14 A Yes, sir

15 Q The items from the car, when were you
16 submitted those? Do you have a note to that effect?

17 A One moment The items from the car looks
18 like were submitted on December 19, 2006

19 Q And those items were analyzed when?

20 A They were analyzed in March of 2007

21 Q Now, if they were submitted from the
22 interior of a car, what would be necessary for that
23 sample to be preserved?

24 A Really nothing The material, once it
25 gets into like a lining, which is cloth, the

1 material is retained until someone takes it and
2 actually cleans the lining of their car, meaning
3 they wash it down or do something

4 That's not an area that's normally
5 cleaned So the time when the weapon was discharged
6 I cannot tell you I just know there was a weapon
7 discharged at some point in the life of that lining.
8 And unless someone has cleaned it or done something
9 to remove it, it will be retained

10 Q When you say "the life," it could be there
11 for a year?

12 A Yes, sir, no problem

13 Q Or longer?

14 A Or longer

15 Q Joe, the components of the -- or the lead
16 vaporizing as you described by hitting a hard
17 object, could that have been metal?

18 A Yes, sir It takes something that has a
19 very rigid form -- concrete, metal, something where
20 it doesn't absorb the bullet, but the bullet begins
21 to disintegrate or break apart on impact

22 Q If the bullet went through the bed of a
23 truck and the victim got hit by it or was in that
24 pattern of the bullet, was in the vicinity of that
25 bullet, would they have it on them?

1 A Yes, sir It would require the bullet to
2 begin to break up, which would mean when the bullet
3 struck something, it began to tear apart Then the
4 lead core, now being free from the copper jacket,
5 the next object it strikes, if it's hard enough,
6 will just vaporize It'll make a small cloud of
7 lead particles

8 Q I'll hand you what's been marked State's
9 Exhibit Number Thirty-Four Is that what you're
10 referring to as to the core?

11 A Yes, sir What's listed as State's
12 Exhibit Thirty-Four depicts a shell casing separated
13 from the lead core And this would be exactly what
14 I'm describing, is that the lead core itself has
15 come loose from the cover

16 And you can tell that the lead core has
17 also struck something It has a flat surface to it
18 So it has actually impacted something after losing
19 its jacket

20 Q Okay How about if the lead core is
21 remaining inside of a person?

22 A If the lead core is remaining inside of a
23 person, then that bullet would have been absorbed by
24 the body And unless the core had separated before
25 the jacket went in, no, sir, it still would be

1 retained inside the body

2 Q Let's say the jacket to the bullet was
3 recovered, but the lead is still in there That
4 would mean it separated at some point, wouldn't it?

5 A It did separate. It would require that
6 the lead core would need to have struck something
7 hard enough to cause the vaporization Striking a
8 body will not do it It would have to strike
9 something before it reached the body

10 Q Joe, is there a difference between the way
11 the lead particles would look from a core that had
12 been impacted as opposed to one that -- as opposed
13 to lead particles that are coming out the magazine
14 of the gun or out the receiver of the gun?

15 A There would be no difference as far as
16 their shape However, there is a difference that
17 has been found sometimes with chemistry The lead
18 core is going to be made up of a certain amount of
19 other materials that we can look at

20 In this case, I found other materials in
21 the lead particles on his hand, which would lead me
22 to believe that it's consistent with core because
23 those same chemicals were found in the core

24 That's not necessarily true from someone
25 just shooting a weapon The chemicals are

1 different, and we don't necessarily get the same
2 chemistry

3 Q Chemicals that are in the gunpowder versus
4 the chemicals that are in the lead --

5 A Well, the --

6 Q -- or chemicals that are in the primer --

7 A The primer, yes, sir

8 Q -- versus the chemicals that are in the
9 lead in the bullet are different?

10 A Yes, sir Every batch of bullet that is
11 made has some difference chemically As you begin
12 to shoot bullets, they begin to build up fouling
13 inside of a weapon

14 So the material that comes out of that
15 weapon will have all this material mixed in
16 together Whereas if you strike an object, the core
17 itself does not have all this fouling on it So it
18 has its own original composition So that's where
19 the difference comes in, I think

20 Q Okay Answer any questions the defense
21 has

22 CROSS-EXAMINATION

23 BY MR GIPSON

24 Q Good morning, Mr Powell

25 A Good day, sir.

1 Q Now, a lot of the analysis that you just
2 mentioned in terms of how the bullet breaks apart
3 and then you recover residue from those actual
4 bullets, you said if the casing was copper, correct?

5 A Yes, sir The casing in general is
6 usually copper In this case, it is copper

7 Q Okay And in situations if it's not
8 copper, do you expect different things to happen?

9 A It depends upon what the material may be
10 The more the bullet stays together, the less that
11 you can be able to have any type of contribution
12 from the bullet core obviously, because the casing
13 is designed to keep the core contained. It's
14 designed to keep it from coming out

15 So if you have a different material --
16 let's say that it was iron -- well, that's going to
17 be harder material It may not bend upon striking,
18 and it keep everything intact

19 Q You said in this case it was actually
20 copper?

21 A It's copper, yes, sir

22 Q And you have tested the bullets in the
23 case Do you have that information with you, or was
24 that transferred to --

25 A Well, the bullets and casings as far as

1 testing for ballistics or testing elementally?

2 Q Both.

3 A Well, if it's looking for lands and
4 grooves, that would be handled by the Firearms
5 Department

6 Q Yes, sir.

7 A All the testing I did was based upon
8 chemistry, looking at the elemental composition of
9 it

10 Q Okay So you have not actually looked at
11 the bullet You just looked at the composition?
12 Did you take a slide?

13 A Didn't have to take a slide I just put
14 the components that I had, took a -- ran an analysis
15 of it, and then sent it on to the other department
16 for them to continue doing their work with it

17 Q So when you take an analysis, you kind of
18 slide it, or how do you collect it?

19 A You take it just like it is The
20 instrument that I use, I put it into a chamber All
21 I have to do is get it lined up I can gather my
22 information where I've taken any sample from it, and
23 then pass it on to that department There's no
24 damage done to the actual component

25 Q So you actually had the core?

1 A I had a core

2 Q A core?

3 A Yes

4 Q Okay And you tested from one core or
5 more than one core?

6 A I just looked at it from the point of view
7 of what was its elemental composition, because the
8 question was posed to me after I initially had ran
9 my test, what -- the person's hands had residue on
10 it How did it get there? And my initial
11 conclusion was that the person had discharged a
12 weapon, because that's the normal way that you get
13 this material

14 It was brought to my attention that that
15 was a problem and that there was no weapon
16 recovered And they wanted me to see was there any
17 other viable options it could be And that's what
18 led me to look from the point of view of the bullet
19 core

20 Q Okay Let me ask you this, then You
21 said that they said that was a problem?

22 A Well, the wording was "my problem,"
23 meaning that when a person is discharging a weapon
24 and they're still at the scene, the weapon should
25 remain with the person

1 Q Yes, sir

2 A If the weapon is missing, it's a problem,
3 meaning that it's an unexplained event, and it had
4 to be explained

5 Q And you can't compare it -- you don't have
6 a known weapon to compare what you found to If the
7 -- the weapon that's mentioned, you can't compare
8 the weapon until it's found

9 A I think, if I understand your question
10 correctly, could I be able to compare the quantities
11 produced by that weapon --

12 Q To what you found on the person, correct

13 A -- on the hands There's not a way -- we
14 tried to do that in the best, but it really doesn't
15 work very well

16 Q Okay

17 A Having the weapon or not having the weapon
18 would not have yielded any more information as far
19 as the quantities It doesn't work very well in
20 that sense

21 If there was a weapon, it would be much
22 more consistent with him having fired a weapon than
23 necessarily the breakup of a bullet, because it
24 takes several events to occur for this bullet core
25 to begin to break up

1 Q All right So essentially it's a harder
2 process for a bullet to break and for gunshot
3 residue to get on a person, correct?

4 A Yes

5 Q It's a more difficult process?

6 A Shooting a weapon is very easy.

7 Q Right

8 A It's very straightforward You pull the
9 trigger, it happens. The bullet breaking up
10 requires the bullet must be broken up, the covering
11 must come loose from it These are events that must
12 occur, and it requires certain things to be in the
13 way of that bullet for those things to happen

14 Q So the simplest explanation when you find
15 gunshot residue is the person fired a weapon?

16 A Yes, sir

17 Q The more complex explanation is that it
18 traveled through something, and because of the way
19 it was cased, it traveled through certain types of
20 objects, and then it finally hit something and
21 shattered, and the residue got on that So that's
22 the more complicated?

23 A That would be a much more complicated
24 scenario

25 Q Okay

1 A There is evidence in this case that a
2 bullet did break up, so that's consistent with this
3 more difficult scenario

4 Q All right So it could have happened, but
5 you can't put a percentage on it, can you?

6 A I cannot put a percentage on it It's my
7 opinion that I think that is what has happened in
8 the absence of a weapon

9 Q Okay And you were told there was the
10 absence of a weapon?

11 A I have -- my understanding is there's not
12 ever been a weapon recovered associated with the
13 victim

14 Q All right So your opinion based on what
15 you've been told is that it could have broken -- the
16 bullet could have broken -- and the residue could
17 have occurred in that particular way?

18 A Yes It has to definitely be considered
19 that this is the source of the material and not that
20 he has had to fire a weapon.

21 Q Okay But, again, you can't exclude
22 either one, can you?

23 A I cannot exclude it, because without other
24 factors that I would have to be able to exclude, I
25 can't

1 Q Now, you said you analyzed areas in the
2 car?

3 A Yes, sir There were samples that were
4 sent to me from various areas of the automobile

5 Q Okay Which automobile are we talking
6 about? Is that a Buick, or are we talking about a
7 truck?

8 A One moment It's listed on my report it
9 was just sent in as a gunshot residue kit from
10 suspect's vehicle And I'll need other information

11 Q So that would be what you were sent And
12 that was submitted to you in 2006?

13 A Yes, sir, that was submitted to me in
14 2006.

15 Q Why so late?

16 A I cannot answer that question I know
17 that it came in after the initial analysis I
18 performed, and then this was sent in to me at a
19 later time

20 Q The first analysis you performed was in
21 2005, correct?

22 A I believe so, or early 2006 One moment
23 Yes, I completed my first analysis in -- would have
24 been October of '05

25 Q Okay And then you did a second analysis

1 on a different vehicle some 12 months later?

2 A Yes, sir

3 Q Okay And what do you expect to happen to
4 residue when it sits that long inside -- you say
5 inside of a vehicle?

6 A If it's not exposed to action to remove,
7 such as rainwater -- what I mean by that is it has
8 to be something agitated to remove, such as what
9 you'd have to do to wash out clothing -- it's going
10 to be retained It's not going to go away. It's
11 going to stay there

12 Q And, in fact, you said since it was some
13 type of fabric, you'd expect it to stay in the
14 fabric if it's not disturbed by washing or anything
15 like that?

16 A Yes The surface characteristics helps in
17 retention If you have dust on a smooth surface,
18 you can take your hand and wipe it off

19 Q Yes, sir

20 A If you have dust captured within fiber,
21 you have to physically wash it to remove it You
22 can't just wipe your hands over it

23 Q And where was this residue found in the
24 vehicle?

25 A It was listed as coming from the passenger

1 side rear headliner That was how it was labeled

2 Q The passenger So the rear passenger?

3 A Yes, sir -- the passenger side rear
4 headliner. So the headliner would be the liner
5 which is above the person --

6 Q So the upholstery?

7 A Yes, the top, the headliner

8 Q Okay. I'm just trying to make sure we're
9 talking about the same You said headliner You're
10 not talking about the headrest?

11 A No, sir Now, there was some samples
12 taken from the headrest, but they were negative
13 This was coming from the headliner, is how it's
14 listed

15 Q So essentially you have the roof of the
16 vehicle, and the lining above that is the headliner?

17 A Yes, sir There's going to be some type
18 of sound material that's put up there to prevent
19 sound, and then there will be a cloth or other type
20 of material over that, and that's what we're
21 describing.

22 Q So that cloth up top?

23 A Yes, sir

24 Q Okay

25 MR GIPSON That's all my questions, Your

1 Honor

2 MR WEEKS Nothing from this witness, Your
3 Honor

4 THE COURT All right, thank you, sir

5 MR WEEKS Your Honor, if he may be excused

6 MR GIPSON No objection, Your Honor

7 THE COURT Yes, sir

8 MR POWELL Thank you, sir

9 THE COURT All right If you'll call your
10 next witness, Solicitor

11 MR WEEKS I call Dr Joel Sexton, Your Honor

12 THE COURT All right

13 (The witness was sworn)

14 CLERK OF COURT Please have a seat in the
15 witness box, state your full name for the Court, and
16 spell your last

17 DR SEXTON· Dr Joel Steven Sexton That's S-
18 E-X-T-O-N

19 JOEL STEVEN SEXTON, M D , having
20 first been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR WEEKS

23 Q Dr. Sexton, where are you employed?

24 A In Newberry, South Carolina. I have a
25 private practice, and we also contract with the

1 Newberry County Hospital

2 Q Okay What has been your role in forensic
3 pathology over the last -- let's just say the last
4 25 years?

5 A It's been 35 But I first trained in
6 Charleston at the Medical University and then taught
7 on their faculty from 1968 until 1983 From '73
8 through '83, I was the Charleston County Medical
9 Examiner, which is the medical equivalent of a
10 coroner

11 And so my office examined all the persons
12 that died suddenly or violent deaths and autopsied
13 some We were also a consultant service for the
14 whole state So we did about 650 autopsies for the
15 State, including 125 for the county I went to
16 scenes in the county as well as all over the state

17 In '83, I moved to Newberry to be the
18 director of the Pathology Department there at the
19 Newberry County Hospital and to do surgical
20 practice We also do about -- or do consulting work
21 for about 25 of the 46 county coroners here in the
22 upper part of the state

23 Q All right. Could you give me your
24 educational background?

25 A I graduated from University of Virginia,

1 served three years in the Navy as a line officer,
2 because I was on a Navy scholarship I attended the
3 Medical College of South Carolina, where I received
4 a master's in chemistry from the analytical
5 chemistry department there at the Medical University
6 -- or Medical College

7 It then became the University as I
8 attended med school and graduated in 1968 with an
9 M.D degree and became licensed in the state In
10 1972, after I finished the four years of residency
11 training, I became nationally board-certified in
12 anatomic pathology, clinical pathology, and forensic
13 pathology

14 Q Explain to me what forensic pathology
15 involves

16 A Basically, a pathologist is a physician
17 who takes additional training in the area of
18 recognizing disease and illness by examining tissue
19 or bodies So a pathologist is a person that does
20 autopsies on persons dying in a hospital setting at
21 the request of the doctor and with permission of the
22 family to learn more about that disease or illness

23 A pathologist also supervises the
24 laboratory where various tests are done on blood,
25 and urine, and spinal fluid to help understand

1 whether a person has an illness or disease and
2 whether they're getting better or worse

3 And we supervise that lab to make sure the
4 results are accurate and consult with the physicians
5 to help them interpret the results from the
6 laboratory We also examine tissue removed at
7 surgery to make sure that tissue doesn't have
8 cancer, or if it does, what type of cancer and to
9 what extent the cancer has spread

10 The pathologist who takes additional
11 training in forensic pathology has that background
12 that I just mentioned, but they also understand how
13 to recognize different types of injuries from
14 looking at the body, how to examine bodies at scenes
15 to learn facts about the circumstances of how the
16 death occurred or to examine photographs from the
17 scene and histories from the scene, as well as learn
18 some information about toxicology so as to
19 understand the effects of drugs and chemicals on the
20 body

21 Q Doctor, in your capacities that you've
22 just testified to, have you conducted autopsies and
23 rendered opinions?

24 A Yes, I have

25 Q Do you have any kind of estimate as to how

1 many autopsies you've performed over your career?

2 A Personally, over 10,000, plus I supervise
3 probably a like number as the head of the department
4 there at Charleston, the forensic section, in the
5 last 24 years in Newberry

6 Q And any estimate as to the number of times
7 you've been qualified as an expert in Circuit Courts
8 of this state?

9 A Over 700 times

10 MR WEEKS Your Honor, I move to
11 qualify Dr Sexton as an expert witness in the field
12 of forensic pathology

13 MR GIPSON. Without objection, Your
14 Honor

15 THE COURT He's admitted without
16 objection

17 Q Dr. Sexton, were you asked to perform an
18 autopsy and render an opinion on a lady by the name
19 of Debra Dorch?

20 A Yes, we examined her She came to us on
21 the 27th of August of 2005

22 Q Did you perform an autopsy and reach any
23 conclusions as to the cause and manner of her death?

24 A Yes, we did

25 Q Could you state what that opinion was?

1 A The only injuries she had were two gunshot
2 wounds Both entered the back One entered the
3 right side just above the waist and came a little
4 bit from her right, because it entered just behind
5 the -- if you hang your arms to your side, the
6 middle of that arm is called an axillary line

7 The posterior axillary line is where the
8 back of your arm would be And it entered in the
9 posterior axillary line and came forward and came
10 around to the front just in the soft tissue, without
11 entering the abdomen

12 The other entered on the left side, a
13 little bit higher, about the middle of the back on
14 the left side, where I'm pointing here down fairly
15 low And it passed upward, ending up with part of
16 the projectile here, just under the skin on the
17 front of the chest

18 It passed through the spleen, the stomach,
19 the diaphragm, the left lung, and the heart, causing
20 bleeding internally and externally The interesting
21 thing about both of these, they were high-powered
22 rifle wounds. The projectile is a very elongated
23 bullet that was about 30-caliber in diameter

24 And it separated into a jacket, which is
25 the copper portion, the thin copper shield around

1 the lead The lead separated from the jacket and
2 entered separately, because it had gone through what
3 was behind her, which was the seat of the truck she
4 was driving and the bed of the truck that she was
5 driving, a pickup truck

6 So it went through the metal bed and went
7 through the back of the vehicle, went through the
8 seat, and partially separated before it entered her
9 body The one on the right side, as I mentioned, is
10 superficial and did not cause any significant
11 bleeding But the one that went through the various
12 organs caused significant bleeding and was the cause
13 of death

14 Q Do you have any idea as to how long it
15 would have taken her to die from that wound?

16 A It tends to vary, depending on how readily
17 the various vessels that were struck tend to bleed
18 But usually it's only a matter of minutes before a
19 person will bleed out when the bullet goes through
20 the heart, as it did in this case

21 Plus, the lung also bleeds rather
22 profusely So I'd say it was a matter of minutes
23 before she would pass out and be in a stage where
24 she would not be salvageable, not be able to
25 resuscitate and bring her back to life

1 Q Doctor, how do you make the conclusion
2 that it was a high-powered rifle?

3 A Several reasons One is the fact that it
4 fragmented the way it did The other is the
5 projectile itself I do a lot of shooting. Since I
6 was in college, I shot competitively with rifle and
7 pistol and continued to do so in international
8 competition and coached several teams, junior teams
9 and a college team at The Citadel, that have gone to
10 the national level

11 And I continue shooting myself and have
12 still some records as a person at my age I've
13 outlived my competition or outlasted some of them
14 So I have some national records So I've been
15 around shooting for years And by looking at the
16 bullet itself, I could tell it was not a projectile
17 that would be in a pistol

18 It's a projectile that would be in a
19 rifle. And the diameter was such it was consistent
20 with a 30-caliber type of high-powered rifle, plus
21 the fact that it tended to fragment, which is what
22 rifle bullets tend to do because of the velocity

23 Q Dr Sexton, if I could ask you to step
24 down and look at some photographs for me Dr
25 Sexton, I'd like to ask you to come over here Do

1 you recognize the scene depicted in State's Exhibit
2 Forty-Eight?

3 A This is a diagram that I drew at the time
4 of autopsy showing the entrance wound here on the
5 lower part of the back

6 Q If you'd touch that on there pretty good,
7 I think it'll make a mark

8 A And the entrance wound just a little
9 higher up on the left side of the back And this
10 one on the lower right back I arbitrarily designated
11 as number two simply because it was a little lower
12 than the one I designated number one It has
13 nothing to do with the sequence in which they were
14 fired

15 The one on the lower right that I
16 designated number two, you can see it comes around
17 the side and ends up here in the front, just under
18 the skin. It would have just come from the right
19 and traveled just under the soft tissue without
20 entering the body cavity

21 The one that I designated number one --
22 and you see I've shown that it's got multiple little
23 fragments around it -- it's a round hole with little
24 tiny smaller holes It travels upward, with the
25 jacket ending up at this point, and the lead core,

1 which is heavier, higher up to the point I just
2 designated higher in the chest, where it was just
3 under the skin of the front of the chest.

4 Q Approximately where did that -- you said
5 it's just under the skin

6 A Just under the skin on the front of the
7 chest

8 Q Where you marked that?

9 A Right, where I put this red mark

10 Q Okay And the items that you recovered
11 from the body of Debra Dorch, State's Exhibits
12 Thirty-Four and Thirty-Five, do you recognize those
13 items? Stand right here and look at them, if you
14 would

15 A Yes, these are duplicates of the
16 photographs that I took of the bullets at the time I
17 recovered them

18 Q And State's Number Fifty, do you recognize
19 those items?

20 A This is the one we labeled bullet number
21 one, core and jacket It bears my mark. It matches
22 my photographs that I took from several sides of the
23 bullet

24 It's in a container that I have labeled
25 with my initials It is in a sealed Zip-Loc inside

1 of this other Zip-Loc -- I'm sorry, sealed plastic
2 container -- that has our designation on it

3 So this is the bullet that was the fatal
4 round that I recovered from Debra Dorch's chest that
5 had entered her left back This is the one that we
6 labeled number two, and it also bears my mark

7 It's in a container that has my initials
8 in it, and it's labeled as the one we labeled number
9 two on Debra Dorch It's in a sealed Zip-Loc inside
10 of this SLED bag that also has a label on it

11 It is the one that entered the back on the
12 lower right and was found here in the soft tissue in
13 the front of the back -- or front of the chest

14 Q Dr Sexton, you remove those items and
15 sent them for further testing as a general rule in a
16 homicide?

17 A That's correct They were turned over to
18 Melissa Peterson.

19 Q And the purpose of it is to go to
20 forensics, or go to trace, or go somewhere else?

21 A In the case of the bullets, it's for
22 ballistics people to examine it There's also
23 toxicology that would be examined for drugs or
24 chemicals And there's also blood that would be
25 used to DNA matters

1 Q And if you knew who the victim was and you
2 knew that it wasn't a drug overdose or something,
3 you wouldn't be sending it for that, would you?

4 A We send it in all cases

5 Q Okay Somebody will make a determination
6 thereafter?

7 A That's correct

8 Q Okay Now, describe what's contained in
9 the photograph you took at autopsy that's State's
10 Number One Are those items you recovered from --
11 are those items, what's depicted in -- not State's
12 Number One -- State's Number Thirty-Four that's
13 depicted on the screen?

14 A Yes As I mentioned earlier, the bullet
15 separated This portion that you see right here is
16 the core This portion you see right here is the
17 lead core, which obviously has more weight than the
18 hollow copper jacket.

19 But the jacket is there so that the lead
20 core doesn't go into the barrel and prevent the
21 lands and grooves from being affected They use a
22 lead core around it to prevent that. And this lead
23 or this copper jacket -- the copper jacket that I've
24 circled here -- does have visible lands and grooves
25 on it which is used for ballistic analysis to

1 compare with a firearm And so this is the jacket
2 and the core from the fatal bullet that I removed
3 from Debra Dorch

4 Q Thank you, Dr Sexton

5 A You're welcome

6 Q Dr Sexton, it's your opinion that Debra
7 Dorch died as a result of a homicide?

8 A First, our opinion is that she did die
9 from that particular gunshot wound to the back. As
10 far as homicide, there are four different ways we
11 classify the manner of death

12 One is a natural death from disease or
13 illness Two is a suicide where somebody kills
14 themselves in some manner. Three is accidental where
15 some act of God perhaps, such as lightning, or they
16 get in water and drown, we call that accidental

17 Homicide is at the hands of another
18 person It has nothing to do with intent, simply
19 the fact that someone else caused the death And
20 then lastly is undetermined where we don't have
21 enough information to determine by what means the
22 person died

23 We know a cause of death perhaps, such as
24 in this case a gunshot wound is the cause of death,
25 but we don't know by what means it occurs. So we

1 can't establish a manner, and we call it as
2 undetermined But this would be termed a homicide

3 Q Okay Answer any questions that Mr
4 Gipson has for you

5 CROSS-EXAMINATION

6 BY MR GIPSON

7 Q Just briefly, Dr Sexton, you performed
8 this autopsy just as you performed, like you said,
9 some 10,000 other autopsies in the past, correct?

10 A Yes, that's correct

11 Q And with the performing of this autopsy,
12 you collected the evidence that's been brought into
13 the courtroom and you've identified, correct?

14 A Yes, that's correct

15 Q And you cannot make a determination on who
16 fired these fatal shots, can you?

17 A That is correct I have no knowledge of
18 who fired these shots

19 Q All right And your knowledge is the fact
20 that there was a bullet -- two gunshot wounds -- and
21 one of those perforated -- and as a result of that,
22 Ms. Dorch passed away, is that correct?

23 A Yes, that's correct

24 MR GIPSON That's all my questions, Your

25 Honor

1 MR WEEKS Your Honor, that's all the
2 questions I have, and I ask that Dr Sexton be
3 excused

4 THE COURT All right Thank you, Doctor You
5 are excused

6 DR SEXTON Thank you, Your Honor

7 MR WEEKS Joe Leatherman

8 THE COURT Stand for a moment while we receive
9 the next witness

10 MR WEEKS Your Honor, the State would call
11 Joe Leatherman I know we're in a break

12 THE COURT All right We'll be seated now

13 CLERK OF COURT Place your left hand on the
14 Bible and raise your right

15 (The witness was sworn)

16 CLERK OF COURT Please have a seat in the
17 witness box, state your full name for the Court, and
18 spell your last

19 MR LEATHERMAN Joseph Michael Leatherman --
20 L-E-A-T-H-E-R-M-A-N

21 JOSEPH MICHAEL LEATHERMAN, having
22 first been duly sworn, testified as follows

23 DIRECT EXAMINATION

24 BY MR. WEEKS:

25 Q Joe, where are you employed?

1 A With the South Carolina Law Enforcement
2 Division, more commonly referred to as SLED.

3 Q And how long have you been employed there?

4 A I've been with SLED for about seven years

5 Q In what capacity are working for SLED?

6 A I'm currently assigned as the lieutenant
7 in charge of the Latent Print/Crime Scene section

8 Q And on August 27, 2005, were you employed
9 with SLED?

10 A Yes, sir, I was

11 Q In what capacity?

12 A I was the lieutenant in charge of the
13 Crime Scene/Latent Print section

14 Q Give me your background, Joe, as to your
15 education and work experience

16 A I graduated with the University of South
17 Carolina in 1986 with a bachelor's degree in
18 criminal justice, was employed in 1987 with the
19 Richland County Sheriff's Department in Columbia

20 I started out on the road, answering
21 calls, was promoted to the bloodhound tracking team,
22 and eventually promoted to the Sheriff's
23 Department's crime laboratory, working crime scenes
24 and latent prints for the Sheriff's Department

25 That was in 1991 My education at that

1 time, besides completing the Criminal Justice
2 Academy basic officer course, I attended the basic
3 latent fingerprint course put on by the Criminal
4 Justice Academy, law enforcement photography school
5 put on by the Criminal Justice Academy, advanced
6 latents put on by the Federal Bureau of
7 Investigation, a school they call ID tech, which
8 teaches you how to process actual fingerprints

9 From 1991 to 1996, I was, like I said, an
10 investigator in the lab at the Sheriff's Department
11 In 1996, I was promoted to sergeant at the Sheriff's
12 Department and actually ran the crime lab

13 I've completed -- besides the schools that
14 I've stated, I've completed blood pattern analysis
15 school, crime scene reconstruction school, footwear
16 and tire wear comparison school, and advanced crime
17 scene reconstruction, and also numerous one-day
18 seminars and conferences

19 Q Have you been qualified as an expert in
20 the courts of this state in crime scene
21 investigation?

22 A Yes, sir, I have

23 Q Have you been qualified as an expert in
24 footwear identification and comparison?

25 A Yes, sir, I have

1 MR WEEKS Your Honor, I would move
2 to qualify Joe Leatherman in both of this fields
3 with regard to his testimony here today

4 THE COURT What says the defense?

5 MR GIPSON No objection

6 THE COURT He is so admitted

7 Q Joe, if you would, step down here I'm
8 going to take you through some pictures here. Do
9 you recognize what's been marked State's Exhibit
10 Number Sixteen?

11 A I do

12 Q And what is that?

13 A That is a crime scene diagram that I
14 completed as part of processing the scene in part of
15 the case

16 Q And do you do that when you're called out?

17 A SLED is required by policy to do a crime
18 scene diagram on any death scene that we do

19 Q Okay And just to take you back, on
20 August 27, 2005, were you called to the scene of a
21 death --

22 A Yes, sir, I was

23 Q -- here in Aiken County?

24 A Yes, sir, I was

25 Q And what did you do when you got there?

1 A As I do on every scene, we talked to
2 whoever called us from the local agency -- I believe
3 in this case it was Sheriff Hunt called us -- got
4 basic information so we could determine if we needed
5 any specialized equipment or anything like that

6 Then I proceeded to the scene, talked with
7 Sheriff Hunt and a couple of other investigators,
8 got basically what they knew, did a general survey
9 of the scene, looking for any evidence, where the
10 evidence was located, in this case, where the
11 vehicle was located, where the victims were located,
12 and began processing the scene

13 Q All right, Joe, flip through these and
14 just see if you can identify those photographs, and
15 tell me the number when you say "yes" or "no "

16 A Yes to number 18, yes to number 17, yes to
17 number 19, yes to number 44, yes to number 43, yes
18 to number 42, and yes to number six

19 Q In general, what are all of those
20 photographs, Joe?

21 A These are -- to document a crime scene
22 with photograph, there are three different views
23 that we use We use what we call a general view,
24 which gives the person looking at the picture a
25 general idea of where, in this case, the truck is in

1 the field

2 We then have a mid-range view, which gives
3 the viewer that's looking at the pictures a little
4 bit better idea of what the truck -- in this case, a
5 truck -- looked like The last view that I shoot is
6 a close-up view

7 A close-up view gives you an idea of
8 actually what the evidence looks like up close
9 These are general crime scene photographs of the
10 truck in the field

11 Q And did you -- in conducting your
12 investigation at this particular location on the
13 crime scene, did you pick up any bullet cartridges
14 or cartridge casings?

15 A Yes, sir, I did.

16 Q I'll hand you what's been marked State's
17 Numbers Eight, Thirty-Seven, and Six and ask you if
18 you can identify what's contained in those
19 photographs

20 A I recognize number eight It's a general
21 photograph of the cartridge casing that was laying
22 in the road here at South Dixie and Windsor Road
23 Number thirty-seven is the mid-range shot of the
24 cartridge casing laying in the road And number
25 thirty-six is I would call another mid-range shot of

1 the cartridge casing in the road

2 Q Okay And did you collect that and send
3 that to the photo people at the South Carolina Law
4 Enforcement Division for analysis?

5 A Yes, sir, I did.

6 Q Look at those photographs, Joe, and
7 identify them by number, and tell me whether you can
8 identify those

9 A Yes to 45, yes to 41, yes to 23, yes to
10 22, yes to 21, yes to 20, yes to 39, yes to 38, yes
11 to 40, yes to 11, yes to 26, yes to 24, and yes to
12 25 Those are the both general and mid-range
13 photographs of the truck that we processed later on
14 at the Sheriff's Department

15 Q What do you mean by "truck" -- which
16 truck?

17 A The truck that was in the field. It was
18 processed at the Sheriff's Department later

19 Q How did you do that?

20 A To process the truck?

21 Q Yes Did you just pick it up and take it
22 there?

23 A The truck was towed by a tow truck company
24 that was chosen by the Sheriff's Department and
25 towed and secured at the Sheriff's Department

1 Q And you went to the Aiken County Sheriff's
2 Department to conduct further investigation on it?

3 A Yes, sir

4 Q Okay Tell me what you did with regard to
5 the truck at the Sheriff's Department In general,
6 what did you do with the truck? What was your
7 purpose in taking the truck to the Sheriff's
8 Department, and what did you look for at the
9 Sheriff's Department?

10 A The evidence that you look for is physical
11 evidence, which is what I do basically It depends
12 on what type of crime it is

13 In this case, we knew that there were
14 shots fired at the truck, so we're looking for
15 bullets The lead then goes out through the front
16 of the rifle when it's fired

17 We weren't necessarily concerned about
18 fingerprints or anything like that, because we knew
19 who was in the vehicle, the victim that died and the
20 other gentleman that was in the vehicle

21 So basically what we try to do is we try
22 to find any bullets that were left in the vehicle
23 and also try to get an idea of the angle of
24 trajectory that the rounds took once they hit the
25 truck

1 Q What is depicted in State's Number Forty-
2 Five that you previously identified?

3 A This would be the back of the truck. This
4 would be the tailgate, which is no longer attached
5 And the wooden -- we call them dowels or rods -- are
6 taken and placed through the bullet holes to try to
7 give us an idea of the angle of the trajectory of
8 the rounds that hit the tailgate

9 Q Do you have any idea about the trajectory
10 of those rounds that are in that tailgate?

11 A They were generally made with a level of
12 flat trajectory through the tailgate and then back
13 through the back of the cab of the truck

14 Q Joe, with this little device here, would
15 you mark out what's depicted in State's Exhibit
16 Number Eleven? I believe you can circle

17 A Part of what we do in recording bullet
18 holes in the truck is that we just shoot them as
19 perpendicularly as we can to the surface and use a
20 scale

21 That way, if somebody like a firearms
22 examiner or somebody else wants to look at the
23 bullet hole and make whatever -- I don't do them --
24 whatever examination they need to do on them, we
25 need to bring them back to actual size, where one

1 inch equals one inch

2 So we take scale tape, and we actually
3 shoot the bullet hole as perpendicular to the
4 surface so if whoever -- the firearms examiner or
5 somebody else -- wants to come back and look at the
6 bullet hole, they can

7 What is in this picture, there's two of
8 them here pretty close together And then you can
9 actually see the dowel

10 Q What's that dowel you're identifying?
11 Draw a line to it

12 A The dowel actually is one of the holes in
13 the tailgate that actually goes through the wheel
14 well, through there, and then it goes directly to
15 the truck

16 Q Did you find the cartridge that appeared
17 to make that one?

18 A I'd have to see it in my notes, but I
19 believe so

20 Q Now, the big circle on the right-hand
21 side, that's actually two shots?

22 A Yes, sir, it is There's one here, and
23 there's one here

24 Q So there appears to be four bullet holes
25 going through -- I mean, seven bullet holes?

1 A Yes, sir

2 Q Can you count them?

3 A One, two, three, four, five, six

4 Q Six bullet holes going in the back --

5 three on the driver's side and three on the

6 passenger side?

7 A Yes, sir

8 Q Okay Joe, did you do any dowels inside

9 the vehicle?

10 A Yes, sir, I did

11 Q Joe, what's depicted in State's Twenty-

12 Four?

13 A It's not the best picture in the world

14 It probably should have been tilted This is the

15 passenger side door, the back of the truck

16 Q Passenger side door?

17 A I'm sorry -- driver's side door, the back

18 of the truck, driver's seat, passenger seat,

19 steering wheel

20 Q Okay And what are those dowels in that

21 picture?

22 A The dowels actually are the holes that we

23 had in the back of the pickup truck, where the

24 bullets actually continued through and went through

25 the seats, as you can see

1 Q There appears to be three dowels depicted
2 in that?

3 A Yes, sir.

4 Q And those are all through the seat?

5 A Yes, sir

6 Q Are there more holes on the interior of
7 the truck?

8 A Yes, sir, there was.

9 Q Did you document those?

10 A I did.

11 Q State's Thirty-Eight and Thirty-Nine, do
12 they look familiar?

13 A Yes, sir, it does

14 Q And what are they?

15 A Thirty-nine depicts the bullet hole that
16 traveled through the back of the truck on the
17 driver's side. It's not doweled, but I believe it's
18 the one that went through the seat, the lower part
19 of the seat right there.

20 Thirty-eight represents another bullet
21 hole I believe it's going to be on the passenger
22 side of the vehicle It doesn't have a dowel, but
23 I'm reasonably certain, without checking my notes,
24 that that was one that also went through the seat

25 Q State's Forty-Four?

1 A I recognize forty-four It's another
2 photograph of a bullet hole, the lower one that went
3 through the wheel well and went through the corner
4 of the back, which continued to travel and hit the
5 passenger side door frame

6 Q Did you find a bullet at the base of that
7 hole?

8 A I did

9 Q I'll hand you what's marked State's
10 Exhibit Number Forty and ask you if you can identify
11 that

12 A Yes, sir It's the close-up photograph of
13 a bullet that is on the seat.

14 Q And was that recovered from the vehicle?

15 A Yes, sir, it was.

16 Q And was that also sent to SLED --

17 A Yes, sir, it was

18 Q -- for analysis?

19 A Yes, sir.

20 Q Joe, this was kind of a different crime
21 scene in that people were processing in two
22 different locations, is that correct?

23 A Yes, sir.

24 Q Did you go to the other location?

25 A The other location being?

1 Q Where the cars originated from?

2 A Yes, sir, I did

3 Q Was somebody doing footwear casts there?

4 A Yes, sir

5 Q That wasn't part of your responsibility at
6 that time, was it?

7 A No, sir, it wasn't

8 Q Y'all kind of split up responsibilities,
9 for lack of a better word?

10 A Yes, sir

11 Q And were you submitted a cast for
12 comparison from the Aiken County Sheriff's
13 Department that was taken from the house crime
14 scene, for lack of a better word?

15 A Yes, sir

16 Q Were you submitted some boots to compare
17 it to?

18 A Yes, sir, I was

19 Q Or some shoes

20 A Actually, five pairs in all

21 Q Five pairs in all?

22 A Yes, sir

23 Q Now, State's Exhibit Twenty-Eight, item
24 number two that's depicted in that, is that the cast
25 that you made a comparison with that you were able

1 to draw some conclusion from?

2 A I don't know The information of where
3 the cast that I compared the shoes to was not
4 related to me in the request, or I didn't receive a
5 phone call from anybody So I can't tell you
6 actually came from, from the scene

7 Q Now, the items depicted in State's Forty-
8 Six and Forty-Seven, can you identify those items?

9 A Yes, sir, I can

10 Q What are they?

11 A Number forty-six is a photograph of the
12 out-soles or the bottom of the shoes from the boots
13 that I examined, made by our Photography Department
14 at SLED And forty-seven is a photograph of the
15 footwear cast that was made on the scene, the
16 photograph being made by the Photography Department
17 of SLED

18 Q Tell me how you go about making a footwear
19 comparison analysis

20 A First of all, there's three general parts
21 to a shoe There's the upper part of the shoe,
22 which is where you stick your foot

23 There's a mid-sole, which is on the side,
24 in between the upper and the out-sole Usually,
25 it's got a lot of cushion material in it so it kind

1 of cushions your step

2 And then there's the bottom of it, the one
3 that hits the grounds It's called the out-sole
4 That's the one that we are normally concerned with
5 when we do footwear examinations.

6 When you put a shoe on and you go about
7 your normal day, you might step on a piece of glass,
8 or you might step on a nail, or you might get a rock
9 stuck in the out-sole All these are random,
10 accidental happenings that make a mark in the out-
11 sole

12 When you step on like some sand or you
13 step on some tile, the material that's on the out-
14 sole actually, in the case of like tile, is
15 transferred on the tile It's transferred on the
16 shape of the out-sole of the shoe

17 People like me who get paid to go work
18 crime scenes come back with some photography or some
19 sticky lifters that we use and actually compare it
20 with the out-sole of the shoe

21 Usually, when we're submitted pairs of
22 shoes, it's compared with the footwear impression
23 that's made at the scene And generally we start
24 with, does the shoe have the same size as, in this
25 case, the cast? Is it the same size as the cast?

1 The out-sole design, and the tread, and
2 stuff like that, is that the same size? Is it in
3 the same place as the cast? If the answer is yes,
4 then you go and you look further, you look more
5 deeply

6 SLED considers wear pattern to not be an
7 individualistic characteristic In other words, I
8 can't say wear pattern on a shoe excludes it from
9 every other shoe in the world, because it's never
10 been proven that wear patterns are uniquely
11 individual

12 But you consider wear pattern when you're
13 trying to examine a shoe The next thing you're
14 going to look for is the individual random
15 characteristics that I discussed earlier

16 Maybe there's an arrow on the shoe If
17 there's enough of those random characteristics, then
18 you would come to the conclusion that that shoe and
19 only that shoe made that print to the exclusion of
20 all others

21 But failing any individual
22 characteristics, sometimes we just might be able to
23 say that it's the same class characteristic, the
24 same size and shape of the shoe that has gotten
25 submitted So it's not always an individual match,

1 a total match So it's not always a match
2 Sometimes we can give it a maybe

3 Q Now, were you submitted any casts from the
4 house crime scene to compare with the five sets of
5 shoes or whatever you received?

6 A Yes, sir, I was

7 Q When did you receive the shoes?

8 A When? On August 28, 2005 -- I'm sorry,
9 2006

10 Q 2006?

11 A I'm sorry, August 27, 2006

12 Q And how about were any of the shoes sent
13 up at different times, or were they all the same?

14 A The log-in sheet that was completed with
15 this case lists items twenty-five through item
16 twenty-nine, which was five pairs of shoes, on one
17 occasion

18 Q And how about the casts? When were they
19 submitted?

20 A They were also submitted on the same day

21 Q And they came from the Sheriff's
22 Department -- Aiken County Sheriff's Department?

23 A The chain of custody lists Mary Francis
24 and Greg Watts as submitting them to SLED

25 Q And were you able to make any comparisons

1 to the items that were submitted to you?

2 A Yes, sir, I did

3 Q Were you able to exclude shoes as having
4 made some of those casts --

5 A Yes, sir, I was

6 Q -- or some of those footprints that were
7 cast?

8 A Yes, sir

9 Q Okay Tell me what your conclusion was

10 A On the item -- we number our items one
11 through whatever, and that's how we approach them
12 Item 30, the cast -- the footwear cast -- my
13 conclusion was that it was not -- that cast was not
14 identified as any of the shoes submitted You want
15 me to list the shoes out?

16 Q Just the five pairs of shoes that were
17 submitted

18 A Okay A black pair of tennis shoes, a
19 pair of Nike shoes, a pair of red Timberlands, a
20 pair of New Balance shoes, and a pair of Reeboks

21 Q Item 30 was one cast?

22 A Yes, sir

23 Q Okay And it didn't match anything?

24 A That's right

25 Q It didn't have any characteristics

1 consistent with any of those shoes?

2 A That's right

3 Q Okay

4 A Item thirty-two, I reached the same
5 conclusion with all the shoes It was not
6 identified with any of the shoes Item 31, I came
7 to the conclusion that the cast had the same class
8 characteristics -- in other words, the same size and
9 out-sole design as the item 30, also item 27, the
10 right shoe Item 27 is the pair of red Timberland
11 boots

12 Q So the cast taken or submitted to you --
13 one of the three casts submitted to you had similar
14 characteristics to the red pair of Timberlands?

15 A Yes, sir It was my conclusion that that
16 right shoe could have made that impression, or any
17 other shoe that was the same size and had the same
18 out-soles on it

19 Q That could be a pretty large amount of red
20 Timberlands?

21 A It could be

22 Q It wouldn't make any difference whether
23 they were red, would it?

24 A No, sir

25 Q Joe, I know you come down to a crime

1 scene, and you gather up evidence and take back
2 What did you take back in this instance for further
3 analysis up at SLED? Did you take a cartridge
4 casing back?

5 A On the day of the incident, it was
6 requested by Lt. Scott with Aiken County that we
7 only take the blood swabs back to Columbia on that
8 day, and that they would be responsible for taking
9 the rest of it

10 Q The blood swabs from the victim's truck?

11 A I took a swab from the passenger side
12 seat Actually, I took two swabs from the passenger
13 side seat, and I took a swab from the driver's side
14 seat And we also had six rolls of color film that
15 were shot

16 Q Okay And those were the pictures you've
17 been identifying --

18 A Yes, sir

19 Q -- some of them?

20 A Yes, sir.

21 Q The item that you identified as the
22 cartridge in the middle of the road, you didn't take
23 that back that day? I'm not worried about the
24 chain, Joe

25 A I did I listed it on a separate intake

1 sheet

2 Q Okay

3 A Along with a set of major case prints from
4 the victim and a bullet on the front passenger seat

5 Q You took all those back to SLED to send to
6 Ira or somebody in firearms?

7 A Yes, sir

8 Q The cartridge casing and the bullet?

9 A Yes, sir

10 Q Joe, do your notes reflect who the red
11 Timberlands was identified as coming from?

12 A Yes, if I can ever get to it

13 Q Actually, all of the shoes, are they
14 identified as to who they came from?

15 A Item twenty-seven on the intake sheet
16 lists red Timberland boots from Edward Walker

17 Q How about the other ones?

18 A Item twenty-five, the black tennis shoes,
19 from Joe Brewer, item twenty-six, Nike shoes from
20 Wallow Ware III, item twenty-eight, New Balance
21 shoes from Cornell Tyler, and item twenty-nine,
22 Reeboks from Tremaine Tyler

23 Q Answer any questions, Joe, that Mr Gipson
24 would have for you

25 A Yes, sir

1 CROSS-EXAMINATION

2 BY MR GIPSON

3 Q Now, Mr Leatherwood, you mentioned that
4 you did not actually take these plaster casts of the
5 shoes, is that correct?

6 A That's correct

7 Q You just did the actual comparison to
8 them, correct?

9 A Yes, sir

10 Q As Mr Weeks handed to you what's been
11 marked as State's Exhibit Number Forty-Six, which
12 purports to be a pair of Timberland shoes, you
13 actually took a picture of the bottoms of these
14 shoes?

15 A Yes, sir

16 Q Okay

17 A Yes

18 Q What is the rationale behind taking a
19 picture of the bottom of shoes?

20 A It documents the part of the shoe that we
21 examined

22 Q And, again, that's the -- I believe you
23 called it the out-sole of the shoe?

24 A Yes, sir

25 Q And that's important because that's the

1 print that it leaves -- well, if somebody's wearing
2 that shoe, that's what's going to leave a print.
3 That's what would leave a print, correct?

4 A Yes, sir.

5 Q And, again, you didn't take that plaster
6 cast A member of the Aiken County Sheriff's
7 Department did that, correct?

8 A Yes, sir

9 Q And what you did afterwards is the cast
10 was submitted to you at some point in time?

11 A Yes, sir

12 Q All right And when I say "the cast,"
13 we're speaking of what's labeled as State's Exhibit
14 Number Forty-Seven And does that fairly and
15 accurate represent the cast that you received?

16 A Yes, sir

17 MR GIPSON. If I may submit this to
18 the jury, Your Honor

19 THE COURT Yes

20 Q And as you compared those casts to all of
21 the shoes that you received in this case, what was
22 the determination that you made?

23 A The items thirty and item thirty-two casts
24 were not identified as any of the shoes. The item
25 thirty-one cast corresponds by class characteristics

1 with item twenty-seven, right shoe Therefore, the
2 item thirty-one impressions would have been made by
3 the item twenty-seven right shoe or any other shoe
4 that displays the same combined class
5 characteristics

6 Q So if we translate that a little bit, you
7 received, as you said, five pairs of shoes, correct?

8 A Yes, sir

9 Q Okay You received, I believe, what's
10 labeled as item twenty-five, a pair of shoes from
11 Mr Joe Brewer, correct?

12 A Yes, sir

13 Q And you didn't find any characteristics of
14 his shoes in that area, correct?

15 A That's correct

16 Q And so, again, his footwear was excluded
17 from footwear that made any impressions in that
18 area, correct?

19 A His footwear is excluded from the cast
20 that was submitted to me

21 Q Okay So his footwear was compared to
22 what was submitted to you?

23 A Yes, sir

24 Q Now, item twenty-six was a set of Nike
25 shoes from Wallow Ware III, correct?

1 A Yes, sir

2 Q And through your comparison, his shoes
3 were excluded from any of the casts that were
4 submitted to you, correct?

5 A Yes, sir

6 Q All right Now, item twenty-seven was a
7 pair of red Timberland boots, which purports to be
8 the pictures which we were looking at that we just
9 spoke of, is that correct?

10 A Yes, sir

11 Q And your finding there was that one of the
12 footprints is consistent with that shoe, correct?

13 A Yes, sir

14 Q And that was a shoe that was submitted to
15 you under the name Edward Walker, correct?

16 A Yes, sir

17 Q All right And you did not actually do
18 these plaster casts, is that correct?

19 A That's correct

20 Q So if I show you State's Exhibit Number
21 Twenty-Eight, which -- can you tell us what that
22 looks like or what that is?

23 A It looks like a yellow marker two, a
24 yellow marker three, and two plaster casts beside
25 each marker --

1 Q Okay

2 A -- on a dirt road

3 Q And two plaster casts beside a dirt road

4 And those are the types of casts that you're

5 submitted after they're cleaned off?

6 A Yes, sir

7 Q Okay And so State's Exhibit Number

8 Forty-Seven, which is a plaster cast, that would be

9 the -- I guess would that be the top side? I don't
10 know how you referred to that

11 A That would be the bottom side, yes, sir

12 Q Okay, the bottom side. And you call that
13 the negative impression or something like that?

14 A That's not a negative impression It's
15 just the bottom side of the shoe

16 Q Okay, the bottom side of the shoe. And
17 that's what you compared when you looked at State's
18 -- well, item number twenty-seven, which was a red
19 Timberland boot, correct?

20 A Yes, sir

21 Q Okay. And that's the boot or that's the
22 impression that's consistent with footwear that was
23 submitted on behalf of Edward Walker, correct?

24 A Yes, sir

25 Q Okay Now, item number twenty-eight was a

1 pair of New Balance shoes from Cornell Tyler,
2 correct?

3 A Yes, sir

4 Q And explain to the jury where you saw
5 footwear impressions that were submitted to you that
6 were consistent with his shoes

7 A I didn't

8 Q Okay Nowhere in that area, correct? No
9 casts were submitted to you that --

10 A No casts were submitted to me that were in
11 any way consistent or identified to item twenty-
12 eight

13 Q Okay And, lastly, we have item number
14 twenty-nine, which was a pair of white Reeboks shoes
15 which belonged to Tremaine Tyler?

16 A Yes, sir

17 Q And, again, nowhere did you find casts
18 that were submitted to you that were consistent with
19 his shoes, correct?

20 A That's right

21 Q Okay And you talked about shoes having
22 similar characteristics The only shoe with similar
23 characteristics that you were submitted in this case
24 is that one pair of Timberlands we talked about,
25 correct?

1 A That's correct.

2 Q Okay Now, as we speak a little bit about
3 those dowels that you mentioned, you physically
4 placed those dowels in the truck, is that correct?

5 A I did

6 Q All right And as you do that, again,
7 you're just looking to find the trajectory or the
8 path of a bullet, is that correct?

9 A Yes, sir

10 Q All right And in doing that, you're in
11 no way able to tell who actually fired the bullets,
12 correct?

13 A That's correct

14 MR GIPSON Court's indulgence for a
15 moment

16 Q And you're not testifying about the
17 caliber of the gun that fired those things in your
18 opinion, correct?

19 A That's right

20 Q Only that a bullet was fired, and that's
21 the trajectory of the bullet?

22 A Yes, sir

23 Q Did you collect any shell casings or
24 anything like that?

25 A I did

1 Q Okay And those are the ones that you
2 essentially collected and forwarded those to the
3 appropriate agency for testing, correct?

4 A Yes, sir

5 Q And probably Ira Parnell and Dr Sexton
6 who looked at these things?

7 A Well, I know they went to firearms I
8 don't know what happened after that

9 Q Okay And other than that, your only
10 other involvement in this case was -- I won't say
11 "only," because you did a good bit But you took
12 pictures. And the pictures that you identified as
13 the ones you personally took, that was essentially
14 your involvement in this case?

15 A Yes, sir

16 MR GIPSON Court's indulgence very
17 briefly, Your Honor

18 Q And can you tell us exactly where this
19 footprint was recovered, where the cast of the print
20 was actually recovered? Can you show us exactly
21 where that was, or could you explain to us where
22 that was recovered?

23 A In this picture here?

24 Q Yes, sir

25 A No, I can't

1 Q All right Did you go out to the house?

2 A I did

3 Q Okay Is that next to the house, or is
4 that in the road?

5 A It looks like it's in the road

6 Q And when you say "that road," you're
7 pointing to State's Exhibit Number Twenty-Eight, is
8 that correct?

9 A Yes, sir

10 MR GIPSON That's all my questions

11 MR WEEKS The defense and the State stipulate
12 the cast he's being questioned about came from
13 what's marked item two in State's Exhibit Number
14 Forty-something, I think State's Exhibit Twenty-
15 Eight, item two that's marked in there, was the cast
16 that he's been referring to up here today. I don't
17 think that was clear earlier

18 THE COURT Is that correct, Mr. Gipson?

19 MR GIPSON That's correct, Your Honor

20 THE COURT All right Any redirect?

21 MR WEEKS No, Your Honor

22 THE COURT All right You may step down, sir

23 MR LEATHERMAN. Thank you, Your Honor Am I
24 excused?

25 MR WEEKS. May he be excused, Your Honor?

1 MR GIPSON No objection

2 THE COURT Yes, sir

3 And with that, ladies and gentlemen, we'll
4 break for lunch We'll have lunch till 2 15 We'll
5 break for lunch We've ordered lunch for you all,
6 but that doesn't mean that you have to stay in the
7 jury room the entire period time of time

8 When you get through eating, then leave,
9 and then be back at 2 15, if you want to leave
10 Please do not discuss the case

11 (The jury left the
12 courtroom at 1 03 p m)

13 THE COURT Anything before we break for lunch?

14 MR WEEKS Not from the State, Your Honor

15 MR. GIPSON No, sir

16 THE COURT Any requests to charge that you all
17 want to hand up for us to look at and then talk
18 about later?

19 MR WEEKS Your Honor, if I could just inquire
20 a little bit about your charge Do you charge
21 reasonable doubt, firmly convinced, or hesitate to
22 act, or both?

23 THE COURT Probably a combination of both

24 MR WEEKS Okay And do have a charge for
25 hand of one, hand of all, act of one, act of all,

1 that type thing?

2 THE COURT Yes

3 MR WEEKS The State is going to be requesting

4 those If I can prepare a charge on it, I will

5 But if you already have one?

6 THE COURT All right

7 MR GIPSON And just mere presence, I think --

8 THE COURT All right

9 MR GIPSON -- which I'm not sure you have.

10 THE COURT All right And mere presence is a

11 part of the hand of one charge

12 MR GIPSON Yes, sir

13 THE COURT But if you're requesting that as a

14 separate charge, then we can discuss that later

15 But it's a part of the hand of one charge

16 MR. GIPSON And I know that But depending on

17 how the testimony begins to play out, we may request

18 a second charge on that

19 THE COURT All right

20 MR GIPSON I'll let you know, the best I'm

21 able to

22 THE COURT All right, we'll break till 2 15

23 (Court in recess for lunch

24 until 2 15 p m)

25 THE COURT Thank you all Please be seated

3 MR GIPSON. Yes, sir, if you would, please

6 CLERK OF COURT Would you like me to swear
7 him?

9 CLERK OF COURT Place your left hand on the
10 Bible and raise your right

12 CLERK OF COURT He's sworn, sir.

18 MR TYLER Yes, sir

22 MR TYLER Yes, sir

23 THE COURT I think the State is getting close
24 to wrapping up Then it will be time for you to
25 present your defense

1 MR TYLER Yes, sir

2 THE COURT You have a right to claim the
3 protection given to you by the Fifth Amendment to
4 the Constitution of the United States This
5 amendment provides in part that no person shall be
6 compelled in any criminal case to be a witness
7 against himself

8 This means that you cannot be required to
9 testify in this case Now, you do have the right to
10 testify on your own behalf, but no one can make you
11 testify This is a personal right, and no one can
12 waive this right except you

13 MR TYLER. Yes, sir

14 THE COURT Now, if you decide to testify, you
15 will be subject to the same rules that govern other
16 witnesses. And you may be examined and cross-
17 examined on any relevant issue in this case

18 In addition, if you have any convictions
19 involving dishonesty, or false statements, or for
20 crimes punishable by imprisonment for more than a
21 year, and I determine that the probative value of
22 using this evidence outweighs its prejudice to you,
23 the Solicitor will then be able to introduce your
24 record to attack your credibility

25 Now, if you decide to testify, this

1 decision on your part must be freely, voluntarily,
2 and intelligently made, with a full knowledge and
3 understanding of the protections given to you by the
4 Fifth Amendment, as well as the consequences of your
5 decision to testify

6 If you decide not to testify, I will
7 instruct the jurors that they cannot give the fact
8 that you did not testify any consideration
9 whatsoever and that there is to be absolutely no
10 prejudice to you because you did not testify

11 In fact, I will instruct them that they
12 cannot and should not even discuss the fact that you
13 did not testify in the jury room You may talk more
14 with your lawyer, Mr Gipson, about this

15 You can talk to your family, friends, or
16 anyone else that you think you might want to talk
17 to, but the final decision will be left entirely up
18 to you

19 MR. TYLER Yes, sir

20 THE COURT: Do you understand what I've
21 explained to you?

22 MR TYLER Yes, sir

23 THE COURT Do you have any questions about
24 what I've explained to you?

25 MR TYLER No, sir

1 THE COURT And have you talked with Mr Gipson
2 about whether or not you should testify?

3 MR TYLER I've talked to him

4 THE COURT You've with him about it some?

5 MR TYLER Yes, because --

6 THE COURT Do you want to talk with him about
7 it some more?

8 MR TYLER Yes, sir

9 THE COURT All right, sir, you can do that,
10 and we'll come back to you a little later on and
11 you'll decide whether or not you want to testify
12 Very good

13 MR GIPSON Thank you, Your Honor

14 THE COURT All right All right, anything
15 else before we press on?

16 MR WEEKS Not from the State, Your Honor

17 THE COURT All right, let's bring the jury
18 out

19 (The jury returned to the
20 courtroom at 2 29 p m)

21 THE COURT All right, the jury is in Welcome
22 back

23 Mr Weeks?

24 MR WEEKS Thank you, Your Honor. Before I
25 call the next witness, the State and the defense

1 have reached a stipulation to keep from bringing a
2 witness down from Columbia

3 They have stipulated that DNA testing was
4 done on the swab taken from the driver and passenger
5 seat of the truck that's in evidence, and that the
6 DNA testing revealed that the DNA belonged to Debra
7 Dorch in the driver's seat and Joe Brewer in the
8 passenger seat

9 THE COURT All right. Is that right, Mr
10 Gipson?

11 MR. GIPSON That's correct, Your Honor

12 THE COURT All right Ladies and gentlemen, a
13 stipulation is an agreement between counsel as to a
14 particular matter And where the parties agree
15 through stipulation, then no further proof is
16 required concerning that matter, and you must accept
17 the stipulation as being the agreement regarding
18 that testimony

19 MR. WEEKS Thank you, Your Honor The State
20 would call Lt Billy Fleury

21 CLERK OF COURT Please place your left hand on
22 the Bible and raise your right.

23 (The witness was sworn)

24 CLERK OF COURT Please have a seat in the
25 witness box, state your full name for the Court, and

1 spell your last

2 MR FLEURY My name is Billy Fleury -- F-L-E-
3 U-R-Y

4 BILLY FLEURY, having first been duly
5 sworn, testified as follows

6 DIRECT EXAMINATION

7 BY MR WEEKS

8 Q Billy, what do you do for a living?

9 A I am a lieutenant in investigations, Aiken
10 County Sheriff's Office

11 Q And how long have you worked with the
12 Sheriff's Office, Billy?

13 A Nineteen years

14 Q And prior to that, where were you
15 employed?

16 A I worked for Saluda County -- Saluda Town
17 Police Department and Saluda County for about three
18 and a half years

19 Q In August -- more specifically, on August
20 27, 2005 -- were you the lieutenant over the
21 criminal investigators at the Aiken County Sheriff's
22 Department?

23 A Yes, I was

24 Q Did you respond to the call in this
25 particular case?

1 A Yes, I did

2 Q Tell me how you responded, Billy

3 A I received a page to respond to the
4 incident On the way down there, I drove, met up
5 with my captain, Wallace Owens, and we arrived at
6 the scene about the same time

7 Q When you say "the scene," which one did
8 y'all arrive to?

9 A Where the truck had went into the field

10 Q All right At that point in time, did you
11 know anything about who or what had caused that?

12 A No, I didn't The only thing I knew was
13 that one of the victims had been taken to MCG
14 Apparently, he was shot We saw the truck in the
15 field with wire wrapped around it, and we saw the
16 lady up under the truck

17 Q Approximately what time of day or night
18 was that, Billy?

19 A It was before daylight It was probably
20 about 4:30, maybe 5:30

21 Q Tell me what you did from there

22 A When it became daylight, myself and Capt
23 Owens rode together He drove Generally what we
24 do when we don't know anything that happened at a
25 scene, we just started just riding around, happened

1 to go down Union Academy Church Road.

2 It was daylight then We saw a gentleman
3 out in his front yard He was up under his carport
4 I believe his name was Mr Williams We stopped and
5 talked to Mr Williams for a few minutes, asked him
6 if he had heard anything, any shots, any -- just
7 anything out of the ordinary He said he had heard
8 some shots --

9 Q Don't tell me what he said Tell me what
10 you did from there, Billy

11 A From there, we went out --

12 Q Where was that at?

13 A That was next door to Mr Tyler, Cornell
14 Tyler We spoke with him briefly, went out into the
15 road On the side of the road, we passed some shell
16 casings and from there immediately called forensics,
17 and we roped the roadway off, couldn't let anybody
18 come up there

19 Q And approximately what time of day was
20 that?

21 A Probably about six, seven, something like
22 that

23 Q Was it daylight?

24 A It had turned daylight

25 Q What was the weather conditions?

1 A It had been raining that morning

2 Q Okay You say you roped it off. And then
3 what did you do?

4 A We taped both ends of the road off We
5 deflected traffic to go somewhere else, called
6 forensics, and we held onto the scene until
7 forensics got there

8 Q Did you know at that point, Billy, that it
9 was any kind of crime scene?

10 A Had no idea it was a crime scene We were
11 in the dark, and we were looking for any kind of
12 information

13 Q Did you go up to the residence there where
14 the bullet casings were found?

15 A Went to the residence, knocked on the
16 door, and no one came to the door

17 Q Ultimately that morning or that day, did
18 you go in that residence?

19 A Later on, we did, with a search warrant

20 Q Whose residence was that?

21 A Mr Cornell Tyler

22 Q And did you find any guns in that
23 residence?

24 A No, it wasn't

25 Q What did you as far as the rest of the

1 investigation after that, during the course of that
2 day and from then on?

3 A Later on that day, Mr Brewer drove up,
4 driven by two investigators that I had sent to MCG
5 Hospital to interview He confirmed that's where
6 the incident had started, where we were at So we
7 knew basically we was on the right thing about that

8 We did a search of some woods back behind
9 the house, found another firearm back there From
10 there, we tried to get in touch with Mr Tyler, went
11 up to his mother's house

12 Investigators talked to the mother I
13 believe for a few minutes Later on, I was driving
14 down the road with another investigator and met Mr.
15 Tyler And we met back up at Ms Tyler's residence

16 Q As a result of information y'all received,
17 who's the first person in this that y'all brought in
18 to the office?

19 A Mr Wallow Ware

20 Q Okay And what day was that?

21 A A day or two later

22 Q From Wallow Ware, how did it proceed,
23 picking up people?

24 A From Wallow Ware, we were led to Mr
25 Walker, and from Mr Walker to Mr Seawright, and

1 that's where we wound up

2 Q At some point, did you attempt to arrest
3 Mr Tyler?

4 A Yes Based on their information the
5 investigators relayed to me, we obtained warrants,
6 yes

7 Q When was Mr Tyler arrested, Billy?

8 A I believe he was arrested the 13th

9 Q Of September?

10 A Yes, sir

11 Q Okay Now, at some point in time the
12 morning of the 27th, were you aware of what type gun
13 might have been used?

14 A We were not aware of what type gun at that
15 time was used We had found a shell casing in the
16 road One of the investigators had found a shell
17 casing in the roadway It came back to a 7 62-by-
18 39, which is a Russian round And then after the
19 autopsy was done, after the bullets were removed, we
20 were informed that it was a high-powered rifle
21 bullet

22 Q Okay. What did you do there with the
23 investigators as far as finding physical evidence?

24 A After finding that following -- I believe
25 it was the next day or the day after, I then sent

1 five or six investigators to comb the road from
2 Union Academy all the way to where we found the
3 truck, looking for shell casings

4 Q Were you able to find any more?

5 A No, sir.

6 Q And, Billy, parts of y'all's department,
7 but items were sent to SLED for analysis and that
8 sort of stuff as a result of what you collected?

9 A Yes, sir

10 Q And the location of Mr. Tyler's house, is
11 that in Aiken County?

12 A Yes, sir, it is

13 Q And how about all the way up to where the
14 truck was located? Is it all in Aiken County?

15 A Yes, sir

16 Q Thank you Answer any questions he has
17 for you

18 THE COURT Mr Gipson?

19 CROSS-EXAMINATION

20 BY MR GIPSON

21 Q Now, you said you came onto the scene
22 somewhere between 4.30 and 5 30 in the morning?

23 A I don't have the exact time that I
24 arrived It was still dark when I got to the scene

25 Q Okay And being the summertime in South

1 Carolina, the sun rises somewhere 6 30-ish --

2 A Yes, sir

3 Q -- somewhere in that time period And you
4 started in the pasture, correct?

5 A Yes, sir That's where I saw the truck in
6 the pasture --

7 Q Yes, sir

8 A -- and then I -- they had already roped
9 the crime scene off

10 Q Who is "they"?

11 A That would be the responding officers that
12 were there, Deputy Harding and some of the others

13 Q Okay So they were there when you got
14 there?

15 A Yes, sir

16 Q And you worked your way back towards --

17 A Yes, sir

18 Q -- Union Academy Road, correct?

19 A Yes, sir

20 Q And quite frankly, you learned about Union
21 Academy Road through 911, just police work,
22 basically --

23 A Just police work

24 Q -- what you looked at And eventually you
25 said that you came upon the area around Cornell

1 Tyler's home, correct?

2 A Yes, sir

3 Q All right Now, you said you found some
4 shell casings outside in the road?

5 A Yes, sir

6 Q And it was still dark at that time?

7 A No, sir, it was daylight

8 Q All right. So about 6 30 or 7 00?

9 A It might have been around 7 00 It wasn't
10 long after it started turning daylight. That's when
11 we started canvassing the area

12 Q Okay Any other traffic back and forth
13 that you saw during that period of time?

14 A It was probably some cars I didn't see
15 any at that time. But there had been some traffic
16 going up and down the road. It was still wet --
17 people going to work that early in the morning

18 Q And did you come up on any footprints or
19 anything like that?

20 A There was some in the road, going down the
21 road

22 Q Okay. Now, you said at some point in time
23 you were led to Wallow Ware, and Ware led you to
24 Walker, Walker led you Seawright, correct?

25 A Yes, sir

1 Q Who led you to Ware?

2 A Gleaton

3 Q James Gleaton?

4 A Uh-huh

5 Q And do you know his nickname, by chance?

6 A Killer Bee -- I believe that's his
7 nickname

8 Q That sound about right, all right And,
9 again, that's when the investigation started and you
10 started interviewing -- or your department started
11 interviewing -- witnesses?

12 A Yes, sir

13 Q You mentioned a firearm or something that
14 was found behind the home Do you know who that
15 belonged to?

16 A It came up -- my understanding was it
17 belonged to -- I'm thinking of his name

18 Q I don't want to suggest an answer to you

19 A No, sir

20 Q It did not belong to Cornell Tyler?

21 A No, sir

22 MR GIPSON Just ask the Court's
23 indulgence for a brief moment.

24 Q And if you think of that name, please feel
25 free to tell me that name Any luck remembering

1 that name?

2 A I was just talking about him a few minutes
3 ago

4 Q Okay But, again, it was clearly not
5 Cornell Tyler?

6 A No, sir He had identified -- this
7 gentleman had identified that the weapon didn't
8 belong to him

9 Q Okay And, again, James Gleaton, Killer
10 Bee, led you to Ware

11 MR GIPSON. All right, that's all my
12 questions

13 REDIRECT EXAMINATION

14 BY MR. WEEKS

15 Q The gun you're referring to, Billy, was
16 what?

17 A Shotgun, 12-gauge Mossberg

18 Q A what?

19 A Twelve-gauge Mossberg, pump shotgun

20 Q A pump shotgun?

21 A Yes, sir

22 Q Okay Was it Johnny Miles --

23 A John Miles.

24 Q -- that you were trying to remember?

25 A I'm sorry -- Johnny Miles

1 Q Okay, thank you

2 MR GIPSON Nothing further

3 THE COURT. All right, thank you, sir

4 MR. WEEKS Your Honor, the State rests at this
5 time.

6 THE COURT All right, ladies and gentlemen,
7 the State has rested, meaning the State has
8 presented its evidence in this case And it's time
9 for me to have you step out while I talk with the
10 lawyers for a little bit We'll have you come back
11 soon. Please go to the jury room Please do not
12 talk about the case

13 (The jury left the
14 courtroom at 2 43 p m)

15 THE COURT Any matters of law at this time?

16 MR GIPSON Yes, sir I'd like to make, of
17 course, a directed verdict motion, Your Honor At
18 this juncture, I understand what the Court's
19 rationale is, and I understand what has to be
20 present in order for a directed verdict to be
21 rendered

22 Your Honor, Mr. Tyler is charged with, as
23 you know, murder, he's charged with assault and
24 battery intent to kill, and he's also charged with
25 possessing a gun in the commission of a violent

1 crime

2 And as it relates to murder, I know three
3 major -- well, there are several elements that you
4 look for First of all, the unlawful killing of a
5 person with malice aforethought And I know there
6 has been testimony here from different people who
7 claim to have been either eyewitnesses or actually
8 participants in this situation

9 And the question is the credibility of
10 these people who have testified and the fact that
11 they sat together and may have corroborated
12 testimony, and there's several motives

13 And, again, understanding the Court's
14 burden at this point in time, it's my contention
15 that the credibility of these people who have
16 testified and said that Mr Tyler was directly
17 involved in this is wanting

18 So based on that, I'd ask that you
19 consider a directed verdict on the charge of murder
20 As it relates to the assault with intent to kill,
21 those two -- actually, all three go hand in hand I
22 think the credibility of the folks that testified
23 and the plausibility of what they said took place is
24 wanting

25 So I'd ask that you consider directing a

1 verdict based on the fact that the motive to lie for
2 these witnesses is here they've had several
3 opportunities to corroborate stories, and, quite
4 honestly, they have changed their stories on more
5 than one occasion

6 THE COURT Mr Weeks?

7 MR WEEKS Your Honor, at this stage of the
8 process, a directed verdict motion looks to the
9 evidence in the light most favorable to the non-
10 moving party There is ample evidence in the record
11 to substantiate that Cornell Tyler, in a light most
12 favorable to the State, was the one who was using
13 the rifle that ultimately killed Debra Dorch and
14 wounded Joe Brewer

15 And the rifle would be the weapon that
16 would qualify because those crimes are specifically
17 under murder There's ample evidence that Ms Dorch
18 was murdered It was not an accident It was a
19 homicide

20 Anything else goes to the weight of the
21 evidence and not to the existence of the evidence.
22 We've established all of the elements with regard to
23 both of those crimes and ask that you'd deny those
24 motions

25 THE COURT According to the testimony of all

1 of the witnesses who were in a position to know who
2 killed Ms Dorch and shot Mr Brewer, according to
3 all of those witnesses, Mr Tyler committed these
4 crimes And the function of the jury is to
5 determine whether or not that testimony is
6 believable

7 And the duty of the jury is to weigh the
8 credibility of the witnesses And at this stage,
9 the State has presented sufficient evidence to
10 withstand a directed verdict motion, and I deny the
11 motion as to each count

12 MR GIPSON Thank you, Your Honor

13 THE COURT All right How about the defense?
14 Are you ready to press on with your defense?

15 MR GIPSON: I think we're ready to press on,
16 except for the fact -- and this will be what I plan
17 on calling right now, if I may, Your Honor And
18 after those are called, I'd ask if I could have a
19 few moments to meet with my client about his right
20 to testify

21 THE COURT Sure

22 MR GIPSON We're ready to press at this
23 point

24 THE COURT All right All right, let's stand
25 for about three minutes and get a good stretch and

1 then press on at that time We'll step out for a
2 moment, so take five minutes

3 (Court in brief recess)

4 THE COURT Wallow Smith -- and he's shackled?

5 BAILIFF. Yes, Your Honor

6 THE COURT All right We need you to
7 unshackle him so he can come and testify without
8 being shackled Either that, or we can swear him
9 and sit him up there, and then we'll have to let the
10 jury come in and out. Let's just unshackle him
11 It'll make it a little easier

12 BAILIFF. Okay

13 THE COURT We have plenty of security if he
14 gets out of hand

15 MR GIPSON And, Your Honor, I anticipate
16 calling him as my second witness

17 THE COURT. Oh, second witness?

18 MR GIPSON Yes, sir

19 THE COURT All right

20 MR GIPSON Yes, sir

21 THE COURT He'll be the second witness Who
22 is the first one?

23 MR GIPSON. James Gleaton, Your Honor.

24 THE COURT. And where is he?

25 MR. GIPSON He's in the back

1 THE COURT He's in the back, too?

2 MR GIPSON Yes, sir He's coming on out

3 THE COURT Okay All right, let's bring in
4 the jury

5 (The jury returned to the
6 courtroom at 3 00 p m)

7 THE COURT All right, ladies and gentlemen,
8 you've heard the State's case It's now the
9 defense's turn

10 Mr Gipson?

11 MR GIPSON Yes, sir, I'd like to call to the
12 stand James Gleaton, Your Honor

13 CLERK OF COURT Come forward, please, and
14 place your left hand on the Bible and raise your
15 right

16 (The witness was sworn)

17 CLERK OF COURT Please have a seat in the
18 witness box, state your full name for the Court, and
19 spell you last

20 MR GLEATON: My name is James Gleaton -- G-L-
21 E-A-T-O-N.

22 JAMES GLEATON, having first been duly
23 sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. GIPSON

1 Q Good afternoon, Mr Gleaton Now, how old
2 are you, sir?

3 A Thirty-seven

4 Q And where are you from?

5 A Springfield.

6 Q And Springfield is straddled by Aiken
7 County and Orangeburg County Which side are you
8 from?

9 A Aiken County

10 Q All right. So the Aiken side of
11 Springfield?

12 A Yes, sir

13 Q All right And have you lived in
14 Springfield most of your life?

15 A Yes, sir

16 Q Now, were you living in Springfield in
17 August of 2005?

18 A Yes, sir

19 Q Let me ask you this Do you have a
20 nickname?

21 A Yes, Killer Bee

22 Q It's what, now?

23 A Killer Bee

24 Q And why do they call you Killer Bee?

25 A I'm allergic to wasps. I got stinged by a

1 wasp when I was young

2 Q Okay And had a reaction?

3 A Yes, sir

4 Q And so based on that, they call you that?

5 A Yes, sir

6 Q And have they called you that most of your
7 life?

8 A All my life, yes

9 Q All your life Now, you said you were
10 living in Springfield in August of 2005

11 A Yes, sir.

12 Q Do you know Cornell Tyler?

13 A Yes, sir

14 Q Do you know Wallow Ware?

15 A Yes, sir

16 Q Do you know Kendall Seawright?

17 A Yes, sir

18 Q Do you know Edward Walker?

19 A Yes, sir

20 Q Do you know John Hartwell?

21 A Yes, sir

22 Q Okay And how do you know those people
23 generally?

24 A Me and John Hartwell went to school
25 together, and Cornell stays right up the road from

1 me And I've got a baby by Kendall's cousin and
2 Walker's cousin

3 Q Okay And are you presently married?

4 A Yes, sir

5 Q All right Now, again, you were living in
6 Springfield in August of 2005 On August 27th, was
7 there anything in particular that took place that
8 you need to talk to this Court about?

9 A Yes About two or three in the morning, I
10 was at Hartwell's house

11 Q When you say "Hartwell," you're talking
12 about --

13 A John Hartwell And then Edward Walker,
14 Kendall Seawright, and Wallow Ware, they came up to
15 Hartwell's house. And we was sitting outdoors
16 talking, and I asked him for beer

17 And when he went in the trunk to get the
18 beer, the beer was hot So I told him I'd put it in
19 the frigerator And they was going to go to
20 Cornell's house, and I told them I'd ride up there
21 with them But --

22 Q You told who that you'd ride with them?

23 A Wallow Ware

24 Q Okay

25 A But when I come back out of the house,

1 they was already gone

2 Q All right So let me make this clear I
3 need you to go a bit slower In the car was Wallow
4 Ware, Kendall Seawright, and who else?

5 A Edward Walker

6 Q Edward Walker What kind of car were they
7 driving?

8 A A green Buick

9 Q A green Buick?

10 A A green Buick, I think it's a Regal

11 Q A Buick Regal?

12 A I think

13 Q Anything interesting about a green Buick
14 Regal to you?

15 A Yes, it was similar to my car, because I
16 had a Grand Prix

17 THE COURT Mr Gleaton, I want you
18 to not have your hand over your mouth while you're
19 talking

20 MR GLEATON Okay

21 THE COURT All right, go ahead.

22 Q And my question for you was, is there
23 anything interesting about that Buick that Mr Ware
24 had And your answer was what, I'm sorry?

25 A It's similar to -- it was similar to my

1 car

2 Q Okay

3 A The only difference is my lights go all
4 the way across my car, but his go in sections

5 Q Okay And so essentially the same car but
6 for the lights?

7 A Right.

8 Q All right What, if anything, happened
9 next?

10 A Well, I was out the door, and I said,
11 "Well, I'll just walk up to Cornell's house,"
12 because I knew that's where they was going at

13 Q About how far is Cornell's house from Mr
14 Hartwell's house?

15 A About an eighth of a mile.

16 Q An eighth of a mile?

17 A Right

18 Q All right What happened next?

19 A And I heard some gunshots I mean, there
20 always be gunshots in the area, so, you know, I
21 ain't even thought nothing about it

22 Q Okay

23 A That's when I seen two vehicles coming
24 down the road At first, I thought they was racing,
25 and then I thought it was my car I said --

1 Q Why did you think it was your car?

2 A Because I had loaned my car to Shelton

3 Q Okay

4 A And I was waiting on him to bring my car
5 back so I could home I didn't want to go home
6 without my car

7 Q Is that why you were walking?

8 A Yes, right

9 Q Okay

10 A And the cars, when they went by me -- when
11 they went by, they got to the road, that's when I
12 heard more gunshots

13 Q Okay

14 A And then the car went up that road, so I
15 turned around, and I said, "Well, I'm going home "
16 And I was headed home That's when the car came
17 back by

18 When the car came back by, somebody
19 hollered something, like "Pick up something," or
20 "Pick me up," or something like that, something in
21 that nature I think that was Walker I ain't for
22 sure it was Walker, but I thought that was Walker
23 But --

24 Q Let's slow down for a second You said
25 that this car passed you on the road Now, which

1 road are we talking about?

2 A Windsor Road

3 Q Windsor Road?

4 A Right

5 Q And that's the long paved road, correct?

6 A Right, right

7 Q All right So the two cars passed you on
8 Windsor Road?

9 A Right

10 Q Okay And after these cars passed you,
11 what is it that you noticed? And let's just kind of
12 break it down frame by frame Let's talk about it a
13 little bit more slowly rather than just talking
14 about it quickly. What is it that you noticed as
15 these cars passed by you?

16 A When they passed me, I don't know who was
17 driving the car I don't even know who was in the
18 car, put it like that I don't know who was in the
19 car.

20 Q Okay

21 A But when they passed by, I seen the
22 gunfire coming from -- not from the driver's side
23 but from the passenger side

24 Q Okay

25 A I don't know whether it come from the

1 front or the back

2 Q Okay

3 A But that's where the gunfire come from

4 Q All right Now, where were you? Let's
5 assume this is the road, the two-lane road Where
6 were you -- if you'll stand down for

7 MR GIPSON. Your Honor, if he can
8 step down for a moment?

9 Q If this is the lane -- tell me how it was
10 situated?

11 A Car coming down this way here

12 Q Car coming this way

13 A I'm on the opposite side

14 Q All right So you were on the opposite
15 side of the road observing all these things happen?

16 A Right

17 Q All right Please have a seat again, if
18 you will, sir. So they passed you, and you heard
19 the gunshots?

20 A Right

21 Q All right And you said that you
22 determined you were going to walk on back home,
23 correct?

24 A Yes, just go on to the house

25 Q All right And what happened next?

1 What's the next thing that happened after that?

2 A That's when the car came back by I
3 wasn't for sure who was hollering out the window, so
4 I never mentioned it hollering out the window

5 Q All right

6 A But what made me think that it was Walker
7 was when I -- after I came to jail He told me --

8 MR WEEKS Objection, Your Honor

9 Q Don't tell us what he told you

10 A Okay

11 Q Let's go a little bit slower You said --

12 THE COURT Just a moment Yes, sir

13 MR WEEKS If we could have a sidebar meeting

14 THE COURT Yes, sir, you may proceed

15 MR GIPSON Thank you, Your Honor.

16 EXAMINATION CONTINUED

17 BY MR GIPSON.

18 Q Now, you mentioned after you -- you saw
19 this car go by And anything else that you
20 specifically observed at that point in time that
21 evening?

22 A No, sir

23 Q Okay Now, was that your car going down
24 the road that morning?

25 A No, sir

1 Q Okay Whose car was it?

2 A Wallow Ware's car

3 Q And how do you know that?

4 A I know Wallow Ware's car

5 Q Now, knowing Wallow Ware, how long have
6 you known Wallow?

7 A All his life

8 Q Okay And you said you know Head Walker
9 as well?

10 A Right

11 Q Okay And you said that you were somehow
12 connected by family --

13 A Right

14 Q -- through a child, correct?

15 A Right

16 Q And how long have you known Mr Walker?

17 A All his life, too

18 Q After that particular evening, when is the
19 next time that you had an opportunity to see Edward
20 Walker?

21 A When I came to the county jail.

22 Q When you came to the county jail?

23 A Yes

24 Q All right And when you say the county
25 jail, you're talking about the Aiken County Jail?

1 A Aiken County Jail

2 Q All right Where did you see him?

3 A Well, they moved me to his pod

4 Q Okay

5 A And he would come to my door

6 Q Now, when you say moved to his pod,
7 explain to the jury what you mean just by terms of
8 moved to his pod

9 A Well, I was in an open ward and --

10 Q What is an open ward?

11 A That's where there's no cell And I got
12 in an altercation, and they moved me to this
13 particular ward where there are cells upstairs and
14 downstairs.

15 Q Okay

16 A They had me downstairs and had him
17 upstairs But when he come out on rec, he would
18 come to my door And me and him would talk at the
19 door all the time

20 Q All right And did you have an occasion
21 to talk to him about the events of this evening --
22 of the evening of August 27, 2005?

23 A Well, he would come, but he wouldn't give
24 me no direct question But he would beat around the
25 bush with things And then, like for instance, he

1 told me that he appreciated that I ain't told on
2 nobody At first, he said why I told on everybody
3 I said, "If you look at your motion of discovery,
4 you'll see I ain't told on nobody, because I don't
5 know nothing " I said, "What you see on your motion
6 of discovery is what I said "

7 Q Okay And when you say motion for
8 discovery, that's just a term that we use --

9 A Rule 5

10 Q -- in criminal defense, Rule 5?

11 A Right

12 Q The evidence in the case, correct?

13 A Right, right

14 Q And when you have a criminal charge
15 pending, you can get any paperwork that the
16 prosecution has that's being used in an attempt to
17 prosecute you, correct?

18 A Right

19 Q And that's referred to as Rule 5?

20 A Right

21 Q All right So you told him to look at his
22 Rule 5?

23 A To just look at his Rule 5

24 Q Okay And what happened next?

25 A Well, he started going around and telling

1 everybody in the pod that I was a snitch, that I was
2 testifying against all them And I got in a couple
3 of altercations about that So how I got from over
4 there with him, I told Mr Weeks about it, and Mr.
5 Weeks got me moved --

6 Q Okay

7 A -- to a different pod

8 Q All right And, again, you said that he
9 talked -- he appreciated you not telling certain
10 things about him?

11 A Right

12 Q I'm not trying to put words in your mouth

13 A Like I told him, I didn't know nothing

14 Q All right Is there any -- was that the
15 only set of conversations that you had with him?

16 A Yes, sir

17 Q Were any specifics talked about, about
18 that particular evening?

19 A No, sir

20 Q Okay Now, you said that you also know
21 Wallow Ware, correct?

22 A Yes -- yes, sir

23 Q I'm sorry

24 A Yes, sir

25 Q Okay. And did you have an occasion to see

1 or meet with Wallow Ware after the evening or the
2 morning of August 27, 2005?

3 A Oh, when I came to the county jail, me and
4 Wallow Ware was in the same housing for about three
5 months

6 Q All right And when you were housed with
7 Mr Ware, did you have any occasion to speak to him
8 about this case?

9 A We never really -- I mean, I joked with
10 him one time when he was pushing a cart. I just
11 told him, I said, "Why don't you drive that like you
12 was driving a car?" And that was it

13 Q Okay

14 A But we ain't never discussed the case,
15 period We never discussed the case I mean, he
16 wouldn't discuss it no how

17 Q All right And did he tell you anything
18 in particular about this case or his implications --

19 A No, sir

20 Q -- involved in this case?

21 A No, sir

22 Q Okay Now -- and since you were housed
23 with either Mr. Walker or Mr Ware, was there ever a
24 time that either of them came and talked to you
25 about anything with their cases?

2 Q Now, the night that you were walking down
3 the road or the morning that you were walking down
4 the road and you saw Wallow Ware's car pass by, did
5 you see Cornell Tyler?

7 Q Okay

9 Q All right

12 THE COURT Yes, sir

15 Q Please answer any questions that Mr Weeks
16 has for you

18 THE COURT All right, sir, you may step down

20 MR GIPSON I'd like to call Mr Wallow
21 DeShawn Smith

23 CLERK OF COURT Please place your left hand on
24 the Bible and raise your right

25 (The witness was sworn)

1 CLERK OF COURT Please have a seat in the
2 witness box, state your full name for the Court, and
3 spell your last

4 MR SMITH My name is Wallow DeShawn Smith --
5 S-M-I-T-H.

6 WALLOW DESHAWN SMITH, having first
7 been duly sworn, testified as follows

8 DIRECT EXAMINATION

9 BY MR GIPSON

10 Q And, Mr. Smith, I'm going to ask you to
11 speak up a little bit.

12 A All right

13 Q You're already speaking a little bit too
14 soft

15 A All right

16 Q And also, if you'll do this for me, as I
17 ask you questions, I'm going to need you to give a
18 verbal answer, meaning a "yes" or a "no," and
19 explain your answers I see you're nodding your
20 head already

21 A Okay

22 Q And one of the things the Court Reporter
23 will not be able to do is to type that or to express
24 exactly what your answer is if you nod your head

25 A All right

1 Q Okay And you're not going to be able to
2 say "uh-huh" or "huh-uh" --

3 A Okay

4 Q -- because that's not going to be able to
5 be legible if we have to go back and look at the
6 transcript at some point in time

7 A All right

8 Q All right And, matter of fact, what I'll
9 do, I'm going to step all the way back here just to
10 encourage you to speak up a little bit, if you will,
11 okay?

12 A Okay.

13 Q All right And if you need to, you may
14 need to lean forward, because that is a microphone
15 right in front of you, and that'll project your
16 voice a little bit.

17 A All right

18 Q Now, where are you from, Mr Smith?

19 A Aiken, South Carolina.

20 Q I need you to speak up a little bit more

21 A Aiken, South Carolina

22 Q And born and raised in Aiken?

23 A Yes, sir

24 Q I need you to --

25 A Yes, sir

1 Q You have to speak loud enough for the last
2 juror to be able to hear

3 A Okay -- yes, sir

4 Q Do you have any children in Aiken?

5 A Yes, sir

6 Q How many?

7 A Five

8 Q Okay And right now, obviously you're
9 incarcerated, is that correct?

10 A Yes, sir

11 Q Tell us where you are serving time and
12 what you're serving time for

13 A At Manning Correctional Institute for
14 second-degree burglary and strong-arm robbery.

15 Q So Manning Correctional Institute?

16 A Yes, sir

17 Q Where is that located?

18 A In Columbia, South Carolina

19 Q And you said you're serving for
20 second-degree burglary and strong-arm robbery?

21 A Yes, sir

22 Q And did you do those crimes?

23 A Yes, sir

24 Q And were you found guilty in Court?

25 A Yes, sir -- I pled guilty

1 Q You pled guilty?

2 A Yes

3 Q So that means you accepted responsibility
4 for what you did?

5 A Yes, sir

6 Q All right Now, do you recognize any of
7 the people in this courtroom sitting on this side of
8 the partition?

9 A Yes, sir

10 Q Who do you recognize?

11 A Mr Bill Weeks, Mr Prince, Ms Brisbin --
12 that's it.

13 Q Okay And do you recognize anyone on the
14 other side of the courtroom?

15 A Cornell Tyler

16 Q All right And, again, being in Aiken
17 County, from Aiken County, and spending time in
18 Aiken jail, you've come into contact with some of
19 these people, correct?

20 A Yes, sir

21 Q All right. Now, there was a point in time
22 when you were arrested for these matters that you
23 are now serving time for in Manning Correctional
24 that you were housed at the Aiken County Jail,
25 correct?

1 A Yes, sir

2 Q And about how long were you in that jail?

3 A Thirteen to fourteen months

4 Q Now, in that 13 to 14 months, did you ever
5 come in contact with Wallow Ware?

6 A Yes, sir.

7 Q Did you ever come in contact with Kendall
8 Seawright?

9 A With who?

10 Q Kendall Seawright

11 A Kendall Seawright?

12 Q Yes, sir

13 A No, sir

14 Q Did you ever come in contact with James
15 Gleaton?

16 A No, sir

17 Q Did you ever come in contact with Edward
18 Walker?

19 A Yes, sir

20 Q All right Now, when you came in contact
21 -- did you ever come in contact with Cornell Tyler?

22 A Yes, sir

23 Q All right When you were in jail in 2005
24 in Aiken County, when you came in contact with
25 Wallow Ware, what types of things did you discuss,

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

Clifton Newman, Circuit Court Judge

Cornell D. Tyler
RECEIVED
JUN 08 2009
SC Court of Appeals

THE STATE,

RESPONDENT,

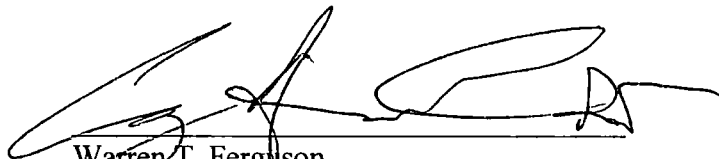
V

CORNELL D TYLER,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Donald J Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 8th day of June, 2009



Warren T Ferguson
Administrative Assistant

SUBSCRIBED AND SWORN TO before me
this 8th day of June, 2009

Karen D Elliott (L S)
Notary Public for South Carolina

My Commission Expires March 19, 2017