

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Appeal from Florence County

JUL 14 2014

Benjamin H. Culbertson, Circuit Court Judge **S.C. Supreme Court**

TRACY WILLARD DANIELS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002572

APPENDIX

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
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VOLUME ONE OF TWO VOLS

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

COURT OF GENERAL SESSIONS

)

2000-GS-21-977

STATE OF SOUTH CAROLINA)

vs.)

TRANSCRIPT OF RECORD

)

Tracy Willard Daniels,)

April 30 - May 4, 2001

Defendant.)

Florence, South Carolina

B E F O R E:

HONORABLE PAUL M. BURCH, Judge.

A P P E A R A N C E S:

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JACK LAWSON, Assistant Solicitor

Attorney for the State

JOHNNY DEBERRY, Esquire

Attorney for the Defendant

Keshia Reed

Circuit Court Reporter

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	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
3	S-1	Photograph	22	358
4	S-2	Photograph	22	358
5	S-3	Photograph	22	358
6	S-4	Photograph	22	358
7	S-5	Photograph	22	358
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EXHIBITS

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
3	S-25	Photograph	22	358
4	S-26	Photograph	22	358
5	S-27	Photograph	22	358
6	S-28	Photograph	22	358
7	S-29	Photograph	22	358
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EXHIBITS

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1 (Court reporter's note: A different court
2 stenographer reported the voir dire and impaneling
3 proceedings regarding the jury.)

4 THE COURT: All right. Gentlemen, have you got
5 anything you want to put on the record at this time?

6 MR. DEBERRY: If your honor please, the -- at this
7 time we would move for a motion under Brady. We would ask
8 that the prosecution furnish us with any evidence that they
9 have that tends to show the innocence of my client.

10 MR. RUSSO: Your Honor, to the best of my knowledge,
11 Mr. Deberry has everything that -- that we have. There was
12 a statement given by Mr. Daniels that evening. I think
13 I've provided Mr. Deberry with a copy of the transcript of
14 that recorded statement as well as a copy of the recorded
15 statement itself, the actual -- a tape of that. And I've
16 given him Miranda warning -- he signed a Miranda sheet.
17 Also a recorded statement by an eyewitness to the incident
18 as well as a copy of the tape -- transcript and the tape
19 for that. I'm not aware of anything that we have that Mr.
20 Deberry doesn't have.

21 THE COURT: Anything specific?

22 MR. DEBERRY: Specifically we would ask that they
23 give us any criminal record that they have or any evidence
24 that could be used to impeach any state's witnesses they
25 have.

1 MR. RUSSO: I'm sorry. What?

2 THE COURT: Any criminal records on any witnesses
3 you got.

4 MR. RUSSO: I'd have to gather that, Your Honor.
5 I've not run rap sheets on my witnesses.

6 THE COURT: Have somebody work on that while
7 we're doing some other things.

8 MR. RUSSO: I can get -- all of my witnesses, other
9 than Ms. McDougal who is Ms. Arion now, as well as possibly
10 Ms. Leffingwell.

11 THE COURT: You're not worried about police officers
12 and expert witnesses.

13 MR. RUSSO: All the rest of them are police
14 officers.

15 MR. DEBERRY: I'm not worried about them. We don't
16 need that.

17 MR. RUSSO: Okay. The only other one's would then
18 either be Ms. Leffingwell which I can do that ---

19 MR. DEBERRY: And the deceased.

20 MR. RUSSO: --- and the deceased which I've provided
21 that already. I've already provided the record on the
22 deceased. So I guess it would be the deceased's mother is
23 the only other witness and I can get that for you.

24 Mr. Deberry: Okay. And we would make a motion
25 under our Rule 5 and we acknowledge that you received our

1 motion for a Rule 5; is that correct?

2 MR. RUSSO: That's correct. Yeah.

3 MR. DEBERRY: We would ask that we be given copies
4 at this time of any -- We have a copy of a statement of Ms.
5 -- then Ms. Mary McDougal, now Arion. We have one
6 transcribed statement of hers that we would ask that we be
7 given at this time even though we realize that the rule
8 allows them to wait and provide it after the witness has
9 testified. We would ask if they have any statements that
10 -- of state witnesses that we be given those at this time
11 so we'll have time to review them and prevent a delay of
12 the trial.

13 MR. RUSSO: I'm checking on that to see if there are
14 any. Your Honor, I'm not aware of any other statements
15 that have been made by any other witnesses. I'm trying to
16 think. There -- beg the Court's indulgence. I don't --
17 The question that I have is that if Mr. Deberry is aware of
18 the contents of this particular statement if it, in fact,
19 is a statement where there was a phone call and I don't
20 even know at this point if it's going to be something
21 that's going to be gone into, but there was a phone call
22 from the defendant to the victim's mother sometime shortly
23 before this incident occurred.

24 Now, as far as -- There's no written statement, of
25 course. There's -- It would just be an oral comment.

1 That's the one that Mr. Deberry is aware of that was made
2 upstairs earlier today in that conversation. That's the
3 only thing that I'm aware of, Your Honor, but again it's
4 something that Mr. Deberry is aware of. And also, Your
5 Honor, if I'm not mistaken, Mr. Deberry has -- We've made
6 all of the state's witnesses available to Mr. Deberry.
7 He's had opportunities and he's known who they are and has
8 had opportunities to speak with them and I think he has
9 spoken with them as a matter of fact. I'm not aware of any
10 -- any surprise or anything like that, judge.

11 MR. DEBERRY: Your Honor, they also allowed me to
12 look at physical evidence and I have done that on a couple
13 of occasions and -- However, as recently as this past
14 Friday they sent the -- the shotgun to Columbia to have it
15 tested. I would ask that they furnish me with copies of
16 any -- and they faxed me Friday a copy of that test result.
17 I received a copy. If there are any other test results
18 that they have obtained such as any blood tests, any
19 fingerprints or anything, I have -- I'm unaware of anything
20 other than the Friday test where they sent, I believe, the
21 gun for...

22 MR. RUSSO: There was a trigger pull test and a
23 functionality test that was done on the weapon. Mr.
24 Deberry has a copy of that report. There are no -- There
25 are no other tests that have been done.

1 THE COURT: Okay. All right.

2 MR. DEBERRY: Your Honor, we -- This case is -- I
3 have recently learned, very recently, maybe as recent as
4 over the lunch hour confirmation of things. That I've
5 recently acquired some information about this case. I'll
6 tell you that this case -- There is going to be testimony
7 here of some unusual and very abrupt and bizarre behavior
8 on the part of the deceased leading up to this incident
9 where he was killed with a shotgun blast.

10 We have frantically been searching for explanations
11 and evidence and things leading up to it, what may or may
12 not have happened and what the evidence is going to show.
13 We have the autopsy results, and the evidence is going to
14 show that this individual, the deceased, had alcohol -- had
15 alcohol to some degree in there. The evidence is there's
16 relatively a low reading based on what I think the
17 testimony is going to show, but in any event I guess the
18 pathologist will clear up that as far as how long after the
19 person died that the test was -- that the blood was taken
20 and so forth, but we're going to have a mixture of alcohol,
21 no question about it.

22 The test also shows that the individual had
23 marijuana in him. The -- I've learned what I was telling
24 you about over the lunch hour here, rumor confirmed now,
25 that this individual -- unfortunately he was a drug addict.

1 It's certainly unfortunate, but that's the facts. I mean
2 -- And I know that the family is aware of it and it may or
3 may not have any bearing here, but I have -- I feel that
4 it's necessary that it comes out in this case and I'll tell
5 you why.

6 This individual was on heroin in Connecticut and had
7 to result to go into a methadone -- taking methadone
8 treatments. He moved here in March prior to the December
9 the 4th incident. He moved here in March of the same year.
10 At that time he had numerous visits to the hospital and
11 would go to the emergency room. He worked off and on with
12 my client as a plumber.

13 Your Honor, in addition to the alcohol and the
14 marijuana, there is another drug that we want to ask the
15 pathologist about that the autopsy shows that he had in
16 him, and he had -- In addition to that, Your Honor, there
17 was evidence and we were first informed through the
18 discovery that he had indicated to his mother that he had
19 pancreatic cancer and had -- and that it was terminal.
20 Later we learned that what he had was -- that he was HIV
21 positive. And this -- as early as, like I was saying, over
22 lunch time I reviewed some medical records that I didn't
23 have the benefit of earlier and it appears that this may
24 have been -- moved from the HIV positive into full-blown
25 AIDS.

1 The combination -- This man's frame of mind and the
2 bizarre activity that occurred, what went on, and the fact
3 that this person here was aware of the HIV, aware of the
4 AIDS situation, I think is going to come into play here,
5 that this person -- We're dealing with a person that he had
6 knowledge had AIDS. We have found out that he did have
7 AIDS. We have the records to show it and it's been
8 admitted at least to the extent of HIV positive by the
9 family.

10 THE COURT: What you're getting at is there was a
11 self-defense, the defense of self-defense possibly?

12 MR. DEBERRY: There are ---

13 THE COURT: Or am I guessing wrong?

14 MR. DEBERRY: Well, there is a -- I think that the
15 actions of the defendant are going to come into play on a
16 defense and I think that his -- Of course, his emotional
17 and his -- His state of mind is going to come into play and
18 be relevant eventually in this case.

19 MR. RUSSO: Your Honor, I obviously on behalf of the
20 state would strongly object to anything coming in with
21 regards to the defendant - excuse me - the victim being HIV
22 positive. Mr. Deberry is reaching for some way to bring it
23 in to discredit the victim, to make the victim more or less
24 unsavory or unsympathetic. There's no indication at all,
25 there's no evidence at all, that him being HIV positive had

1 any link to the facts surrounding this case and the issues
2 involved in this case.

3 THE COURT: Well ---

4 MR. RUSSO: Also ---

5 THE COURT: --- this has come up before, Solicitor,
6 and you're right. It's irrelevant. I haven't allowed it
7 in, but if it in some way goes to self-defense, fear on his
8 part, that possible avenue could come in, but you're
9 exactly right. If it doesn't go to something that makes it
10 relevant in this -- in fact, this came up -- that's come up
11 in the last few months here in Florence. I had another
12 case we tried. I know I ruled on that.

13 MR. RUSSO: Yes, sir. Your Honor, also -- well, and
14 it does, Your Honor. It has to be something that the
15 defendant knew about at the time, that it's not just mere
16 speculation or rumor. Also -- and I -- since we're on the
17 subject of Rule 5 and Brady and everything like that, we
18 served a reciprocal Rule 5 request, Brady request, on the
19 defense and we have received nothing from them, nothing at
20 all. And Mr. Deberry's talking about he has some records
21 that show -- some medical records that show this and I
22 don't have anything like that. You know, just as our feet
23 are held to the fire under Rule 5 and Brady, so is the
24 defense. I have received nothing from them.

25 THE COURT: You understand where I'm coming from?

1 Because I don't know a thing about this case. I don't know
2 whether there's even going to be any defenses. I don't if
3 self-defense is involved or whatever, but I'll make it
4 clear what I'm talking about. If you are HIV positive,
5 full-blown AIDS, and I know that and you try to attack me
6 and bite me, you see how self-defense comes in? That would
7 make it relevant, for example. But, otherwise, to try to
8 bring in that somebody was HIV positive or had AIDS or
9 whatever, that's not right. That's putting somebody on
10 trial; that's improper. So I hope I've helped you by
11 probably confusing you even more.

12 MR. DEBERRY: Your honor, there's been a lot of
13 thought about this, and it cuts both ways. He's saying
14 that there may be an attempt to bring in AIDS to show the
15 fellow was derelict or this, that, and the other. That
16 could backfire on somebody. I would be afraid to do that.
17 I think that would hurt the defense. This is solely
18 offered for the purpose of showing an explanation for the
19 bizarre activity that -- surrounding this death.

20 THE COURT: Do you have an expert witness that
21 proposes to testify to that?

22 MR. DEBERRY: At this time I can't say I do, and as
23 far as giving him the records, I read the first page of the
24 stack of things that were handed to me while I was in front
25 of you and I have made a copy of it to give it to him.

1 I've told him I had it; right?

2 THE COURT: That would be the only way I know it
3 could come in. You'd have to have an expert witness to say
4 that he -- that in their opinion that somehow or another
5 the behavior was exhibited because of a certain disease or
6 whatever. Otherwise, it's not coming in. So be careful
7 with it. A lay person certainly couldn't testify to it.

8 MR. RUSSO: And if I'm understanding the Court --
9 And obviously we would have the same standard. It would
10 have to be an expert witness who would then have to be able
11 to say that to a reasonable degree of medical certainty
12 that this disease causes someone to act this way. Is that
13 correct, Your Honor?

14 THE COURT: I see what you're getting at.

15 MR. DEBERRY: Your Honor, we would move to exclude
16 any -- There are many pictures that we've seen that we feel
17 would be inflammatory. These would be pictures of the
18 deceased's body and the clothes and the bloody evidence,
19 and we would exclude all of that type evidence and we would
20 want to have an in camera decision as to what -- what
21 should be admissible and what shouldn't.

22 THE COURT: Can we handle that when we get to it or
23 is that something that needs to be done now?

24 MR. DEBERRY: Whenever suits me as long as it's done
25 outside the ---

1 MR. RUSSO: I've just got -- in all honesty, Your
2 Honor, there's a voluminous amount of photographs, and I've
3 gone through it. Mr. Lawson and I have both gone through
4 it. As far as I can tell, I've only got maybe three
5 photographs that I think that they would question and I
6 could show them to, Your Honor, right now.

7 THE COURT: Are you to the point that you know which
8 ones you want to introduce?

9 MR. RUSSO: Yes, sir. I mean, I've got the ones
10 here that I think they'd have an objection to although I
11 think they're based on this case. I think, they're
12 admissible, but, I mean, I can show you right now.

13 THE COURT: Well, we can go ahead and handle that
14 now so we won't have to delay later.

15 MR. RUSSO: I'll get the ones out that I think you
16 might have an objection to.

17 (Pause in proceedings.)

18 MR. DEBERRY: This stack, no objection to.

19 MR. RUSSO: Your Honor, if I may explain, there are
20 an incredible number of photographs of the deceased. All
21 of them, as you're aware since it's a shotgun wound to the
22 neck, are very, very bloody and very -- could be -- what we
23 feel though is necessary and necessary for the
24 pathologist's testimony as well as in one of the issues in
25 this trial are going to be the distance that the defendant

1 was from the victim when the shot was fired.

2 The pathologist is going to testify as to stippling
3 and that around the wound which will help give them some
4 gauge or idea on how far away that weapon would have been
5 when it was fired. That is the least offensive picture
6 that we have that shows that. Of course, then there are
7 pictures of the body and we took links to take those
8 pictures out that show a lot of blood. And I think you
9 will notice the body -- pictures of the body laying in the
10 yard that reflect little, if any, blood. It's simply the
11 body. That is a picture they found deceased.

12 He was laying on ground as you see in that picture
13 and that shell was in his hand. They were just taking
14 photograph; there will be testimony in the case that prior
15 to being killed the defendant handed the victim the weapon.
16 The victim actually removed a spent shell from the weapon
17 and handed it back to the defendant and then was shot and
18 killed him. And when they found his body, he was actually
19 holding the spent shell that was ---

20 THE COURT: What -- We got a problem here. These
21 things haven't even been marked. We need to have reference
22 to them.

23 MR. RUSSO: Well, I guess, the ones that he's
24 objecting to will need to be.

25 MR. DEBERRY: Same thing put these in the same pile.

1 MR. RUSSO: I guess, we need to mark these for
2 reference.

3 MR. DEBERRY: There's no objection.

4 MR. RUSSO: Well, there's no objection here, but for
5 the purposes of this we need to get these marked now for
6 the purposes of this hearing.

7 (Pause in proceedings.)

8 (Photographs marked for identification as State's
9 Exhibit Numbers 1-6 and 8-34.)

10 THE COURT: Okay. Gentlemen, let's work through
11 these so it will be clear on the record. State's Exhibit
12 Number 1 is the neck of the deceased apparent bullet hole
13 in it. Now, what purpose does the State seek to have this
14 entered or this introduced?

15 MR. RUSSO: The purpose is as I indicated, Your
16 Honor, we went through all the photographs. We attempted to
17 select the one that was the least, I guess, offense to a
18 layperson as far as the least amount of blood, least amount
19 of gory details. To be able to show at the wound area as,
20 Your Honor, can see around the wound area is all these pit
21 marks or what appeared, I think, would be considered
22 stipplings from the weapon. That a pathologist would
23 testify that is what they use to determine the distance of
24 the weapon at the time it was fired.

25 From that, they can determine whether a weapon was

1 what they call point-blank range or whether it was five
2 feet away within a certain range. I think the pathologist
3 would need -- would use that to testify off of, and I think
4 the jury should be able to understand what the pathologist
5 is using. And as I've indicated all though any picture of
6 a gunshot is going to be disturbing to people, I think that
7 is is not so disturbing that it shouldn't be admitted for
8 that purpose.

9 MR. DEBERRY: Your Honor, the defense, of course, we
10 take the position it is in admissible justifies gross as it
11 can be. It's a horrible looking picture. Nothing, nothing
12 that the pathologist cannot describe variably to the jury.
13 I read the report before I saw the picture and he can
14 describe that as he already has done in detail where
15 there's one -- probably even better. He says that it's one
16 per one inch circumference.

17 MR. RUSSO: He gave the extension to him, Your
18 Honor.

19 MR. DEBERRY: And they can get same thing in as far
20 as distance and gun powder residue by verbal and written
21 report then he can with this and better than that picture
22 that the defense takes the position is inadmissible.

23 THE COURT: All right. I'm going to overrule your
24 objection based on the fact that I'm assured by the State.
25 And it's provide in my ruling that is to be used in

1 conjunction with scientific evidence of the expert witness.
2 I will note on the photograph that it is limited to --
3 basically limited to the wound area and does not show the
4 decedent's face.

5 MR. RUSSO: Yes, Your Honor. And, Your Honor, if
6 during the testimony of the pathologist, I will obviously
7 talk with the pathologist before he testifies. If he feels
8 that this isn't necessary in his testimony, we want use it.

9 THE COURT: Good. All right. Let me ask you, Mr.
10 Deberry, do you still have an objection about the hand with
11 shotgun shell in it?

12 MR. DEBERRY: Your Honor, we take the same position.
13 We feel like it could be described verbally. We don't need
14 to put the picture of a dead person's -- part of his body
15 in front of a jury.

16 MR. RUSSO: Your Honor, that picture has absolutely
17 no blood or anything whatsoever. It's a hand.

18 THE COURT: All right. That was 2 same as to 9, 8.

19 MR. DEBERRY: Same as to 9, 8.

20 THE COURT: All right. I'll overrule the objection
21 on that. It's obvious it's not any problem with those in
22 my point of view. And it's just a showing of a shotgun
23 shell being held in the hand. Number 10 is the opposite
24 hand. What purpose is that for?

25 MR. RUSSO: Your Honor, that's just -- they picked

1 up some items off the ground. One of the items was a
2 lighter; that's the lighter there just showing the
3 proximately to the decedent's body where they picked up the
4 lighter.

5 MR. DEBERRY: Same objection.

6 THE COURT: What's the purpose of knowing about the
7 lighter?

8 MR. RUSSO: I can withdraw that. These are just
9 items they picked up whether they become an issue or not
10 would be whether the defense made is an issue.

11 THE COURT: Okay. If you don't keep it in -- If the
12 that lighter for some reason becomes an issue in the trial,
13 I'll revisit it. Okay. Otherwise you can pull that one
14 out.

15 MR. RUSSO: Okay.

16 THE COURT: Three, four, five, six and seven all
17 show decedent at various viewpoints laying on the ground
18 near a -- looks like gas lantern of some type of lamp.

19 MR. RUSSO: Your Honor, the purpose here is the
20 position of the decedent when law enforcement arrived in
21 relation to the defendant's trailer and with regards to the
22 eyewitness testimony of what she observed. And I will say,
23 Your Honor, it may -- on Number, I think, this is five,
24 Your Honor, the significance of this one is there's going
25 to be testimony that the decedent prior to his death had

1 this bar that's used to turn water on and off that he had
2 that in his hand and that prior -- when he was handed the
3 weapon, he laid that to be ground and was standing near
4 that and this is just give that relationship.

5 This one gives the relationship of the decedent.
6 This is Number 6 gives the relationship to the decedent to
7 the defendant's home. The defendant allegedly, Your Honor,
8 had come out of this door and was standing in this area
9 when he fired the weapon. This is the carport which is
10 right next to decedent's house where again showing the
11 location of the victim at the time that he was killed. And
12 this is just at the other angle which maybe repetitive,
13 Your Honor.

14 This is the relationship of -- If you will notice,
15 Your Honor, there's a trailer in the background that was
16 the home of the eyewitness and where she was when she was
17 witnessing the killing. And that shows her relationship
18 and the distance from the decedent from her -- her vantage
19 point. This one, Your Honor, I could withdraw. It's just
20 repetitive. It shows basically it shows this position but
21 from the other angle. And if it's going to be a problem, I
22 don't mind withdrawing it.

23 MR. DEBERRY: What number is that?

24 MR. RUSSO: Number 7.

25 THE COURT: You don't need it withdrawn?

1 MR. RUSSO: I don't need Number 7.

2 THE COURT: You got any other comment about it?

3 MR. DEBERRY: Our position is basically the same,
4 Your Honor, we feel that these pictures are obviously this
5 day and time you can crop these pictures or you could show
6 the sketch of body there rather than the actually body.
7 And it would be used only for the purpose of -- if you look
8 at the two, the one that's cropped or sketch or the one
9 with the body for purpose of explaining to the jury.

10 THE COURT: All right. On four, six, three, cause
11 of the explain need I overrule the objection on them. But
12 why are you worrying about something that the defense will
13 probably want to introduce.

14 MR. RUSSO: Well, again, I mean, Your Honor, I just
15 -- These are the photographs we were going to put together.
16 If that doesn't become an issue and it would only become an
17 issue if the defense made it an issue. And I'd like to be
18 able to if they do to be able to come back to refute or to
19 rebut anything that maybe said with regards to that. There
20 may be no need for it. But I thought we ---

21 THE COURT: I was just wondering about that.

22 MR. RUSSO: We should go ahead and rule on that
23 while we were doing this.

24 THE COURT: I'll overrule the objection on it. But
25 don't, you know -- you got to use your own judgment. I'm

1 not trying to tell you how do that one.

2 MR. RUSSO: Yes, sir, I understand.

3 THE COURT: Mr. Deberry may need that one back.

4 MR. RUSSO: Well, he's got copies of all those,
5 judge.

6 THE COURT: All right.

7 MR. DEBERRY: Your Honor, please, my client does in
8 my opinion does not have a criminal record that should be
9 allowed in front of this jury. And I think Mr. Russo will
10 agree there's no crime of moral turpitude that he has been
11 convicted of. In the '80's, I think, that there's a
12 magistrate's court offense. Other than that he's never
13 been in general sessions court and he's never been
14 convicted of any crime of moral turpitude.

15 THE COURT: Any issue concerning that, Solicitor?

16 MR. RUSSO: No, Your Honor, the only -- And I shared
17 this -- Mr. Deberry and I've talked. The only thing I
18 think is in his history is that magistrate level offense
19 back in the early '80's or mid '80's as far as his record
20 concern. And, Your Honor, I guess, I just wait to see how
21 the direct testimony goes if should Mr. Daniels take the
22 stand. And Mr. Deberry and I've talked about it. I don't
23 know there's going to be any problem involved with that. I
24 wouldn't have obviously any grounds to bring in that
25 magistrate level offense.

1 THE COURT: Okay.

2 MR. DEBERRY: As I understand it, they have told me
3 they don't have any prior record of the deceased; is that
4 correct?

5 MR. RUSSO: I'm sorry.

6 MR. DEBERRY: There's no prior record of the
7 deceased?

8 MR. RUSSO: Correct. The only one was that issue
9 back in '83 or '84. And -- The decedent you said?

10 MR. DEBERRY: That's correct.

11 MR. RUSSO: That's correct. Yes, sir. And I don't
12 have the record of those other witnesses you asked me
13 about, but I'll get them.

14 MR. DEBERRY: Your Honor, we would move in order
15 that we make sure that each witness gives an independent
16 recollection of the events that occurred that night and
17 this happened some more than year ago. This December the
18 4th will be two years. We would move that to have the
19 witnesses sequestered in the trial.

20 MR. RUSSO: I don't have any objection.

21 THE COURT: All right. Now, what's for the goose
22 good for the gander. All witnesses will be sequestered
23 except for your chief investigating officer to assist you.

24 MR. RUSSO: Yes, sir. That would be Investigator
25 Phil Hanna.

1 MR. DEBERRY: Your Honor, also we have -- And I
2 don't know when you want to take that up. I would like
3 take it up before we have opening remarks to the jury so
4 that we could plan accordingly. I would like take up the
5 Jackson v. Deno hearing on the statement of the defendant's
6 statement so we can go forward.

7 THE COURT: All right. I understand.

8 MR. DEBERRY: I think that's all the motions I have.

9 THE COURT: Y'all told me you wanted to make a
10 motion there about your bond.

11 MR. DEBERRY: Your Honor, also I would submit to the
12 Court that I have had a 100 percent cooperation. I
13 appeared with Mr. Daniels when he was at the bond hearing.
14 He was under strict rules as far as the bond hearing on
15 contacting me, people of that nature. We have now the
16 facility, the Effingham facility is about 10 miles from
17 here.

18 During the next several days in the trial of in this
19 case, it would be very much of a hardship for me to have to
20 converse with my client if he were in the detention center.
21 He has been out for almost a year and a half now, Your
22 Honor. And we would ask that he be allowed to remain out
23 on bond during the course of this trial.

24 THE COURT: State taking any position on that?

25 MR. RUSSO: Your Honor, we would just go by

1 whatever, Your Honor's, discretion is on that.

2 THE COURT: Yeah, I understand that problem. You
3 know, I been out there to Effingham too for some meetings
4 and whatever by there I know that can be a problem. And
5 he's close by.

6 Sir, you understand ---

7 DEFENDANT DANIELS: Yes, sir.

8 THE COURT: If I go along with this and I leave you
9 out during the progress of this trial, you fully understand
10 this case will go on in your absence?

11 DEFENDANT DANIELS: Yes, sir.

12 THE COURT: If you don't come back.

13 DEFENDANT DANIELS: Yes, sir.

14 THE COURT: I have to tell you that and you will be
15 tried in your absence should you not return. Of course,
16 that be the worse thing in the world you could possibly do
17 at this point, would be to run.

18 DEFENDANT DANIELS: Yes, sir.

19 THE COURT: Okay.

20 DEFENDANT DANIELS: Yes, sir.

21 THE COURT: All right. Your motion is granted.

22 MR. RUSSO: The only other -- Your Honor, the --
23 referring to an earlier matter. There was a statement --
24 Of course, we're fixing to go into, I think, this taped
25 statement that he gave. And there is a statement which he

1 gave on the scene. And I'm sure we're going into that as
2 well. But Mr. Deberry has a copy of that. It's included
3 in the incident report.

4 MR. LAWSON: Your Honor, this is whether or not the
5 issue approach the court as to not at least starting the
6 case itself in the morning and letting the jury go ahead
7 and go so we can finish -- because these Jackson v. Deno
8 hearings may take a little while. Now, that we also have
9 an oral statement as well as a recorded statement that we
10 going to have to deal with. But both through Jackson v.
11 Deno hearing with different officers, totally different
12 officers.

13 THE COURT: And you, Mr. Deberry, you feel like you
14 need the Deno hearings?

15 MR. DEBERRY: I do.

16 THE COURT: Okay. That suit, you?

17 MR. RUSSO: Yes, sir.

18 MR. DEBERRY: Yes, sir.

19 THE COURT: Bring the jury in.

20 (The jury came in the courtroom.)

21 THE COURT: All right. Ladies and gentlemen, thank
22 you for your patience. I know we kept you back there in
23 that room for an half an hour. As I will tell you and I've
24 already mentioned to you, I am the judge of the law and you
25 will be judge of the facts. I got to have more time to

1 handle some preliminary matters. And we have just
2 discussed it, counsel and I. There's no point in us
3 keeping y'all back there in that room while we do that.
4 And it's going to take probably the rest of the afternoon
5 for us to work through that.

6 So we decided we don't need keeping the jury back
7 there for the purposes of us handling matters of law out
8 here. So we're in agreement what to do is to let y'all go
9 on home and we will stay here work and work through all
10 those matters and have the case ready to actually go to
11 trial before you all in the morning. Okay. So we're going
12 to stay here we gone do that. I need y'all back here at 10
13 in the morning. Report to this jury room right back here
14 promptly 10 or a little bit before. Hopefully we'll be
15 able to get started at that time.

16 Do not discuss this case with anyone. Do not even
17 discuss it amongst yourselves. Should anybody try to
18 approach you in any form telephone, in person, fax, e-mail,
19 whatever do not discuss this case with them and immediately
20 notify the police department or the sheriff's department of
21 any such contact. Okay. And, of course, I will take that
22 up with you in the morning should something like that
23 happen. It very seldom happens, but it has in past. And
24 it is totally improper for anybody to do something like
25 that. So I have to warn you about it. All right.

1 Counsel, anything before I release them for the
2 afternoon?

3 MR. DEBERRY: Nothing, Your Honor.

4 MR. LAWSON: Nothing from the State.

5 THE COURT: All right. We will see y'all at 10 in
6 the morning. Y'all have a good night.

7 (The jury was excused for the day.)

8 THE COURT: What we got two statements, one written
9 and one oral?

10 MR. LAWSON: Correct.

11 THE COURT: All right. Solicitor, I believe, that
12 puts the ball in your court.

13 MR. LAWSON: Your Honor, Mr. Russo had to run out
14 for just a minute. I guess, we should go ahead and start
15 this. We'll start with the written statement, Your Honor.
16 The oral statement the officer is on the way.

17 THE COURT: Okay.

18 MR. LAWSON: He is not present yet. We call Officer
19 Phil Hanna. Your Honor, I think there's a sequestration
20 order and we need to go ahead and remove witnesses now.

21 THE COURT: Right, we need to.

22 PHIL HANNA, being first
23 duly sworn, testified as follows:

24 IN CAMERA DIRECT EXAMINATION BY MR. LAWSON:

25 Q. State your full name for the record?

1 A. It's Philip Hanna.

2 THE COURT: Mr. Lawson, you're comfortable in going
3 forward or you rather wait on Mr. Russo?

4 MR. LAWSON: Actually, we can wait on Mr. Russo, but
5 either way, Your Honor, I can go ahead and get some
6 preliminaries out of the way.

7 THE COURT: Any objection?

8 MR. DEBERRY: No objection.

9 THE COURT: All right. Go ahead.

10 Q. And, Mr. Hanna, where are you employed?

11 A. Florence County Sheriff's office.

12 Q. And how long have you been so employed?

13 A. Eleven years.

14 Q. So you were employed there on December the 4th of
15 1999?

16 A. That's correct.

17 Q. Did you have occasion on that day to meet or interview
18 a Mr. Tracy Daniels?

19 A. Yes, I did.

20 Q. Do you see Mr. Daniels at this time?

21 A. Yes, sir, I do.

22 Q. Is he in the courtroom?

23 A. Yes.

24 Q. Could you identify him to the Court?

25 A. Yes, sir. The gentleman sitting right there.

1 Q. Sitting by Mr. Deberry?

2 A. That's correct.

3 Q. All right. Mr. Hanna, did you -- In what capacity did
4 you meet Mr. Daniels on December the 4th of 1999?

5 A. On that particular night, I was the investigator on
6 call for that weekend and was asked to respond out to the
7 residence Mr. Tracy Daniels in reference to a shooting
8 incident do follow up investigation, which by the time I
9 got there the deputies had already had the defendant
10 handcuffed in a police car. And I later spoke with him at
11 the Florence County Detention Center.

12 Q. All right, sir. Were you and are you now the case or
13 lead investigator on the case?

14 A. Yes, sir.

15 Q. The case agent. Were you assigned this case at that
16 time?

17 A. Yes, sir.

18 Q. As a result of being assigned the case, what did you
19 do?

20 A. At that particular -- On that evening, we had other
21 units respond out to process the crime scene, which our
22 forensics unit processed the crime scene. I interviewed
23 witnesses and also took a statement from the defendant at
24 the law enforcement center that same night.

25 Q. All right. And do you know whether or not Mr. Daniels

1 was Mirandized?

2 A. Yes, he was.

3 Q. And who did that?

4 A. The first time he was Mirandized was by Deputy Scott
5 Brown at the scene.

6 MR. DEBERRY: Object. Lack of first-hand knowledge,
7 Your Honor.

8 THE COURT: No, he can testify that it was given.
9 Now, he can't go into what was said.

10 MR. LAWSON: Correct.

11 Q. And did you also have an opportunity to Mirandized
12 Mr. Daniels?

13 A. Prior to me speaking with him, I did Mirandize him.

14 Q. And what did you tell him?

15 A. Basically, we have a form that we fill out before
16 interviewing any subjects in custody before taking a
17 statement. And this is the form that I filled out where
18 the defendant signed it and initialed each line.

19 Q. Is that the original form that was done that night or
20 is that a copy?

21 A. This is the original one.

22 Q. All right. And what does that form say, please, sir?

23 A. The constitution requires that I inform you that you
24 have the right to remain silent. Anything you say can and
25 will be used against you in a court of law. You have the

1 right to talk to a lawyer and have him present with you
2 while you're being questioned. If you cannot afford to
3 hire a lawyer, one will be appointed to represent you
4 before any questioning, if you wish. You could decide at
5 any time to exercise these rights and not answer any
6 questions or make any statements. And do you understand
7 each of these rights I've explained to you. The defendant
8 wrote, yes.

9 And having these rights in mind do you wish to talk
10 to me now. Defendant also wrote, yes. Signed his name and
11 also as a waiver of rights form, says I have read this
12 statement of my rights and understand what my rights are.
13 I am willing to make a statement and answer questions. I
14 do not want a lawyer at this time. I understand and know
15 what I am doing. No promises or threats have been made to
16 me. No pressure of any kind has been used against me by
17 anyone. And this too was signed by the defendant and was
18 witnessed by myself along with Officer McElveen with the
19 law enforcement center.

20 Q. All right, sir. And did you indicate on each every
21 line that the defendant placed his initials?

22 A. That's correct. On each one of the lines that which
23 are numbered, there is a place for the defendant to initial
24 and he did so.

25 Q. And was that done at your instruction?

1 A. I told him to initial each line after I read it to
2 him. I have a copy that -- I have this copy in front of
3 him and I'm reading mine so he can read along with me.

4 Q. All right. Now, did you ask him if he understood
5 those rights before you ask him to sign or initial each
6 line?

7 A. That's correct.

8 Q. Did you have any question in your mind that he
9 understood his rights at the time that he signed that
10 document?

11 A. No, sir, there was no questions.

12 Q. All right. Did he then proceed to give you a
13 statement?

14 A. That's correct.

15 Q. I'll ask you to look at this and identify if you would
16 to the Court?

17 MR. LAWSON: And we would move that this be
18 introduced as Court's Exhibit 1.

19 Mr. Deberry: No objection.

20 MR. LAWSON: For the purpose of Jackson v. Deno
21 hearing.

22 (Transcribed Statement marked as Court's Exhibit
23 Number 1.)

24 A. And this in my hand is a transcribed copy of the
25 recorded statement that Tracy Daniels had given me that

1 night.

2 Q. And did you -- You in fact did record the statement?

3 A. Yes, sir.

4 Q. What did you record it on?

5 A. A standard tape recorder, cassette tape recorder.

6 Q. Can you identify this in this -- please, look in that?

7 A. Yes, this is the statement -- the cassette tape that I
8 put the statement on that night. I recognize my

9 handwriting and this is also just a regular container I put
10 it in to keep up with it so that it could be transcribed.

11 Q. All right. And at the time that statement was given
12 did Mr. Daniels ever indicate that he wished to have a
13 lawyer present?

14 A. No, he didn't.

15 Q. Did he ever tell you that he didn't want answer any
16 more questions?

17 A. No.

18 Q. Did you ever threaten him or coerce him in anyway to
19 get him to make that statement?

20 A. No, I didn't.

21 Q. Did you offer him any promise or reward or anything of
22 value to make the statement?

23 A. Didn't offer him anything.

24 Q. All right. In your opinion, the statement was made
25 voluntarily?

1 A. Yes, it was.

2 Q. Of his own freewill and accord?

3 A. That's correct.

4 Q. And on that statement is what was transcribed on the
5 transcription; is that correct?

6 A. That's correct. All but the portions that the person
7 could not understand what he was saying, which is labeled
8 by in audible.

9 Q. All right. Did you prior to taking that statement
10 again advised Mr. Daniels of his rights on the tape
11 recording itself.

12 A. Yes. Once I took the tape recorded statement and turn
13 the tape on, I again read his Miranda rights, which is also
14 on the tape.

15 Q. Would that have been done after he had signed the
16 waiver of rights form?

17 A. That's correct. It been the second time myself had
18 Mirandized him.

19 Q. All right. So would then a period of just a few
20 minutes you had given him his Miranda rights on at least
21 two occasions?

22 A. Yes. There was a difference in time because I talk
23 with him prior to actually getting the tape recorded
24 statement, but that was a short time.

25 Q. All right. So what did you talk about during that

1 period of time?

2 A. Just asking him what happened.

3 Q. And then you took the recorded statement?

4 A. That's correct.

5 MR. LAWSON: Your Honor, the State would also move
6 the introduction of the tape and the transcript for the
7 purpose of Jackson v. Deno hearing. Move as Court
8 Exhibit's 2 and 3.

9 MR. DEBERRY: No objection.

10 (Cassette tape marked as Court's Exhibit Number 2.)

11 (Transcript of statement marked as Court's Exhibit
12 Number 3.)

13 MR. LAWSON: I'm gone break this tape before this
14 hearings over.

15 THE COURT: Has the tab been removed on that tape?

16 MR. HANNA: No, sir.

17 THE COURT: Counsel, are we all in agreement that
18 that tab should be pulled out of there now?

19 MR. RUSSO: Yes, Your Honor.

20 MR. DEBERRY: Yes, sir.

21 MR. LAWSON: That would be State's evidence, Your
22 Honor. Answer any questions Mr. Deberry may have.

23 IN CAMERA CROSS EXAMINATION BY MR. DEBERRY:

24 Q. Mr. Hanna, this incident occurred back -- What's your
25 best estimate of when the incident occurred where

1 Mr. Leffingwell was killed?

2 A. December the 4th 1999 at approximately 1600 hours --
3 well, six o'clock. I think. It was 1800 hours.

4 Q. And when is the first time that you saw Mr. Daniels?

5 A. I saw him at the scene, but he was in the back of a
6 patrol car.

7 Q. When?

8 A. That same night while at the residence.

9 Q. And when would that be?

10 A. December the 4th.

11 Q. I understand it's the same night. But what time that
12 night did you see him?

13 A. I first responded was at 6:03. I'd have look at cad
14 report to know exactly what time I got there, but somewhere
15 around 6:30 I would guess.

16 Q. In the neighborhood of 6:30?

17 A. I think.

18 Q. Okay. And you first saw that gentleman right there
19 then; right?

20 A. In the back of the police car -- Well, I didn't really
21 go look at him. When I first got there, I was -- got with
22 all the officers at the scene. So it would have been I'd
23 say between 6:30 and seven that would be probably better.

24 Q. Okay. So we would been within within an hour of the
25 time when the incident occurred; is that correct?

- 1 A. Yes, I'd say that.
- 2 Q. And you talk with him then?
- 3 A. Not at the scene.
- 4 Q. But you saw him in the back of the ---
- 5 A. Patrol car.
- 6 Q. Okay. And tell me how close did you get to him?
- 7 A. I remember opening the door to like at him to see what
- 8 he looked like. And told him to take him on to the jail
- 9 and I'd talk with him there.
- 10 Q. Okay. And so there's no question about it that at the
- 11 time at least at the time you saw him -- the very first
- 12 time you saw him he was incarcerated?
- 13 A. That's correct.
- 14 Q. Now the ---
- 15 A. When -- Well, when I first got there, he was detained
- 16 by the officer until they could find out what was going on
- 17 because they didn't know anything. So he was temporarily
- 18 detained.
- 19 Q. He couldn't leave if he wanted to. Y'all would have
- 20 stopped him?
- 21 A. Yeah, he was being detained.
- 22 Q. All right. Now ---
- 23 A. An investigator detained him.
- 24 Q. You are the -- From reading all the reports that I've
- 25 read if you had to say that somebody was in charge, you're

1 the man in charge; is that correct?

2 A. Yes.

3 Q. And how would you describe your position in this
4 investigation?

5 A. I'm the primary investigator. I was the investigator
6 on call that night. So it was my job to go out and find
7 out what happened.

8 Q. Everybody else that's been listed -- they gave the
9 judge a witness list would be subordinate to you or under
10 your control as far as this investigation?

11 A. Somewhat. The forensics unit headed by a lieutenant
12 who's in charge of that unit. He knows what to do. So I
13 don't question him as far as what the process and what to
14 do.

15 Q. But you were the chief investigating officer?

16 A. That's correct.

17 Q. Okay. As the chief investigating officer, tell the
18 Court if you would what did you observe as far as evidence
19 of the use of alcohol when you first arrived at scene that
20 night.

21 A. When I first arrived, I didn't see any evidence.

22 Q. Okay.

23 A. Later on I walked inside the house and there was
24 obvious beer cans - excuse me - and I think there might
25 have possibly also been bottle of vodka there. So it was

1 obvious sometimes -- some period of time there had been
2 some alcohol consumed there.

3 Q. Okay. Now, let me go on to this. You just made the
4 statement there might have possibly been a bottle of vodka
5 there?

6 A. I can't remember if it was vodka or brown liquor. It
7 was a bottle of alcohol.

8 Q. Okay. There wasn't possibly -- There was definitely
9 and you seen the pictures and you were there in person?

10 A. Right.

11 Q. There was a bottle of alcohol?

12 A. Yeah, that's correct.

13 Q. And how would you describe the size of that bottle of
14 alcohol?

15 A. Best I can recall off the top of my head it was a -- I
16 think, it was liter size. And there wasn't much left best
17 I can remember. I don't know exactly how much, but
18 photographs could show it better because it was
19 photographed.

20 Q. Okay. And so you saw a liter?

21 MR. LAWSON: Objection, Your Honor, that does not go
22 to the voluntariness of the statement. Unless counsel can
23 allege that the defendant was intoxicated and didn't know
24 what he was doing.

25 MR. DEBERRY: Well, I'm going with it.

1 THE COURT: Go ahead.

2 Q. And so you saw a liter of alcohol there that was
3 almost gone is your best recollection?

4 A. Uh-huh.

5 Q. And then I understood you to say that there was some
6 beer cans there; is that right?

7 A. In the trash can there was beer cans there.

8 Q. And do you recall the number.

9 A. No, sir.

10 Q. Okay. And as far as there being two people there
11 drinking -- and one of reasons for this throughout the
12 investigation has that surfaced constantly the fact that
13 there were two people were there drinking?

14 A. Yes, there were known to be friends or known to drink
15 beer together drink alcohol together.

16 Q. And from talking with the neighbor from your
17 investigation with talking with everybody, from reading the
18 statements of Mr. Tracy Daniels and everyone starting from
19 early that afternoon. Did you understand that there was
20 constant drinking?

21 A. Yes.

22 Q. And would it be a fair statement to say that at least
23 at the time of this incident that Mr. Tracy Daniels was
24 intoxicated from what you gathered from the evidence?

25 A. I can't tell you if he was intoxicated or not. I

1 don't -- when I talked to him, he didn't appear to be
2 intoxicated.

3 Q. Okay. And you have readily available -- You
4 questioned him at the law enforcement center; is that
5 correct?

6 A. That's correct.

7 Q. And there at the law enforcement center there you have
8 readily available the ability to test a person for the
9 alcohol in their system; is that right?

10 A. I'm sure. I guess it is. I don't know how to work
11 it. But I'm sure it is there.

12 Q. Well, that's the place where they run the Breathalyzer
13 for people that are charged primarily in this county with
14 DUI; is that correct?

15 A. I'm not gone doubt you. I never been in there, not in
16 the Breathalyzer room.

17 Q. Okay. Well, did you make any attempt to have a test
18 run on this subject to see exactly how much alcohol he may
19 have in his system?

20 THE COURT: Mr. Deberry?

21 MR. DEBERRY: Sir.

22 THE COURT: You know that's not permissible use. I
23 mean, the law is for driving under the influence for those
24 data masters and Breathalyzers. How come that's being
25 drugged into this?

1 MR. DEBERRY: Well, Your Honor, it's our position
2 that he shouldn't have been making that statement in the
3 condition that he was in. And that they should have waited
4 and the evidence shows that he should have waited until
5 such time as he had a clear head.

6 MR. LAWSON: Your Honor, we can play the tape and,
7 Your Honor, can judge based on the tape whether or not the
8 defendant sounds intoxicated, whether his words are
9 slurred, whether he's slow with speech, slow to respond.
10 All of which the officer has said he did not appear to be
11 intoxicated at the time of giving the statement. And Mr.
12 Deberry is continuing to fish in this area and the officer
13 has already said, he didn't appear to be under the
14 influence at the time that I took the statement.

15 And that's the whole question as to whether or not
16 he appeared. If he's going to -- It becomes a question of
17 fact if he gone say I was too drunk to make a statement
18 like that. Now, the question of admissibility, it becomes
19 a question of weight of the evidence as opposed to
20 admissibility.

21 THE COURT: What I'm concerned about here is
22 something I been concerned about since I been on the bench.
23 And I don't think Mr. Deberry was heading this way
24 necessarily that's why I wanted to ask you. I don't want
25 to see a police officer put on trial for his investigation

1 by something that would have been improper for him to have
2 done. I don't want an attorney to try make Mr. Hanna look
3 bad by saying he should have gotten a data master or
4 Breathalyzer reading on this defendant. When we all know,
5 that that would be improper.

6 Now, if a blood test or something like that that
7 might be permissible at an appropriate medical facility or
8 personnel maybe, yes. But I'm not gone sit up here and let
9 this officer go on trial now for something that he couldn't
10 possibly have done under the law. That's all I'm worried
11 about, Mr. Deberry.

12 Q. Officer, did you feel -- Did you have the ability to
13 have this person's -- any blood drawn from Tracy Daniels.
14 Could you have done that?

15 A. If I had felt that it was necessary, I guess, it would
16 be possible. But I didn't feel like it was necessary.

17 Q. Okay. And you realize that this was within how many
18 hours from the alleged incident within five hours; is that
19 correct? What time is your statement?

20 A. Can I look at this. The incident occurred around six
21 o'clock p. m. and I took the statement 1219 a. m., which is
22 -- that's a good four -- that's six hours.

23 Q. Okay. All right. And you elected not to attempt to
24 get any type blood analysis to see if this person had been
25 drinking or to what extent; is that correct?

1 A. That's correct.

2 Q. Okay. Now, do you recall that when you first
3 questioned him on this written statement that you -- right
4 after you advised him some very important rights. That he
5 had the right to remain silent. That he had a right to
6 have a lawyer there. Do you remember telling him that; is
7 that correct?

8 A. That's correct.

9 Q. Immediately after that on page 2 of this statement, do
10 you see there in photograph 2 the last sentence where you
11 say, do you understand these rights. I think prior to your
12 being arrested tonight I think the deputies also read your
13 Miranda rights to you. Is that correct do you remember.
14 And do you see there that the written statement here says
15 that it's inaudible?

16 A. Uh-huh.

17 Q. You see that?

18 A. Yes.

19 Q. Okay. Now, do you recall what he said then?

20 A. No, I don't. We could easily listen to the tape and
21 see if we can recognize it.

22 Q. The tape would be the best evidence there rather than
23 this written document; is that correct?

24 A. No, as far as that one word missing -- whatever it was
25 missing.

PHIL HANNA IN CAMERA CROSS EXAMINATION BY MR. DEBERRY
PHIL HANNA IN CAMERA REDIRECT EXAMINATION MR. LAWSON2

1 Q. But your answer as far as this one word is concerned
2 here the tape would be best evidence; is that correct?

3 A. Right. To see if it could be made out.

4 Q. Okay. Now, do you remember Mr. Daniels when you asked
5 him if he felt comfortable with going forward with the
6 statement?

7 A. That's right.

8 Q. Did he tell you he did not feel comfortable with going
9 forward?

10 A. That's correct.

11 Q. All right. At that time did you advise him again that
12 he had the right to stop and have a lawyer present.

13 A. No, I didn't.

14 MR. DEBERRY: That's all the questions I have thank
15 you.

16 THE COURT: Anything further, Mr. Lawson?

17 MR. LAWSON: One minute, Your Honor.

18 MR. HANNA: Your Honor, can I ask you a question?

19 THE COURT: Ask me a question?

20 MR. HANNA: Yes, sir.

21 THE COURT: Run it through your attorney first.

22 MR. HANNA: I want to say everything he told me but

23 ---

24 IN CAMERA REDIRECT EXAMINATION BY MR. LAWSON:

25 Q. Okay. Yeah, I was going to ask you about that that

1 there was an indication that Mr. Daniels had indicated to
2 you that he was not willing to make the statement. Would
3 that be accurate or inaccurate?

4 MR. DEBERRY: We object to that -- to the form of
5 that question, Your Honor. He's asking if the response of
6 this person was accurate or inaccurate; that's not a proper
7 question.

8 MR. Lawson: Your Honor ---

9 THE COURT: I thought you -- what a minute repeat
10 the question, but don't answer it.

11 Q. All right. During cross examination, defense counsel
12 asked you if the defendant made a statement during the --
13 while you were advising him of his rights that he felt
14 uncomfortable making the statement; is that correct?

15 A. Yes.

16 Q. All right. And you answered that he did make that
17 statement?

18 A. Yes.

19 Q. Actually, what was it he said?

20 A. I'm going to be honest with you I am not comfortable,
21 but I am going to be honest with you all the same. I'll
22 answer any questions you want me to -- you want to ask me
23 to the best of my ability.

24 Q. And then on page 2, he also said I'd rather be any
25 where else other than here but?

1 A. Yes.

2 Q. And was there ever an indication while you took this
3 statement that he had any trouble communicating with you or
4 understanding your questions?

5 A. None.

6 MR. LAWSON: All right, sir. That's all we have.

7 THE COURT: Anything else, Mr. Deberry?

8 MR. DEBERRY: Nothing, Your Honor.

9 THE COURT: You may step down. Thank you, sir.

10 MR. HANNA: Yes, sir, thank you.

11 (The witness leaves the witness stand.)

12 MR. LAWSON: That's all we have, Your Honor.

13 MR. DEBERRY: Nothing. We're not going to present
14 any evidence on the issue, Your Honor.

15 THE COURT: All right. Are you -- give me a little
16 help now. Are you concerned about the admission of this
17 confession? Are you satisfied with the questioning? We
18 move on? Are you ---

19 MR. DEBERRY: I am ---

20 THE COURT: --- as far as the voluntariness is
21 concerned.

22 MR. DEBERRY: As far as the voluntariness, it's our
23 position that the statement was taken while the person was
24 still in the shock. It was too close in time and that he
25 had obviously had alcohol in his system. And it would be

1 better to wait. And we take the position that the
2 statement was involuntary.

3 THE COURT: All right. Based on what's before me
4 the timing and the circumstances and all, I've considered
5 all of this has been testified to. And I'm convinced
6 beyond a reasonable doubt and I find that the confession
7 was obtained from the defendant after he was fully advised
8 of his rights under the Fifth and Sixth Amendments.
9 Specifically, his Miranda rights. That he waived his
10 Miranda rights. He waived his right to remain silent and
11 made a statement and that statement can be used in court;
12 that his waiver was freely, voluntarily, and intelligently
13 entered into and that he did not request an attorney at any
14 time. That wasn't any due rest involved and without
15 coercion, without without undue influence, without reward,
16 without promise or hope of reward. Wasn't any promise of
17 leniency. There wasn't any threat or injury, any kind of
18 compulsion or inducement that would give me any concern.
19 And it appears to the Court the confession was voluntary
20 product of the free and unconstrained will of the
21 defendant. Therefore, I'm going to allow the statement in.

22 There has been no conflicting evidence presented
23 here as far as the court is concerned other than Mr.
24 Deberry what you maintain, but I'm going ahead and making
25 these findings to meet the requirements of State v. Child

1 anyway so. That take cares of that. Now, how about the
2 next one.

3 MR. RUSSO: Your Honor, we assumed that your order
4 of sequestration carried into this hearing as well. So the
5 officer is out here. He's here, but he's not in the
6 courtroom. I'll go get him.

7 THE COURT: Okay.

8 MR. RUSSO: Your Honor, we call Officer Scott Brown.

9 SCOTT BROWN, being first
10 duly sworn, testified as follows:

11 IN CAMERA DIRECT EXAMINATION BY MR. RUSSO:

12 Q. State your full name for the record?

13 A. My name is Scott Brown.

14 Q. Scott, where are you employed?

15 A. With the Florence County Sheriff's office.

16 Q. And what is your position there with the sheriff's
17 department?

18 A. Currently, I'm a member of the criminal enforcement
19 unit.

20 Q. You recall the events occurring on December the 4th of
21 1999?

22 A. Yes, I do.

23 Q. All right. And you were working that night or that
24 day?

25 A. Yes, I was.

1 Q. Do you recall Mr. Tracy Daniels that evening?

2 A. Yes, sir, I do.

3 Q. All right. And I'm just going to go to the issues at
4 hand here. You were at the scene based on -- receiving a
5 call from your department; is that correct?

6 A. Right. I was dispatched through central dispatch to
7 respond to the location.

8 Q. Okay. And when you arrived, Mr. Daniels was there?

9 A. Yes, sir, at that time he was at the location.

10 Q. And in what capacity were -- was Mr. Daniels a suspect
11 in this case at that pint?

12 A. I believe at the time I arrived Mr. Daniels was
13 already detained.

14 Q. Okay. All right. And did you have an opportunity to
15 speak with him?

16 A. Yes, I did.

17 Q. All right. If you would tell the Court how that came
18 about?

19 A. When I arrived, the other units on scene had already
20 detained Mr. Daniels. I assisted Deputy Fuleihan at that
21 time and begin to speak with Mr. Daniels. At that point
22 before we asked him any questions, I did read him his
23 Miranda warnings.

24 Q. Okay. Now, when you're on the scene there, do you
25 have a waiver of rights form or how do you do that. You

1 just read him?

2 A. Usually, I just read it off my Miranda card that I
3 have with me.

4 Q. Okay. And did you have that card evening?

5 A. Yes, I did.

6 Q. Do you have that with you today?

7 A. I do not have it today because I was in such a rush to
8 get here.

9 Q. All right. Do you recall -- If you would please tell
10 the Court if you can recall exactly what you told him with
11 regards to his Miranda rights?

12 A. The exact Miranda warnings that I read I can't -- I'm
13 not good at rememberazation, but I give him his right to
14 remain silent and told him that anything he used --
15 anything he said will be used in court against him. I told
16 him he had the right to an attorney. And if he cannot
17 afford an attorney, one would be appointed to him without
18 cost. And, I believe, after we finished reading the
19 statements, I asked him if he wish to answer any questions
20 at that time and he agreed to.

21 Q. Let me -- you had a card you indicated that night --
22 what is that card, if you would?

23 A. It's a laminated card that I usually keep in my pocket
24 right with my business cards, but like I said it's
25 something -- I rushed out.

1 Q. I know you were called immediately to come here.

2 A. Right.

3 Q. But is this something issued to you by the department?

4 A. I believe, I was given that when I first started with
5 sheriff's office by my patrol lieutenant at that time.

6 Q. Okay. I'm just going to ask you if you would to
7 review this list here. And I just want you to review that
8 and then I'm gone ask you a question in a moment?

9 A. Yes, sir.

10 Q. I want to show a card and tell me is this familiar to
11 you. Is this card familiar to you?

12 A. That card is similar to the one that I have, but not
13 exactly the same.

14 Q. All right. It's not the same card?

15 A. Uh-uh.

16 Q. Let me show you another one. Is that card familiar to
17 you?

18 A. That would be the one.

19 Q. All right. Now, let me ask you, Scott -- Deputy Brown
20 is that card the same card or identical to the card that
21 you had the night when you read Miranda warnings to Mr.
22 Daniels?

23 A. Yes, sir, it was. Like I was saying it's a laminated
24 card and this one is laminated. It's one that was printed
25 at the sheriff's office.

1 Q. All right. And could you please tell the Court
2 exactly his rights as you read them to him?

3 A. You have the right to remain silent. Anything you
4 say can and will be used against you in a court of law.
5 You have the right to talk a lawyer and have him present
6 with you while you're being questioned. If you cannot
7 afford to hire a lawyer, one will be appointed to represent
8 you before any questioning if you wished. You can decide
9 at any time to exercise these rights and not answer any
10 questions or make any statements. Do you understand each
11 of these rights as I explained to you. Then having those
12 rights in mind do you wish to talk with us now.

13 Q. All right. You read this to Mr. Daniels?

14 A. Yes, sir, I did.

15 Q. As went through these with Mr. Daniels, in your
16 opinion, did he indicate to you that he understood his
17 rights?

18 A. He told me that he did understand his rights and I
19 believed him at that time.

20 Q. All right. Did any time during your questioning of
21 Mr. Daniels did he ask to speak to a lawyer?

22 A. Not at that time, no, sir.

23 Q. Did he ask to stop answering your questions?

24 A. No, sir.

25 Q. Did he indicate he wished to stop answering questions?

1 A. No, sir.

2 Q. All right. Now, as you observed his demeanor, what
3 was his demeanor?

4 A. At that time he was speaking to me clearly. We had
5 conversation even after any statements were made and prior
6 to him being Mirandized.

7 Q. All right. Did you smell any alcohol?

8 A. I could smell an aroma of alcohol, yes, sir.

9 Q. But in your observations of Mr. Daniels, did he appear
10 to you to be intoxicated to the point that he couldn't
11 understand your questions?

12 A. To the point that he could not understand my
13 questions, no, sir. He appeared to understand. He was
14 steady on his feet that night or after late afternoon. I
15 didn't see anything that I thought was grossly intoxicated
16 or to the point where he could not understand nor speak to
17 me clearly.

18 Q. As you would ask him a question -- Now, I'm not asking
19 you as to the accuracy or the truthfulness of his
20 statements to you. But in response to your question, did
21 he seem to be answering your questions as you asked them?

22 A. Yes, sir, to the best of my knowledge.

23 Q. Which gave you an indication that he understood what
24 you were asking?

25 A. Yes, sir.

SCOTT BROWN - IN CAMERA DIRECT EXAMINATION BY MR. RUSSO
SCOTT BROWN IN CAMERA CROSS EXAMINATION MR. DEBERRY 62

1 Q. Okay. And did he in fact give you a statement?

2 A. Yes, he did.

3 Q. All right. And is that statement reflected in your
4 incident report?

5 A. Yes, sir.

6 Q. All right. To the best of your knowledge, does your
7 report contain the complete statements which he gave to you
8 that night after you read him his Miranda?

9 A. Can I look over it?

10 Q. Sure, please.

11 A. Yes, sir, to the best of my recollection that is what
12 the statements that were asked and the answers as I
13 recorded them.

14 Q. All right. Now, in a statement that he gave you that
15 night, did he admit shooting Mr. Leffingwell?

16 A. Yes, he did.

17 MR. RUSSO: I have no further questions at this
18 time. Please, answer any questions Mr. Deberry may have.

19 IN CAMERA CROSS EXAMINATION BY MR. DEBERRY:

20 Q. What time was it that you first saw Mr. Daniels?

21 A. The exact time, sir, I'm not sure. It was late
22 afternoon I remember that. I was working the evening
23 shift.

24 Q. Were you the first one there at the scene?

25 A. No, sir.

1 Q. Who was at the scene when you got there?

2 A. I know Deputy Mark Fuleihan, Lieutenant Curt
3 Summerford were there.

4 Q. Where did you see him first, Tracy Daniels?

5 A. In front of his residence.

6 Q. In what position?

7 A. Prone on the ground, I believe.

8 Q. And, I believe, the statement reflects that you were
9 inspecting the premises; is that right?

10 A. I'm pretty sure of it. I mean, I'd have to totally
11 reflect back to the report. I read the statements part of
12 the report.

13 Q. Okay. Before you look into this, just tell me your
14 recollection. Do you remember going in there or not?

15 A. Yes, sir, I went inside the residence.

16 Q. And without looking at the statement what do you
17 remember about the inside of residence?

18 A. It was a mobile home. I remember there was a kitchen
19 to our right and living room to our left. I didn't go any
20 further then that living room.

21 Q. Okay. What did you see as far as any evidence that
22 alcohol had been consumed there?

23 A. To be honest, I can't remember.

24 Q. Okay. Did you see the decedent?

25 A. Yes, sir.

1 Q. And how close did you get to him?

2 A. Within a feet or an inch probably.

3 Q. Did you smell alcohol on him?

4 A. Sir, I can't remember.

5 Q. You said you smelled alcohol on Mr. Daniels; is that
6 right?

7 A. Yes, sir, an aroma of alcohol.

8 Q. What?

9 A. An aroma of alcohol that I could smell it.

10 Q. Okay. And did you ask him how much he had to drink?

11 A. I do not recall.

12 Q. If you had recalled, do you think it would be in your
13 statement?

14 A. It may have been.

15 Q. Did you have the ability to record this statement?

16 A. As far as a tape recorder?

17 Q. Yes, sir.

18 A. No, sir.

19 Q. You don't have tape recorder?

20 A. We did not at that time.

21 Q. Okay. And you made statement a minute ago that when
22 Mr. Russo asked you if you -- if he asked for a lawyer at
23 the time that you were talking to him and you said he
24 didn't make -- ask for a lawyer then. When did he ask for
25 a lawyer?

1 A. He never asked me for a lawyer.

2 Q. Are you aware of any time that he asked for a lawyer?

3 A. No, sir, I'm not.

4 MR. DEBERRY: That's all the statements -- questions
5 that I have.

6 MR. RUSSO: Nothing further, Your Honor.

7 THE COURT: You may step down. Thank you very much.

8 (The witness leaves the witness stand.)

9 THE COURT: Anything from the State?

10 MR. RUSSO: That's we would have on that issue.

11 THE COURT: Any anything from the defense.

12 MR. DEBERRY: Nothing, Your Honor. Again, we would
13 move the same motion. We would move to exclude the
14 statement based on the fact that it was close in time to
15 when this incident occurred and that the defendant would
16 have been in shock. And that there was alcohol consumed
17 and a better time to do it would have been at a later time
18 other than doing it at this particular time.

19 THE COURT: All right. Once again, there's not any
20 conflicting evidence has been presented here. Based on the
21 same reason a few minutes ago, I find that this statement
22 is admissible. It came after he was, the defendant, was
23 given his Miranda rights. An officer read from the card.
24 Doesn't appear to be any coercion or promises of leniency,
25 any threats, and undue influence anything involved here.

1 And this statement was a voluntary product of free and
2 unconstrained will of the defendant. It was freely,
3 knowingly, and intelligently provided. So therefore, I'll
4 allow it in.

5 MR. DEBERRY: Your Honor, I think that covers the
6 motions that we have today. I would like to tell the Court
7 that since I been before you today this business of the
8 AIDS situation has come up and I understand your ruling
9 that an absent -- there being a need for -- to help
10 establish a self-defense that there would have to be an
11 expert. It's now 4:20 and I just -- I'm gone try. I'm
12 gone start right now. This is the first time that I've --
13 I'm gone go and see if I can get something like that lined
14 up. And I say that for the purpose that I may -- I hope
15 there are not and I hope it will work out. But I may have
16 to ask the Court's indulgence if I have some difficulty in
17 a time frame.

18 THE COURT: Sure. Mr. Deberry, I can tell you
19 having tried cases now going on 10 years and surprisingly a
20 good many of them had HIV positive and some cases AIDS --
21 full-blown AIDS situation. I never remembered any expert
22 testimony anything that would come into play concerning
23 somebody's behavior. If it's there, I don't know about it.
24 But I'm not say it's not there. I don't recall one. As
25 far as mind altering and causing somebody to do a

1 particular behavior or act or whatever. I can't remember
2 one. All right. We'll fire back up at 10.

3 (Court recessed for the day.)

4 (Court has now reconvened.)

5 THE COURT: Any matters before we bring the jury in.

6 MR. RUSSO: Your Honor, I just would like to -- I
7 don't know if this will be a motion in limine or just
8 clarification, but for purposes -- And I don't think it
9 would come up obviously as much in the State's case in
10 chief. But we do have opening statements, which is going
11 to be made. But with regards to, Your Honor's, ruling on
12 the decedent's health and the HIV question, the AIDS
13 question that that is at least until the defense if they do
14 choose to to try and go into that area produce those
15 witnesses and the experts necessary to show that, Your
16 Honor. I would ask that that be an area that we tabo or
17 ---

18 THE COURT: That's what I meant.

19 MR. RUSSO: Just wanted to renew that.

20 THE COURT: How about our witnesses now. We got
21 everybody. Everybody's taken care of?

22 MR. DEBERRY: He's agreed to allow this one daughter
23 here to remain in the courtroom.

24 MR. RUSSO: That's correct, Your Honor. She -- I
25 think she probably -- should the defense put up a case. I

1 think she will end up being a witness. But she's
2 Mr. Daniels' daughter and I've agreed to allow her to stay
3 and be supportive.

4 THE COURT: How about your character witness. I
5 thought y'all said they could stay.

6 MR. DEBERRY: We got the preacher he can stay.

7 THE COURT: All right bring them in.

8 (The jury returned to the courtroom.)

9 THE COURT: All right. Madam clerk, if you will
10 swear the jury.

11 (The jury panel was sworn.)

12 THE COURT: Madam forelady and ladies and gentlemen
13 of the jury, we will now begin the actual trial of this
14 case and I'm gone start off by just giving you some brief
15 opening statement here to just let you know how we going to
16 proceed basically. All of you aware that both the State
17 and defendant in a criminal trial have an equal right to
18 have an opportunity of a judicial proceeding to have you, a
19 jury, sworn for the trial of the case.

20 One of the most important aspects of your duty as a
21 jury lies essentially in that oath that you just took.
22 That is to well and truly try and determine the facts of
23 this case. In our system here in South Carolina, the jury
24 is judges of the facts. The judge is the judge of the law.
25 In this point forward, no one concerned with the trial has

1 a right to decide any question of fact in the trial or the
2 truth of it except you the jury. The facts are for your
3 resolution and that's your decision and yours alone.

4 After you hear all the evidence in the case, it will
5 be your duty by your mutual and joint discussions to
6 determine the truth of the case by deciding the weight and
7 the believability of each part of the evidence and by
8 applying the law the case thereto. As a trial judge, I am
9 the judge of the law in the case. I have the
10 responsibility to preside over the trial, to rule on the
11 admissibility of evidence offered during the progress of
12 the trial, and to state to you, the jury, the law
13 applicable to the case.

14 I cannot directly or indirectly comment about the
15 facts in the case. South Carolina is different from other
16 states that allow judges to comment on the facts in cases,
17 but here in this state our constitution prohibits that. So
18 I have to sit up here as a neutral referee as such and rule
19 on the various things that may come up objections or
20 motions or whatever. And then, of course, be the judge of
21 the law.

22 Now, the end result of any trial, ladies and
23 gentlemen, whether it is civil or criminal whatever is for
24 you to reach a verdict. Simply stated how do you reach a
25 verdict. You find the facts in the evidence presented.

1 Apply the law of the case that I will provide to you at the
2 end of the case to those facts as you find them. And thus
3 reach a final verdict in the case speaking the truth of the
4 case as you determine it. I will fully and more completely
5 state to you the principles of law applicable to the issues
6 in this case before it is given to you for a decision.

7 There are certain principles that I need to discuss
8 with you at this time for your guidance. The defendant has
9 entered a plea of not guilty to the charges contained in
10 the indictment. And I tell you at this time the indictment
11 is not evidence in the case and it is a formal instrument,
12 written instrument, by which this case is processed into
13 the court. And a plea of not guilty places upon the State
14 the burden of proof in the case. The defendant is presumed
15 in law innocent of all charges contained in an indictment.

16 The burden of proof requires the State to prove
17 guilt beyond a reasonable doubt. Therefore consistent with
18 that burden, the defendant shall be presumed innocent and
19 that presumption of innocence is sufficient to compel a
20 verdict of not guilty or a verdict of acquittal, unless,
21 the jury concludes that the State has satisfied it's
22 obligation to prove the defendant guilty beyond beyond a
23 reasonable doubt.

24 We will begin this case by allowing both sides
25 beginning with the State since they have the burden of

1 proof to make opening statements. Opening statements are
2 used to outline the case to you to let you know how it's
3 going to proceed as far as the evidentiary portion. When
4 all that is completed as far as the opening statements, you
5 will have the evidentiary portion of the case where you
6 will receive the evidence.

7 Evidence may take many different forms. It may be
8 testimony from the witness stand. It may be photographs,
9 other physical type items, documents. Maybe, models.
10 Whatever the evidence is it is important that you listen
11 and observe the evidence because as I said you are the
12 finders of the facts. As I told you yesterday during the
13 trial of this case, do not discuss this case amongst
14 yourselves or with anyone else. If anybody should try to
15 discuss the matter with you, don't discuss it with them and
16 let me know of any such contact.

17 I will also tell you at this time when a case is
18 given to you for deliberations, your verdict whatever it
19 may be will have to be a unanimous verdict. All 12
20 deliberating jurors will have to be in agreement on the
21 verdict.

22 All right. Solicitor, the floor is yours.

23 MR. RUSSO: Thank you, Your Honor. May it please
24 the Court and Mr. Deberry. It's December the 4th 1999.
25 It's a Saturday. Donald Leffingwell Jr. goes over to Tracy

1 Daniels' house -- trailer out in Effingham. Donald
2 Leffingwell sometimes does some work with or for
3 Mr. Daniels as a plumber or Mr. Daniels is a plumber and
4 Donald Leffingwell at times does some work with him -- for
5 him. Also Donald Leffingwell is the son of Rose
6 Leffingwell who Tracy Daniels at some point or stage dated
7 or had a relationship with or some sort. They're at his
8 house. As it gets to be dark and moving into the evening,
9 it just so happens that Mary McDougal Arion who at the time
10 was Mary McDougal. Who happens to live right next to the
11 trailer, the mobile home that Tracy Daniels lives in.

12 Ms. McDougal's mobile home is right there. And she
13 just so happens to have been out shopping and comes home at
14 a quarter to six December the 4th 1999. You'll hear her
15 testimony. She gets out of her car and she begins to clean
16 out her car because she's going to a Christmas party later
17 that evening and some friends are going to be riding with
18 her. She can see -- She hears what she perceives to be an
19 argument between two people and she can look across where
20 her car is parked. And she can see Donald Leffingwell
21 standing in the yard of Tracy Daniels a few feet away from
22 the step that lead into his mobile home.

23 You'll hear her testimony. She can't see Tracy
24 Daniels' upper torso, but she can see him from the waist
25 down and he's standing on the stoop. The reason she can't

1 see him from the waist up is there's aluminum awning or a
2 carport. And where she's standing, he's standing on the
3 stoop so the awning kind of cuts off him from the waist up,
4 but she can hear his voice. You'll hear testimony that she
5 has been a neighbor of his for some five or six years and
6 she can recognize his voice. And she perceives that
7 there's a verbal argument going on. And although she can't
8 hear the text over the argument, she says in her belief
9 it's clearly they're arguing.

10 She completes cleaning up her car and she turns to
11 go into her home and as she gets to the steps, she hears a
12 noise. She goes up the steps. And before she could even
13 put her key in the door, she hears a shotgun blast. At
14 that point she goes in the house, drops what she has. She
15 does not cut on the lights. And you'll hear her testimony.
16 It's dark at this time.

17 MR. DEBERRY: Your Honor, please, may we approach
18 the bench.

19 (A bench conference was held off the record in the
20 presence of if jury, but out of the hearing of the jury.

21 MR. RUSSO: She gets in her house and she goes
22 straight to the back of the house. Where you'll hear her
23 testimony that she looks out the back-door window and there
24 she can see Donald Leffingwell on ground and she can see
25 Tracy Daniels' trailer in the front. You'll hear her

1 testimony of what she sees. As she sits there and observes
2 -- She'll tell you the details with regards to what she
3 sees. And essentially she sees what she perceives, again,
4 to be a calming down. Things seem to have been okay. And
5 Mr. Daniels comes out and he's got a shotgun. She sees him
6 pass the shotgun to Mr. Leffingwell.

7 She'll tell you what she observes. Then
8 Mr. Leffingwell passes the shotgun back to Mr. Daniels who
9 then proceeds to snap the shotgun closed and according to
10 her testimony takes one step back and raises it up and
11 shoots Donald Leffingwell in the throat. Law enforcement
12 arrives. She calls 911. Law enforcement arrives. You'll
13 hear the testimony of the officers as they come to the
14 scene. What they observed. What they seen, items that
15 they found in the area.

16 You'll hear testimony with regards to statements
17 which were taken by the officers both from Mr. Daniels as
18 well as from Ms. McDougal.

19 Ladies and gentlemen -- Madam forelady, ladies and
20 gentlemen of the jury, my name Tommy Russo. I'm the deputy
21 solicitor for the Twelfth Judicial Circuit. It is my job,
22 my duty to present to you the evidence and the facts that
23 support the charge in this case. I'm not here to give you
24 the blow by blow details. I'm here give you an overview of
25 what the State intends to produce as evidence in this case.

1 As jurors, it is your duty to take the evidence as
2 it's presented. And as the judge instructed you, the
3 evidence in this case is going to come from people who take
4 this witness stand as well as physical evidence, which may
5 be presented during the course of this trial. Anything
6 that I have to say is not evidence. Anything Mr. Deberry
7 may have to say is not evidence. We're simply advocates
8 for our two sides. But I think if you listen to the
9 evidence, look at the evidence, put it all together and
10 weigh it with what the law is that the judge will give you.
11 And the judge will give you law in this case.

12 And it is your duty to take the facts as you heard
13 them. Apply those facts to the law in your duty to reach a
14 verdict. And the word verdict is actually from a Latin
15 phrase veredicto, which means to speak the truth. I thank
16 you for your attention in this matter. And I think after
17 you hear all of the in evidence the case and apply that
18 evidence to the facts to the law as the Court will charge
19 you. I believe you will be able to go back into your room,
20 talk amongst yourselves and deliberate because that's your
21 job is to deliberate and talk about it, to place it all
22 together.

23 And I think when you do that, you're going to be
24 able to in fact reach a verdict, veredicto to speak the
25 truth. And in this particular case, the truth is that

1 Tracy Daniels on December the 4th 1999 shot, killed, and
2 murdered Donald Leffingwell and that's the fact and that's
3 the truth. The judge will charge you on the law. The
4 judge will tell you what murder is and the elements that
5 are needed to be able to show murder. I think you will
6 find that those elements do exist and that this man is
7 guilty of murder of Donald Leffingwell. Thank you.

8 MR. DEBERRY: May it please the Court?

9 THE COURT: Yes, sir.

10 MR. DEBERRY: Ladies and gentlemen of the jury, my
11 name is Johnny deberry. It's going to be my job here for
12 the next several days to represent Tracy Daniels who's
13 seated right over here with his daughter. He's got another
14 daughter that's here to support him and a son. Those two
15 are outside of the courtroom because as just as the State
16 is required keep witnesses out, so is Tracy Daniels; that's
17 been a ruling of the Court. And I don't want you to think
18 that they're out because they don't want to be here.

19 Ladies and gentlemen, I want to tell you from the
20 outset a person in this particular case that you're going
21 to hear has lost his life. And he was about 40 years old
22 and another person's future is at stake. That -- Those
23 facts alone tell us the importance of a decision and the
24 things that we have got to do in the next few days. I'm
25 going to tell you from the outset I'm a part-time public

1 defender and I've been appointed represent Tracy Daniels.

2 And to start with I want to tell you that I'm
3 scared. And, ladies and gentlemen, I hope you are also
4 afraid. We have a task to do almost unbearable what
5 appears to be unbearable. We gonna hear evidence that
6 comes from this stand here and that's all you gonna be able
7 to use to make a decision that's going to mean the
8 difference in a person's life. You're not going to have
9 the ability to know anything first hand. You gonna hear it
10 from this courtroom and with that you gonna take that
11 evidence and apply it to the law that, His Honor, is gonna
12 give to you and come out with that verdict that's gonna
13 mean so much.

14 I'm gonna be the lawyer. The only lawyer he's got.
15 And it's gonna be my job to assist and make sure that you
16 can get everything that you can possibly need to make that
17 decision. I hope that I'll be able to do it.

18 Ladies and gentlemen, when you're facing charges
19 like this, when you're representing a person like this, I
20 want you to realize that those wheels of justice sometimes
21 turn very harshly. And I want you to realize that the
22 State is powerful, a very powerful entity. You're gonna
23 see in this case that the prosecution is gonna come on
24 strong and I don't know if we'll be able to survive.

25 They gonna first of all start off with lawyers. You

1 see two lawyers sitting there experienced and professional.
2 You gonna see a team of police officers come in and they
3 are gonna be professional witnesses. They're use to
4 testifying. And they gone give you the facts as they see
5 it. In addition to that, the State has professionals that
6 will come from out of this city from Columbia. They will
7 have expert in forensics, pathology. They have a multitude
8 of resources to bring in evidence against Tracy Daniels and
9 they gonna do it. And I suspect that they gone do it well.

10 And, ladies and gentlemen, if you ever had a person
11 to come to you and say, Mr. Deberry, all this happened, but
12 I am not guilty. I did not mean to kill my friend. If you
13 ever have that burden put on you, then you know why I'm
14 afraid.

15 Ladies and gentlemen, not only do we have the State
16 getting ready to do what they gone do that first impression
17 that you're will receive. Ladies and gentlemen, not only
18 are the coming with that evidence, but you're gonna hear as
19 the prosecutors said, you gonna hear and receive this
20 information that'll help you form first impression. You
21 gonna hear that that eyewitness -- and I've talk with her.
22 I've talked to her in front of people. I've talked with
23 her with her husband and I've talked with her privately.
24 And I believe that when she takes that stand, Mary
25 McDougal, now Mary McDougal Arion. I believe that what she

1 says she truly believes. And she's gonna say that Tracy
2 Daniels took that shotgun on that night and held it up and
3 shot this man in the throat.

4 Not only that, ladies and gentlemen, I tell you why
5 I'm even more afraid my own client, Tracy Daniels, show
6 evidence in this case that's gonna show that he made
7 statement that night, too. And he said I took that shotgun
8 and I shot him. That's scary.

9 Now, I know I talk about that first impression and I
10 am always fearful of the first impression in cases like
11 this. And I feel like if there ever was a time that you
12 have to watch out and be afraid of the first impression is
13 this in this case. I think that in this case there was a
14 first impression required by Mary McDougal. There was a
15 first impression that even Tracy Daniels had. And there
16 was a first impression in all of these officers required.
17 And feel like you gonna get one, too. That's scared and
18 the risk is is will that first impression continue.

19 You know anytime you start a case or anytime you
20 start some event like some ball game or something like that
21 somebody gets to go first and I understand that no matter
22 what it is. And in this case in a criminal case, the
23 prosecution has the right to go first and tell you their
24 story and we have to sit back and wait until the second
25 half before we can tell you our side of the story; that

1 first impression is a dangerous thing.

2 MR. RUSSO: Your Honor, I apologize. May we
3 approach.

4 THE COURT: Uh-huh.

5 (A bench conference was held off the record in the
6 presence of the jury, but out of the hearing of the jury.

7 MR. DEBERRY: Ladies and gentlemen, some cases
8 dezone in the first half and people form their opinion
9 then. But I'll tell you right now from the start in this
10 particular case the judge will tell you that people do not
11 have to take the stand. The burdens on the prosecution.
12 They have the burden. They go first. They have the burden
13 of prove a person guilty. The defense has to do nothing.
14 Unless, they elect to. But I'm gonna tell you that there's
15 going to be a second half.

16 Tracy Daniels is going to take that stand and he's
17 going to tell you the second half of this incident. So I
18 ask you if you would, if you would, to keep -- try your
19 best, it's gonna be hard, but try your best to not form
20 that first impression, but to keep an open mind during the
21 first half of it of the case. When the prosecution goes
22 first, keep an open mind.

23 So that after that just as you did with the State,
24 you will be able to hear the evidence that comes from the
25 second half. Then, ladies and gentlemen, you will be able

1 to take what you heard, the evidence from the first half of
2 the case as well as the second half of the case, and you
3 will be able to take both sides and in that jury room with
4 you. And then you will be able to come out with a verdict
5 that's fair and that you've considered all of the evidence
6 and apply it to the law and come out with a verdict that
7 speaks the truth. And that's all we can ask you or any
8 jury to do. Just be careful and I thank you.

9 THE COURT: Solicitor, you may proceed to call your
10 first witness.

11 MR. RUSSO: Thank you, Your Honor. The State would
12 call with Mr. Curt Summerford.

13 CURTIS SUMMERFORD, being
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. RUSSO:

16 Q. State your full name for the record?

17 A. Curtis K. Summerford, III.

18 Q. Am I correct is it Lieutenant Summerford?

19 A. Yes, sir, it is.

20 Q. And you go by Curt; is that correct?

21 A. Yes, sir.

22 Q. Curt, I'm gonna stand back here by the jury box and
23 I'm gone ask you some questions. And if you would speak
24 enough for me to hear you, and then I'd be assured that the
25 members of the jury can hear as well?

1 A. Yes, sir.

2 Q. Curt, where are you employed?

3 A. The Florence County Sheriff Department.

4 Q. And how long you been employed there?

5 A. Approximately 14 and a half years.

6 Q. And what are your duties with the sheriff department?

7 A. I'm a lieutenant -- a supervisor of over five man unit
8 that patrols Florence County and hits the high crime areas
9 and work specialized crimes.

10 Q. How long have you been involved in law enforcement?

11 A. Approximately 14 and a half years.

12 Q. All your time has been with the Florence County
13 Sheriff's office?

14 A. Yes, sir.

15 Q. All right. Now, in your duties with the sheriff's
16 department, what are your duties. What do you do?

17 A. What we do it -- This team started up about two and a
18 half years ago. It was presented and the Sheriff liked it
19 and implemented it. It's a specialized team that works as
20 a pack and rides around all over Florence County hitting
21 areas where we having complaints whether it be drug
22 activity or car break-ins. During the holidays like
23 Christmas, we may go to Magnolia Mall if there's a lot of
24 packages being stolen out of cars or things like that or
25 shoplifting anything like that.

1 Q. Does your team respond to calls from dispatch or you
2 just routinely patrol?

3 A. We just routinely patrol. We're not -- We don't
4 actually go out and take like large scene reports or break
5 in reports. We actually -- We are aggressive team that
6 goes out there and stops cars for speeding. We get on the
7 interstate and stop cars for speeding. Look for drugs and
8 look for other indicators that help us lead to other crimes
9 that have occurred.

10 Q. I'd like to turn your attention, if I could please, to
11 December the 4th of 1999. Do you recall the events of that
12 day?

13 A. Yes, sir, I do.

14 Q. Were you on duty that day?

15 A. Yes, sir.

16 Q. If you would, please, tell the members of the jury how
17 you became involved in this matter with regards to
18 Mr. Tracy Daniels?

19 A. We were at the Sheriff's office, which is in
20 Effingham. And we were catching up on some reports that we
21 had to do at the office. We had -- we were wearing -- in
22 uniform and wearing our radios and heard from dispatch that
23 they gave out a shooting call off of I think called it's
24 Callie Young Road, which is right down from the office.
25 And I instructed my officers to go ahead and respond to it

1 since we were right there at it to go ahead and head that
2 way and see what kind problem there was.

3 Q. Let now let me ask. Callie Young you said it's near
4 the office. Where's your office located?

5 A. It's located on Friendfield Road in Effingham.

6 Q. All right. Is that your office are what we call the
7 detention center; is that correct?

8 A. Yes, sir. County jail, detention center.

9 Q. Out in Effingham?

10 A. Yes, sir.

11 Q. What county is that in?

12 A. Florence County.

13 Q. All right. How far would you estimate that this
14 location where the call was -- How far would that be from
15 your office?

16 A. Estimating probably two or three miles.

17 Q. All right. And so you received a call there was a
18 shooting at that location; is that correct?

19 A. Yes, sir.

20 Q. All right. Please, continue.

21 A. At which point I instructed my officers to go ahead
22 and respond to it that I'd be coming shortly after them. I
23 had to drop some paperwork off at the dispatch. My
24 officers left and went to the -- heading toward the
25 location that they gave out as the shooting where it was

1 taken place. At that time I got in my car and proceeded to
2 head to the location also.

3 My officers had actually drove past the actual
4 location where it had taken place at. It was -- It's a
5 long road and all they gave out is, I believe, the address,
6 the numerical address and they were trying to find it.
7 And then we got from dispatch gave us a better description
8 of how to get to it and what the trailers looked like. And
9 I actually was the first officer to arrive at the scene.

10 Q. Okay. And this location where this occurred what
11 county is that in?

12 A. In Florence County.

13 Q. All right. And were there any street numbers or signs
14 to indicate the proper address for this?

15 A. There may have been on the mailbox. I really -- When
16 you're riding on the road and you're looking for the
17 location, a lot of things running through your mind
18 especially when you're involved with a shooting call.
19 You're thinking about a lot of stuff to lookout for. And
20 we were having trouble finding the actual numerical
21 address.

22 Q. About what time is it that you received this call?

23 A. I want to say it was early evening like around 7:45
24 almost eight o'clock. I believe sometime during that time
25 span.

1 (Pause in proceedings.)

2 MR. DEBERRY: No objection, Your Honor.

3 Q. Curt, I'm gone show you, I believe, y'all call it a
4 cad report?

5 A. Yes, sir.

6 Q. And could you tell the jury please what a cad report
7 is?

8 A. There is a report that the dispatchers print out from
9 the computer when they take a call when you call 911. They
10 automatically start entering that information and it
11 documents the actual call that they receive. Whether it be
12 a break-in or a shooting whatever it documents the time,
13 date. The caller calls to tell the information and they
14 will type in the information as they're receiving it.

15 Q. Okay. Now, I'm gone ask you, if you would, to review
16 the cad report and see if it recollects your memory with
17 regards to the time that this call went out?

18 A. It's on 12-4 of '99. It's in military time at the
19 time they received it at 1754.

20 Q. What would 1745 be in civilian time?

21 A. 7:54. No 6:54.

22 Q. Five.

23 A. Five. I'm sorry. I use regular time. I'm not much
24 on military time. I apologize.

25 Q. That's okay.

1 A. I use the regular time. I know a lot of other
2 officers do.

3 Q. But the report does indicate 1754?

4 A. 1754. And the time dispatch set out was 1755. So one
5 minute after they received the call, they dispatched it out
6 as a shooting call.

7 Q. And just for clarification for the jury purposes.
8 We'll use civilian time?

9 A. Okay.

10 Q. That will be 5:54; is that correct?

11 A. Yes, sir.

12 Q. So we're looking at six minutes to six?

13 A. Yes, sir.

14 Q. All right. Do you -- Does the report reflect what
15 time you actually arrived on the scene?

16 A. Let's see.

17 Q. Let me ask you while you're looking. You said that
18 the call, the dispatch call, actually went out at about
19 five minutes to six and that this location is approximately
20 two to three miles from where you were located; is that
21 correct?

22 A. Yes, sir, I found it. Yes, sir, it's showing at 1802,
23 which would be 6:02.

24 Q. All right. So you arrived at 6:02 in your unit?

25 A. Yes, sir.

1 Q. And by unit I mean your car; is that correct?

2 A. Yes, sir.

3 Q. What type of car do you drive?

4 A. I drive an unmarked Camaro.

5 Q. Okay.

6 A. And when I say unmarked, it has no markings to show
7 it's a police car or anything like that other than the blue
8 lights on the inside.

9 Q. There on the inside?

10 A. Yes, sir. There's no bar light. It's all -- all the
11 lights are---

12 Q. There are no bar lights on the outside of your car?

13 A. No, sir.

14 Q. Looks like a regular Camaro?

15 A. Yes, sir.

16 Q. All right. When you arrived, tell the jury what you
17 saw. What you observed?

18 A. When I arrived, dispatched was advising me that --
19 They were still giving me a description of the trailers.
20 Telling me about one trailer and another trailer parked
21 parallel to it. And advised me that the subject involved
22 in shooting was standing at the door. As I was driving up,
23 I observed a vehicle parked with a driver's door open, male
24 subject lying on the ground, and another male subject
25 standing in the doorway of the trailer.

1 MR. RUSSO: If you could mark this, please.

2 (Diagram marked for identification as State's
3 Exhibit 35.)

4 Q. Curt, I'm gone show you what's been marked as State's
5 Exhibit Number 35. I'm gone ask you just to just to glance
6 over it, look at it. And then, if you can, show the
7 members of the jury where you came in your vehicle when you
8 arrived at the scene?

9 A. Okay. This will be coming from Effingham on
10 Friendfield Road. I was coming this way heading that way.
11 The driveway that turns in right here. I turned in and
12 this is where I observed the vehicle parked over here. I
13 stopped my vehicle right here, got out of the vehicle. The
14 subject was laying here and the defendant was standing in
15 the doorway.

16 Q. Okay. Now, as you arrived, there's two trailers here.
17 What was your understanding the defendant's trailer was
18 which one?

19 A. It was the one facing this way. It was facing the
20 road -- parallel with the road.

21 Q. Okay.

22 A. This trailer was -- I had no knowledge anything --
23 Well, about that trailer.

24 Q. Okay. All right. Now, when you arrived, you said you
25 saw an individual standing in the doorway ---

1 A. Of the trailer. All you could see -- It was like a
2 screen door. And all you could see was from the waist up
3 of the subject.

4 Q. Okay. Bottom of the door was solid?

5 A. Right.

6 Q. All right. At that time did you know who the
7 individual was standing in the doorway?

8 A. I did not know his name or anything to the nature. I
9 was just advised by our dispatchers that the subject
10 standing in door was the subject involved with the
11 shooting.

12 Q. All right. What is -- What was the lighting
13 conditions in that area when you got there?

14 A. It was lit well enough where I could see the subject
15 laying on the ground and the subject standing in the door.
16 It was -- There was like a yard light on that lit up like
17 the garage area and the front area of the trailer.

18 Q. All right. When you observed this individual standing
19 in the doorway, what did you observe?

20 A. He was just standing in the doorway and the other
21 subject was lying on the ground. At which that time, I got
22 out of my vehicle and drew my weapon because I didn't know
23 who had the gun or who was involved other than the
24 information of the subject standing in doorway. I drew my
25 weapon and pointed it at him and advised him to put his

1 hands up where I could see him.

2 Q. All right. If you would stand and shot the jury how
3 he was standing in the doorway?

4 A. The door, I guess, came to about right here on him and
5 he just had his arms down to his side.

6 Q. All right. You couldn't---

7 A. So you could not see his hands at all.

8 Q. All right. Go ahead and tell the jury what you
9 proceeded to do?

10 A. At that time I had my weapon out and I proceeded to
11 tell him to put his hands up. And he would not the first
12 time I ordered him to do it he didn't do it. My firearm is
13 equipped with a laser sight that will put a beam of light
14 on you showing where bullet can go. I turned the laser
15 sight on, put it on his chest and again advised him to put
16 his hands up so I could see his hands. At which time he
17 looked at the red dot on his chest and then put his hands
18 up.

19 Q. Okay. You can have a seat then. But he did put his
20 hands up?

21 A. Yes, sir.

22 Q. All right. What did you -- At that point what did you
23 do?

24 A. I ordered him to come outside.

25 Q. All right. And ---

1 A. He has hesitated right at first and I kept ordering
2 him to on come out. I mean, yelling to him, Come on out.
3 Come on out. At which time Deputy Weaver had arrived and
4 was coming around to the side of the trailer as backup.

5 Q. All right.

6 A. When I was ordering him out, he came down the stairs
7 and was just standing there with his hands up. And Deputy
8 Weaver took him and placed him on the ground and handcuffed
9 him.

10 Q. All right. Did you say anything to him at that point?

11 A. At that point I wanted to know where the gun was. I
12 wanted to make sure there was no one else in the house that
13 could have had the gun. I said where is the gun. He
14 stated that it was inside.

15 Q. All right. At that point you have him custody; is
16 that correct?

17 A. Yes, sir.

18 Q. Okay. Did you see a weapon anywhere out in the yard?

19 A. No, sir.

20 Q. Okay. Did you -- So you saw a person lying on the
21 ground?

22 A. Yes, sir.

23 Q. All right. Did you know who that was?

24 A. No, sir, I had no knowledge of the name or anything or
25 who the subject was.

1 Q. All right. Was that person moving?

2 A. No, sir. In my experiences, he appeared to be
3 deceased.

4 Q. All right. Anywhere around the individual lying on
5 the ground -- And I'm referring to the person who you
6 described as in your opinion was deceased. Any guns or
7 weapons in the area where he is?

8 A. No, sir.

9 Q. All right. Mr. -- Now, the individual who came out of
10 the house who you ordered out of the house and came out of
11 the house. Who was that individual?

12 A. That was Mr. Daniels.

13 Q. All right. Mr. Daniels had no weapons on his person
14 at that point; is that correct?

15 A. Not that I saw when he came out. No, sir.

16 Q. Okay. All right. Once you got him on the ground and
17 - excuse me - Deputy Weaver got him on the ground and you
18 had him in custody, what did you do at that point?

19 A. I instructed Deputy Fuleihan and Deputy Brown to go
20 inside and secure the residence and make sure -- I think,
21 it was not Deputy Brown. It was Deputy Fuleihan and Deputy
22 Weaver to go inside and secure the residence and make sure
23 no one was inside.

24 Q. Okay. Did they in fact go into the residence?

25 A. Yes, sir.

1 Q. All right. Did you see or observe any other
2 individuals other than the deceased person on the ground
3 and Mr. Daniels. Did you observe or see any other
4 individuals at that mobile home or in that area?

5 A. No, sir.

6 Q. All right. How long would you estimate you were at
7 the scene?

8 A. From beginning to the end?

9 Q. Yes, sir?

10 A. Probably over an hour or hour and a half.

11 Q. Okay. And during that time other than law enforcement
12 officers and personnel that were working with your group,
13 did you see anyone else any civilian person either in that
14 mobile home or around that mobile home or in that area?

15 A. Some people came up -- and were, I guess, what you
16 call nosey wanting to know what was going on. They were
17 riding by and several people had got out their cars and
18 wanted to walk up to the scene, but we had already secured
19 the area with evidence tape or what we call crime scene
20 tape. The big yellow tape that you wrap around certain
21 area to keep people from coming into a certain area to mess
22 with evidence or ^{to} tamper with anything.

23 Q. Then in this area that you described, the area which
24 was roped off as the crime scene area. Any individuals
25 other than Mr. Daniels and the deceased person?

1 A. No, sir.

2 Q. Besides your ---

3 A. Besides law enforcement and the coroner and people
4 like that. No, sir.

5 Q. Okay. Curt, did you have an opportunity other than
6 your initial ordering of Mr. Daniels out of the residence.
7 Did you have any opportunity to observe him or be close by
8 him and observe his demeanor?

9 A. Other than when -- After we make sure everything was
10 secured, he was sat up and Deputy Brown was gonna -- I
11 think take him and place him in the patrol car. Other than
12 that my dealings with him was very limited. I mean, didn't
13 sit down and talk to him or anything of that nature.

14 Q. Okay. What was your observation of him though during
15 the time you observed him?

16 A. He was very calm. Didn't make any statements to any
17 kind of concerns or anything to nature like, you know, any
18 statements that would ---

19 Q. He didn't make any statements to you; is that correct?

20 A. No, sir. Other than when I asked him where the gun
21 was. He stated it was inside. But other than that he
22 didn't make any other statements.

23 MR. RUSSO: Thank you, Lieutenant Summerford.

24 Please, answer any questions Mr. Deberry may have.

25 CROSS EXAMINATION BY MR. DEBERRY:

1 Q. Mr. Summerford, you have stated, I believe, the that
2 record show that dispatch received this call at 1754, which
3 is 5:54; is that correct?

4 A. Yes, sir.

5 Q. Six minutes to six?

6 A. Yes, sir.

7 Q. Okay. Now, so that we can get good feel of whether
8 it's light or dark. And it's very confusing today because
9 today at that time the sun's still very high in the sky;
10 right?

11 A. Yes, sir.

12 Q. On December the 4th, I don't know if you looked into
13 it, but did you know that on December the 4th of 1999 that
14 sunset on that particular day was about six minutes after
15 five o'clock?

16 A. Yes, sir.

17 Q. Okay. And so from six minutes after five around to
18 six minutes until six would be one hour less 12 minutes; is
19 that correct?

20 A. Say that again now.

21 Q. Okay. If sunset on that day was six minutes after
22 five?

23 A. Six minutes after five.

24 Q. Okay. And this incident occurred at six minutes to
25 six. Do you agree that that is 12 minutes short of six?

1 A. Yes, sir.

2 Q. Okay. And so do you think it would be a fair
3 statement to say that this incident occurred a little bit
4 better then 45 minutes after sunset?

5 A. Approximately, yes, sir.

6 Q. And do you as your own personal experience are you
7 aware of that any time you got 45 minutes after sunset it's
8 dark?

9 A. Yes, sir. I mean, I had my headlights on. It's now
10 doubt in my mind that it was dark.

11 Q. And as a matter of fact, the sun would have come into
12 play not at all ---

13 A. No, sir.

14 Q. --- in the 45 minutes. It's dark?

15 A. Yes, sir.

16 Q. And Mary McDougal, the one that called the dispatch.
17 The girl in the trailer next door. You're aware that she
18 indicated that almost immediately -- in fact she had the
19 phone in her hand?

20 MR. RUSSO: We object, Your Honor. Mr. Deberry is
21 testifying to facts that aren't in evidence.

22 MR. DEBERRY: No, Your Honor, I'm cross examining
23 him.

24 THE COURT: Go ahead.

25 Q. Are you aware that Ms. McDougal, the girl next door,

1 has indicated that she called immediately?

2 A. I'm not aware of who Ms. McDougal was at the time. I
3 was just being advised by dispatch. So I didn't know who
4 was, if any, eyewitness at the location. I was just
5 advised by dispatch that the subject was standing in the
6 doorway. So I couldn't tell you when, who called or
7 anything of that nature. I don't understand what you're
8 asking me. You understand what I'm saying. I was just
9 advised by dispatch. They didn't tell me Ms. McDougal is
10 the eyewitness or anything.

11 Q. Let me go a little bit more in detail.

12 A. Okay.

13 Q. In this case have you been involved in preparing for
14 here today?

15 A. Yes, sir.

16 Q. Okay. And do you know Mary McDougal now Mary McDougal
17 Arion?

18 A. Yes, sir.

19 Q. And as a part of the investigating this case have you
20 learned that she is the person that called that caused you
21 to go there at 1754 ---

22 A. Yes, sir.

23 Q. --- which is 5:54?

24 A. Yes, sir.

25 Q. Okay. Now, in asking you today in front of this jury,

1 are you aware that she -- that this person called
2 immediately. She had the phone in her hand and she called
3 immediately after the shot that killed Mr. Leffingwell?

4 A. Yes, sir, that's what I was told. Yes, sir.

5 Q. Okay. So do you -- You agree that Ms. McDougal was
6 the only the witness that you're aware?

7 A. That I'm aware of, yes, sir.

8 Q. And other than the three people Tracy Daniels, Donald
9 Leffingwell, and then Mary McDougal. Those were the only
10 three people at this particular location; is that right?

11 A. Yes, sir, that's my understanding. Yes, sir.

12 Q. So that jury will understand a little bit about this
13 location you've been there obviously?

14 A. Yes, sir.

15 Q. And I've been there, but they haven't. This is not --
16 even though there are two trailers this is not a trailer
17 park. This is one lot; right?

18 A. Yes, sir.

19 Q. As a matter of fact, there are woods on one side of it
20 and woods on the other side. And if you going down the
21 road, you could easily miss it?

22 A. Yes, sir.

23 Q. I think you said that some people did?

24 A. Yes, sir.

25 Q. And after going in there, you see that there's two

1 trailers and a carport and some other structure off to the
2 right. Do you recall that?

3 A. I'm not sure about -- You mean the structure like the
4 -- where Mr. Daniels keeps his cars.

5 Q. No. Two trailers, the carport and another structure.
6 And it's indicated here, I believe, is the shed?

7 A. Okay. I understand, yes, sir.

8 Q. Now, I don't believe -- Who is the main officer that's
9 in charge of all this going to be presenting this case?

10 A. The investigator. Deputy Phil Hanna.

11 Q. Right here.

12 A. Investigator Phil Hanna, he's the investigator that
13 was called to the scene and follows up on it and
14 investigates the facts.

15 Q. Okay. And you are called -- Your involvement is you
16 were the first one the scene?

17 A. Yes, sir.

18 Q. Okay. And, I believe, your involvement with -- You
19 stayed there as you said a hour, a hour and a half?

20 A. Yes, sir. Once the first -- Usually the first
21 officers on the scene are the ones that secure the area and
22 to hang around to make sure no one tries to sneak in or,
23 you know, want to go see what's going on or be nosey or
24 anything of that nature. So we have to hang around until
25 they through processing the scene and finish doing their

1 job. And then we're allowed to leave.

2 Q. All right. Did you go inside the residence that
3 night?

4 A. Yes, sir.

5 Q. In that hour, hour and a half?

6 A. Yes, sir, right at first I did. Yes, sir.

7 Q. And tell me, if you would, did you see when you went
8 in there evidence of alcohol?

9 A. Yes, sir, I did.

10 Q. And tell the jury what all you saw there?

11 A. I say, I believe, it was a liquor bottle and some beer
12 cans.

13 Q. And what kind of liquor bottle and if you would
14 describe it?

15 A. I'm not sure. I couldn't tell you. I'm not up on the
16 name brands. It was a clear. I don't know the name brand
17 on the liquor bottle. I didn't pay that much attention.

18 Q. Okay. You familiar with a half pint, quart and a
19 pint. Those are the sizes of alcohol?

20 A. It was bigger than a -- It was a tall bottle.

21 Q. Okay. And, I believe, that that -- Your evidence
22 showed that that alcohol almost gone; is that correct?

23 A. Like I say I didn't pay attention to how much was in
24 it. That wasn't my concern at the time.

25 Q. You have pictures here?

1 A. Yes, sir. I didn't take them. I'm just telling you
2 from my experience. I didn't -- just like the beer cans I
3 couldn't tell you what was in them. If they were full or
4 half full or empty. I didn't check them.

5 Q. Okay. Well, how about the number of them?

6 A. I couldn't recall. If I had to estimate, I'd say
7 three or four maybe five. And there were some in the trash
8 can.

9 Q. Okay. So there's no question about it. There's
10 evidence that alcohol was ---

11 A. There's no question whatsoever there was alcohol.

12 Q. And you could smell alcohol on Tracy Daniels?

13 A. Yes.

14 Q. And you could smell alcohol on the deceased?

15 A. I couldn't -- I didn't get close enough to smell the
16 alcohol on the deceased.

17 Q. Okay. Well, have you reviewed the records?

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

19 Q. You haven't seen that?

20 A. No, sir. I have not seen the records on the deceased.

21 Q. Have you talked with any people that have -- have you
22 talked with Officer Hanna about this case prior to
23 testifying?

24 A. Not about that with the records on the deceased if he
25 was intoxicated or anything. No, sir.

1 Q. But you have talked with him?

2 A. Yes, sir. I talked to him about the case. But I
3 didn't talk to him about the deceased.

4 Q. Okay. And to your knowledge have you ever been to
5 this particular place here before this?

6 A. No, sir, that was my first time going there.

7 Q. And did you know Tracy Daniels before this?

8 A. No, sir, I did not.

9 Q. And your brother's named Craig; is that correct?

10 A. Yes, sir.

11 Q. And did you know whether or not your brother is ---

12 A. After my involvement when arresting Mr. Daniels, I
13 found out that Craig and Mr. Daniels worked together.

14 Q. Okay. And your brother also is somewhat a
15 photographer; is that correct?

16 A. Yes, sir. And does plumbing on the side.

17 Q. Now, you indicated that Mr. Daniels didn't give any
18 problem at all. He wasn't ---

19 A. Other than having to say it several times put his
20 hands up. I was concerned if he was holding something in
21 his hands that was the only -- but as far as giving me
22 problems of being disorderly or arguing with me, no, sir.
23 He was very calm.

24 Q. He did exactly what you asked him to do?

25 A. Yes, sir. He was very calm and did what I told him to

1 do.

2 Q. And you don't really hold anything or see anything
3 abnormal about his -- not necessarily moving right away.
4 But you were in an unmarked car; right?

5 A. But I was in full uniform, you know, giving him
6 orders. I mean, I was -- As I drove up, I got out of the
7 car. And, I mean, in full uniform I was telling him to put
8 his hands up. I mean, that's not an everyday thing to see
9 a man laying in the ground there in front of you and an
10 officer coming out -- getting out of his car telling you to
11 -- giving you orders.

12 Q. And he cooperated once he put his hands in the air and
13 walked out. He cooperated with you a 100 percent; is that
14 right?

15 A. He didn't immediately cooperate. It was like I said
16 when I put the light on him, he had to look at the light
17 like, you know ---

18 Q. Once he put his hands up and came out of that
19 house ---

20 A. He was put on the ground. At that point he had no
21 choice but to cooperate. He was placed on the ground and
22 handcuffed.

23 Q. Well, as far as his attitude toward you cooperate,
24 would you give him an A or did he cooperate ---

25 A. He didn't give me any problems. Once he was placed

1 on the ground in handcuffs, there was no other cooperation
2 needed. I mean, I didn't talk to him. I didn't ask him
3 any other questions other than like I asked -- told the
4 jury that I asked him where the gun was and he said it was
5 inside. That's the only involvement I've had with him.

6 Q. Did you touch gun?

7 A. No, sir.

8 Q. Did you see the gun?

9 A. Yes, sir.

10 Q. Did you attempt to preserve the gun?

11 A. I didn't touch anything in the residence. Once I saw
12 the gun and made sure there was not other subjects inside
13 with my officers, the area was secured until forensics got
14 there to process the scene.

15 Q. Okay. And did you see somebody touch the gun?

16 A. I want to say it was Officer -- Forensic Officer Jason
17 Dore is the one that processed and I saw him with the gun.

18 Q. Okay. So you saw somebody touch that gun?

19 A. Yes, sir.

20 Q. And you think it was Jason Dore?

21 A. I think so, yes, sir.

22 Q. And where were you when you saw him touch the gun?

23 A. Standing in the doorway at the mobile home.

24 Q. On the inside or the outside?

25 A. Right there on the inside of the doorway.

1 Q. And he was on the inside?

2 A. Yes, sir.

3 Q. And the gun was where?

4 A. Inside.

5 Q. Where inside?

6 A. In the kitchen area right beside the front door. It
7 was -- where I saw it it was leaning up against over there
8 toward some appliance whether it be a washing machine or
9 refrigerator or something right there in that area by the
10 kitchen table.

11 Q. And you knew not to touch that gun until a forensic
12 man got there; right?

13 A. Usually, I don't. I mean, it depends on the
14 circumstances. Sometimes we make sure that if -- I saw it
15 was a single shot shotgun. So I knew that I wasn't really
16 concerned about a loaded gun laying around. If it's an
17 automatic or something of that nature, we may want to make
18 sure to secure the gun and no one else would get it. But
19 in that circumstance, I just left the gun sitting there.

20 Q. Well, at that time you didn't know -- The fact that it
21 was a single shot shotgun didn't have any bearing in your
22 mind did it as to whether or not it was loaded?

23 A. No, sir. Like I said certain situations where we went
24 to secure the scene. If the gun's outside, if the gun's
25 just laying there in front of other people, we secure the

1 firearm. But this was inside the residence and we knew
2 that there was nobody else there. So I didn't bother it.

3 Q. You didn't touch it?

4 A. No, sir.

5 Q. Okay. Now, tell me what when you saw the officer pick
6 up that gun. Tell me about that?

7 A. I just -- I mean, I saw him pick up the gun. I didn't
8 stand around and watch or hang around.

9 Q. I thought you saw him pick it?

10 A. I saw him pick it up and that's -- like I said I don't
11 hang around to watch the processing of the scene.

12 Q. How did he pick up?

13 A. I couldn't tell you. I just remember him -- I
14 believe, he had gloves on and picked up the gun.

15 Q. You just remember him grabbing it. You believe he had
16 gloves on?

17 A. Yes, sir.

18 Q. All right. What did you see him do with it?

19 A. Like I said at that point I walked out. He started
20 processing the scene. He had his camera with him and he
21 started processing it. So I didn't hang around. I went
22 back outside.

23 Q. Did you ever go back out there and help with any of
24 these measurements here?

25 A. No, sir, not that I recall. No, sir. That's not my

1 job. I don't help with processing the scenes or anything
2 of that nature.

3 Q. Okay. Well, I understand that was the first time that
4 you recall that you were there at this particular place; is
5 that right?

6 A. Yes, sir.

7 Q. Okay. I understood you to testify that you stayed
8 there between an hour and an hour and a half?

9 A. Yes, sir.

10 Q. Is that right?

11 A. Yes, sir.

12 Q. Now, do I understand that you don't remember ever
13 going back there?

14 A. I never went back to the location. I stayed -- that
15 night was the only time I been to that location. And I
16 stayed there for the hour, hour and a half until they
17 processed the scene. I usually at that point ---

18 Q. That's all I want to know. You haven't been back?

19 A. No, sir.

20 MR. DEBERRY: Thank you.

21 REDIRECT EXAMINATION BY MR. RUSSO:

22 Q. Curt, let me take you back where Mr. Deberry was
23 asking you about your observation of alcohol in the house.
24 And you said you had seen some beer cans and a bottle of
25 alcohol, what you perceived to be an alcoholic beverage; is

1 that correct?

2 A. Yes, sir.

3 Q. I'm gone show you what's been marked as State's
4 Exhibit Number 33. Does this look like the items that you
5 saw in the house?

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

7 Q. Okay. Curt, you have no idea, am I correct, when this
8 alcohol was consumed if it was consumed?

9 A. No, sir. I mean, the way the residence was there was
10 even food laying on the table that was already cooked and
11 just been laying out. I couldn't tell if it was, you know,
12 old. There was trash still in the trash can. And there's
13 no way to determine -- you know, I didn't go up and touch
14 the cans and see if they were still cold or anything of
15 that nature. No, sir.

16 Q. Okay. So you see cans and that bottle, which is some
17 evidence of alcohol in the home?

18 A. Yes, sir.

19 Q. But you don't know who drink it?

20 A. No, sir.

21 Q. And you don't know who or when it was dranked?

22 A. No, sir.

23 Q. But you did testify that you could smell an odor of
24 alcohol about Mr. Daniels that night; is that correct?

25 A. Yes, sir, I could.

1 Q. Now, let me turn your attention. Mr. Deberry was
2 talking to you about this shotgun and your concern about
3 this shotgun and stuff like that. When you saw the
4 shotgun, it was in the house; is that correct?

5 A. Yes, sir.

6 Q. And now was this before or after the house had been
7 what y'all called cleared or checked out?

8 A. After the house had been cleared.

9 Q. Okay. So at that point do you know exactly who was in
10 that residence; is that correct?

11 A. Yes, sir.

12 Q. And the only people that would possibly have been in
13 that residence were law enforcement officers; is that
14 correct?

15 A. Yes, sir.

16 Q. All right. Did you have any concern about that weapon
17 being unattended at that point?

18 A. Not at that point. No, sir. At that point we had
19 secured the area and there was no need to be concerned
20 about the firearm.

21 Q. Okay.

22 MR. RUSSO: Beg the court's indulgence for just a
23 moment, please.

24 Q. Mr. Deberry was asking you about light and dark. And
25 I think you testified and agreed with him that it was dark

1 out that night?

2 A. Yes, sir.

3 Q. And you also testified with regards to the area was
4 lit that there was a street light; is that correct?

5 A. When you go to turn in or as you're riding by, you can
6 see Mr. Daniels' trailer, but the other trailer was dark.
7 There was no light on in this trailer. And the light was
8 basically where you can see the front door and that's how
9 they would have seen -- When I was driving up, I could tell
10 before even turning in I could see Mr. Daniels standing in
11 the doorway.

12 Q. Okay. And were the lights on or off inside the
13 trailer or mobile home?

14 A. I believe they were on I'm not -- It wasn't, you know,
15 a bright bright light. It was -- The light was centered
16 over the door and the door area.

17 MR. RUSSO: I have no further questions.

18 RECROSS EXAMINATION BY MR. DEBERRY:

19 Q. The food -- Tell the jury what you saw as far as...

20 A. It appeared to be like he had grilled out steaks.

21 Q. Just tell us you might not remember. If you don't
22 remember just say it. Tells us what you remember that was
23 on the table?

24 A. There was other items on the table like I want to say
25 maybe bread or something to that nature. There was a plate

1 had some meat in it. I couldn't tell you how many pieces
2 of meat or if they were cut up or anything. But I remember
3 it being -- I want to say it was steak. And I couldn't
4 tell how long it had been there.

5 Q. The State's Exhibit marked for identification Number
6 25. I'll ask you to look at it, if you would. Number 25
7 and ask you if do that help to refresh your memory?

8 A. Yes, sir.

9 Q. Officer, did you see see there two plates that have --
10 First of all, we got a plate that's got two -- what appears
11 to be sweet potatoes there; is that right? One up toward
12 the top of it?

13 A. To me -- If that's sweet potatoes, I looks like raw
14 meat to me. It doesn't like a sweet potato.

15 Q. Okay. All right. And just below that you see two
16 plates there and clearly whatever left there is a steak; is
17 that right?

18 A. It looks more than one steak. Yes, sir.

19 Q. And the one on the right does that look like to you a
20 steak that's been eaten?

21 A. Yes, sir.

22 Q. Now, looking back to the one on the left. You said
23 it's just one steak?

24 A. It looks like a piece of -- A larger piece of meat
25 beside it if you look -- that's how I perceive it. I mean,

1 I'm not trying to argue with you. It looks like a piece of
2 steak with another piece of steak.

3 Q. Does it look like that table had been prepared for two
4 people?

5 A. No, sir, it doesn't. To me it doesn't look like it.
6 The one plate had just the one fork. And there appears to
7 no other forks on the table.

8 Q. Did you see blood on the gun?

9 A. Not that I recall. No, sir, I don't. The only blood
10 that I saw was on the deceased and on the door when you go
11 to go into the trailer.

12 Q. You don't remember seeing any blood on the gun?

13 A. No, sir. Like I said I didn't handle the gun. I
14 didn't go up to it and look at it. I just saw the gun
15 laying against the door. I mean, the area in the kitchen.

16 Q. In preparing for this case, have you learned that
17 there was blood on the door?

18 A. Yes, sir.

19 Q. And have you the seen pictures where there's blood on
20 the door?

21 A. Yes, sir.

22 MR. DEBERRY: That's all I have. Thank you.

23 MR. RUSSO: Nothing further of this witness, Your
24 Honor.

25 THE COURT: You may step done.

1 (The witness leaves the witness stand.)

2 THE COURT: Ladies and gentlemen, let's take a 15
3 minute recess. If you will step back to your jury room to
4 relax just a minute or two.

5 Court will be in recess for 15 minutes.

6 (The jury was excused to the jury room.)

7 (Court has reconvened.)

8 THE COURT: All right. Ready to go, Solicitor?

9 MR. RUSSO: Yes, Your Honor.

10 THE COURT: Bring them in.

11 (The jury returned to the courtroom.)

12 THE COURT: All right, Solicitor.

13 MR. RUSSO: Thank you, Your Honor. May it please
14 the Court, the State would call Deputy Scott Brown.

15 SCOTT BROWN, being first
16 duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. RUSSO:

18 Q. State your full name for the record?

19 A. My name is Scott Brown.

20 Q. Deputy Brown, I'm gone stand back here at the end of
21 the jury box. Please, speak loud enough for me to hear so
22 the members of the jury panel can hear you, okay?

23 A. I sure will.

24 Q. You go by Scott?

25 A. Yes, I do.

1 Q. Scott, where are you employed?

2 A. I'm currently employed with the Florence County
3 Sheriff's office.

4 Q. How long have you been employed with the Sheriff's
5 office?

6 A. Going on my 8th year there.

7 Q. All right. Is that the entire time that you been
8 involved in law enforcement?

9 A. Yes, it is.

10 Q. So eight years you been involved in law enforcement?

11 A. That's right.

12 Q. What is your position with the Florence County Sheriff
13 Department?

14 A. Now, I am currently employed with our criminal
15 enforcement unit. Prior to that, I was on patrol for six
16 and a half years.

17 Q. All right. On December the 4th of 1999, what was your
18 employment?

19 A. Patrol division at that time. I was patrolling the
20 streets of Florence County.

21 Q. All right. At that time had you been involved in
22 investigations in anyway as far as -- let me clarify. As
23 far as your position with the Sheriff's Department where
24 were -- did you ever serve as an investigator?

25 A. At that time, no, sir, I had not been an investigator.

1 Q. Okay. You are now?

2 A. I'm part of the criminal enforcement unit, which is a
3 division of our narcotics investigation.

4 Q. All right. But in December of 1999, you had no
5 experience in investigations; correct?

6 A. That's correct.

7 Q. All right. I'm going to take you to - excuse me - the 4th
8 day of December of 1999. Where you on duty that day?

9 A. Yes, I was.

10 Q. All right. Do you recall the events of that day?

11 A. I recall somewhere late that afternoon we were
12 dispatched to respond in reference to a shooting on Callie
13 Young Road in Effingham.

14 Q. All right. Do you know about what time it was that
15 you received that call and where you were?

16 A. I can tell you real quick. 1756 hours was my dispatch
17 time.

18 Q. Okay. And we're going to try, if we can, to deal with
19 civilian time for the jury's purpose?

20 A. Be 5:56 p. m.

21 Q. All right.

22 A. And at that time I remember that I was sitting at the
23 Sav-A-Step Gas Station at Cashua -- South Cashua Drive and
24 Knollwood, which is the road beside Forest Lake. The road
25 that cuts through the lakes.

1 Q. Okay. And so when you received this call you then
2 proceeded to that location; is that correct?

3 A. Yes, I did. That's correct.

4 Q. All right. When you arrived, about approximately what
5 time was it?

6 A. My approximate arrival time was 6:03.

7 Q. All right. Now, this is in early December of 1999.
8 Do you recall the lighting conditions with regards to
9 whether or not the sun was up or dark?

10 A. It was late afternoon. But, I mean, it wasn't head
11 lights time at that time because as far as your vehicle
12 goes you can still see clearly pretty decent.

13 Q. All right. When you arrived at Callie Young Road at
14 that location, what did you observe as you arrived? Let me
15 back up for a moment. What type of vehicle do you drive?

16 A. At that time I was driving a Crown Victoria unmarked
17 patrol car.

18 Q. All right. Now, is that -- is that marked like the
19 Sheriff's vehicle we see on the streets?

20 A. The ones you see the majority of the day, everyday.
21 The big Crown Vic's with the light bars on top. At that
22 time that's what I as driving.

23 Q. And the shields on the side?

24 A. Yes, sir.

25 Q. Okay. When you arrived what did you observe?

1 A. At the time of my arrival, I noticed that the other
2 units had already arrived, which were part of the criminal
3 enforcement unit. They were there at the time and they had
4 the scene secured and a suspect detained.

5 Q. Okay. I'm gonna ask you if you would to refer to
6 State's 35 and just kind of familiarize yourself with this
7 and show the jury when you pulled up to the scene where you
8 pulled up?

9 A. I believe there was a driveway right here, 'if I'm not
10 mistaken right in this area somewhere right in here. The
11 lead directly up to his residence. I believe that Sergeant
12 Summerford at the time was parked right in here. And I was
13 between him and I believe there was another marked patrol
14 car there. A similar marked patrol car in that unit.

15 Q. So in front of this mobile home, marked as defendant's
16 residence?

17 A. Yes, sir.

18 Q. And somewhere between that and Callie Young Road?

19 A. Yes, sir. I probably say in this general vicinity.

20 Q. Okay. So other than law enforcement officers were
21 there any other individuals that you observed as you came
22 on to the scene?

23 A. Once I exited my vehicle like I said, I noticed the
24 defendant was on the ground in front of his residence and
25 there was also a deceased person a few feet away.

1 Q. All right. At the time that you got out of your
2 vehicle, did you know that it was Mr. Daniels who they had
3 in custody?

4 A. I had know idea who it was at that time.

5 Q. All right. What did you do once you arrived?

6 A. Once I arrived, I spoke with the officers who were on
7 scene. And they had advised me via radio prior to arrival
8 and listening to the radio to traffic on the way that they
9 had taken the suspect into custody and that they had him
10 detained at that time. The time they also advised me that
11 the scene was secured and there was nobody else at the
12 scene running around in the yards or as far as anybody else
13 being hiding out inside the residence.

14 Q. Okay. Once you arrived, what was your
15 responsibilities when you arrived?

16 A. I was a primary officer on scene. I took total
17 control of taking down information and noting details as
18 far as patrol officer is responsible for.

19 Q. There are responsibilities that are different for
20 patrol officers then there are for investigators; is that
21 correct?

22 A. Right. Totally different as far as our
23 responsibility, and investigator, forensics.

24 Q. Okay. Now, did you have an occasion then to -- When
25 did you first realize that it was Tracy Daniels who was in

1 custody?

2 A. I believe that was after we had pat searched
3 Mr. Daniels. And, I believe, somebody had initially told
4 me his name and then I ended up speaking to him after
5 myself and Deputy Fuleihan.

6 Q. All right. Now, you said you pat searched the --
7 Mr. Daniels?

8 A. Yes, sir.

9 Q. He was in custody at that time; is that correct?

10 A. He was detained at that time on -- He was on the
11 ground with handcuffs on. Yes, sir.

12 Q. All right. And so what was the need for you doing a
13 pat down?

14 A. Well, I knew that eventually Mr. Daniels would end up
15 in my vehicle and that's common practice. We all do it for
16 officer safety. It's a pat down search to make sure for
17 any weapons or anything that might be in somebody's pockets
18 that we don't with them when they get into our vehicles.

19 Q. Okay. Did you take any photographs while you were
20 there?

21 A. I did not take any photographs, no, sir.

22 Q. All right. I'm gonna show you a photograph that is
23 marked as State's Exhibit 34. You didn't take this;
24 correct?

25 A. No, sir.

1 Q. All right. I'm gone ask you to look at that and tell
2 me if you can familiarize yourself and identify that?

3 A. It appears to be the ground in front of the
4 defendant's residence right within close proximity of the
5 doorsteps.

6 Q. All right. And if you look closely, do you see any
7 individuals in that photograph?

8 A. The victim is lying in the far background of the
9 photo.

10 Q. All right. Let me show you another photograph marked
11 as State's 32 and if you would identify that photograph?

12 A. This seems to be a close up of some items that are
13 seen to the bottom left of the first photo appears to be a
14 looks like a zip-o still lighter, cigarette, a knife and
15 maybe some keys.

16 Q. All right. Now, when you did a pat down of the
17 defendant, Mr. Tracy Daniels, did you take items out of his
18 pocket?

19 A. Yes, sir.

20 Q. All right. And are those the items that we see in
21 those photographs there?

22 A. Yes, sir. That would be in the general area where he
23 was laying so I would've took them out of his pockets and
24 laid them on the ground.

25 Q. All right. And again, the items which you took out of

1 Tracy Daniels pockets are those items there. What are
2 they?

3 A. Yes, sir. Like I said I believe it's a zip-o style
4 lighter, small pocket knife, and a -- looks like a set of
5 keys, and there's a cigarette also there.

6 Q. Okay. Is anything else in his pockets or anything
7 else that you observed that would have caused you concern
8 before you put him in your vehicle?

9 Mr. Deberry: What picture is that he's referring
10 to?

11 MR. RUSSO: That is Number 32, I believe. Yes,
12 State's 32.

13 A. Can you repeat your question, Mr. Russo?

14 Q. Yes, sir. These items were taken out of Tracy
15 Daniels' pocket; correct?

16 A. That's correct.

17 Q. Was there anything else in his pockets that would have
18 caused you concern before you put him in your vehicle?

19 A. I don't believe there would have been anything else in
20 his pockets that would cause concern because if I would
21 been concerned about them, it would have been out.

22 Q. You would have taken them?

23 A. Yes, sir.

24 Q. Okay. All right. So you do his pat down. You take
25 these items out of his pocket and what do you do next?

1 A. Myself and Deputy Fuleihan assisted the subject up in
2 standing him up.

3 Q. All right. And then what did you do?

4 A. At that time I read Mr. Daniels his Miranda warnings.

5 Q. All right. And if you would please when you do that
6 is that done strictly from your memory?

7 A. No, sir. It's read from my card.

8 Q. All right. You say it's read from your card. What
9 are you referring to?

10 A. I keep a card. It's my Miranda warning card right
11 here.

12 Q. Okay. Now, would you please tell the jury exactly
13 what you said to Mr. Daniels that evening?

14 A. Sure. Advised Mr. Daniels that he had the right to
15 remain silent. Anything you say can and will be used
16 against you in a court of law. You have the right to talk
17 to a lawyer and have him present with you while you're
18 being questioned. If you cannot afford to hire a lawyer,
19 one will be appointed to represent you before any
20 questioning if you wished. You can decide at any time to
21 exercise these rights and not answer any questions or make
22 any statements. Do you understand each of these rights as
23 I explained them to you. And having these rights in mind
24 do you wish to talk with us now.

25 Q. All right. You read that to Mr. Daniels?

1 A. Yes, sir.

2 Q. All right. Did he respond?

3 A. Yes, sir. Mr. Daniels advised me that he would answer
4 any questions that I had. I believe his answering to
5 having those rights in mind do you wish to talk us now. I
6 believe his answer was, yes.

7 Q. Okay. And you said that Deputy Fuleihan was there
8 with you?

9 A. Right. And I believe there's also Lance Corporal
10 David Easley (sic) from the highway patrol.

11 Q. All right. Did you in fact -- or let me ask you this.
12 After you read Mr. Daniels his rights, did he at that time
13 indicate to you that he wished to have an attorney present?

14 A. No, sir. He did not. He did not request an attorney
15 to me.

16 Q. Did he answer your questions?

17 A. Yes, sir, he did.

18 Q. All right. And what did ask him?

19 A. I believe I asked him just a general question to begin
20 with. Would you tell me what happened here tonight. And
21 at that time Mr. Daniels proceeded to tell me that the
22 victim had come over to his residence and - excuse me -
23 just a minute.

24 Q. Let me ask you if you would, Deputy Brown. This
25 appears in your report?

1 A. Right.

2 Q. Is that correct?

3 A. Yes, sir.

4 Q. And is that report done just strictly off of your
5 memory?

6 A. No, sir. I take notes while I'm on the scene. And I
7 mean this report was eventually done later on that evening
8 as far as being dictated to be typed. But I always make
9 notes while I'm take a report anything from, you know, a
10 simple larceny to a case of this magnitude.

11 Q. So when you -- When you prepared your report and when
12 you spoke with Mr. Daniels that night, you jotted down
13 notes with regards to what was being told to you?

14 A. Yes, sir.

15 Q. All right. If you would share with the jury what
16 Mr. Daniels told you?

17 A. Okay. I asked Mr. Daniels like I said if he wished to
18 talk with us about what happened and he said the victim
19 came to his residence and they came inside. He stated that
20 the two of them begin to argue. He stated that the victim
21 threatened to harm him.

22 I asked the subject what way did the victim threaten
23 to harm him and he stated that the victim threatened to
24 hurt him. I asked him again the elaborate on this and he
25 continued saying the victim was gone hurt him. He then

1 stated that he and the victim continued to argue. And he
2 stated that he shoved the victim out of his residence and
3 then shot the victim. I had then asked Mr. Daniels where
4 he was when he shot the victim and he stated that he was at
5 his doorstep. I asked him how many times he fired the
6 weapon and he stated he fired the gun once. And these were
7 the statements that were made to myself and in front of
8 Deputy Fuleihan and Lance Corporal Easley (sic).

9 MR. DEBERRY: Your Honor, please, our position is
10 noted.

11 Q. As your speaking with Mr. Daniels, does he appear to
12 understand your questions?

13 A. Yes, sir. He appeared to totally understand and
14 answered questions straight forward as to what I'd asked.

15 Q. Would you describe to the jury his demeanor during
16 this time. And, I guess, what I'm referring to is what did
17 you observe as far as whether he was excited or crying,
18 calm, upset or whatever. What did you observe?

19 A. When I first approached Mr. Daniels when he was on
20 ground, he appeared to be very calm. He was not overly
21 anxious or, I guess, very -- was not agitated or appeared
22 to be any type of -- extreme sorry to the point of where he
23 was maybe cry or anything. Even when I stood him up, he
24 talk to me just as plain as I'm talking to Mr. Russo now
25 and to y'all.

1 Q. Did you smell any alcohol?

2 A. I could smell an aroma of alcohol. Yes, sir. But I
3 don't believe that he was like grossly intoxicated at the
4 time. He was steady on his feet and had no slurred speech
5 or anything like that.

6 Q. All right. Did -- With regards to your questions, was
7 he providing answers to the questions you were asking?

8 A. Oh, yeah. His answers were straightforward. His
9 answers I felt that the answers he give me were straight to
10 the question that I had just previously asked.

11 Q. So he was responding directly to the questions?

12 A. Yes, sir.

13 Q. He was able to comprehend as far as you can tell?

14 A. Right. Even to the point that when I asked him what
15 happened that night, he even started at the beginning and
16 told me that the subject -- the victim come over to his
17 house.

18 Q. After you talked to him, did he make any further
19 comments with regards to this incident?

20 A. I believe one more comment was made to me after he was
21 placed in my vehicle. I went back and asked him a second
22 time how many times he'd fired the weapon and he again told
23 me once.

24 Q. All right. Why did you ask him that a second time?

25 A. When I went back up to the actual crime scene, I had

1 noticed two spent shells in the area.

2 Q. Shotgun shells?

3 A. Yes, sir. Two spent shotgun shells, I believe, one of
4 them were on the ground and one was in the victim's hand.

5 Q. Okay. That was reason the reason for asking him a
6 second time about the gun?

7 A. That's correct.

8 Q. During his comments to you our his statements to you,
9 did he express any remorse or regret with regard to the
10 incident?

11 A. Not to me, no, sir.

12 Q. After you -- I think you said after you spoke with him
13 you then placed him in your patrol car; is that correct?

14 A. That's correct, sir.

15 Q. All right. And then what did you do?

16 A. At that time I believe that Investigator Hanna arrived
17 on scene and I went ahead and spoke with him and advised
18 him what we had noticed at the time. I advised him that we
19 did have a suspect in custody who was in the back seat of
20 my vehicle. And at that time I helped to continue with the
21 investigation with the investigators and the forensics
22 officers.

23 Q. And at that point what were your duties -- You know
24 got the suspect in your patrol vehicle. Now, what are your
25 duties?

1 A. At that time it's just to assist them in whatever they
2 need. I believe we went into the residence and checked
3 there and rechecked it again, located a weapon. And then
4 like I said I continued to help Investigator Hanna and
5 Corporal Dore and I believe Lieutenant Lutcken at the
6 scene.

7 Q. Did you yourself handle any weapons other than the
8 knife you took out of Mr. Daniels' pocket?

9 A. No, sir.

10 Q. That was your not your duty?

11 A. No, sir. I noted where the weapon was and advised the
12 forensics officers when they got there where it was.

13 Q. And where was the weapon when you saw it?

14 A. It was leaning against an appliance. I believe it
15 might have been a washer or dryer or something like that in
16 the kitchen of the mobile home.

17 Q. All right. Let me show you what's been marked as
18 State's Exhibit Number 20. Can you identify that please?

19 A. Yes, sir. This would be the weapon that I noticed
20 leaning against the wall and like I said it's right beside
21 a dryer.

22 Q. Okay. All right. And is that the condition of the
23 weapon when you observed it?

24 A. When I observed it. It was not moved by me or
25 anything that's where it was sitting.

1 MR. RUSSO: Beg the Court's indulgence for just a
2 moment please.

3 Q. Now, when you prepared your - excuse me - you said you
4 prepared a report; is that correct?

5 A. That's correct.

6 Q. About do you know approximately what time you prepared
7 that report?

8 A. Approximately, I left that scene at about nine o'clock
9 right close to nine o'clock p. m. that night. I was
10 working second shift and usually our relief comes out about
11 nine o'clock. So I probably got a break right in that area
12 and like I said due to the magnitude of the report this
13 report was probably already prepared and called within an
14 hour maybe two.

15 Q. But it was that night?

16 A. Oh, yes, sir. It was -- On evening shift we have to
17 turn our report -- We have to turn our reports in prior to
18 two o'clock that night or called them in so they can be
19 dictated -- I mean, typed out from the dictation.

20 Q. And you prepared that report with your notes in hand;
21 is that correct?

22 A. That's correct.

23 MR. RUSSO: All right. I don't have any further
24 questions. Deputy Brown, if you would please answer any
25 questions that Mr. Deberry may have.

1 CROSS EXAMINATION BY MR. DEBERRY:

2 Q. Mr. Brown, first of all, I like to try get the
3 chronological events of who got there first and when you
4 got there and that's where I'm gone be coming from next
5 minute or so. Okay.

6 A. Yes, sir.

7 Q. I understood you to say if I recall correctly that you
8 remember where you were when you first received the call?

9 A. Yes, sir, because I was talking to somebody.

10 Q. That was somewhere near Forest Lake; is that right?

11 A. Yes, sir. Knollwood and Cashua.

12 Q. What you say?

13 A. Knollwood and Cashua. Knollwood Drive.

14 Q. Intersection of Knollwood and Cashua?

15 A. At the Sav-A-Step Gas Station.

16 Q. And just -- How do you happen to remember you were
17 there?

18 A. I happen to remember that because Corporal Easeler
19 (sic) -- Lance Corporal Easley (sic) ---

20 Q. He's with the highway patrol?

21 A. Right. He was working a wreck and I had pulled in
22 there. We were conversing about something when that call
23 came in and he followed me from that point to the location.

24 Q. So both of y'all left from that place and went out to
25 this scene here at Callie Young Road?

1 A. That's correct.

2 Q. All right. So that the jury will understand how far
3 and all. About how far you do you think that is?

4 A. Five or six miles.

5 Q. Five or six miles?

6 A. Something like that.

7 Q. And traveling on that road for five or six miles to
8 get from there to Callie Young Road, you wouldn't go
9 through the City of Florence?

10 A. No, sir.

11 Q. You would stay on country roads is that ---

12 A. They're not total country roads. I mean, they're
13 traveled roads. But yeah -- I mean, it was just off --
14 Actually, you do end up on US 52 main which is Irby Street
15 to get there.

16 Q. But during that five or six miles, you would go
17 through a wooded area, houses, as well as getting to a busy
18 place like 52; right?

19 A. Sure.

20 Q. Now, and so that we can get the time that's exactly as
21 to when you received that call. Do you have a record of
22 that?

23 A. I have it noted as far as in my report where my
24 dispatch time and my arrival time was. Yes, sir.

25 Q. All right. Tell me that so I can write it down?

1 A. Our dispatch time was 5:56 and our time arrived for me
2 was two -- correction 6:03.

3 Q. 6:03. Somethings got to be wrong doesn't it?

4 A. 6:04 - excuse me.

5 Q. 6:04?

6 A. Yes, sir.

7 Q. All right. Are you aware that supposedly the first
8 call that Ms. McDougal called in was it electronically or
9 somewhere or another it was logged in pretty accurately?

10 A. I'm sure it was. Yes, sir.

11 Q. Okay. And do you 1754?

12 A. Right 5:54.

13 Q. That right a bell?

14 A. Yes, sir.

15 Q. 5:54.

16 A. Date and time the call was received was at 5:54.

17 Q. Certainly, you would not have known about this
18 incident before that, would you?

19 A. Probably not. I mean, I wouldn't have known. No,
20 sir, because, I mean, nobody had called.

21 Q. So you wouldn't have started out on that journey from
22 Cashua over there near Forest Lake to the six miles to get
23 to this location before that. You started at that time or
24 soon thereafter?

25 A. That's correct; yes, sir.

1 Q. Okay. And about how long would you think it would
2 take you to drive the five or six miles there?

3 A. It evidently took me about seven minutes.

4 Q. Seven minutes?

5 A. Yes, sir.

6 Q. Going pretty the fast?

7 A. It was a call of high priority.

8 Q. What did you say?

9 A. It's a call of high priority.

10 Q. High priority.

11 A. That is blue lights and sirens call.

12 Q. Okay. And you -- I recall you said that you -- The
13 way you drive there -- You could see clearly. You didn't
14 have to have your head lights on?

15 A. As far as I can remember I don't believe it was. Into
16 five, six o'clock in the afternoon. I believe you can
17 still see well.

18 Q. All right. And you got there you say at -- When you
19 got there, who was there?

20 A. Sergeant Summerford and I know Deputy Fuleihan is two
21 that I remember speaking with at that time and Lance
22 Corporal Easley was behind me.

23 Q. Now, I understood you say that you're pretty
24 conscientious. You keep good notes; is that right?

25 A. I try to. Yes, sir.

1 Q. You have to in cases like this because little things
2 that you don't realize are important sometimes might make
3 or break a case; is that right?

4 A. It's possible. Yes, sir.

5 Q. And your way of that, you have to be very careful?

6 A. Yes, sir.

7 Q. And little things that might make or break a case for
8 the prosecution could also do the same for somebody who's
9 accused; is that right?

10 A. Yes, sir.

11 Q. And that's why you take notes?

12 A. Try to do my best. Yes, sir.

13 Q. That's why you try?

14 A. Yes, sir.

15 Q. Okay. And in this case you took notes and you -- I
16 noticed that you seem to go back and really check about
17 this one shot, two shot issue; is that right?

18 A. Yes, sir. Because of the statement that he made to me
19 was not consistent with what I observed. I've got two
20 spent shotgun shells. So I was trying to make sure what
21 happened.

22 Q. And so when he said that he shot once, he said that he
23 shot the shot that killed his friend; didn't he?

24 A. He told me that he shot him. Yes, sir.

25 Q. Okay. So this other shot that he denied was not the

1 shot that killed the person; right?

2 A. That I don't know. I don't know whether -- I don't
3 know which shot was shot by whom or which shot killed
4 whoever.

5 Q. Well, you do know this. You do know that he said that
6 the shot he shot that he remembered killed his friend. You
7 remember that?

8 A. Sure, yeah. He said that he had shot him.

9 Q. Then you found out that there's a second shot that he
10 didn't say anything about?

11 A. That's -- I found a second spent shotgun shell. Yes,
12 sir.

13 Q. All right. And then through further investigations
14 not only was there two spent shells to indicate that there
15 were two shots rather than one. But there was another --
16 An eyewitness who clearly heard two shots; right?

17 A. Yes, sir. I believe there was an eyewitness. Yes,
18 sir.

19 Q. And aren't you aware that she heard two shots?

20 A. At that time -- I mean this was well after ---

21 Q. Now, this right now you talking to this jury. Aren't
22 you aware that there were two shots?

23 A. Oh, yes, sir.

24 Q. And she said there were two shots?

25 A. Yes, sir.

1 Q. And clearly Tracy Daniels after he told you that there
2 was only one shot fired, you went back to him again and you
3 asked him. You were suspicious about that one shot?

4 A. Yes, sir. We had two spent rounds ---

5 Q. He contended to be adamant about the fact of one shot?

6 A. Yes, sir. He told me he fired the gun once.

7 Q. And he didn't give any explanation or tell you that
8 anybody else had fired a shot either, did he?

9 A. He didn't say anything about anybody firing a
10 weapon other than himself.

11 Q. Now, Mr. Brown, you said that you went inside the
12 residence there as a trained officer; right?

13 A. Yes, sir.

14 Q. And you been on the force for like eight years, I
15 believe?

16 A. Yes, sir.

17 Q. And when you went in, you saw that shotgun and you
18 said that it was leaning by an appliance?

19 A. Right. Yes, sir.

20 Q. Then the prosecutor handed you a picture it was
21 leaning by an appliance; is that correct?

22 A. Yes, sir. I believe it look like a dryer.

23 Q. How close did you see a door to where you saw that
24 gun?

25 A. The front door of the residence was probably five or

1 six or seven feet somewhere in there. It's just a single-
2 wide mobile home. So you an appliance on the outside wall
3 and then a gun laying there. So probably somewhere three
4 quarters of a width through the mobile home. I mean,
5 guessing.

6 Q. So it was pass a minimum of feet, six feet away from
7 the door?

8 A. Yes, sir, probably.

9 Q. And so it wouldn't -- You wouldn't tell this jury that
10 that gun was laying there by the door would you leaned up
11 by the front door?

12 A. I believe it was where the picture ---

13 Q. That wouldn't be right, would it?

14 A. By the door?

15 Q. Yeah?

16 A. No, sir.

17 Q. Who touched the gun first?

18 A. The only person that I saw touch the weapon was during
19 the forensics investigation with Corporal Dore.

20 Q. Corporal Dore?

21 A. Yes, sir.

22 Q. Where were you when you saw him touch the gun?

23 A. I was standing in the living room.

24 Q. You were in the house?

25 A. Yes, sir.

1 Q. Living room and the kitchen there with the appliances?

2 A. Kind of adjoined.

3 Q. No door in between you see right in there; right?

4 A. Yes, sir. Like a half wall that separates the two.

5 Q. No door?

6 A. Correct.

7 Q. Okay. Tell me what you saw him do with that gun?

8 A. I mean, I think he photographed it and probably make
9 sure it was wasn't loaded. It would be standard.

10 Q. Well, I don't really what to know what you think. I
11 want to know -- And I know you can't remember everything.
12 I'm not trying to pick at you. But I do want to know best
13 you can remember what did you see him do with the gun?

14 A. He photographed it I know that.

15 Q. We can take that for sure?

16 A. Yes, sir.

17 Q. He photographed it. Do you see the photograph up
18 there. You may have or you may have not?

19 A. There's a photograph of a weapon on the table right
20 here sitting on the table.

21 Q. First you pick this up and look like that this picture
22 of a shotgun taken from the top of the shotgun?

23 A. Right. Yes, sir.

24 Q. And it looks to be that the shotgun is on the table
25 and there's a fork there?

1 A. Right.

2 Q. Okay. That's State's Exhibit Number 16?

3 A. Yes, sir, that's it.

4 Q. Now, do you remember -- Do you have a recollection
5 that you saw him take a picture of the shotgun while it was
6 on the table?

7 A. I don't know where he took the picture. I remember
8 seeing him take the pictures.

9 Q. Tell me what else you remember about his handling that
10 shotgun case that point turns out to be important?

11 A. All I know is he moved it from the spot where you saw
12 it in this picture and began taking photographs. Like I
13 said I'm not in forensics. I don't know exactly which way
14 they take photos. I know they take photos from all
15 different angles and different views of, you know, anywhere
16 from weapons to entry points. But that picture you're
17 holding there I think is 20 that depicts where I saw it.

18 Q. This is where you first saw Exhibit Number 20; that's
19 where you first saw the shotgun?

20 A. Yes, sir. I believe it was sitting right there in
21 front of that appliance leaning on the wall there.

22 Q. Just the way you described it before you even saw the
23 picture; right?

24 A. Yes.

25 Q. And did you see the officer when he lift that gun.

1 Did you see anybody take it and put it over by the front
2 door which would be across this entrance here or this
3 opening between the kitchen and the living room. Did you
4 see anybody take it and put it by the front door?

5 A. Like I said the only time I saw a weapon I believe it
6 was sitting by an appliance.

7 Q. Right where it is?

8 A. Yes, sir.

9 Q. Did you -- How did you see him pick it up. Did you
10 see anything done to preserve the fingerprints on it?

11 A. I'm sure they did.

12 Q. No, I'm not asking what you sure they did I'm really
13 and truly. All we want to know is what did you see?

14 A. I saw him pick up the weapon.

15 Q. All right. Did you see him pick it up in any
16 particular way?

17 A. More than likely he had gloves on. I mean, I can't
18 remember exactly what he did or whether he picked it up --
19 whatever. I don't know. I know he moved the weapon. That
20 would be a question for Corporal Door. I don't know how he
21 moved it.

22 Q. Did you see blood on the gun?

23 A. Like I said, Mr. Deberry, I didn't inspect it that
24 well. I know it was there.

25 Q. You know what was there?

1 A. I know the weapon was there. I advise him where it
2 was. It's their responsibility to collect evidence. I
3 didn't bother it at all.

4 Q. I think you sort of got around the edge of it, but I
5 don't believe you ever said when Tracy said that
6 Mr. Leffingwell had gotten to his house for the first time,
7 did you?

8 A. Repeat your question one more time.

9 Q. Do you have any recollection of when Tracy would have
10 told you that the deceased, Donald Leffingwell, first got
11 to his house that night?

12 A. He just he came over. He didn't depict the time.

13 MR. DEBERRY: That's all I have. Thank you.

14 MR. RUSSO: Nothing further of this witness, Your
15 Honor.

16 (The witness leaves the witness stand.)

17 MR. RUSSO: Your Honor, the State would call Deputy
18 Mark Fuleihan. Your Honor.

19 THE COURT: Yes, sir.

20 MR. RUSSO: I spoke with Mr. Deberry and he doesn't
21 have any objection to allowing Mr. Brown to be excused.

22 THE COURT: Thank you, Deputy, you're excused.

23 MR. RUSSO: At this time the State would call Deputy
24 Mark Fuleihan.

25 MARK FULEIHAN, being first

1 duly sworn, testifies as follows:

2 DIRECT EXAMINATION BY MR. RUSSO:

3 Q. State your full name for the record?

4 A. Mark Edward Fuleihan.

5 Q. And, Deputy Fuleihan, you go by Mark; is that correct?

6 A. That's correct, sir.

7 Q. All right. Mark, if you would please speak loud
8 enough for me to hear you and make sure that the members of
9 the jury will hear your testimony. Where are you employed?

10 A. I'm employed with the Florence County Sheriff's
11 office.

12 Q. All right. And what's your position with the Florence
13 County Sheriff's office?

14 A. I'm a deputy sheriff assigned to the criminal
15 enforcement unit.

16 Q. All right. And how long have you been assigned to
17 that unit?

18 A. Been assigned to the unit for approximately three
19 years.

20 Q. All right. So at the time of this instance December
21 of 1999 you would have been assigned to that unit?

22 A. That's correct. Sir.

23 Q. All right. How long have you been in law enforcement?

24 A. Eight and a half years.

25 Q. And is all that time been with the Florence County

1 Sheriff Department?

2 A. Yes, sir, it has.

3 Q. Okay. I'm gonna ask you if you would please to turn
4 your attention to December the 4th of 1999. Do you recall
5 the events of that day?

6 A. Yes, I do, sir.

7 Q. All right. And let me ask you. At that time back in
8 December of '99 what type of vehicle were you driving?

9 A. I was driving a unmarked black Camaro.

10 Q. Okay. So it didn't have any markings other than it
11 was just a Camaro?

12 A. That's correct, sir.

13 Q. Okay. Do you recall receiving a call to report to
14 Callie Young Road regarding a shooting?

15 A. Yes, I do, sir.

16 Q. Do you know about what time you received that call to
17 the best of your recollection?

18 A. It was late afternoon 1700 to 1800, which is five to
19 six o'clock. I believe, that's correct.

20 Q. Okay.

21 A. I don't have the exact time in front of me, sir.

22 Q. All right. If you'd refer to that cad report, do you
23 know what time that call went out?

24 A. Yes, sir. The call according to the cad system was
25 dispatched at 1755 hours, which is 5:55. And law

1 enforcement officers arrived on the scene according to the
2 cad system was at 1802 hours, which is six o'clock.

3 Q. Okay. Does that report -- Would that report
4 specifically state when you yourself arrived or does it
5 break it down into individual officers?

6 A. Yes, it does, sir. It says call was -- I arrived on
7 the scene at 1803 hours, which is three minutes after six.

8 Q. Okay. When you arrived, Mark, do you recall -- I'm
9 gone get you to refer to State's 35. I'm gone let you look
10 at it for a moment and kind of familiarize yourself with
11 it. This will be Callie Young Road up here?

12 A. Yes, sir.

13 Q. When you -- As you arrived, where did you park your
14 vehicle?

15 A. I parked my vehicle -- Then Sergeant Summerford now
16 Lieutenant Summerford. Sergeant Summerford was the first
17 officer that pulled in. Then Deputy Heath Weaver who also
18 is assigned to the criminal enforcement unit. He pulled in
19 and then I pulled in between Deputy Weaver and more
20 directly behind Sergeant Summerford's vehicle.

21 Q. What general vicinity if you would point out in this
22 diagram would y'all have been parked. I know this isn't
23 exact, but if you could give an general area?

24 A. We would have parked in this general vicinity right
25 here.

1 Q. Okay. All right. And as you arrived those two
2 vehicles were already there; correct?

3 A. That's correct.

4 Q. All right. What did you observe with regards to the
5 scene as you arrived?

6 A. Like I stated Sergeant Summerford arrived on scene
7 first. Deputy Weaver was the second vehicle and I pulled
8 in behind him. We had a hard time initially locating the
9 residence because of numbers weren't on the mailboxes and
10 so forth. When I arrived on scene, I observed a male
11 subject standing in the doorway to the residence in which
12 we were dispatched to respond to.

13 Q. Okay. Was there anyone else other than other law
14 enforcement officers. Was there anyone else at the scene?

15 A. By that time, it was Sergeant Summerford, Deputy Heath
16 Weaver, myself.

17 Q. Let me rephrase my question. You saw an individual
18 standing in the door of the mobile home; correct?

19 A. That's correct, sir.

20 Q. All right. Was there any other individual alive or
21 dead at the scene?

22 A. There as a subject laying down on the ground in front
23 of the mobile home.

24 Q. Okay. What happened did you do as you received all
25 and you arrived?

1 A. We -- When I arrived on the scene, Sergeant Summerford
2 had his service weapon drawn. He was pointing his service
3 weapon at the trailer. I also along with Deputy Heath
4 Weaver also draw our service weapons where at such time we
5 order the subject who was standing at the doorway to come
6 out of the residence.

7 Q. Did he come out?

8 A. He finally did come out, sir. Yes, sir.

9 Q. All right. And when he came out what happened?

10 A. Deputy Heath Weaver then approached the defendant and
11 took him down. He was standing on the top step as I
12 recall. Deputy Heath Weaver then placed him down on to the
13 ground, which is common for us in a situation like that and
14 then place him into handcuffs.

15 Q. Okay. At the time -- When you arrived now the only
16 information you have is there's been a shooting; is that
17 correct?

18 A. That's correct, sir.

19 Q. Now, at the time when you saw this individual in the
20 doorway and coming out, did you know it to be Mr. Daniels.
21 Did you know who he was?

22 A. No, sir, we did not.

23 Q. All right. You found that out sometime later; is that
24 correct?

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

1 Q. All right. So he was placed into custody on the
2 ground in handcuffs by Deputy Weaver?

3 A. That's correct.

4 Q. All right. What did you do at that point?

5 A. At that time we did not know if there were any persons
6 located inside the residence or not. At that time I
7 instructed Deputy Heath Weaver to go with me. We entered
8 in the residence and then we cleared the residence for any
9 potential suspects or persons who might have been in the
10 residence.

11 Q. Okay. When you indicated you cleared the residence,
12 your purpose there is simply to see if there any other
13 people around; is that correct?

14 A. That's correct.

15 Q. And was there anyone else there?

16 A. No, sir.

17 Q. All right. What did you do at that point?

18 A. At that time we exited the residence where crime scene
19 and then Investigator Hanna were dispatched to respond to
20 the incident location. We began some of the other officers
21 who were present then began putting up crime scene tape
22 pursuit to our crime scene policy.

23 Q. Okay. Did you have an occasion to speak with
24 Mr. Daniels -- Tracy Daniels that evening?

25 A. I did, sir.

1 Q. All right. If I would please tell the jury the
2 situation surrounding that discussion?

3 A. Yes, sir.

4 MR. DEBERRY: Our position is noted, Your Honor.

5 A. Myself and Deputy Scott Brown who was assigned to the
6 patrol division at that time and Trooper David Easley with
7 the South Carolina Highway Patrol. The defendant, we got
8 him up and Deputy Brown Mirandized him and give him his
9 Miranda warnings at that time. And at that time Deputy
10 Brown, he understood -- He verbally advised us that he
11 understood his Miranda warnings and then Deputy Scott Brown
12 asked him about the incident that occurred.

13 Q. Did you actually hear Deputy Brown read him his
14 Miranda rights?

15 A. Yes, I did.

16 Q. All right. And, Mark, you done this on numerous
17 occasions yourself; is that correct?

18 A. That's correct, sir.

19 Q. In the reading of his rights, did Deputy Brown cover
20 everything that you know to be covered with regards to
21 that?

22 A. Yes, he did, sir.

23 Q. And did you hear Mr. Daniels response as to whether or
24 not he wished to make a statement at that time?

25 A. Yes, I did.

1 Q. And what did he say?

2 A. He said -- He began to speak up about the incident
3 that occurred.

4 Q. Okay. All right. Now, were you actually standing
5 there listening to his rendition of the facts?

6 A. That's correct. Myself, Deputy Scott Brown, and
7 Trooper Easler(sic) with the South Carolina Highway Patrol.

8 Q. Okay. Do you recall what he said?

9 A. He initially stated that the deceased victim came to
10 the defendant's residence where they began to argue about
11 the deceased's mother who was my understanding the
12 defendant was dating or cohabitating -- had some sort of
13 relationship as such. He said that the deceased then
14 threatened to do harm to the defendant. Deputy Brown asked
15 the defendant, you know, in which way did he say he was
16 gonna harm you. He just reiterated that he was gonna harm
17 him.

18 Deputy Brown then attempted to try to get the
19 defendant to kind of go into maybe somewhat little bit
20 detail about how he planned to harm him. Where at such
21 time the defendant related that he pushed the deceased
22 person, the victim, rather out of the residence and from
23 the top of the step. Then he used the 12-gauge shotgun and
24 discharged a firearm striking the victim.

25 Q. All right. So in layman's terms he told you he shot

1 the victim?

2 A. That's correct, sir.

3 Q. Okay. And ---

4 MR. DEBERRY: Your Honor, we object to that last
5 question there as being leading. He said in layman's terms
6 he told him he shot. Prior to that I understood the
7 witness to say that he had -- His statement was that he
8 discharged the firearm.

9 MR. RUSSO: I will rephrase the question, Your
10 Honor.

11 THE COURT: All right.

12 Q. To the extent you can recall, what were the words that
13 Tracy Daniels used when he was talking about after he
14 indicated he shoved the victim out of his house. What did
15 he saw?

16 A. He said that he shoved the victim out of his house.
17 He said -- And then he shot the victim from standing at the
18 top of the porch.

19 Q. Okay. You were standing there when Deputy Brown read
20 his Miranda rights; is that correct?

21 A. That's correct.

22 Q. Did Deputy Brown do that off of his memory -- from his
23 memory of the Miranda rights?

24 A. No, sir. There's a card that he had that he took from
25 his credential wallet and read the Miranda warnings

1 to was he excited, was he calm, was he crying, was he --
2 Just explain to the jury what you observed his demeanor?

3 A. As we began speaking with the defendant, he was calm.
4 He really didn't have a lot of emotion. He answered our
5 questions. And he spoke freely as freely as I'm speaking
6 to you now, sir.

7 Q. Did you smell any alcohol about his person?

8 A. I did smell alcohol from his person, yes.

9 Q. Okay. At any time through your observations, did you
10 have any concern as to whether or not he understood his
11 questions or your questions or if he understood what was
12 going on?

13 A. Initially, when Deputy Brown read the Miranda warnings
14 from his issued card, I smelled the alcohol coming from the
15 defendant's person. In all cases, if we smell alcohol or
16 if we feel that the subject may be under the influence of
17 narcotics or drugs or something, I always ask do you think
18 that you are under the influence to not understand these
19 Miranda warnings. And in this particular case just to
20 cover ourselves and the defendant's rights which we don't
21 want to violate, of course. I asked Mr. Daniels if he felt
22 that he was impaired enough not to understand the Miranda
23 warnings and he advised that, you know, he understand the
24 Miranda warnings fully.

25 Q. So now that wasn't Deputy Brown that was you?

1 verbatim off of the card.

2 Q. Is that the way you do it, Mark?

3 A. Yes.

4 Q. Okay. Was there anything further or was that the end
5 of his statement?

6 A. Yes, sir.

7 Q. All right. What did you do at that point?

8 A. At that time Deputy Brown, then placed the defendant
9 into the back of his patrol car.

10 Q. Okay.

11 A. Where there was a barrier.

12 Q. Okay. Then what were your duties at that point?

13 A. At that time we were basically security for the crime
14 scene again waiting for Investigator Phil Hanna with the
15 Florence County Sheriff's Office investigation unit along
16 with crime scene unit to arrive on the scene.

17 Q. Okay. So at this point your responsibilities become
18 securing the scene to make sure no one other than
19 authorized personnel in the area?

20 A. That's correct.

21 Q. All right. You're fairly close to Tracy Daniels that
22 evening is it fair to say?

23 A. Yes, sir.

24 Q. Do you recall -- If you would describe to the jury his
25 demeanor or in other words what you observed with regards

1 A. Yes, sir, that was coming from me because I did not
2 know whether Deputy Brown had smelled the alcohol. And at
3 that time I smelled it. So in all cases where we have
4 incidences like that I go ahead and go the additional mile
5 for that.

6 Q. All right. And he indicated to you that he understood
7 your questions?

8 A. That's correct, sir.

9 Q. He understood his rights?

10 A. That's correct.

11 Q. At any time did he ask to speak to an attorney?

12 A. No, he did not.

13 Q. Or did he comment that he did not want to answer any
14 more questions?

15 A. No, sir.

16 Q. Mark, after Mr. Daniels was placed in the patrol car
17 and you continued your duties in being security for the
18 area, did you have any occasion to go back in the mobile
19 home?

20 A. No, sir. I did not, no, sir.

21 Q. When you first went in the mobile home to clear the
22 home to make sure there was no one else in there, did you
23 -- I think you testified you saw there was no one else in
24 the home?

25 A. That's correct.

1 Q. Did you see a weapon?

2 A. We did. I did rather.

3 Q. All right. Did you in anyway handle that weapon?

4 A. No, sir.

5 Q. You didn't pick it up. You didn't touch it?

6 A. No, sir.

7 Q. All right. Did you observed anything with regards to
8 any evidence that there had been alcoholic beverages in the
9 home?

10 A. I personally did not see any alcoholic beverages.

11 Q. Okay. All right. And your duties as going through
12 there is your looking for people; is that correct?

13 A. That's correct, sir.

14 Q. But you were aware you were dealing with a shooting so
15 the gun caught your eye?

16 A. That's correct.

17 Q. Where was was it. Do you recall where it was?

18 A. Yes, sir. As soon as you went to the top step, you
19 open the door the kitchen area, if you will, was to the
20 right as soon as you walked inside. And as Deputy Weaver
21 and I were sweeping the kitchen area I noticed a long
22 barrel shotgun. It was leaning up against an appliance in
23 that general vicinity right there.

24 Q. In the kitchen area?

25 A. Yes, sir.

1 MR. RUSSO: I have nothing further please answer any
2 questions from Mr. Deberry.

3 CROSS EXAMINATION BY MR. DEBERRY:

4 Q. Officer Fuleihan, who was the main officer -- who is
5 the chief officer on this particular case as we stand
6 today?

7 A. Could you define what you say chief officer is?

8 Q. Well, how about the main officer the one in charge
9 over everybody?

10 A. Well, that would ultimately be the sheriff, but he was
11 not at the incident location.

12 Q. Okay. Of the people that are prepared to testify in
13 front of this jury who's in charge?

14 A. I would have to say would be my supervisor which would
15 be Lieutenant Summerford.

16 Q. Lieutenant Summerford is your supervisor?

17 A. That's correct.

18 Q. Who is Lieutenant Summerford's supervisor?

19 A. The captain over the investigations unit.

20 Q. And who is that?

21 A. Captain Jeffords.

22 Q. Captain Jeffords?

23 A. That's correct.

24 Q. What position does Officer Phil Hanna hold?

25 A. He's a criminal investigator, sir.

1 Q. And how would you describe his play or his position in
2 this particular case?

3 A. His job is to further investigate the crime in which
4 we called him to.

5 Q. Would he be over you?

6 A. In this particular incident, yes, sir.

7 Q. Would he be over Mr. Summerford?

8 A. Yes.

9 Q. Okay. Would he be over -- Is it Scott Brown. Would
10 he be over him?

11 A. Scott Brown?

12 Q. Uh-huh?

13 A. Yes, sir.

14 Q. Now, and describe if you would again what was your
15 role and what was your position in this case?

16 A. My role as any other unit that was dispatched to the
17 scene.

18 Q. Okay.

19 A. Just responding to it.

20 Q. Who is in charge of the forensics?

21 A. Lieutenant Keith Lutcken is in charge of the forensics
22 unit.

23 Q. And who else would be in his department?

24 A. You talking about that particular night or just in
25 general.

1 Q. That night?

2 A. That particular night would be Corporal Jason Dore.

3 Q. Those two?

4 A. That's correct.

5 Q. Now, tell the jury if you would, how would you
6 describe that -- You traveled from where to where when you
7 first heard about it?

8 A. I was at the law enforcement center finishing up some
9 paperwork.

10 Q. You just had a few minutes drive over there?

11 A. Yes, sir.

12 Q. How would you describe the lighting as you drove over
13 there?

14 A. Lit. I mean, it wasn't baseball park lit. But it was
15 lit well enough where we could see the defendant standing
16 in the doorway.

17 Q. Now, first let me ask you about your drive over there.
18 How was it outside?

19 A. It was dark if that's what you're asking.

20 Q. Okay.

21 A. I had to use my headlights. Yes, sir.

22 Q. And you would have gotten a call about the same time
23 that they had -- You said you got your call -- You arrived
24 at 1803; is that right?

25 A. Yes, sir. According to the cad system; that's

1 correct.

2 Q. And now you were the third person to get there?

3 A. That's correct.

4 Q. And you went inside the scene and went inside the
5 house?

6 A. That's correct.

7 Q. And at that time, you, as a trained officer, you took
8 mental note and, I guess, you took other notes, too; is
9 that right? You take down written notes?

10 A. I did not. No, sir.

11 Q. And you saw the shotgun in there?

12 A. Yes, sir.

13 Q. You didn't see any alcohol in there?

14 A. I don't recall. I'm not saying there wasn't. I'm
15 just saying I don't recall there being any there, sir.

16 Q. Did you -- And you saw the shotgun up by the
17 appliances?

18 A. That's correct.

19 Q. And did you move the shotgun?

20 A. No, sir.

21 Q. Did you ever see the shotgun by the front door?

22 A. No, sir.

23 Q. And did you see somebody with a shotgun?

24 A. No, sir.

25 Q. Did you never -- How long did you stay there?

1 A. About from the time I arrived on scene until the time
2 I left?

3 Q. The time you got there until the time you left. Yeah?

4 A. An hour maybe an hour and a half maybe.

5 Q. Well, tell the jury how many people you saw move the
6 shotgun?

7 A. I personally didn't see anybody remove the shotgun.
8 What Deputy Heath Weaver and I did was we went in initially
9 to clear the residence for any other subjects who maybe
10 inside the residence. Once we did that, we left the area
11 and then the crime scene tape which was put up by myself
12 and others. Then that area is pretty much corded off until
13 our crime scene unit gets there. And then they access the
14 situation as it is. We don't -- We didn't -- I speak from
15 myself, sir. I didn't touch anything as far as the weapon
16 or anything of that matter.

17 Q. What I'm asking you, did you see anybody walking
18 around with a shotgun at any time during the hour that you
19 were there?

20 A. I did not. No, sir.

21 Q. You never saw that shotgun moved?

22 A. No, sir. I personally did not see it moved. No, sir.

23 Q. That's all I'm ask you. You personally?

24 A. I personally did not see it moved. No, sir.

25 Q. Did you see anybody taking pictures of it?

1 A. Yes, sir.

2 Q. Who did ---

3 A. I saw people taking -- You say taking pictures or
4 taking pictures of the weapon?

5 Q. Taking pictures of the shotgun.

6 A. Not to my knowledge. No, sir.

7 Q. Now, what did you see as far as any processing going
8 on inside that -- inside that house. You didn't see
9 anybody as you said ever move that shotgun?

10 MR. RUSSO: Your Honor, I object. That has been
11 asked and answered numerous times.

12 MR. DEBERRY: I want him to answer it.

13 Q. What else did you see in that house as far as the
14 processing going on in there?

15 A. As I've stated, sir, I didn't see anything because
16 that's not my job. The crime scene unit -- My job is to go
17 in and protect the crime scene as it is.

18 Q. I understand.

19 A. Okay. And we did that by having the proper security
20 officers there to protect the crime scene. Placing in the
21 crime scene unit tape up. And once crime scene unit
22 arrives, they're advised of the situation. And then they
23 go in and then they process or do whatever their job
24 entails. I don't know anything about crime scene
25 investigation.

1 Q. You through?

2 A. Yes, sir.

3 Q. What I want to know what did you see inside that
4 residence that you think is relevant to this case other
5 then you said you saw that shotgun. You didn't see any
6 alcohol. Tell me what you remember seeing, if anything?

7 A. That's basically it, sir. I mean, like I stated our
8 initial reason for going inside the residence ---

9 Q. I'm not asking you why you went in there and I'll try
10 to make myself clear then you can answer. Do you have
11 anything else to offer to this jury?

12 A. No, sir.

13 Q. That you saw in that house other than that shotgun and
14 the fact that you didn't see any alcohol?

15 A. No, sir.

16 Q. Thank you. Now, I want ask this. Did you see -- What
17 do you -- What is the term GSR mean?

18 A. I don't have a clue, sir.

19 Q. Did you ever hear that expression being used there at
20 the scene?

21 A. No, sir.

22 Q. Did you ever see anybody taking any fingerprints --
23 Have you scene people take fingerprints before?

24 A. Yes, sir.

25 Q. You know what it looks like when you see somebody

1 taking fingerprints; right?

2 A. Yes, sir.

3 Q. Did you see anybody doing that?

4 A. I did not. No, sir.

5 Q. Tracy Daniels definitely told you that that gun one
6 time, I think, you said that he told you that it discharged
7 and killed his friend; is that right?

8 A. He said that he shot the victim. Yes, sir.

9 Q. But my question is one time on that stand today, you
10 said that Tracy Daniels said that that gun discharged and
11 killed his friend. Did you say that or not?

12 A. Well, the discharging was my own words. Yes, sir.

13 Q. Okay. Now, there was something peculiar about that
14 that you learned about his -- When you ask him how many
15 times that gun was fired, you remember that?

16 A. I didn't ask him how many times it was fired.

17 Q. Do you remember something out there that night as
18 being contradictory. Mr. Daniels said that it was one shot
19 fired?

20 A. Right.

21 Q. And there was of evidence two shots fired; is that
22 right?

23 A. I believe so. Yes, sir.

24 Q. Did you know what Ms. McDougal had said?

25 A. No, sir. No, sir.

1 Q. Did you -- Have you ever been there to the scene
2 before?

3 A. No, sir.

4 Q. Have you ever been there since that night?

5 A. No, sir.

6 Q. The -- You said that Mr. Daniels said that the gun was
7 shot from the porch level; is that right?

8 A. That's correct.

9 Q. And tell the jury where you understood -- Where you
10 understood the place that he was telling you that the shot
11 came from to be?

12 A. Which was right here.

13 Q. Right there?

14 A. Yes, sir.

15 Q. And that's showing how many steps getting to the porch
16 level?

17 A. Two steps.

18 Q. Okay. And you understood it to say -- him to say that
19 he was where?

20 A. On the top step.

21 Q. On the top step or the porch? Well, let me get
22 something straight. Let's say you come out of the home.
23 There's sort of a platform that you wouldn't refer to --
24 not a big one not a porch but a platform then small steps,
25 foot-size steps. Did you recall it being that way?

1 A. Yes.

2 Q. Okay. Did you understand that he was telling you that
3 he was on one of the steps or on the platform?

4 A. As I recall it was from the -- What you're referring
5 to as the platform. Yes, sir.

6 Q. Help me to see if you see a picture of this step.
7 Here one right here the number will help you out. I'm
8 referring to State's Exhibit Number 12 ask you if you can
9 tell us -- What does that show there?

10 A. That shows the front of the residence.

11 Q. Whose residence?

12 A. Mr. Daniels, the defendant residence.

13 Q. Okay. Looking at that picture where would
14 Ms. McDougal's trailer be in regards as you looking for
15 place that the camera would have been placed when the
16 picture was taken?

17 A. I'm assuming you're speaking of Ms. McDougal the
18 initial complainant?

19 Q. The other complainant?

20 A. She was to the right of the mobile home shown here.

21 Q. Okay. That picture's the same night that it happen;
22 right?

23 A. That's correct.

24 Q. And that picture of that gold car there that's
25 Donald's car; isn't it?

1 A. I believe so. Yes, sir.

2 Q. And y'all took that car in for processing; didn't you?

3 A. I believe so. Yes, sir.

4 Q. Okay. Back to the steps. Does it look like that
5 platform thing that I could call a porch or a platform
6 that's leveled with the bottom of the door?

7 A. Fairly so. Yes, sir.

8 Q. And that's where you understood that Tracy Daniels was
9 saying that he shot from?

10 A. That's correct.

11 Q. And only Exhibit Number 12. All right. You take that
12 just make one little dot where you understood him to tell
13 you that his feet were where he was standing. Is it right
14 there?

15 A. Well, it was just on the platform. Exactly where his
16 feet was located I didn't ask him that.

17 Q. Which one of these horizontal lines ---

18 A. It's the top of the platform.

19 Q. Is that a good indication of where you understood him
20 say he was?

21 A. At the top of the platform. Yes, sir.

22 Q. All right. Thank you. Now, you saw Donald lying down
23 on the ground; right?

24 A. That's correct.

25 Q. And about how far do you think he was when he's lying

1 there from that platform?

2 A. Probably from the top of the platform anywhere between
3 maybe eight to ten feet could be a little bit further. I
4 don't have the exact measurements.

5 Q. And how far do you think he would be elevated above
6 Mr. Leffingwell if Mr. Leffingwell was standing on the
7 ground?

8 A. Couple of feet maybe. I'm not exactly sure.

9 Q. Okay. Did you see evidence of a shot that didn't hit
10 Mr. Leffingwell there at the scene where a shot had hit
11 something?

12 A. Can you repeat the question please?

13 Q. Yeah. I'm not talking about the shot that shot and
14 went into the left side Mr. Leffingwell's throat and killed
15 him?

16 A. Right.

17 Q. I'm not talking about that.

18 A. Yes, sir.

19 Q. Did you see evidence where another shot had been fired
20 out there?

21 A. I personally did not see evidence of it. No, sir. I
22 did not.

23 Q. Since then have you heard about that?

24 A. I've heard of evidence of what you're talking about.
25 Yes, sir.

1 Q. Okay. And have you seen pictures of where that shot
2 was hit?

3 A. I have not. No, sir.

4 Q. Are you aware that there was a statement by an
5 eyewitness that there were two shots?

6 A. I've heard that there was a statement made concerning
7 that. Yes, sir.

8 Q. Are you aware that they were two spent shells there at
9 the scene?

10 A. I know that the victim had a shell in his hand. Now,
11 whether it was a spent cartridge or not I can't testify to
12 to that.

13 MR. DEBERRY: That's all I have. Thank you.

14 REDIRECT EXAMINATION BY MR. RUSSO:

15 Q. Mark, you had tell the members of the jury where Tracy
16 Daniels told you he was standing when he shot Donald
17 Leffingwell; correct?

18 A. That's correct.

19 Q. So Tracy Daniels would have told you that he had
20 crawled on top of this mobile home and shot him. Is that
21 what you would have told the jury that he would have told
22 you that?

23 A. Yes.

24 Q. Okay. You're simply repeating what he told you;
25 correct?

1 A. That's correct.

2 Q. It's not your testimony that that's where the shot
3 occurred, is it?

4 A. No.

5 MR. DEBERRY: Your Honor, just because we come back
6 on redirect, doesn't mean we can cross examine or lead a
7 witness and I object to it.

8 THE COURT: That was leading. I sustain the
9 objection.

10 Q. What were your duties on this night?

11 MR. DEBERRY: That's not proper.

12 MR. RUSSO: Your Honor, he went extensively into
13 where did you go, did you see other evidence.

14 THE COURT: Go ahead.

15 Q. What were your responsibilities when you arrived on
16 this scene when you got there?

17 A. Initially, to secure the crime scene and to apprehend
18 any suspects or persons responsible for the shooting.

19 Q. You testified you went into the residence after you
20 first got there?

21 A. That's correct.

22 Q. And cleared the residence?

23 A. That's correct.

24 Q. Did you ever go back into there that night?

25 A. No, sir.

1 Q. Have you ever been back in there?

2 A. No, sir.

3 Q. And your purpose for going in the residence and
4 clearing the residence was to do what?

5 A. Was to -- what we call in law enforcement terms is to
6 clear the residence to look for any other persons inside
7 the residence.

8 Q. Is it your duty to look for evidence while you're in
9 there?

10 A. No, sir.

11 MR. RUSSO: Thank you. I have no further questions.

12 THE COURT: Anything else?

13 MR. DEBERRY: Nothing, Your Honor.

14 THE COURT: You may step down.

15 (The witness leaves the witness stand.)

16 THE COURT: Ladies and gentlemen, at this time we
17 will stop and take a lunch break. I need you back here at
18 2:30. Remember don't discuss the case with anyone.
19 Everybody else remain seated while the jury departs for
20 lunch.

21 (The jury was excused.)

22 THE COURT: Okay. We will break for lunch until
23 2:30. I'm not singling out either side. I'm just going to
24 make this generic statement. There's absolutely too much
25 repetition going on with the questioning. Think about what

1 you asking. If you've asked it before, don't ask it again
2 or if you heard the other side ask it, don't ask it again.

3 (Court is in recess.)

4 (Court has now reconvened.)

5 (Photograph marked for identification as State's
6 Exhibit 36.)

7 THE COURT: Bring them in.

8 (The jury returned to the courtroom.)

9 THE COURT: All right. All jurors thank you for
10 your patience, ladies and gentlemen. I had a case that had
11 to have an amended sentence on it and we had to work in
12 taking care of that. We're ready to go now.

13 Solicitor.

14 MR. RUSSO: Your Honor, if I may before we call the
15 next witness, I'd like to inform the Court and Mr. Deberry
16 in an effort to be judicious with our time. We have put up
17 Deputy Scott Brown who gave a statement with regards to the
18 statement that the defendant made at the scene. Deputy
19 Mark Fuleihan who also was present when that statement was
20 made then testified as to that.

21 I have Trooper David Easler (sic) available and I
22 make him available if the defense would like to question
23 him. But my purpose for putting him up would have simply
24 been again that he heard the statement made and I didn't
25 want to be repetitive with that. But I did want to make

1 him available if Mr. Deberry felt like he needed to cross
2 examine him about that issue. That was the only issue I
3 would have put him up about.

4 MR. DEBERRY: Your Honor, I'll be glad to talk with
5 him and I feel like under those circumstances that I have a
6 duty to talk with him and I'll be glad to do that sometime
7 outside the courtroom.

8 THE COURT: All right. You want to take a few
9 minutes now and do it.

10 MR. DEBERRY: Or we can go ahead and I can talk with
11 him now. I don't want to interrupt you.

12 MR. RUSSO: Your Honor, should Mr. Deberry need to
13 actually cross examine him the trooper on the stand that's
14 great after he speak with him. But if he like to speak
15 with him now, it'll give me an opportunity to set up this
16 project for Dr. Nichols who will be out our next witness.

17 MR. DEBERRY: I thought he had an ulterior motive.

18 THE COURT: All right.

19 (Pause in proceedings.)

20 MR. LAWSON: Your Honor, if there be no objection if
21 Officer Easeler (sic) be excused.

22 MR. DEBERRY: No objection.

23 THE COURT: You're free to go thank you for coming.

24 MR. RUSSO: Your Honor, we call Dr. Clay Nichols.

25 CLAY A. NICHOLS, being first

1 duly sworn, testifies as follows:

2 DIRECT EXAMINATION BY MR. RUSSO:

3 Q. State your full name for the record?

4 A. Clay Allan Nichols. N-i-c-h-o-l-s.

5 Q. Dr. Nichols, could you please tell the jury where
6 you're employed?

7 A. I'm currently at Palmetto Richland Memorial Hospital
8 in Columbia.

9 Q. Okay. What is your position there at the hospital?

10 A. I'm a forensic pathologist.

11 Q. Would you please, if you would, explain -- Before we
12 do that if you don't mind, Doctor, would you go through
13 your -- Give us the benefit of your educational background?

14 A. Yes, sir. I received my Bachelors Science Degree from
15 the University of Oklahoma in 1981. Four years later, I
16 received my Medical Degree also from the University of
17 Oklahoma in 1985. Following that, I entered a residency
18 program at the Medical University of South Carolina in
19 Pathology -- in forensic pathology completing that in 1990.
20 Following that I was on the faculty until December of this
21 year teaching pathology to medical students residence in
22 forensic fellows. I hold a unrestricted license to
23 practice medicine in surgery in the State of South
24 Carolina. And I'm board certified by the American Board of
25 Pathology in both anatomic and forensic pathology.

1 MR. RUSSO: Your Honor, at this time we would offer
2 Dr. Nichols as an expert witness in the area of forensic
3 pathology.

4 MR. DEBERRY: No objection.

5 THE COURT: So qualified.

6 Q. Dr. Nichols, would you please explain to the members
7 of the jury exactly what forensic pathology is?

8 A. Yes, sir. To begin with pathology is a branch of
9 medicine a subspecialty in medicine that deals with the
10 laboratory aspects of medicine. And what that means is
11 that any time any tissue is taken from a person, at time of
12 surgery, such as an appendix or a tonsil that's sent to the
13 pathologists where it's looked at to verify the diagnoses
14 to see if there's anything else wrong with that piece of
15 tissue. Any time blood is removed it's also sent to the
16 lab where a pathologist interprets the blood. Forensic
17 pathology is a subspeciality in pathology that deals in the
18 performance of autopsies of people who die of suspicious or
19 unnatural deaths.

20 Q. Okay. And, of course, a homicide would be a situation
21 where you'd be involved as a forensic pathologist?

22 A. Yes, it would.

23 Q. All right. Now, did you have an occasion to perform
24 an autopsy and perform as a forensic pathologist with
25 regards to a killing which occurred in December in 1999

1 with a victim was Mr. Donald Leffingwell, Jr.

2 A. Yes, I did.

3 Q. When was that you performed that autopsy, Doctor?

4 A. December 5, 1999 at 12:15 p. m.

5 Q. Okay. And at that point you're then given some brief
6 history of the situation?

7 A. Yes, sir.

8 Q. All right. And what was your understanding that you
9 were performing this autopsy for?

10 A. Briefly, it was our understanding that the deceased,
11 Donald Leffingwell, apparently went to somebody else's
12 home, an argument ensued and Mr. Leffingwell subsequently
13 received a shotgun blast to the neck and as a result to the
14 shotgun wound died.

15 Q. Okay. And you performed that autopsy; is that
16 correct?

17 A. Yes, sir.

18 Q. You were able to determine the cause of death; is that
19 right?

20 A. Yes, sir.

21 Q. And would you please the jury what your findings were
22 with regards to that?

23 A. Donald Leffingwell, Jr., died as a result of shotgun
24 would to the neck.

25 Q. All right. If you could, Doctor, explain the injury

1 and how the injury caused this particular death?

2 A. Yes, sir. There was a gunshot wound of entrance on
3 the left interior neck, which is approximately here. It is
4 10.5 inches from the top of the head and just left to the
5 midline. The wound is stellate which means it's star
6 shaped and is 1.1 inch in width and 0.7 inch in length. A
7 5.5 by 5.8 inch area of gunpowder stippling is around the
8 wound, no abrasion boarders identified.

9 Q. Now, where no abrasion boarder identified. What does
10 that mean?

11 A. What that means is that in this particular case that
12 the pelts entered as almost a solid mass with very little
13 scalping around the edges of this particular wound. It
14 also indicates a rather close injury.

15 Q. All right. Doctor, I'm going to show you a photograph
16 of what's been marked as State's Exhibit Number 1, which is
17 the wound which I think you found on the deceased. If you
18 would, Doctor, and if you need to step down please feel
19 free to do so. If you would explain to the members of the
20 jury what you're discussing when you talk about the wound
21 not being stellate and then the stippling and the effects
22 and what your findings were from that?

23 A. Do you have a photograph of this?

24 Q. No, sir.

25 THE COURT: You gone have to speak up now that

1 machine running and you can't hear over here at the court
2 reporter station. Doctor, if you could switch sides, it
3 will probably help her. Is that all right.

4 DR. NICHOLS: Yes, sir, thank you.

5 A. What we're looking at here is the neck area and
6 shoulders of Mr. Leffingwell. The shoulders are open
7 through here. This would be the anterior neck or the front
8 part of the neck. It appears on the chins here. You can
9 see this large wound right through here and this is where
10 the gunshot -- shotgun entrance was located.

11 And I mentioned before it is about 1.1 or 0.7 inch
12 in maximum diameters. There is some tearing here, but if
13 you look at the edges, the edges are smooth where the pelts
14 came out of the shotgun as a solid mass and did not have to
15 have time to simply spread as such. They went into the
16 neck as multiple pelts acting as one larger pellet.

17 Also it's a little more difficult to see but here
18 would be a good example. There's some dark dots through
19 here and that's called gunpowder stippling. And this is
20 also an indication of close the gun was to the target or
21 the deceased when the trigger was pulled because not only
22 did the pelts strike the victim, but unburned gunpowder
23 also left the gun and had an opportunity to strike the
24 victim. If it's several feet away, the gunpowder would
25 dissipate and fall to the ground before actually struck the

1 victim. And I was given the history before hand that
2 perhaps that the muzzle of the target, meaning the end of
3 the shotgun, to Mr. Leffingwell's neck was approximately
4 two to three feet. Looking at this, that's a very
5 reasonable estimate and I agree with that story.

6 Q. Now, Doctor, the wound as we see it here with the
7 smooth edges that you describe.

8 A. Yes, sir.

9 Q. What would you have expected to find with a shotgun
10 blast with a double-ought (00) buckshot? What would you
11 have expected to find as we would have been outside that
12 range further out?

13 A. Essentially, a shotgun pattern would begin to spread
14 approximately one inch for every three feet back. So
15 approximately three feet back some place in there. There's
16 virtually no spread which is what we see here. As you back
17 up further and further to six feet, nine feet, twelve feet,
18 the pattern will start to spread out. And at a certain
19 point, it'll spread out to the point where you no longer
20 have a solid mass of pellets acting as one, but you have
21 multiple separate pellets. So you start seeing a scalping
22 around the skin where individual pellets pierce the skin
23 and even further back you start seeing individual pellets
24 strike the skin leaving individual marks rather than one
25 large whole.

1 Q. So this would be an indication of essentially one
2 large slug is that -- or the appearance of one large slug?

3 A. That is correct.

4 Q. So we have no spreading?

5 A. That's right.

6 Q. And thank you, Doctor. Let me go to this next photo
7 while you're standing and then that way we want have to ask
8 you to get up again. I show you what's been marked as
9 State's Exhibit 36 and if you could explain to the members
10 of the jury panel what this is.

11 A. This is an x-ray that was the time of autopsy of
12 Mr. Leffingwell. You see the application down the lower
13 left-hand corner. Essentially, this is the chest here
14 coming out the other side. The collarbones are the
15 clavicles going up like wings. The bretebral (sic) collar
16 where your spine going from in this particular case about
17 midchest all the way to the neck or chin, which we see
18 right here the chin. You can see the beginning of the
19 skull up and through here. What this x-ray is pointing out
20 is this large hole which used to be Mr. Leffingwell's
21 spinal cord. The assault of the shotgun blast coming in
22 from the left neck. It actually exited out of the back of
23 the right neck or the upper shoulders because the
24 catastrophic and devastating injury to the spinal cord
25 essentially decapitated him because the spinal cord which

1 provides all nervous input from the brain going throughout
2 the body and from the body all the way back up to the
3 brain was destroyed. Also right here you see a single
4 shotgun pellet which we recovered at the time of autopsy.

5 Q. That was recovered out of Mr. Leffingwell's body; is
6 that correct?

7 A. Yeah, that is correct.

8 Q. All right. Thank you, Doctor. Now, Dr. Nichols, as
9 part of your examination in this case you have a body with
10 a shotgun wound. But as far as an autopsy, do you in fact
11 examine the entire body.

12 A. Yes, we do.

13 Q. In your examination of Mr. Leffingwell, other than the
14 wound caused by the shotgun blast, did you find any other
15 open or bleeding wounds on Mr. Leffingwell?

16 A. You mean like cuts or scrapes.

17 Q. Cuts, scrapes. Any other -- Where you would have open
18 bleeding?

19 A. No, sir, we did not.

20 Q. Also as part of your autopsy performance, do you also
21 do a toxicology or examination of his blood and urine?

22 A. Yes, that is also performed.

23 Q. And would you please tell the jury your finding with
24 regards to your toxicology?

25 A. Toxicology examination of blood and urine removed at

1 autopsy revealed a blood ethanol level of 0.060 percent;
2 that's weight volume. Also Benzodiazepines were also
3 identified in the blood and quantitated at a level of 0.254
4 milligrams per litter. And Benzodiazepine that was
5 identified was Temazepam, which is T-e-m-a-z-e-p-a-m also
6 known as Restoril. In addition, marijuana metabolites were
7 also identified in the blood and ~~you~~^{the} urine.

8 Q. Okay. Now, Doctor, so the jury can understand. When
9 you give the numbers the very some understanding with
10 regards to the point .060 percent blood alcohol, how that
11 relates to -- Well as lay people how they would understand
12 that?

13 A. Yes, sir. A level of 0.100 would be the minimal level
14 necessary usually to be considering intoxicated for driving
15 purposes in the State of South Carolina. At 0.06 that's a
16 little more than half that level.

17 Q. Okay. So the -- And I want have this right.
18 Benzodiazepines?

19 A. Yes, sir.

20 Q. Is that correct. What is that?

21 A. Those are like Valium like compounds. There are many
22 different types of those in the one family. And basically,
23 these are minor tranquilizers.

24 Q. And, of course, there was marijuana present I think
25 you indicated?

1 A. Yes, sir.

2 Q. Doctor Nichols, based on this toxicological report
3 would you expect that this individual at the time he was
4 killed would have been ---

5 MR. DEBERRY: Your Honor, we object that's not
6 laying a proper foundation. We object to that question.

7 MR. RUSSO: I haven't asked him anything yet.

8 THE COURT: Pose the question but, Doctor, please
9 don't answer it until I give you the green light.

10 Q. Based on finding these compounds in the bloodstream
11 and urine of the victim, would you expect to find someone
12 with these levels in their blood to be sedate or present?

13 THE COURT: I'll overrule the objection. You may
14 answer it.

15 A. People who have Benzodiazepines which are tranquilizer
16 alcohol which often acts in concert with Valium like
17 compounds as well as marijuana would tend to certainly be
18 more docile than aggressive.

19 MR. DEBERRY: Judge, may we approach the bench.

20 THE COURT: Yes, sir.

21 (A bench conference was held in the presence of the
22 jury, but out of the hearing of the jury.)

23 THE COURT: Note his objection on the record.

24 Q. Doctor, could you explain to the jury why you would
25 have that opinion based on these compounds being found in

1 someone's system?

2 A. First of the ---

3 MR. DEBERRY: Your Honor, again, I like for my
4 objection -- I don't think he seems to phrase the question
5 to get an opinion properly in this case and I object to it.

6 THE COURT: I'll overrule the objection. You may
7 proceed.

8 DR. NICHOLS: Thank you, Your Honor.

9 A. To begin with Temazepam is also known as Restoril,
10 which is a specific type of Valium compound which is often
11 used to aid and sleep and many people take these as sleep
12 aides. In concert with alcohol, that would tend to magnify
13 the effect of Temazepam. And also marijuana tends to, for
14 lack of a better word, mellow people out rather than make
15 them more aggressive. So you have three compounds, which
16 will tend to reduce a person's level of aggressiveness and
17 be a little more docile.

18 Q. If you can, Dr. Nichols, someone who -- And I think
19 you testified that based on your findings forensically you
20 would determine that the muzzle of this gun would have been
21 anywhere from two to three feet from the victim at time it
22 was fired?

23 A. That's a very reasonable range based on the
24 examination. Yes, sir.

25 Q. All right. And if you can tell me the effect of

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1 someone one being shot at that range in the neck area as
2 Mr. Leffingwell, would that cause their body to be blown
3 back or would they then clasp in place or what would the
4 effect be on the body?

5 A. In the case of Mr. Leffingwell, what happened as I
6 pointed out with the x-rays that the shotgun blast
7 essentially destroyed his spinal column. As such the
8 person would tend from lack of muscular control just drop,
9 but also added to that would be the small blast to the
10 shotgun pushing the deceased back. So there would be a
11 tendency blow to be blown back a little bit but also clasp
12 pretty much in their tracks.

13 Q. And you wouldn't expect someone to stumble; is that
14 correct?

15 A. No, sir. In order to stumble, that's a voluntary
16 action in order to gain someone's balance. And
17 Mr. Leffingwell had no ability to gain a balance. He had
18 not ability to voluntarily control his muscles.

19 MR. RUSSO: Beg the Court's indulgence for one
20 moment please, Your Honor. Doctor, I have no further
21 questions at this time. Please answer any questions for
22 Mr. Deberry.

23 CROSS EXAMINATION BY MR. DEBERRY:

24 Q. First of all, Doctor, I understand you to say that
25 that group of pellets that you described as acting as one?

1 A. Yes, sir.

2 Q. Still together?

3 A. Yes, sir.

4 Q. Entered the left side of Donald's neck; is that
5 correct?

6 A. Yes, sir.

7 Q. If I come up closer to you and you point to me, where
8 on his body that hole was?

9 A. Yes, sir.

10 Q. I'm gone require you to stand up.

11 A. Okay. Approximately here.

12 Q. Okay. Now, you were given certain givings so to speak
13 or certain things you were given to use as far as the facts
14 that people related to you prior to doing your examination;
15 is that right?

16 A. Yes, sir.

17 Q. And you were told that it was a shotgun wound?

18 A. Yes, sir.

19 Q. And you were told that the, I believe, that it was
20 between two to three feet away; is that right?

21 A. Yes, sir.

22 Q. And were you told that the end of the barrel was was
23 within two to three feet away or were you told that the
24 people were standing between two to three feet away?

25 A. All I have is that he was reportedly within two to

1 three feet. And it's not indicated -- It's not indicated
2 to me whether or not you are talking about the suspect who
3 fired the gun or whether or not you're talking about the
4 muzzle of the gun.

5 Q. Well, let's read it again.

6 A. Okay.

7 Q. Did you say that he was between two to three feet is
8 that what...

9 A. He reportedly was within two to three feet, yes, sir.

10 Q. He being a person?

11 A. Yes, sir.

12 Q. Now, did you have the opportunity to be able to see
13 the weapon that was used?

14 A. No, sir.

15 Q. And have you had an opportunity since you did your
16 examination to view the weapon?

17 A. No, sir.

18 Q. Did you make any assumptions as far as you know
19 barrels come in different lengths?

20 A. Yes, sir. But that -- The barrel length in this
21 particular case is not that important because what you're
22 doing is actually measuring -- our examination matching it
23 up where the end of the barrel was not exactly how far
24 length of the barrel but when the shotgun pelts come out of
25 the barrel. So we're not really talking about something

1 being a sawed-off shotgun versus a long-barrel shotgun.
2 We're measuring from my examination from the entrance wound
3 to the muzzle or the tip of the barrel.

4 Q. Okay. Well, then did you find that that history that
5 was given to you and he was two to three feet away. Did
6 you find that not to be the truth; correct?

7 A. Actually, I find this -- It's just rather somewhat
8 ambiguous that he could be two to three feet away from the
9 muzzle of the gun or could be approximately two to three
10 feet away from the deceased. The main thing is that the
11 barrel of the gun was approximately two to three feet away
12 from the deceased, Mr. Leffingwell, when the trigger was
13 pulled.

14 Q. And that's your testimony?

15 A. Yes, sir.

16 Q. Okay. And so if this is the end of the barrel?

17 A. Yes, sir.

18 Q. Show me with your hand where you say two feet is from
19 the entrance?

20 A. Well, if we have a yard stick, we can just measure
21 approximately two to three feet.

22 Q. I'll do that in a minute. Just show me where you
23 think two feet is?

24 A. Well, if we have a yardstick, why would you want my
25 estimate when we have a yard stick here.

1 Q. Would you mind?

2 A. Approximately, the length of my arm would be
3 approximately two to three feet.

4 Q. Which one do you think -- Put it where you think two
5 feet is?

6 A. Approximately here.

7 Q. Okay. Put it where you think three feet is?

8 A. Well, that's probably as far as I can get my arm out.

9 Q. It's pretty accurate, right? Would you agree that
10 that's about 32 inches?

11 A. That's about 32 inches.

12 Q. Okay. Now, if I'm holding this shotgun right here,
13 tell me -- How far do you think I'm standing from you now?

14 A. About two and a half feet.

15 Q. And that would be within the distance where I could
16 comfortably hand you the shotgun?

17 A. Yes, sir.

18 Q. You can hand it back whether it be broken or not; is
19 that correct?

20 A. Yes, sir.

21 Q. This distance just this close?

22 A. Yes, sir.

23 Q. Okay. Now, there are ways to take a shotgun and test
24 that gun for distance is this correct that people take
25 shotguns like that and cases like this. And they do what

1 they call a distance test where they fire into something
2 like this cardboard here?

3 A. Yes, sir, blotter paper.

4 Q. Blotter paper?

5 A. Yes, sir.

6 Q. All right. They do a scientific test so that when
7 they come in the courtroom they can testify that the gun is
8 been tested from various distances?

9 A. That's correct firearms examiners do that. Yes, sir.

10 Q. Okay. And at times do they assist you in that regard?

11 A. Yes, sir.

12 Q. Okay. And can you tell this jury if one of those
13 tests was done in this case?

14 A. No, sir, that's really out of my purview. That comes
15 with the request of other individuals. My parts is to do
16 the autopsy examine the body for pertinent findings.

17 Q. Now, listen carefully.

18 A. Yes, sir.

19 Q. I asked you if you knew whether or not what was done
20 in this case?

21 A. No, I do not.

22 Q. Now, do you -- Did you request that one be done?

23 A. I'm not in the position to request one to be done.

24 Q. Okay. Well, so we've learned that you're not in a
25 position?

1 A. Yes, sir.

2 Q. Even though you're not in a position the fact of my
3 question.

4 A. Yes, sir.

5 Q. Did you request one?

6 A. I'm not position to. It's not my ---

7 Q. Can I just ---

8 A. Because it's not my autopsy. I don't even authorize
9 the autopsy. The autopsies are authorized by the coroners
10 office to me to look at the body. And from that I generate
11 my report which you see here. Any additional crime scene
12 testing or trace evidence as far as collection or testing
13 is done outside of my office. I can't even release the
14 autopsy report because it's not my autopsy report. It's
15 the coroner autopsy report. So I can't order additional
16 test like that.

17 Q. I take it you didn't ask for one, right?

18 A. That's true.

19 Q. Okay. Now, tell me what was the height of
20 Mr. Leffingwell?

21 A. I believe it was around 69 inches.

22 Q. And tell me the jury what that comes to?

23 A. Five foot nine.

24 Q. What was the height -- Where you told the height of
25 Mr. Tracy Daniels?

1 A. No, I was not told the height of Mr. Tracy Daniels.

2 Q. What were you told as far as the position that
3 Mr. Daniels was in as far as height from the --
4 Mr. Leffingwell?

5 A. I was told no information about the height.

6 Q. What were you told as far as position of the two
7 people at the time that the gunshot -- that the gun
8 discharged?

9 A. As I mentioned before ---

10 Q. Other than the distance of two, three?

11 A. That's it. I don't believe that the suspects name was
12 ever brought up in our discussion.

13 Q. Okay. Well, we'll call him just the Mr. Daniels?

14 A. Okay. That's fine.

15 Q. And so you were never given any information about him
16 what position the two people were in?

17 A. No, sir.

18 Q. Other than the the two to three feet?

19 A. That's correct.

20 Q. You don't if one was leaning over?

21 A. No, sir.

22 Q. You don't know anything about it?

23 A. No, sir.

24 Q. Would that have been helpful?

25 A. Not to determine the cause or manner of death.

1 Q. Would a -- Would one of those distance tests been
2 helpful?

3 A. It may have made it a little more accurate, but I
4 think as I'm here testifying today that I did say that this
5 is an estimate based on the anatomic findings. And
6 somebody wanted a more accurate measurement, then I'm sure
7 a test firing pattern to be performed. Once again, I'm not
8 in the position to order those tests or ask for those
9 tests.

10 Q. Who is?

11 A. It could be the investigating officer, the coroner's
12 office.

13 Q. Now, Doctor, I understand you to tell this jury that
14 you found evidence of marijuana is this person's system?

15 A. Yes, sir.

16 Q. Evidence of alcohol?

17 A. Yes, sir.

18 Q. And evidence of Valium?

19 A. Yes, sir.

20 Q. And it's your testimony here that that more than
21 likely ---

22 MR. DEBERRY: And I examine my position, Your Honor.

23 Q. You have given an opinion that that person was more
24 docile than more aggravated or hostile; is that correct?

25 A. Yes, sir.

1 Q. Doctor, it can happen both ways, can't it?

2 A. In what case?

3 Q. Somebody who has alcohol in their system, drugs in
4 their system, it can go either way. It can make some
5 people mean as a snake, can't it?

6 A. I'm going on the bases of my opinion here that we have
7 a person with alcohol, with Restoril, which is a sleep
8 inducing compound and marijuana. And based on that as far
9 as no other history, I would expect the deceased to be more
10 docile than aggressive.

11 Q. But my question is it can make some people more
12 aggressive?

13 A. I don't have any knowledge of that. If you have an
14 independent expert, please bring him and they can render
15 their opinion. This is my opinion here today.

16 Q. What I want to know about your opinion is that the
17 case every time or is that just what you think happened
18 here?

19 A. Given what I have this would be the expectant result.

20 Q. You weren't there that night evening obviously?

21 A. No, sir.

22 Q. Did they tell you that the two gentlemen were there on
23 a social occasion friendly with each other. Did you learn
24 that history?

25 A. The history I was given a 40-year-old white male who

1 went over to his drinking buddy's home. They apparently
2 had an argument. I don't know what the circumstances were.
3 I don't know if it was friendly or unfriendly.

4 Q. All right. So you heard -- The word in there was
5 something about a buddy; right?

6 A. A drinking buddy, yes.

7 Q. Okay. All right. Now, Doctor, did you -- Would your
8 position change about whether make this particular person
9 more docile or more aggressive if you heard that after he
10 -- A meal was prepared for him by Mr. Daniels that he all
11 of a sudden kicked over the grill that they just cooked his
12 steak on?

13 A. No, sir. I mean, if you want to present that
14 testimony that's fine. What I have here is what I'm
15 looking at and this is the bases of my opinion. If you
16 have other information, please present it.

17 Q. I'm asking you -- I'm asking you to tell this jury
18 whether or not if you had known that and if you know that
19 now, would you still be in the opinion that these drugs
20 would have made him more docile?

21 A. Yes, sir, I would.

22 Q. Even if you took as the truth that the person kicked
23 over a grill and refused to eat for no reason whatsoever,
24 not apparent reason your opinion will still be the same?

25 A. Based upon my findings, yes, sir. If you have other

1 information to present -- If you have other information to
2 present, please present it. But based what I have and what
3 I've given is my opinion testimony, I would stand by my
4 opinion.

5 Q. Doctor, if you learned, that this person just before
6 he was shot, did you know anything about his prior medical
7 history?

8 MR. RUSSO: Objection, Your Honor.

9 MR. LAWSON: Objection, Your Honor.

10 MR. DEBERRY: I just asked him if he knew anything
11 about his medical record.

12 THE COURT: Well, be careful now.

13 MR. DEBERRY: I am.

14 Q. Did you know anything about his prior medical history?

15 A. No, sir.

16 Q. Nothing whatsoever?

17 A. No, sir.

18 MR. DEBERRY: Your Honor, I have a matter to take up
19 outside the presence of the jury.

20 THE COURT: Ladies and gentlemen of the jury, please
21 step back to your room. Just relax a few minutes.

22 (The was excused to the jury room.)

23 THE COURT: I would assume you want to lead to do a
24 proffer?

25 MR. DEBERRY: Yes, sir.

1 THE COURT: You may proceed.

2 MR. DEBERRY: Thank you.

3 Q. Doctor, has anyone told you even up to today, that
4 this person was known drug addict?

5 A. No, sir.

6 Q. Did anyone tell you that he been addicted to heroin?

7 A. No, sir.

8 Q. Did anyone tell you that this person had been in
9 methadone clinic for many years?

10 A. No, sir.

11 Q. Did anyone tell you that he had -- that he was HIV
12 positive?

13 A. Yes, sir.

14 Q. Did anybody tell you that that HIV positive all
15 likelihood progressed to full blown AIDS?

16 A. That was mentioned, but I have no evidence that that
17 was true.

18 Q. You don't have any evidence that he had AIDS was true;
19 do you?

20 A. Based on my autopsy report, I saw no evidence of full
21 blown AIDS. There was no infection, no cancer to indicate
22 any sort of full blown AIDS. We do not do a HIV testing.
23 So, as far as whether or not the virus is there, I have no
24 comment. But I have no evidence as far as going further to
25 AIDS where there's an infection or cancer that was produced

1 by the virus and that would have been picked up by the
2 autopsy.

3 Q. Okay. So you don't have any -- You didn't test for
4 HIV -- whether or not he was HIV positive?

5 A. That's correct.

6 Q. And you're going on simply rumor; is that correct?

7 A. Rumor more what?

8 Q. That he had -- That he was HIV positive?

9 A. No. I have my findings here say nothing about HIV or
10 AIDS. You asked me if someone told me that the deceased
11 had HIV and they did, but I did not diagnose that nor did I
12 diagnose AIDS in my autopsy. So I'm not going on any
13 rumor. I'm just affirming your question.

14 Q. Okay. But we gonna get a little further into it. Did
15 you test for HIV on this person?

16 A. No, sir.

17 Q. Did anything about your tests help you determine in
18 your mind as to whether or not he was HIV positive even
19 though you didn't do the test if other things give you an
20 opinion?

21 A. No, sir.

22 Q. All right. Now, if it's after you found out that
23 there was a rumor that he was HIV positive, did you have an
24 opportunity to further do some test then?

25 A. I just found out about that about an hour ago.

1 Q. I see. When did you find out that he -- or had you
2 ever found out before now?

3 A. No, sir, with my ---

4 Q. Hold on let me finish.

5 A. Okay.

6 Q. Did you ever find out before right now that he was a
7 heroin addict?

8 A. No, sir.

9 Q. I hand you a Carolinas Hospital System looks like
10 registration form here dated 12-2-99. You remember when
11 this incident occurred?

12 A. On the fourth.

13 Q. Okay. And ask you to just look over this briefly and
14 only go to 12-2 for ---

15 MR. RUSSO: Your Honor, just for the record, I have
16 not been provided any of this information. Mr. Deberry
17 showed it to me this morning and said he would get me a
18 copies of it, but I don't have any of this. So -- And
19 I don't know where he's going with this. So I'm going to
20 wait and see, but it just needed to be noted.

21 MR. DEBERRY: I will get you a copy.

22 A. Was there something in particular you wanted me to
23 look at or just read?

24 Q. Do you see there where there's an indication back on
25 12-2, two days before this incident that medical records

1 show that he was HIV positive?

2 A. I believe in the history present illness is mentioned
3 that the deceased states that he is HIV positive. That's
4 on page 1 of 3 for the medical history on 12-2.

5 Q. Do you see that it also said that he had elected not
6 to take any antiviral medications for two years by his
7 choice?

8 A. Yes, sir.

9 Q. I'm looking in here and I'm going to show you in a
10 minute where they say that he's hostile and aggressive
11 acting?

12 A. Okay.

13 Q. It may be further on. But what you have just read is
14 by a doctor -- What doctor?

15 A. Eric Weinstein.

16 Q. Okay. Now, that's on 12-2-99 the report there that we
17 just discussed? Did you see in this report, Doctor, where
18 he had a problem with the doctor that was trying to help
19 him, a female doctor?

20 A. Yes, sir.

21 Q. And do you see there that that was something unusual
22 about what he -- The history he was given to the doctors
23 that was trying to help him?

24 A. Such as?

25 Q. Read it and see.

1 A. Well, you tell me what's unusual. I might not think
2 it's unusual if you point out. I'm not trying to be
3 uncooperative. But there's a particular paragraph I'll be
4 happy to look at that.

5 Q. You see where he saw Dr. Mallow?

6 A. Mallow, yes, sir.

7 Q. Stated he doesn't like female doctors and hasn't been
8 back. Do you see over here where he made some demands on
9 his doctor?

10 A. Yes.

11 Q. Okay. Now, go through this next visit that that visit
12 just happens to be the same day this thing occurred?

13 A. Right.

14 Q. You were given none of this; is that right?

15 A. Yeah, that is correct.

16 MR. RUSSO: I might note, Your Honor, that we didn't
17 have it to give.

18 MR. DEBERRY: I got it yesterday. I just haven't --
19 I showed it to you, but I just haven't give you a copy.
20 I'm gone take it right now.

21 Q. Okay. You see this report here Carolinas Hospital
22 System from South Carolina?

23 A. Yes, sir.

24 Q. Emergency department record dated 12-4-99?

25 A. Yes, sir.

1 Q. I don't see a time here; do you?

2 A. No.

3 Q. Okay. I'll ask you, Doctor, to read that first part
4 that history right there. This is on the morning of the
5 day that this person died. If you read it out loud?

6 A. This 40 year old with a history of in stage AIDS.
7 Last T-cell count ---

8 Q. Excuse me. Do you know what in stage Aids mean?

9 A. Sure.

10 Q. What does it mean?

11 A. It means that he is going to die of AIDS.

12 Q. Okay. Go ahead?

13 A. Last T-cell count he told me was in the 40's. He was
14 recently seen by Dr. E. Weinstein on 12-2-99. At that time
15 he also had a history of thrush and Kaposi's sarcoma
16 intermittently.

17 Q. He had what?

18 A. Thrush and Kaposi's sarcoma intermittently.

19 Q. What is that?

20 A. Thrush is a Candida. It's a yeast disease in the
21 throat and Kaposi's is a cancer that is associated with
22 AIDS, but he has it intermittently. It comes and goes.
23 Let's see he did not like the fact that Dr. Mallow was a
24 female doctor and therefore had not gone back. About 14
25 years ago, he was diagnosed and decided not to take any

1 antivirals protease inhibitors.

2 He was diagnosed - excuse me - His wife has died of
3 HIV related symptoms. She obtained it apparently they
4 believe by IV drug abuse. He denies any IV drug use -- IV
5 drug abuse himself. He denies that he does any drinking or
6 smoking. However, I can smell the odor of smoke in his
7 clothes.

8 When he was seen by Dr. Weinstein, he did a full
9 workup on him. At that time 12-2 chest x-ray was negative.
10 EKG was normal. It showed a normal sinus rhythm. ST
11 segment was flat obtained for tachycardia initially. It
12 was resolved. This was according to Dr. Weinstein's note.
13 UA was within normal limits, CPK and MB and troponins were
14 normal. White count was 3.8. Hemoglobin and hematocrit
15 was 15.6 and 46.0. Platelet count of 261 normal
16 differential. Sodium was 138. Potassium 3.6. Chloride
17 106. CL2 24. BUN 12. Creatinine 0.9. Glucose 93.

18 He had Toradol here for his arthralgias. He also
19 got here in also got Naprosyn here and also Xanax -- 15
20 Xanax to go home. He said that he - excuse me - He has had
21 only six or seven of those left. He said that they have
22 not been helping him with the anxiety and today his chief
23 complaint is that his joints are aching. He is nervous and
24 cannot sleep.

25 Q. I like to get in the record here in the part where

1 he's indicating that he has pressured speech. And he would
2 start right there and tell us what that means?

3 A. He claims he has intermittently for the last year or
4 so vomiting and diarrhea, fevers, coughs and hesitancy of
5 urination none of that is new. Nothing has changed since
6 Thursday according to him. He denies with his anxiety any
7 suicidal or homicidal ideations, auditory or visual
8 hallucinations. He has not been sleeping but says he has
9 been eating normally. He does have a little bit of
10 pressured speech. However, when I asked him to calm down,
11 he was able to do that.

12 In many memory, I was able to ask him four things
13 approximately ten minutes later and he was able to remember
14 three of the four. So he has good short-term memory. He
15 said that if he ever developed any thoughts of hurting
16 himself or others, he would return immediately to the
17 emergency department. He denies any other complaints. He
18 said the main problems are above.

19 Q. Okay. Do you see what the doctor prescribed for him
20 to take on that day? And start reading here as far as the
21 treatments here..

22 A. The patient was given Toradol 60im and Antivan one
23 milligram im with good relief of his symptoms.

24 Q. What is that?

25 A. Toradol, I believe, is a analgesic and the Ativan is

1 also a Valium white compound.

2 Q. That be consistent what you found; right?

3 A. Yes, sir. Although Ativan was not specifically
4 identified. It could be in the same family.

5 Q. All right. Go ahead.

6 A. With good relief of his symptoms. I did get a chest
7 x-ray read by myself and absence of radiologist shows no
8 acute infiltrates, no effusions, heart medium size of
9 normal hard size and position. And you want me to go into
10 the labs again.

11 Q. Uh-huh?

12 A. Lab show white count of 3.8. HNN of 15 and 43.4.
13 Platelet count of 269, no left shift. Sodium 141.
14 Potassium 3.9. Chloride 111. CL220. BUN 17. Creatinine
15 1.0 and Glucose 98.

16 Q. And did you, of course, had known of that information
17 at the time you did your autopsy the next day; right?

18 A. That is correct.

19 Q. Doctor, did you see -- I noticed in your autopsy you
20 examined all of the organs?

21 A. Yes, sir.

22 Q. And the pancreas in particular?

23 A. Yes, sir.

24 Q. Tell us what you found about that?

25 A. Pancreas has a normal gray white lobulated appearance

1 and the duck[†] are clear.

2 Q. And do you know -- I'll give you -- If this individual
3 had told his mother and his mother told the authorities
4 immediately when she found out that he had died, that he
5 had pancreatic cancer and it was terminal, did you make --
6 have any findings to support that ---

7 A. No, sir, known.

8 Q. --- that statement by the deceased?

9 A. None. Terminal pancreatic cancer is extremely
10 debilitating is very painful in order to be usually ---

11 Q. He didn't have it, did he?

12 A. No.

13 THE COURT: Mr. Deberry, I'm being lenient as I can
14 now, but I don't see where we heading with this. I thought
15 I knew where you was heading with it when we got into it.

16 Q. Ask you to look if I got one more page here with Dr.
17 J. T. Booth local doctor here in Florence's Bruce Hospital
18 System the physical examination here. And ask you to read
19 Dr. Bruce -- Dr. Booth as his impression?

20 A. Okay. And that was what date? I'm sorry.

21 Q. This is when it was Bruce Hospital now it's Carolinas
22 Hospital.

23 MR. RUSSO: Your Honor, object ---

24 MR. LAWSON: Your Honor, that is too remote.

25 MR. DEBERRY: This is a proffer.

1 THE COURT: I'm listening. It is a proffer but...

2 A. It's looks like February of 1991.

3 Q. Okay. As far back as February of 1991, what did they
4 find here in Florence's Bruce Hospital history for this
5 impression for this individual?

6 A. The impression that Dr. Booth has written is that the
7 patient is significantly dependant on the alcohol and
8 cocaine. He has a long history of multiple chemical
9 dependencies and he's admitted for detoxification.

10 Q. Did you have any information relative to that history
11 at the time you made your opinions here?

12 A. No, sir.

13 MR. DEBERRY: Your Honor, these are the medical
14 records that was subpoenaed by my office. And we received
15 here in the courtroom yesterday during court hours. I
16 would offer these into evidence. I would like the
17 opportunity to make a copy and keep a copy for myself and
18 give those to -- give a copy also to Mr. Russo.

19 MR. RUSSO: Your Honor, I would object to that.
20 There's no basis or foundation for this. I don't know
21 where those records came from. You know he comes in here
22 and testifies that those are the accurate records of
23 anything. It's just totally improper just based on I got
24 these records I want to submit them into evidence.
25 Secondly, Your Honor, and again I reiterate, I don't know

1 where we went here ---

2 MR. DEBERRY: I would withdraw that. I didn't mean
3 to say -- I don't want to offer them into evidence at this
4 time, Your Honor.

5 THE COURT: You want me to make them a Court's
6 Exhibit. I'll do that but not in as evidence. In other
7 words, it could be a court exhibit that will be preserved
8 for the record.

9 MR. DEBERRY: She's making a copy for me and a copy
10 for Mr. Russo.

11 (Medical records marked as Court's Exhibit Number
12 4.)

13 THE COURT: Anything else?

14 MR. DEBERRY: Your Honor, at this time we have been
15 outside the presence of the jury. And now based on the
16 fact that this doctor is stated that he is unaware of
17 significant drug dependance and medication that was taken
18 even apparently or that was prescribed the day of this
19 incident, I ask permission to question him in that regard
20 in front of the jury.

21 MR. RUSSO: Your Honor, I don't think -- And again,
22 I'm not sure where we went here. I don't recall Mr.
23 Deberry asking the doctor -- First of all, Your Honor, did
24 you find any of these chemicals in his system that would be
25 important. And then secondly, Your Honor, based on all

1 this stuff we just went over, would that change your
2 opinion based on the findings that you found. Now,
3 obviously, you know, Your Honor, it would be important to
4 know doctor did you find any heroin in his system. Doctor,
5 did you find any methadone in his system. You know, all
6 the these things are history. They're history of the
7 victim. As far as I can tell at this point, nothing is
8 relevant to this date.

9 MR. DEBERRY: Your Honor, please they're history. I
10 submit they're significant history. This person has been
11 for a number of years a heroin addict, a drug addict. It's
12 going back to 1991 even here in Florence to say this had a
13 permanent effect. We know that drugs eat the brain cells.
14 This man he didn't know about this man's prior history.
15 And he said it would make him docile. All he had was
16 marijuana, alcohol and whatever that Benzo ----

17 A. Benzodiazepines.

18 Q. What?

19 A. Benzodiazepines.

20 THE COURT: Well, in regards to your comment,
21 Solicitor, he did say he found one those drugs.

22 A. Yes, sir, the Benzodiazepines.

23 MR. RUSSO: Yes, Your Honor, but I'm saying it
24 wouldn't effect his opinion though my question.

25 THE COURT: I cannot allow you.

1 MR. RUSSO: He said ---

2 THE COURT: In other words, I see this where one
3 question short of where we ought to be and based on what's
4 before me right now, I still stand by my ruling. You can't
5 go into all that. Now, if the question had been posed to
6 him if that effected or changed his findings in anyway
7 according what his answer was, I might change my point of
8 view. But as it stands right now -- And I'm not gone ask
9 him the question. It's not my duty to ask him the
10 question. Sometimes I have in the past in a proffer in
11 certain cases. But I don't ask questions in front of a
12 jury and I'm very hesitant to ask it in front of a witness
13 in a proffer, but as it stands now I can't help you.

14 Now, are there any further questions? I don't want
15 to cut anybody off short here. Any further questions of
16 the doctor during this period of proffer?

17 Q. Did it change your opinion any of that information
18 that you found about his prior medical history that you
19 read?

20 A. No, sir, I did not. He died as a result of a shotgun
21 wound to the neck plain and simple. And as far as
22 medications I found with my interpretations of the
23 expectant results, I stand by my opinion. If other people
24 have different opinions or have other direct evidence,
25 they can present that as their testimony.

1 Q. Well, are you saying -- Are you qualifying your answer
2 on the fact that you don't have any other information?

3 A. Yeah, I did not see this man personally.

4 Q. Well, then I'm gone ask you then?

5 A. Counselor, I don't mean to be uncooperative, but if
6 you have someone who can testify as to his state of mind
7 who's reasonably expert to do that, please present them.
8 I'm doing my best given the autopsy results of a person who
9 is dead trying come up with normal expected findings of
10 someone who had had marijuana, alcohol and Restoril, which
11 is ~~to~~ ~~out~~ somebody to sleep. It is a calming medication.

12 And if you have evidence from someone who said on
13 this particular time after these drugs were given he was
14 still agitated to a reasonable degree, then have them
15 testify. This is my testimony and no matter what you said,
16 as far as what was presented back then was significant not
17 now. Mr. Leffingwell died as a result of having a shotgun
18 take out ^his spinal cord and it dropped him like a rock.

19 Q. What I want to know let's just say that you assumed
20 that he had a long period of time been heroin addict ---

21 A. Yes, sir.

22 Q. --- that wouldn't change your opinion at all if you
23 took it as truth?

24 A. No, sir. And in fact when you look at the medical
25 record, you even see where the complaints in the

1 observations are more of anxiety. And I don't see the word
2 aggressiveness in there any place. Did I miss it. Can you
3 help me out and show me where three or four other
4 physicians that say this man was aggressive at this
5 particular time. If I missed it, I apologize, but I didn't
6 see that in the medical record. And I think that even
7 after I read through it the word that this person is
8 aggressive or belligerent what was not there. And if it
9 was, and they can come and present there ---

10 Q. I'm gone ask you to read it when it gets back here.
11 There are some statements in there to that effect from the
12 medical personnel that didn't know anything was gone happen
13 that day?

14 A. Well, I didn't see ---

15 Q. I'm gone ask you -- Listen I'm gone ask you would you
16 mind reading and they bring it back in here and not be
17 excused to and get through reading it?

18 A. Yes, sir. I will read it.

19 Q. Okay.

20 A. I'll be more than happy to.

21 THE COURT: Now, I just want to make sure now
22 whether they're all on the same waive length here now.
23 I've already ruled on that. There's not going to be
24 anything mentioned about HIV, AIDS or anything else because
25 I told everybody yesterday I thought I was very clear,

1 unless there was some expert testimony that somehow made it
2 relevant it is relevant. And I'm still standing behind
3 that and I'm telling you we keep on messing around here and
4 it slips out as my mama use to say it's gone be the devil
5 to pay now. Okay. Bring them back.

6 The jury returned to the courtroom.)

7 THE COURT: All right.

8 MR. RUSSO: Your Honor, I don't have anything on
9 redirect for Dr. Nichols. I think we're finished with Dr.
10 Nichols.

11 THE COURT: Thank you, Doctor, you may step down.

12 MR. RUSSO: Now, Your Honor, just for clarification
13 because I know that we got sequestration order here.
14 Should Dr. Nichols -- I know he's gonna stay with us, but
15 should he leave court or how would you like him. He's
16 finished testifying.

17 THE COURT: He's finished the sequestration. It
18 doesn't really serve any purpose now so he can. So he may
19 -- wherever he's comfortable.

20 MR. RUSSO: Dr. Nichols, either you may remain with
21 us or you can go to my office; is that correct.

22 THE COURT: He's welcome to use any chamber either
23 my chamber either one. Soon as y'all through with him, we
24 need to cut him loose because I'm sure he's got very busy.

25 MR. RUSSO: Yes, sir, Your Honor.

1 Your Honor, at this time, we would call Investigator Phil
2 Hanna.

3 PHIL HANNA, being first
4 duly sworn testifies as follows:

5 DIRECT EXAMINATION BY MR. RUSSO:

6 Q. State your full name for the record?

7 A. It's Phillip Hanna.

8 Q. Investigator Hanna, you go by Phil; is that correct?

9 A. That's correct.

10 Q. All right. Phil, please, if you will speak loud
11 enough for me to hear you, then the members of the jury
12 will be able to hear you. Where are you employed?

13 A. Florence County Sheriff's office.

14 Q. And what is your position with the Sheriff's office?

15 A. I'm a criminal investigator.

16 Q. How long have you been in -- How long have you been in
17 criminal investigations?

18 A. Since 1993.

19 Q. And prior to investigation what did you do with the
20 Sheriff department?

21 A. I was patrol deputy.

22 Q. How long have you been involved in law enforcement?

23 A. For going on 11 years.

24 Q. And has that entire time been with the Florence County
25 Sheriff department?

1 A. Yes, it has.

2 Q. Phil, I'm gonna take you to December the 4th of 1999.
3 And ask you to please turn your attention to that date. Do
4 you recall the events of that day?

5 A. Yes, I do.

6 Q. How did you become involved in this matter?

7 A. On that particular weekend, I was investigator on
8 call. I was paged and asked to respond out to the shooting
9 incident location on Callie Young Road.

10 Q. Okay. Now, how did that work with the sheriff
11 department. Are you -- You and the other investigators
12 have a rotating system?

13 A. We take a week at the time. We rotate it between nine
14 of us and take a week.

15 Q. So whatever investigator happens to be on call that --
16 on a particular week when an incident occurred, that
17 investigator is the one assigned to that case?

18 A. That's correct.

19 Q. So your involvement with this case -- You have no
20 personal involvement in this matter?

21 A. None.

22 Q. Okay. So if you would, please, tell the jury when you
23 first became aware of this incident?

24 A. On that particular day, I was paged and asked to
25 respond to Callie Young Road in reference to a shooting

1 incident. I was instructed with the address and where to
2 respond. And once I got there, that's when I was
3 approached by Deputy Scott Brown who filled me in for what
4 had taken place since he's gotten there and what he's found
5 out.

6 Q. Okay. And do you recall about what time you received
7 the call. Do you know?

8 A. If I could get a copy of the cad report. I don't
9 recall, but it should be on the what time I...

10 Q. Was it -- Was it light out or was it dark?

11 A. It was in December. So it was dark by the time I got
12 there.

13 Q. Okay. When you arrived on the scene, what did you
14 find?

15 A. When I arrived at the scene, the crime scene was
16 already secure. Mr. Daniels ---

17 Q. What do you mean by that when you say it was already
18 secured.

19 A. The deputies had already got there and cleared the
20 house to make sure there's no more perpetrators or anyone
21 inside. And secured the scene so that no one else could
22 get in and that's with any evidence or contaminate, you
23 know, any evidence.

24 Q. All right. What did you observe when you arrived?

25 A. Well, immediately when I got there the area was roped

1 off with what they call crime scene tape. And I get there
2 and I see the victim Mr. Leffingwell lying on his back in
3 front of Mr. Daniels' house. And Mr. Daniels was in the
4 back of Deputy Scott Brown's patrol car.

5 THE COURT: Hold up a minute, Solicitor.

6 MR. RUSSO: Yes, Your Honor.

7 THE COURT: Everybody just stand at ease a minute.

8 (Pause in proceedings.)

9 THE COURT: Okay, Solicitor, you may continue.

10 MR. RUSSO: Thank you, Your Honor.

11 Q. And I believe and if I'm not mistaken, Phil, you
12 indicated that when you arrived you observed the victim in
13 this case Mr. Donald Leffingwell lying face up on the
14 ground; is that correct?

15 A. That's correct.

16 Q. I'm gone show you what's been marked -- Let me show
17 Mr. Deberry.

18 MR. DEBERRY: I renew my motion to exclude these
19 especially to Number 4.

20 THE COURT: Previous objections are noted and I
21 stand by my condition.

22 (Photograph entered as evidence as State's Exhibit
23 Number 6.)

24 Q. I want to show you what's been marked as State's
25 Exhibit Number 6. Is that the position that you found the

1 victim in when you arrived?

2 A. Yes, it is.

3 Q. Now, let me show you what's been marked as State's
4 Exhibit Number 3. And if you can tell me there appears to
5 be a full and a slab of some sort. Can you tell the jury
6 what that is?

7 A. That is a small concrete area where they have a grill
8 sitting on they grill on that little slap.

9 Q. Okay. Now, do you -- You say they grill on it. Is
10 that a portable grill or is it like a brick grill. What is
11 it?

12 A. Portable grill.

13 Q. Okay. And is that the position that the decedent was
14 in when you arrived on the scene?

15 A. Yes, it is.

16 Q. And is that the condition that he was in when you
17 first observed him?

18 A. Yes.

19 Q. All right. What else did you observe as you came upon
20 the scene?

21 A. Like I said defendant Mr. Daniels at the back of
22 Deputy Scott Brown's car. I was also met by the forensics
23 officers who are there process the crime scene. And they
24 do their job and then they report to me what they found.
25 They showed me where the -- Of course, the gun shell spent

1 round in the victim's right-hand.

2 Q. Okay. Show you what's been marked as State's Exhibit
3 No. 8 and ask you to identify that please?

4 A. Yes, this is the victim's right-hand with the spent
5 round in it -- spent shell -- fired shell.

6 Q. And State's Exhibit 2?

7 A. Another shot of the same hand and shell. This time
8 one of the forensic officer's is opening his hand to get a
9 better shot -- photograph of the shot shell.

10 Q. Okay. State's Exhibit 19, if you can identify that
11 please?

12 A. This is the second shot shell that was found on the
13 left side where he facing the mobile home on the right side
14 of the door steps.

15 Q. And 18?

16 A. Okay. This is a closer shot of that same second shell
17 that was found.

18 Q. Okay. Now, did you have an occasion to speak with the
19 defendant Tracy Daniels when you arrived?

20 A. When I first got to the scene Scott Brown -- Deputy
21 Scott Brown he briefed me on what he had found and what the
22 defendant had told him as far as him -- him being the one
23 who shot the victim lying on the ground. I didn't never --
24 I opened the door and looked at him. Didn't ask him
25 anything and went back to processing the crime scene.

1 Well, assisting and processing the crime scene.

2 Q. All right. Now, when you went over to look at him,
3 where would you go? Where was he?

4 A. He was sitting in the back seat of Deputy Scott
5 Brown's patrol car.

6 Q. And the individual who is back there investigating, is
7 he in court here today?

8 A. Yes, he is.

9 Q. And who is that?

10 A. That would be Mr. Tracy Daniels.

11 Q. All right. But you didn't speak with Mr. Daniels at
12 that time; is that correct?

13 A. That's correct.

14 Q. All right. What did you proceed to do?

15 A. While I was at the scene, there were several officers
16 there. Somebody instructed me that the mobile home -- The
17 neighbor of Mr. Daniels had been struck by several of the
18 pellets -- The stray pellets from the shotgun blast.

19 Q. Let me back you up here. That someone else had been
20 shot or her home had been shot?

21 A. I'm sorry her home had been shot.

22 Q. Okay. Was anyone -- Throughout your investigation in
23 this case is there anyone who was shot other than Donald
24 Leffingwell?

25 A. No.

1 Q. Okay. I just wanted to make that clear. So you found
2 out that pellets hit the home or a neighbor?

3 A. That's correct.

4 Q. What did you do at that point?

5 A. At that point, we went and spoke with Ms. Mary
6 McDougal cause at that time I found that she was home and
7 witnessed the entire incident.

8 Q. Now, I'm gone get you to refer to State's 35 please.
9 And if you would point out for the members of the jury
10 panel, where the defendant's mobile home is?

11 A. This is the defendant's mobile home.

12 Q. All right. And then the pad you spoke of with regards
13 to the grilling?

14 A. Of the concrete pad here.

15 Q. All right. And then Ms. McDougal's home?

16 A. Of course, it's here.

17 Q. All right. And you said that that home was struck
18 with pellets?

19 A. Right. The diagram here the distance and the back
20 door right here is where a majority of the pellets hit.

21 Q. All right. And where there any other structures that
22 you noticed -- Were there any other structures that you
23 noticed that had received damage from what appeared to be a
24 shotgun?

25 A. Yes, while we was there, of course, we knew that one

1 of the shells had to be from what struck the victim and the
2 other second shell fired shell lead us to start looking to
3 see where possibly what that hit. And we found the middle
4 half garage that the victim -- I mean, sorry the
5 defendant's vehicle parked up under it. It had been
6 struck.

7 Q. All right. And, now, on this Diagram 35 where would
8 that be?

9 A. It would have been right here in the corner. This is
10 the metal building with like half way just the tops metal.

11 Q. Okay. Let me show you. And this will probably
12 clarify things. Show you what's been marked as State's 28.
13 And can you identify that?

14 A. Yes, this is the metal or metal half building that I'm
15 talking about with the shot rounds. You can see where the
16 rounds went through. This time it being far enough away
17 that the rounds are spread out.

18 Q. And just for the purpose of clarification if there's
19 no objection we'll just call it a carport for this
20 purposes, okay. And State's 27?

21 A. Another picture of the same carport closer up.

22 Q. And 26?

23 A. This would be the reverse side the inside part of the
24 carport showing where the blast come through.

25 Q. All right. Now, as you look State's 26, at this point

1 we're underneath the carport looking up; is that correct?

2 A. That's correct.

3 Q. What does that indicate to you with regards to the
4 direction of the shots?

5 A. It's coming from the defendant's door or from his
6 house.

7 Q. So in other words, it's from outside the carport
8 through and into the carport?

9 A. Correct.

10 Q. Okay. Were you involved in the direct collection of
11 evidence or what was your duties there?

12 A. As far as collecting evidence and label it and
13 photograph that's strictly up to forensics. They process
14 all of it. My job I talk to witnesses and they report to
15 me what they found and where they found it. I don't
16 necessarily be there when they recover it.

17 Q. All right. Was there anyone else there other than law
18 enforcement officer's and Ms. McDougal at her house, is
19 there anyone there?

20 A. Only EMS personnel.

21 THE COURT: All right, Solicitor?

22 MR. RUSSO: Yes.

23 THE COURT: Y'all had a break. The court staff
24 hadn't. And I need just a 10 minute break. And then take
25 care of the doctor and give the court staff a recess.

1 So y'all step back and let's take ten minutes okay.

2 MR. RUSSO: Yes, sir.

3 (The jury was excused to the jury room.)

4 (Court in recess.)

5 (The jury returned to the courtroom.)

6 Q. Phil, if you'll remember the last thing I asked him or
7 can Keshia tell me because I don't remember where I was at?

8 (Pause in proceedings.)

9 Q. All right. I think the last thing we talked about was
10 who else you saw there at the scene. I think you indicate
11 other than no one other than EMS and law enforcement and
12 coroner's office people like that?

13 A. That's correct.

14 Q. No, civilians is that correct?

15 A. That's correct.

16 Q. All right. Now, at some point you've got forensic's
17 people gathering the forensics evidence; is that correct?

18 A. That's correct.

19 Q. All right. And you had understanding that someone
20 allegedly saw what happened; is that correct?

21 A. That's correct.

22 Q. All right. And you went and spoke to that person?

23 A. Yes.

24 Q. And who was that?

25 A. Ms. Mary McDougal.

1 Q. All right. And I'm not asking you what she's told
2 you. But based on your conversation with her, did you feel
3 you had a better understanding of what may have occurred
4 that evening?

5 A. Yes.

6 Q. All right. And based on that did you go -- What time
7 did you talk with Ms. McDougal; do you recall?

8 A. It's in the -- state the times in the statement. I
9 don't remember exactly.

10 Q. But was it that evening?

11 A. Yes, it's that same night.

12 Q. While you were at the scene?

13 A. While I was there.

14 Q. All right. And you spoke to her at her residence?

15 A. Yes.

16 Q. After your conversation with her, did you find out
17 then -- I mean, did you then talk with your forensic's
18 people about what they had gathered?

19 A. Yes, cause after I spoke with her and during her
20 conversation, she took me through her house to show me
21 where she was standing when she witnessed the incident and
22 also showed me where the rounds have actually penetrated
23 her house the bullets.

24 Q. All right. Let me show you what's been marked as
25 State's Exhibit 24. Can you tell me what that is?

1 A. This is the back door to Mary McDougal's residence.

2 Q. And what did you observe there?

3 A. What appears to be two bullet holes and the bottom of
4 the door.

5 Q. Okay. State's 22?

6 A. Yes. This is going to be a closer up, a closer shot
7 of the two bullet holes in the door.

8 Q. Okay. After you took her statement -- And I think you
9 said that she took you into her home and showed you where
10 she was standing when she watched this stuff; is that
11 correct?

12 A. That's correct.

13 Q. All right. As you're looking out that door where her
14 vantage point was, what -- How would you describe -- And
15 I'll get you to stand. Refer to State's 35. How would you
16 describe your ability to -- And it's dark; is that correct?

17 A. Yes.

18 Q. How would you describe your ability to see this area
19 where she claims to have seen what she saw?

20 A. After she told me that she witnessed it, I went there
21 and looked out of the window myself just to make sure it
22 was possible and it was clear. You can easily see it
23 because there was a light here that's high enough to
24 illuminate the area. There's also a motion light, that's
25 not labeled on here, but it's at the end of the house, you

1 know a motion light someone moves it cuts on. So it was
2 well lit.

3 Q. Now, all right so that's my questioning. This area
4 where this occurred, where the shooting occurred from your
5 vantage point of Ms. McDougal's window with it being
6 nighttime, were you able to see individuals out there where
7 this had been allegedly occurred?

8 A. Clearly.

9 Q. Now, what if any serology test that you ask your
10 forensics people to perform on the weapon?

11 A. None.

12 Q. All right. Was there blood found on the weapon?

13 A. Yes, there was.

14 Q. Why would you have not asked them to perform a
15 serology or blood test on the blood on the weapon?

16 A. Because I didn't feel like it was necessary because I
17 had the confession from the defendant who admitted to
18 shooting the victim and an eyewitness who witnessed the
19 defendant to shooting the victim. And also I knew that he
20 had held it and from the cut on his hand that would account
21 for the blood in the area on the gun where it was located.

22 Q. Now, let me ask you about that. You indicate a cut on
23 his hand. When you say on his hand, who are you talking
24 about?

25 A. I'm sorry. I mean the defendant's hand, his right

1 hand.

2 Q. Mr. Tracy Daniels?

3 A. That's correct.

4 Q. Now, if you don't mind, could you using your hand --
5 You said the right hand?

6 A. Yes.

7 Q. Would you please show the jury where you observed the
8 cut on Mr. Daniels' hand?

9 A. It would be on the inside right here of his hand.

10 MR. DEBERRY: I couldn't ---

11 A. I'm sorry right in there.

12 EXAMINATION BY MR. DEBERRY:

13 Q. Is that the inside or the outside?

14 A. Well, outside.

15 DIRECT EXAMINATION CONTINUED BY MR. RUSSO:

16 Q. I'm gone show you State's 15. Can you identify that?

17 A. Yes, this was the shotgun that was recovered from the
18 defendant's residence that night.

19 Q. All right. And what does that picture show?

20 A. It reflects the handle of where you would normally
21 grip the shotgun to hold.

22 Q. And what appears on there?

23 A. It appear to be blood.

24 Q. Now, based on your investigation, how many people were
25 at the defendant's home at the time this occurred?

1 A. At the defendant's home there's only two.

2 Q. All right. And who would that have been?

3 A. That would be the defendant, Mr. Tracy Daniels, and
4 the victim, Mr. Donald Leffingwell, Jr.

5 Q. Did you order any forensics to take any fingerprints
6 off of the weapon?

7 A. No.

8 Q. All right. And why not?

9 A. Because I felt that there was no need to because again
10 I knew according to the defendant's own statement that the
11 victim in this case had handled the gun earlier that day.
12 And also according to the statement from the witness, she
13 saw the victim handle the gun at one point. And actually,
14 if we was to recover the victim's fingerprints that we
15 expected would be there along with defendant's. If his on
16 was on it, we expected it.

17 Q. Okay. Now, at some point that evening you spoke with
18 the victim -- defendant Mr. Daniels at that point; is that
19 correct?

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

21 Q. All right. And where was that when you actually had a
22 conversation with him?

23 A. That would have been at the law enforcement center in
24 Effingham which is the jail actually.

25 Q. Okay. At that time was Mr. Daniels actually under

1 arrest?

2 A. Yes, he was.

3 Q. All right. You spoke with him?

4 A. Yes.

5 Q. And, what if anything, did you do with regards to his
6 rights?

7 A. Prior to taking a statement or actually speaking with
8 him ---

9 MR. DEBERRY: It's our position to preserve, Your
10 Honor.

11 THE COURT: Yes, sir.

12 A. Before speaking to him in regards to what took place
13 at that home that night, I read him his Miranda warnings
14 and had that form filled out which he signed and initialed.

15 Q. Okay. I'm going to show you what's currently marked
16 as court's exhibit and ask you if can identify that?

17 A. Yes, sir, this is the original Miranda warning form
18 that it's a standard for the Florence County Sheriff's
19 Office.

20 Q. All right. And you read that to Mr. Daniels?

21 A. Yes, I did.

22 Q. Would you please read to the jury exactly what you
23 read to Mr. Daniels that night. Let me back up. About
24 what time was it when this was going on?

25 A. The time that I read the -- I'm sorry. The time that

1 I read him his Miranda warning was is at 11:41 p. m. on
2 December the 4th 1999.

3 Q. All right. And please tell the jury exactly what you
4 read to him?

5 A. The constitution requires that I inform you that you
6 have the right to remain silent. Anything you say can and
7 will be used against you in a court of law. You have the
8 right to talk to a lawyer and have him present with you
9 while you're being questioned. If you cannot afford to
10 hire a lawyer, one will be appointed to represent you
11 before any questioning if you wished. You can decide at
12 any time to exercise these rights and not answer any
13 questions or make any statements. Do you understand each
14 of these rights I've explained to you. He wrote yes.
15 Having these rights in mind, do you wish to talk to me now.
16 He again wrote yes.

17 Q. All right. And as I view this form, this is a form
18 which you presented to him?

19 A. Yes, and it goes further to the waiver rights.

20 Q. All right. Now, I noticed that next to each one of
21 these rights that you read there seems to be a mark. What
22 is that?

23 A. That would be his initials. We have -- try to make it
24 a standard practice for every line we read to him. We want
25 him to initial it. That make us believe that he

1 understands what we're telling. That takes time for him to
2 initial it.

3 Q. All right. Now, you indicated there is a paragraph at
4 the bottom. Please read that if you would?

5 A. This is the waiver of rights. It's says I have read
6 this statement of my rights and I understand what my rights
7 are. I'm willing to make a statement and answer questions.
8 I do not want a lawyer at this time. I understand and know
9 what I am doing. No promises or threats have been made to
10 me. No pressure of any kind has been used against me by
11 anyone. There was signed by the defendant, Tracy Daniels.
12 Witnessed by myself and also the correction officer
13 McElveen.

14 Q. All right. At any time, did Mr. Daniels tell you that
15 he could not read?

16 A. No.

17 Q. Did any time did he convey to you that he did not
18 understand what you were telling him?

19 A. No, and I also read that. I read that to them.

20 Q. Okay.

21 A. They have a copy. Like I said they have this copy.
22 They sign it and read it. And I have my own copy that I'm
23 reading along with them to make sure that they understand
24 it and I read that for them.

25 Q. Okay.

1 MR. RUSSO: Your Honor, at this time we would move
2 to enter that into evidence as State's Exhibit. It's the
3 Miranda rights form.

4 THE COURT: I believe that's subject to the prior
5 objection. It's in subject to the prior objection.

6 MR. RUSSO: Yes, thank you, Your Honor.

7 (Miranda form entered as evidence as State's Exhibit
8 Number 37.)

9 Q. After your read him his rights and he indicated he
10 knew what he was talking about, what did you do at that
11 point.

12 A. At that point, I basically asked him what to took
13 place? What happened.

14 Q. And did you have a conversation. Did he tell you what
15 --

16 A. He went through his story of what he said happened
17 that night. I didn't have the record on at that point
18 because I basically wanted to know what happened and what
19 he's gone tell me. He went through his story telling me
20 what he recollected happened and then later I recorded it.

21 Q. All right. Now, when you actually did a tape
22 recording of -- So you actually did a tape recording of
23 Mr. Daniels' statement that night; is that correct?

24 A. Yes.

25 Q. When you -- Let me show you what's been marked as

1 Court's Exhibit 2. And ask if you can identify that,
2 please?

3 A. This is the cassette tape that I recorded Tracy
4 Daniels' statement on.

5 Q. All right. When you took this recording of this
6 Mr. Daniels' statement, did you inform him that it was
7 being recorded?

8 A. Yes.

9 Q. Did he give his permission for that to happen?

10 A. Yes.

11 MR. RUSSO: Your Honor, at this time we would move
12 the tape currently marked as Court's Number 2 into
13 evidence.

14 THE COURT: And subject to previous objection.

15 MR. RUSSO: Yes, sir.

16 (Cassette tape entered as evidence as State's
17 Exhibit Number 38.)

18 MR. RUSSO: Your Honor, at this time we would have
19 ask to be able to play that tape for members of the jury.

20 (Cassette tape was played in court.)

21 Q. Phil, after this statement was taken, what did you do
22 then after that?

23 A. I went ahead and took him around to the detention
24 center and booked him in and charged him with murder.

25 Q. Now, when you took him around to the detention center,

1 did they go ahead and book him on in?

2 A. What -- The cut that he had on his hand the detention
3 center would not take him with this cut. If they have any
4 kind -- anything wrong with them that's visible, they make
5 you take them to the hospital get it looked after. And I
6 was on call and keep from getting tied up and having to go
7 to another case if something else might have happened, a
8 patrol deputy took him to the hospital.

9 Q. All right. What did you do next, Phil?

10 A. That same night -- Of course, I already spoken with
11 the victim -- I'm sorry the witness Ms. Mary McDougal and
12 got her recorded statement from her. And that same night
13 -- Well, matter of fact after getting the statement from
14 the defendant, I went home. All the stuff I did was prior
15 to taking the statement from him.

16 Q. Okay. After talking with Ms. McDougal and after
17 talking with the defendant, Mr. Daniels, were there any
18 other forensic test that you felt were necessary to gather
19 evidence to show to prove your case?

20 A. We had a GSR kit performed on the defendant.

21 Q. Now, please tell the jury what a GSR kit?

22 A. It's a gun residue kit to see if the person fired a
23 weapon.

24 Q. All right. Now, do you know when that was done?

25 A. It would have been after I got my statement from him

1 and before he went to the hospital.

2 Q. Now, that was sent to SLED; is that correct?

3 A. That's correct. Sent to SLED for analysis.

4 Q. Let me show you what's been marked as State's Exhibit
5 Number 39. Phil, do you recognize that?

6 A. Yes, this is the results from the trace department at
7 SLED head quarters in Columbia.

8 Q. And what's the result according to the GSR kit which
9 was taken?

10 A. In the sample submitted in the kit labeled Tracy
11 Willard Daniels the quality -- I'm sorry the quantity ---

12 MR. DEBERRY: Excuse me just a minute. Are we gone
13 have the person that did that come in the courtroom.

14 MR. RUSSO: She's been subpoenaed. If need for her
15 to be ---

16 MR. DEBERRY: I would like for that witness to be
17 here at the time of the results to go over it.

18 MR. RUSSO: That's fine. That will work.

19 Q. But anyway the GSR kit was taken, sent to SLED. And
20 then a result was obtained. And you received a copy of
21 that; is that correct?

22 A. That's correct.

23 Q. All right. Are there any other tests which were
24 ordered by you as a result of your investigation?

25 A. Later the gun was sent for working -- in order to make

1 sure it was working. It was later sent.

2 Q. All right. We also have that person available so we
3 want go into those results as well. Anything further that
4 you did with regards to this investigation during that
5 time?

6 A. No.

7 Q. I'm going to show you what's been marked as State's
8 Exhibit Number 12, which is a photograph Mr. Deberry
9 referred to earlier with another witness. I noticed that
10 there's a gold car in that photograph. Do you know who's
11 that car that was?

12 A. Yes, this is Mr. Leffingwells.

13 Q. All right. And as part of your investigation was that
14 car and the contents of that car were they searched?

15 A. Yes, it was.

16 Q. Were there any weapons found in that car?

17 A. No, there wasn't.

18 Q. Is that picture as it appears there in States 12, does
19 that appear to be the condition of the car when you
20 arrived?

21 A. Yes, it is.

22 Q. All right. And I noticed the drivers door is open; is
23 that correct?

24 A. Yes.

25 MR. RUSSO: Thank you, Investigator Hanna. Please

1 answer any questions Mr. Deberry may have.

2 MR. DEBERRY: May we approach.

3 (A bench conference was held in the presence of the
4 jury, but out of the hearing of the jury.)

5 THE COURT: I'm gone ask y'all to step back.

6 (The jury was excused to the courtroom.)

7 THE COURT: All right. It suits me to stop now, but
8 Mr. Deberry, I'm gone ask if you would discuss a stopping
9 now with your client before you begin your cross
10 examination to make sure he's in complete agreement that we
11 break at this point.

12 MR. DEBERRY: I discussed that with him and he has
13 no objection to that. He concurs with me. We would
14 request that we break at this time and come back in the
15 morning.

16 THE COURT: Is that correct, Mr. Daniels?

17 DEFENDANT DANIELS: That's correct.

18 THE COURT: All right. Thank you, sir, I appreciate
19 that.

20 The gentleman that's in the back of the courtroom.
21 Are you related to one of the jurors.

22 MR. BULLARD: Yes, sir.

23 THE COURT: I need to instruct you at this time do
24 not discuss this case with your wife because there's
25 certain things I ruled in admissible and it would be highly

1 inappropriate ---

2 MR. BULLARD: We already discussed that.

3 THE COURT: Okay. You hadn't talked with her about
4 that hadn't you?

5 MR. BULLARD: I ain't even mention it to her.

6 THE COURT: Okay. On the record, I need to cover
7 that with you. If you'll make sure, don't slip up and say
8 anything to her. Okay. What is your name?

9 MR. BULLARD: Meldon Bullard.

10 THE COURT: There been any press coverage in here --
11 I'm gone go ahead and warn them about the press anyway in
12 case somebody thinks so.

13 MR. RUSSO: I'm not aware of any press, Your Honor.

14 THE COURT: Bring them in.

15 (The jury returned back into the courtroom.)

16 THE COURT: Ladies and gentlemen of the jury, we
17 gone stop here now rather than stay way over into the
18 evening possible cross. We're all in agreement. We've
19 discussed it and figured this is the best time to stop.
20 It's right at five. Once again, do not discuss this case
21 with anyone. Should anybody try to contact you and discuss
22 this case with you, do not discuss it with them. Let me
23 know of that contact. I know one of you husband is here.
24 I've already talked with him. It cannot be any
25 communication even with a family member about this. Don't

1 even ask an opinion of any family member. Not only him but
2 all the rest of you. Keep this to yourself until you are
3 instructed to deliberate.

4 One other thing so far as far as I know, there has
5 been no media coverage or any members of the press up here.
6 But from here on out, I am going to instruct you to avoid
7 any local news coverage. That includes the T. V., radio,
8 and print until after this case is completed. Because as
9 you know as I know, sometimes the press can -- And most of
10 the time they're accurate, but sometimes they can have
11 opinions and sometimes there in accurate and it could
12 influence you in an improper way. So we don't want to take
13 that chance.

14 So until this case is over avoid any local press
15 coverage. I'm not telling you can't watch the national
16 news, that's fine. But all of you know what time the news
17 comes on the television and radio. So please avoid that
18 until this case is over. With that said, we bid you a good
19 night and we'll see you in the morning. What time you want
20 to start in the morning 9:30.

21 MR. RUSSO: Yes, Your Honor.

22 THE COURT: That suits.

23 MR. DEBERRY: Yes, sir.

24 THE COURT: Let's try to fire up at 9:30.

25 (The jury was excused for the day.)

1 (Court adjourned for the day.)

2 (Court has now reconvened.)

3 THE COURT: All right. Gentlemen, anything before
4 we get back with the testimony?

5 MR. RUSSO: Nothing from the State, Your Honor.

6 MR. DEBERRY: Your Honor, I've got a couple of
7 witnesses. I have a witness from from out of town. And I
8 talk with Mr. Russo last night in an effort to try to help
9 coordinate -- you have how many witnesses left? '

10 MR. RUSSO: The remainder of Investigator Hanna and
11 then one, two, three ---

12 MR. DEBERRY: What are those numbers on there?

13 MR. RUSSO: I'll just tell you who they are. We got
14 Jason Dore. Then we got Ira Parnell 13; 14, 17 and 18.

15 MR. DEBERRY: I got a little help thank you. I'm
16 thinking maybe mid afternoon.

17 THE COURT: Keep in mind we got a roster meeting at
18 four.

19 MR. DEBERRY: Oh, we do. So we gone stop at four
20 today.

21 THE COURT: Four or shortly thereafter.

22 MR. DEBERRY: Well, I wouldn't think we'd get
23 into defense today.

24 MR. RUSSO: Probably we get into the defense in the
25 morning be my best guess, yes, sir.

1 THE COURT: I mean if it takes over a little bit,
2 that's fine. But we going to have to stop sometime shortly
3 after four.

4 MR. RUSSO: Your Honor, again, based on how it goes
5 that's probably a good stopping time.

6 THE COURT: Okay. Mr. Hanna, if you will take the
7 stand. I believe the ball is in Mr. Deberry's court now.
8 So if he's ready to go, we will bring the jury in. Counsel
9 waive polling of the jury.

10 MR. RUSSO: State waives, Your Honor.

11 MR. DEBERRY: Yes, sir.

12 (The jury returned to the courtroom.)

13 THE COURT: Good morning, ladies and gentlemen,
14 we're ready to resume the testimony.
15 Mr. Deberry.

16 MR. DEBERRY: Thank you, Your Honor.

17 CROSS EXAMINATION BY MR. DEBERRY:

18 Q. Officer Hanna, first of all, tell us if you would -- I
19 believe you been referred to as the chief investigating
20 officer for this particular case; is that correct?

21 A. That's correct.

22 Q. And as chief investigating officer for this case, I
23 believe, you said that obviously you can't do everything.
24 But that whatever was done, whatever was discovered,
25 whatever was found by the forensic unit or the unit that

1 goes in and contains the area. Those people are required
2 to report to you what they found and where they found it;
3 is that correct?

4 A. That's correct.

5 Q. And you as a trained officer been on the force for how
6 long?

7 A. Since 1990.

8 Q. Been there 10, 11 years?

9 A. Right.

10 Q. And you have investigated many cases in the past?

11 A. Correct.

12 Q. In your position; right?

13 A. Yes.

14 Q. And, Officer Hanna, in this particular case, you don't
15 find them any more important than a murder case do you?

16 A. No.

17 Q. And in this case, I'm sure you did your best. We can
18 always do better. But at the time you did the best you
19 felt that you could do; is that right?

20 A. Yes, sir.

21 Q. And in finding a case like this, I'm sure one of the
22 things that you were doing -- And I had read your reports
23 things that you have written and notes you've taken. I
24 assume that one of the main things in this case as in any
25 case like this you were concerned about a motive?

1 A. Yes.

2 Q. And to find a motive you have to look after the fact
3 and search for things to help you pick up on a motive; is
4 that correct?

5 A. Yes.

6 Q. Sometimes you look to see if somebody had a monetary
7 benefit?

8 A. Correct.

9 Q. And in this case, I assume that you looked into that
10 area carefully; is that right?

11 A. Yes.

12 Q. And there was absolutely ruled out by you that there
13 was any monetary benefit whatsoever in this particular
14 case?

15 A. Yes, I couldn't find any.

16 Q. As matter of fact, Mr. Leffingwell still had his money
17 that he cashed that day from a check that he had received.
18 He still had close to \$500 cash on him?

19 A. Yes, he had some cash on him.

20 Q. Was close to 500; wasn't it?

21 A. The exact amount at this point. I don't know it's
22 stipulated in my notes but that sounds fairly accurate.

23 Q. Okay. All right. And you sometimes we find motives
24 where people have life insurance policy's on people. And
25 that wasn't the case here, was it?

1 A. No, sir.

2 Q. So we can totally rule out any monetary gain or any
3 reason for Tracy to want to kill or want his friend to die
4 from a monetary standpoint is that true?

5 A. That's true.

6 Q. Okay.

7 MR. RUSSO: Your Honor, excuse me and I apologize
8 for interrupting you. May we approach please.

9 (A bench conference was held in the presence of the
10 jury, but out of the hearing of the jury.)

11 Q. How did that -- My question from the investigation in
12 this case. There's no evidence whatsoever of any monetary
13 motive?

14 A. Correct.

15 Q. Now, in order to find and fully investigate a case as
16 you do, sometimes you talk with people that knew the people
17 to try help you find out if there's some reason, some
18 motive for this?

19 A. Correct.

20 Q. And in this case, you went to naturally to a relative
21 of Donald's. You went to the mother; is that correct?

22 A. Correct.

23 Q. And you at that time, you in your investigation you
24 wanted to learn if there was anything that she may be aware
25 of. You wanted to know that; didn't you?

1 A. Yes.

2 Q. And I believe that's the first time -- That's the
3 first time in your investigation that you found out that
4 not only did they know each other, but they were friends;
5 is that right?

6 A. That wasn't the first time.

7 Q. That wasn't the first time?

8 A. No.

9 Q. But at least at that time when you saw her it was
10 confirmed that you already knew that they were friends?

11 A. Yes.

12 Q. And that they were -- They worked together?

13 A. On occasions, yes.

14 Q. Okay. And did you know that or later learned that
15 Tracy sort of helped in giving him work, really when he
16 might not have been much of a help. Did you learn that?

17 A. According to Mr. Tracy Daniels statement he said that.

18 Q. Okay. And did you find things to corroborate that?

19 A. I knew that he was close according to the victim's
20 mother. I think she confirmed that.

21 Q. Okay. Did you also learn that Tracy had helped him
22 get that car?

23 A. That I'm not sure of. I'm not denying it, but I don't
24 know.

25 Q. Okay. And did you learn that -- You, of course,

1 learned that in this case from talking to Tracy and looking
2 at the evidence and so forth that Tracy had him. He was
3 sort of his guest there that night; is that right?

4 A. Yes.

5 Q. And that you learned that they had played the guitar
6 together?

7 A. According to his statement that's correct.

8 Q. And you saw a guitar there?

9 A. Yes, there was one there.

10 Q. And you heard Tracy say that that Donald had not
11 brought his over there that night so that they share
12 Tracy's?

13 A. Yes.

14 Q. You also heard that Tracy had gotten a steak that
15 belonged to Tracy. Obviously, it was there because it had
16 to be thawed out. It wasn't one that Donald brought there
17 right?

18 A. That ---

19 Q. In other words, Tracy was giving him a dinner that
20 night?

21 A. That's possible, yes.

22 Q. Well, all the evidence shows that that's more than
23 possible that's either truth or more than likely; isn't it?

24 A. There was a steak -- another one there whether they
25 eat it or not I don't know.

- 1 Q. Okay. Now, you heard -- As an officer would you tell
2 me in your position lieutenant, what lieutenant's were in
3 charge of forensics investigation here?
- 4 A. Lieutenant Keith Lutcken.
- 5 Q. Okay. Did anybody assist him?
- 6 A. Jason Dore.
- 7 Q. Okay. But you mentioned Lieutenant Keith Lutcken
8 first. He would be in charge? He was the ranking officer?
- 9 A. You ask me who was the ranking forensic supervisor and
10 the would be Keith Lutcken.
- 11 Q. On this case?
- 12 A. Right.
- 13 Q. Okay. All right. Now, did you supervise his -- You
14 were over him; right?
- 15 A. Lieutenant Keith Lutcken?
- 16 Q. Uh-huh.
- 17 A. I'm not necessarily over him. I'm the lead
18 investigator on the case. He reports to me what he finds,
19 but as far as being over him, I don't tell him what to do.
- 20 Q. I understand.
- 21 A. He's a supervisor in that kind of position and he
22 knows what to do.
- 23 Q. But he reported to you what he found?
- 24 A. That's correct, yes.
- 25 Q. Now, did -- Was it -- It came to your knowledge that

1 early on that afternoon Tracy had gone to a junk yard to
2 get a doorknob for Donald; is that correct with Donald?

3 A. Yes.

4 Q. And that junk yard it's not far from where you work
5 out there at the law enforcement center; right?

6 A. That's right.

7 Q. And what's that fellow's name that owns that junk
8 yard?

9 A. Ray Jones.

10 Q. And tell me you went talk with him?

11 A. No.

12 Q. You were aware that these two gentlemen, Donald and
13 and Tracy that they talked with Mr. Ray Jones on this
14 afternoon; is that correct?

15 A. According to the defendant statement that's correct.

16 Q. And I didn't have to tell you this Ray Jones name
17 because you know him?

18 A. No, I don't know him.

19 Q. How did you know the name when I asked you?

20 A. From the defendant's statement.

21 Q. Okay. But you know where his place is?

22 A. I'm not exactly sure. I think I'm familiar with it,
23 but I'm not a 100 percent.

24 Q. Well, Officer, I understand that you just -- Did you
25 not see any necessity or any reason to go and talk with

1 this man?

2 A. No.

3 Q. Well, as an officer I'm sure that in your position you
4 realize that there was as some big discrepancies in what
5 Tracy was telling you. And what the facts showed; is that
6 right?

7 A. Yes, but I didn't have any way of confirming or
8 denying if he went to Ray Jones or not based on anything.
9 I didn't have enough ---

10 Q. You don't think going to Mr. Ray Jones and asking him
11 what time these two gentlemen came out there might have
12 confirmed that?

13 A. I didn't feel like would have had any bearing on
14 anything that took place later on that night.

15 Q. I understand. Well, when we have big discrepancies in
16 what somebody's saying and what we know to be the truth,
17 doesn't that show a problem there that we need to look
18 into?

19 A. Well, like I said I didn't do it because I didn't feel
20 like it was necessary at the time.

21 Q. All right. Hindsight twenty-twenty (20/20) though;
22 isn't it?

23 A. That's correct.

24 Q. We have a major difference in what Tracy said and you
25 realize when people -- When people going through some

1 traumatic thing like this, sometimes people aren't always
2 accurate are they?

3 A. That's correct.

4 Q. And even when sometimes some people are trying to tell
5 you the best they can when they been in a bad bad situation
6 like a horrible wreck, somebody getting killed right at
7 their hands or close by it. It's not uncommon for people
8 to make errors; is it?

9 A. It's not uncommon and it's also not uncommon for them
10 to want to not tell me exactly what's right.

11 Q. Right. You have to be concerned as an officer about
12 people intentionally telling you things that aren't right.
13 And got to be concerned about people trying there best to
14 tell you but being mistaken; isn't that true?

15 A. That's correct.

16 Q. And so what we have a duty to do in that regard is we
17 need to investigator thoroughly and we need to check out.
18 This person might be telling you something wrong because
19 they meant to or because it's unintentional. But we need
20 to find out as best we can; don't we?

21 A. Yes.

22 Q. Okay. Now, we got in Tracy's statement he tells you
23 that after Donald came over that afternoon that they went
24 off together and went to the junk yard; right?

25 A. That's correct.

1 Q. And when he's telling you as best he can, when he's
2 talking to you right after this, he tells you that Donald
3 came over to his house around five o'clock; didn't he? Did
4 you hear that in the statement?

5 A. That's possible. I don't remember exactly, but that
6 sounds right.

7 Q. Okay. And there was something peculiar about that
8 because this incident occurred around 55 minutes after
9 that; isn't that true?

10 A. That's true.

11 Q. And in that 55 minutes if he's correct on that time,
12 too much happened in that 55 minutes; didn't it?

13 A. Yes, you would think so.

14 Q. And so we got a problem and we need to look into it;
15 don't we?

16 A. Yes.

17 Q. Okay. Now, if Donald -- Do you have anything to
18 dispute that Donald -- as Tracy says today that now he
19 recalls that Donald came to his house at 1:30 in the
20 afternoon and not five o'clock when he told you?

21 A. No.

22 Q. We don't have anything to dispute that do we?

23 A. No.

24 Q. And the junk yard man he may come in here and he may
25 confirm that Tracy was dead wrong when he told you that

1 Donald got there at five o'clock. Is that true?

2 A. It could.

3 Q. And so if we're analyzing his statement to see what
4 type frame of mind he was in when he was talking to you
5 after this tragedy that's something that we need to look
6 at. And we will look as we go through this case. All
7 right. Is that all right with you?

8 A. That's fine.

9 Q. Okay. Now ---

10 MR. RUSSO: Your Honor, I'd object. I'd ask him to
11 ask his questions in the form of a question as oppose to
12 testifying and making statements.

13 THE COURT: Be careful how you word your questions.

14 Q. Now, that time difference we gone leave that right now
15 and move to something else all right.

16 A. Okay.

17 Q. Tell me do you recall another big difference in his
18 statement and what we know in his statement is not true?

19 A. Yes, I do.

20 Q. Okay. And that's the one shot two shot deal; right?

21 A. Correct.

22 Q. Now, when he talk with you on two different occasions
23 one's recorded and one's not; right?

24 A. Yes.

25 Q. He told you that there was only one shot fired there

1 that night; is that true?

2 A. Yes.

3 Q. And that's in his statement?

4 A. Yes.

5 Q. He told you that verbally. And do you recall him also
6 making that statement some ten days later at a bond hearing
7 when he said, no, there was only one shot out there that
8 night. Do you recall that?

9 A. I wasn't there for the bond hearing.

10 Q. You weren't there. Have you seen the transcript of
11 the bond hearing?

12 A. No, I haven't.

13 Q. Now, after Tracy told you there was only one shot, you
14 had talked with Mary McDougal and you knew even though you
15 didn't tell Tracy. You knew without a doubt in your mind
16 there were two shots there that night; didn't you?

17 A. Yes, I did.

18 Q. And so with that knowledge and after he had said there
19 was only one shot, you went back to him knowing that there
20 was two shots according to this girl that wasn't involved
21 in the altercation. You went back to him; didn't you?

22 A. Yes.

23 Q. And you wanted to double check to see if he was
24 telling you something that wasn't true or if he wasn't in
25 -- Didn't know what he was saying if he was mistaken. You

1 wanted to double check and you asked him again?

2 A. Want to give him the opportunity to tell me again to
3 make sure that he was correct.

4 Q. Okay. And he continued to tell you, no, sir. There
5 was only one shot?

6 A. That's correct.

7 Q. And, Officer, he continued to tell you that was his
8 recollection; correct?

9 MR. RUSSO: Object, Your Honor. That's been asked
10 and answered three times already. He said there was one --
11 say there was one shot. And he said it three or four times
12 now.

13 THE COURT: All right. Move on.

14 Q. Officer, you -- That one shot two shot just like the
15 five o'clock and there being an earlier time. Those things
16 concern you. Those two differences concern you; didn't
17 they?

18 A. The one shot two shot did

19 Q. And ~~the~~ time frame didn't show you any concern?

20 A. At the time it didn't.

21 Q. Okay. And that's why you didn't go to check out what
22 Tracy had said and see if they had gone there earlier that
23 afternoon to the junk yard?

24 A. That's correct.

25 Q. Now, the -- another big difference in what Tracy said

1 that we know couldn't be true couldn't be correct. He was
2 either not telling the truth or he was mistaken because of
3 being able to remember what happened at this tragedy. The
4 other biggest thing you know what it is?

5 A. Tell me.

6 Q. Okay. I just asked you. Is there something in your
7 mind that was bothering you about this something else. A
8 big difference in what he said and what you found through
9 your investigation to be cold facts and the truth?

10 A. Can you be more specific -- they -- go ahead.

11 Q. Tracy told you -- And in a case like this the distance
12 -- one person is away from another one when a gun goes off.
13 You can't get more important than that, can you?

14 A. That's correct.

15 Q. And in this particular case we got a major difference;
16 don't we in the distance?

17 A. From what he says?

18 Q. Uh-huh.

19 A. That's correct.

20 Q. Okay. And in his statement at the same time that he
21 told you that Donald got there at five o'clock in the same
22 time that he told you that there was only one shot. He
23 told you that when that gun was fired by him that he was 12
24 to 15 feet away; didn't he?

25 A. Yes.

1 Q. And you and I would be how far away from each other
2 right now?

3 A. I don't know.

4 Q. Give me your best estimate?

5 A. I'm not the best in the world at guessing.

6 Q. Well, you wouldn't deny that we're 12 to 15 feet away
7 right would you?

8 A. That be good. I'm not good at it, but that sounds
9 reasonable.

10 Q. Okay. And you certainly can tell the difference
11 that's a lot of difference in that and the barrel being as
12 close as two feet?

13 A. That's correct.

14 Q. From the person when it went into the side of their
15 neck; right?

16 A. That's right.

17 Q. And we know that when Tracy told you that he was 12 to
18 15 feet away that he was being asked -- He was on the spot.
19 He was being questioned by you on probably without a doubt
20 the most important recollection in his life that was
21 important; wasn't it?

22 A. Yes.

23 Q. And we know that when he told you that, it was at the
24 same setting at the same time that he told you about the
25 five o'clock that he told you about one shot and he told

1 you that that's how far he was away; right?

2 A. True.

3 Q. And we know, Officer Hanna, from the good
4 investigation that you did, we know that all three of those
5 things whether they are crucial or not. You admitted that
6 that distance was crucial; right?

7 A. Yes.

8 Q. All three of those things we have facts to show that
9 Tracy was the dead wrong; is that right?

10 A. As far as the yardage or feet, yes. Going to the junk
11 yard I don't have proof of that.

12 Q. But it could be acquired; right?

13 A. Yes.

14 Q. And the element?

15 A. Yes.

16 Q. What the was the element?

17 A. Talking about the one shot, two shot.

18 Q. Right. We know all three of them were wrong. You
19 know now that those two are wrong?

20 A. I know those two are wrong.

21 Q. And we know that we can find out if that other one's
22 wrong, if the timing about five o'clock versus about 1:30
23 or so is wrong. We know we can find those three out;
24 right?

25 A. Yes.

1 Q. Now, so what we have to do when we find out that
2 somebody is telling things that are wrong. And we know
3 they're wrong and they're important. They can make or
4 break something. We've got to give it our best and we got
5 to dig and we got to find out why do you have these
6 problems and we got to look the best we can to come up with
7 an answer; right?

8 A. Yes.

9 Q. Okay. So in this case, you got the autopsy report.
10 You had this autopsy -- You ordered it to be done as the
11 chief investigating officer; is that correct?

12 A. But the coroner ordered it done.

13 Q. Okay. Well, everybody was sort of under your
14 direction though and everybody had to report to you and
15 tell you what they found and where they found it; right?

16 A. Correct.

17 Q. And you kept records; right?

18 A. Yes.

19 Q. So when the coroner under you ordered that this
20 autopsy be performed, a certain history is then sent along
21 to help the pathologist in his report. So he can come in
22 here and take the stand and testify to the jury. You send
23 a certain history; is that correct?

24 A. No. The coroner orders the autopsy and he sends the
25 history.

1 Q. Okay.

2 A. He was out there at the scene with me.

3 Q. Okay. Well, you're in charge; right?

4 A. But I don't have the -- I don't have the authority to
5 send an autopsy. We concur together, but the coroner sends
6 it.

7 Q. The coroner makes the decision as to whether there
8 should be an autopsy or not?

9 A. Right.

10 Q. Okay. What I'm trying to get from you is, you know,
11 you can send some information to help the pathologist for
12 the autopsy. You got the ability to tell him what you
13 learned in your investigation to help them; right?

14 A. Yes, that's true.

15 Q. Now, in this case, I understood the pathologist and
16 you were in here at that time to say that he had a history
17 that two to three feet away; is that correct?

18 A. That's correct.

19 Q. The word was he was standing two to three feet away
20 rather than the barrel being two to three feet, which could
21 be a difference there; right?

22 A. Oh, yes.

23 Q. Which one -- Did you participate in sending that
24 history?

25 A. No, I didn't.

1 Q. Did you -- You read it as a chief investigating
2 officer. You read it; right?

3 A. I've ready since the autopsy's been returned to me the
4 report.

5 Q. Now, if you had wanted to put something in there, you
6 could have. You could have told him to help something you
7 knew about; right?

8 A. The two to three feet to me let me know that -- I knew
9 that the barrel was two to three feet away no matter what
10 -- When you saying he, where the barrel. I took it to be
11 the barrel. The barrel of the end of the barrel is got to
12 be two to three feet away no matter where he's standing at.

13 Q. Okay. That's what you took it to be?

14 A. Right.

15 Q. And if you had seen that going in -- that report going
16 to the doctor so that he can formulate an opinion and come
17 in here and give opinion testimony, you could have added
18 something to that if you wanted to; couldn't you? You know
19 something you thought was...

20 A. Yes, I could have.

21 Q. Now, you heard that doctor come in here and say that
22 he thought that this alcohol and the illegal drugs and the
23 other drugs that he was taking that that made him in his
24 opinion, would have made him docile; is that correct?

25 A. Yes.

1 Q. And, Officer, you had information from Mary McDougal
2 whose got no reason in the world to say anything other than
3 what she believes; right?

4 A. Correct.

5 Q. She got no motive in this; does she?

6 A. No.

7 Q. She like anybody can make a mistake or be confused,
8 but you found no reason or no motive for her tell you
9 anything other than the truth?

10 A. That's correct.

11 Q. And you didn't send in the history to tell this doctor
12 that not only from what Tracy had said about this bazaar
13 activity -- actions of Donald at the time of this thing.
14 But Mary McDougal is got nothing in the case. Mary
15 McDougal said that not only was this person acting
16 peculiar, he kicked over ---

17 MR. RUSSO: Objection, Your Honor. May we approach?

18 THE COURT: Uh-huh.

19 (A bench conference was held in the presence of the
20 jury, but out of the hearing of the jury.)

21 MR. RUSSO: I object statement to what he just said.

22 THE COURT: All right. Rephrase it and see if he's
23 got a problem with it

24 MR. DEBERRY: I'll rephrase it.

25 Q. Mary McDougal whose got nothing to do with this case

1 other than to try to tell it the best you can. You where
2 are aware that she had heard a big noise. First, she heard
3 a lot of arguing; is that correct?

4 A. Correct.

5 Q. And there weren't but two people over there according
6 to the investigation; right?

7 A. Right.

8 Q. And that there was some -- As she was going into her
9 house, she heard -- Before she heard the first shot, she
10 heard a big noise. And she later told you that she thought
11 that Donald had kicked over a grill?

12 MR. RUSSO: Objection. Objection, Your Honor,
13 that's a mischaracterization of the statement that does not
14 appear in that statement at all.

15 MR. DEBERRY: I'm not saying that. This is cross
16 examination that's what happened and that's what she's gone
17 say.

18 MR. RUSSO: Your Honor, may we approach, judge.

19 THE COURT: Uh-huh.

20 (A bench conference was held in the presence of the
21 jury, but out of the hearing of the jury.)

22 Q. From your investigation and after talking with Mary
23 McDougal and learning that she was going into the house.
24 You remember step by step. As a trained officer, you took
25 her through each little step; didn't you?

1 A. Yes, I did.

2 Q. You even remember her description of exactly what
3 happened as she was putting the keys into her door?

4 A. Yes.

5 Q. And you remember what she told you that she heard as
6 she was approaching before she got those keys out?

7 A. Yes.

8 Q. And what she described was some horrible sound, a loud
9 sound. And she didn't really know at that time what it
10 was; is that correct?

11 A. That's correct.

12 Q. And then you remember that when she went in there, she
13 told you that the first thing she did. She went in her
14 house. She didn't cut the lights on because, but she
15 didn't want anybody to be able to see her looking out;
16 right?

17 A. That's right.

18 Q. But she was able to look through there; is that right?

19 A. Yes.

20 Q. And she saw the grill turned over?

21 A. Yes.

22 Q. And after awhile she said that -- Did she tell you
23 what she thought -- who she thought had turned that grill
24 over?

25 A. She thought the victim had turned it over. She didn't

1 see it. So I didn't know if he had either turned it over
2 or tripped over it. I mean, there's no way to tell.

3 Q. Right. But any question about it, the grill was over,
4 turned over?

5 A. The grill was turned over.

6 Q. And later -- And later on she saw Donald Leffingwell
7 pick the grill back up?

8 A. Right.

9 Q. She told you that?

10 A. Yes.

11 Q. And not only she see him pick the grill back up. The
12 top had come off of it and she saw him pick the top up and
13 put the top back on the grill; right?

14 A. That's correct.

15 Q. So when this doctor came in here and said that he
16 thought that this person would have been in his opinion
17 based on what he had in his system alcohol, illegal drugs,
18 and some other drug. When that doctor came in here with
19 that opinion, he didn't have the history that this person
20 had been arguing just before he died; did he?

21 A. Yes.

22 Q. He had that?

23 A. Yes, it's in there.

24 Q. You say -- Where is it. You see it where?

25 A. It's in the autopsy report.

1 Q. In the autopsy report?

2 A. Yes.

3 Q. All right. Did you tell him about the grill?

4 A. No.

5 Q. Did you tell him that Tracy had said that this fellow
6 had been violent?

7 A. No.

8 Q. Did you tell him that Tracy had said that this fellow
9 refused to eat when he was told to eat?

10 A. No, I didn't tell him that.

11 Q. Did you tell him anything about any bazaar behavior or
12 anything erupting all of a sudden. Had Tracy told you
13 that?

14 A. What's in the autopsy report is what was said. I
15 didn't tell him anything.

16 Q. Now, don't you think that that doctor should have the
17 very -- He wasn't there when this thing happened. And he's
18 trying to look at something and draw some conclusions. He
19 needs the best evidence and the best information that can
20 be given to him; doesn't it?

21 A. Yes, he does.

22 Q. Cause he's got a hard job to do. Tell this jury
23 something that he believes happened and he wasn't even
24 there?

25 A. That's correct.

1 Q. His works cut out for him?

2 A. Yes.

3 Q. And he needs the best; right?

4 A. Right.

5 Q. Now, other than -- There are a lot of things --
6 Science today is really progressed from when it was ten
7 years ago or even five years ago; hadn't it?

8 A. Yes.

9 Q. And it's amazing what labs and things like that that
10 you have available, it's amazing what they can do to help a
11 jury make a decision; isn't it?

12 A. Yes.

13 Q. And obviously nothing new as old as I can remember
14 fingerprints are available and that's been said to be an
15 exact science; is that correct?

16 A. Yes.

17 Q. When they get a fingerprint, they can tell if it's
18 mine or yours or whoever it is without a doubt if they can
19 left it; right?

20 A. Correct.

21 Q. And it's commonly fingerprints are found on guns and
22 cases all the time. That's common; isn't it?

23 A. Yes.

24 Q. And in this case you knew from your investigation that
25 from what was told to you that both Tracy and Donald had

1 their hands on this gun just before this tragedy happened;
2 right?

3 A. That's correct.

4 Q. Okay. And you have said that you -- somethings you
5 just didn't really see the need to doing?

6 A. Correct.

7 Q. And because I assume that you felt like you had the
8 statement from Tracy and the statement from her. And
9 therefore, we didn't really go through some of the steps
10 that we could have done; didn't we?

11 A. I didn't feel like there was a need for anything
12 fingerprints that's what your asking. The reason being is
13 because it was obvious according to the eyewitness she saw
14 him -- both of them handle the gun. And according to the
15 defendant's statement, both of them had the gun earlier.
16 So I would only -- If there was any prints on it, naturally
17 they would be the victim's and the defendant's.

18 Q. Right. And coupled with all that in your mind, you
19 had a statement from Tracy and a statement from a girl.
20 And there was some things that we could have done and we
21 just didn't do because we had those statements; isn't that
22 right?

23 A. That's right.

24 Q. And we sort of performed an opinion right away. You
25 wrote on your -- at the end of your report that night that

1 case was clear; didn't you?

2 A. Not the end of the night I didn't.

3 Q. Well, was it the next day?

4 A. No, whenever I finished my report is when it was
5 clear.

6 Q. Okay. When was that?

7 A. Whatever the date is on my narrative. I don't know.

8 Q. Within a day or two; right?

9 A. No, it took me longer than that to get the autopsy
10 report back.

11 Q. Okay. Before you waited on that autopsy report in
12 your mind it was clear, you had booked him for murder;
13 right?

14 A. Yes, he was then charged with murder.

15 Q. And, Officer Hanna, there were a lot of things that
16 could have been done that we didn't do because we had
17 formed an opinion that it was a clear cut case; is that
18 right or wrong?

19 A. Opinion based on the facts and circumstances at hand.

20 Q. Right.

21 A. I didn't feel the need for, certain things.

22 Q. You had an opinion?

23 A. Sir?

24 Q. You had an opinion; right?

25 A. Yes.

1 Q. And there were other things that could have been done
2 that weren't done?

3 A. Correct.

4 Q. Now, you just said that you just really didn't see the
5 need to check fingerprints and so they weren't done?

6 A. Correct.

7 Q. And, Officer Hanna, that's something that that -- once
8 it's not -- somethings that we fail to do we go back and
9 the do; right?

10 A. Right.

11 Q. Like we can go back to that junk yard and talk to Don
12 Rogers; right?

13 A. Right.

14 Q. But there's somethings like this fingerprint thing
15 that that -- Once that decisions made not to do it can
16 never -- can't ever come back and do it again; can I?

17 A. No.

18 Q. Now, and you didn't think that anything would come up
19 to make it make this decision for this jury easier by
20 getting fingerprint test? You didn't think that anything
21 would come up?

22 A. No.

23 Q. If you did, you'd send it off; wouldn't you?

24 A. Yes, I would have.

25 Q. And you could have easily sent it off?

1 A. Yes.

2 Q. In addition do that, Officer Hanna, you could have --
3 There was blood on that gun; right?

4 A. Yes, there was.

5 Q. And I think I heard you tell this jury earlier that
6 you figured that's Tracy blood. And if you sent it off it
7 come back and show that that's Tracy's blood and the lab
8 can do that; right?

9 A. Yes.

10 Q. The lab can tell you that this blood is on that gun
11 and identify it?

12 A. That's correct.

13 Q. And you as the chief investigating officer in this
14 murder case, you made the decision that it wasn't necessary
15 to send that gun to be tested for -- have a blood test;
16 right?

17 A. And the reason I didn't may I explain?

18 Q. Sure.

19 A. The reason I didn't is because also as the pathologist
20 has confirmed. We didn't see any lacerations or anything
21 on the victim's body except for the wound to his throat.
22 So naturally I wouldn't assume that any of the blood on the
23 stock of the gun where a normal person holds it, would be
24 any other than the person who shot it, which would have
25 been Tracy Daniels who obviously had a laceration, a

1 puncture wound to the outside of his hand. So that's the
2 reason it was not sent off.

3 Q. Okay. So again we have assumed that the blood on the
4 gun was Tracy's; that's what you did?

5 A. Yes.

6 Q. And you weren't there, but you made that assumption
7 that that blood on that gun was Tracy's by talking to
8 Tracy; didn't you?

9 A. Tracy and the eyewitness.

10 Q. Both of them?

11 A. There was only two people at the residence, which was
12 the defendant and the victim. And that was confirmed by
13 the eyewitness who witnessed it.

14 Q. Okay. And at that time, you didn't know that these
15 other things that Tracy had said is the gospel -- were
16 absolutely false; did you?

17 A. No, I didn't.

18 Q. Now, you -- You had the blood that could be tested
19 from Donald; correct?

20 A. Yes.

21 Q. And if there had been blood -- Donald's blood on that
22 gun, the lab could have done that easily. And come in here
23 and somebody tells this jury whether or not Donald's bloods
24 on that gun?

25 A. Yes, they could have.

1 Q. But we didn't do it, did we?

2 A. No, I didn't.

3 Q. And some things like fingerprints they go away and
4 gets too late to do them; is that right?

5 A. That's correct.

6 Q. And some things that we over look, like you did last
7 Friday ---

8 MR. RUSSO: Objection, Your Honor. May we approach,
9 Your Honor.

10 (A bench conference was held in the presence of the
11 jury but, out of the hearing of the jury.)

12 Q. There's some things that we can go back and do like
13 you did last Friday; is that right?

14 A. Yes.

15 Q. And hindsight sometimes better than when you're in the
16 mist of everything going on; right?

17 A. That's right.

18 Q. And a very important step in a case like this, of
19 course, would be to have a thorough examination of this
20 shotgun and have it tested; is that correct?

21 A. That's correct.

22 Q. And we have gone some close to a year and a half and
23 nobody had ever tested the shotgun; have they?

24 A. That's correct.

25 Q. And then this Friday after year and a half after

1 whoever might have been touching this gun been in the
2 Solicitor's office; right?

3 A. No.

4 Q. Sir?

5 A. It's been in our evidence room.

6 Q. Did you show me that gun in the Solicitor's office?

7 A. I thought you're referring to it's been there over a
8 year and a half.

9 Q. It's been all around and people been handling it. It
10 was handled back there at the Solicitor's office?

11 A. Oh, yes.

12 Q. Okay. And after all that people putting it in the
13 evidence room, bringing it back to the Solicitor's office,
14 carrying it back to the evidence room. After that, you
15 decide to send it off?

16 A. Yes.

17 Q. And you send it off Friday for testing?

18 A. Right.

19 Q. Now, hindsight the better time to do it would have
20 been to send it off, get it preserve just like it was when
21 it was left standing there. By the way, did you understand
22 from your investigation it was left standing there across
23 from the front door of Tracy's trailer by those appliances
24 or right there by the front door?

25 A. By the appliance.

1 Q. By the appliance?

2 A. Yes.

3 Q. Okay. Now, in looking back, would have been better,
4 would have been more accurate to have that gun tested for
5 function, for safety, for fingerprints and for blood
6 analysis. The better time to do it would have been
7 immediately taken it from the scene and preserve it; is
8 that true?

9 A. The fingerprints and blood sample I still don't see
10 where that been necessary, but as far as the function, yes.

11 Q. Okay. Let's just assume that somebody else made a
12 decision that should have been done. My question to you
13 is, would have it been better to do it back then that night
14 to preserve it and send it off right then or later?

15 A. That would have been better to send it right then.

16 Q. That wasn't done; was it?

17 A. No, it wasn't.

18 Q. Now, in addition to that in cases like this, you have
19 available experts in the field of blood; right?

20 A. Yes.

21 Q. And they can look at something and they can tell.
22 They have the ability to tell if something is from what
23 direction the blood come in and got on a object. You seen
24 them do that come in a courtroom and do that; haven't you?

25 A. Yes.

1 Q. And they can tell if blood came from -- Once they find
2 out who it came from, what body it came from. Then if
3 they're given a good history, they can tell you if that
4 blood was came from what they call back spatter or forward
5 spatter; isn't that true?

6 A. Yes.

7 Q. And when you somebody gets shot and a bullet goes
8 through them, there's something called forward spatter and
9 it gets on things; doesn't it?

10 A. Yes.

11 Q. And there is something called believe it or not back
12 spatter. It comes back in the direction where the bullet
13 came from; doesn't it?

14 A. Yes, I'm not an expert anything of that.

15 Q. No, but you've heard about it?

16 A. I've heard about it.

17 Q. And you looked at that shotgun; didn't you?

18 A. Yes.

19 Q. And did you see blood on there that appeared to have
20 been smeared?

21 A. On the handle.

22 Q. Did y'all see blood on there that appeared to be
23 spattered on?

24 A. I don't know the difference in it. The bloods blood.
25 I mean, that would be an expert that would have to make

1 that decision. I mean, I saw it on the handle where
2 obviously someone had been holding it.

3 Q. But already said it, you really didn't see the
4 significance of this blood?

5 A. No, I don't.

6 Q. So you fold like the case pretty much cut and dry?

7 A. Right. Cause if there was blood on the barrel that
8 would not be uncommon.

9 Q. Now, always people do in gunshot cases, people in your
10 business they do something that I learned that's called
11 abbreviation is a GSR. Tell the jury what GSR means.

12 A. Gun residue -- gunshot residue. I don't know exactly
13 what it stands for.

14 Q. GSR. Okay. Blood shot residue that's a basic; isn't
15 it?

16 A. Yes.

17 Q. People do it?

18 A. Yes.

19 Q. Okay. And when you got two people there, the only two
20 people we know of involved this particular situation;
21 right?

22 A. Right.

23 Q. The thing to do is to do a gunshot residue test and
24 send it to SLED to let it come back and tell you because it
25 can tell you wonders; can't it?

1 A. Yes.

2 Q. And I believe that you did a gunshot residue test on
3 Tracy Daniels; is that correct?

4 A. I had it done. Well, I didn't actually have it done.
5 It's SOP before the all suspects involved in a shooting
6 incident to have it done.

7 Q. I don't know what SOP mean?

8 A. Standard operation procedure.

9 Q. What?

10 A. Standard operation procedure.

11 Q. Standard operating procedure?

12 A. Right.

13 Q. Okay.

14 A. A gunshot subject -- suspect it's always performed ---

15 Q. Which one did you say just then subject or suspect?

16 A. Subject suspect it's done.

17 Q. Well, what was Tracy classified in your mind in this
18 case?

19 A. When it was performed on him he was in custody.

20 Q. No. You said a suspect or a subject. What did you --
21 How did you classify Tracy in this case?

22 A. Now, he's a subject.

23 Q. And so he would be the suspect as well as the subject?

24 A. Right.

25 Q. Okay. What about the person that was shot?

1 A. The victim.

2 Q. Yeah.

3 A. What are you asking me?

4 Q. You didn't do a gunshot residue kit on him, did you?

5 A. No, it wasn't performed.

6 Q. And again that could have easily been done; right?

7 A. Yes. And the reason it wasn't done is because
8 eyewitness who clearly saw the defendant shot the victim
9 and from the defendant's own testimony that he's the one
10 who shot the gun and shot the victim.

11 Q. Again, we assume that those people are correct?

12 A. Yes.

13 Q. And therefore, we don't go and have that scientific
14 test done to confirm what they said?

15 A. Correct.

16 Q. As a matter of fact, we had one person saying that it
17 was within two to three feet of Mary McDougal; right?

18 A. Excuse me.

19 Q. We had Mary McDougal saying that the shot went off
20 within two or three feet away?

21 A. I have look at her statement I don't recall how close
22 she said it was. I don't remember off the top of my head.

23 Q. Okay. And the autopsy report the history went that it
24 was two to three feet away?

25 A. Yes, the autopsy report said that.

1 Q. Okay. And we have another person supposedly right
2 there had another person saying it was 12 to 15 feet away;
3 correct?

4 A. That's correct. So we didn't do this gunshot residue
5 to tell us wonders because we assumed that both of those
6 are right.

7 Q. You should have done it; shouldn't you in hindsight?

8 A. It should have been performed.

9 Q. And we didn't do it?

10 A. No, it wasn't.

11 Q. And the reason we didn't do it -- The reason we didn't
12 do it keeps coming back to the trunk of this matter is
13 pretty much that first impression. And we knew everything
14 we needed to know in this case to put -- Did you write down
15 on your report case is clear by arrest?

16 A. By arrest. Yes, I did.

17 Q. And that's reason we didn't do a lot of these things;
18 did we?

19 A. No, the reason I felt it wasn't necessary that's the
20 reason a lot of things wasn't done.

21 Q. And the reason it wasn't necessary. Officer Hanna,
22 what time did you get off that night?

23 A. I don't recall. It was late.

24 Q. What time did you get off?

25 A. There is no certain time.

1 Q. If nothing had happened, you have shift work; right.
2 You worked from a period of time you're on duty?

3 A. See that was on a -- I believe that was on a Saturday
4 night.

5 Q. Yeah. I can get your report and let you refresh your
6 memory. When you took this statement, was it pass your
7 hours?

8 A. I have no set hours for weekends. I'm on call so I'm
9 on call the whole time there is no set hours.

10 THE COURT: Just a second. You may continue. Thank
11 you.

12 Q. When you did -- You took a -- or you had in your
13 direction somebody took a gunshot residue kit; is that
14 correct?

15 A. Yes.

16 Q. And the time to get when you take a gunshot residue
17 kit, tell me you take scrapings from people's hands and
18 under their fingernails or how do you do that. Tell the
19 jury how that's done?

20 A. I don't know the forensics officers do it. I don't
21 conduct that. They do it.

22 Q. Well, tell us the best you know what all is done?

23 A. I don't know how they do it. I hate to tell you
24 something wrong because that's -- They the one that
25 strictly do it. I've never done it before.

1 Q. All right. So what officers gone be able -- You're
2 the chief investigating officer. What officer will be here
3 that will be able to help us in that regard?

4 A. Jason Dore -- Forensic Officer Jason Dore should be
5 able to tell testimony you.

6 Q. Okay. And I believe, Officer Lutcken, is also a
7 lieutenant; is that correct in that same are?

8 A. Yes.

9 Q. And he may know how to do that you think?

10 A. Yes, I'm sure he does.

11 Q. You seen it done before; hadn't you? You seen where
12 the put the bag on their hands?

13 A. Yes, I seen them put bags on peoples hand.

14 Q. Have you seen them -- You never seen them do a gunshot
15 residue getting the information that needs go to the lab?

16 A. I've seen some of it, but I don't know everything they
17 do.

18 Q. Well, tell us what you seen?

19 A. I seen them swab their hands with some type of Q-tip.

20 Q. Okay. And they put that in a bag?

21 A. Some type of vile or container or something I don't
22 know.

23 Q. What else have you seen them do in getting that?

24 A. That's it.

25 Q. As an officer with your experience, would you agree

1 with me the best time to that is the soonest time you can
2 do it?

3 A. Oh, I agree.

4 Q. And in this case, it wasn't done on Tracy Daniels
5 until after the statement -- after 12 something clock at
6 night; right?

7 A. That's correct.

8 Q. And I believe we just forgot to do it; is that right.
9 Didn't I hear somebody say that?

10 A. No, I didn't say we forgot to do it.

11 Q. Well, do you remember to do it or just intentionally
12 not do it?

13 A. Unfortunately, forensics officers are the one that do
14 it and I don't know -- I guess that's when they can get the
15 time to do it or that's when they remember to do it or
16 whatever.

17 Q. Really. Do you think they just didn't think to do it.
18 What did you just say.

19 A. I don't ---

20 THE COURT: Hold up. You need some coffee?
21 How about a cup of coffee would that help you?

22 JUROR: Yes, sir.

23 THE COURT: You weren't asleep were you?

24 JUROR: No, I was listening.

25 THE COURT: Get her cup of coffee. Everybody else

1 okay. Anybody else want a cup of coffee. I don't mind you
2 having it coca cola or coffee.

3 All right. Mr. Deberry.

4 MR. DEBERRY: Thank you, Your Honor.

5 Q. Officer Hanna, what ultimately happened was we took
6 the gunshot residue kit either at your direction. Are you
7 aware of it or somebody did it. We know it was done from
8 Tracy; isn't that true?

9 A. Yes.

10 Q. And unfortunately, it was too late; wasn't it?

11 A. It was -- You asking me if it was too late?

12 Q. Uh-huh?

13 A. That I don't know I can tell you what the results was.

14 Q. Tell the jury what the results were?

15 A. The form if I could read it to you.

16 Q. It's a yes or no just tell them. You know what it is.
17 Did they find anything or not?

18 A. No.

19 Q. And, Officer Hanna, from all indications there ought
20 to be gun residue on Tracy; shouldn't it?

21 A. I don't -- Sometimes in certain situations there is,
22 not always.

23 Q. And when you got those results and you saw they had
24 tested gunshot residue on Tracy's hands and they didn't
25 find any at all, that didn't concern you?

1 A. No, sir, because I know how fragile it is.

2 Q. Okay. Now, the other subject that was there we can
3 also have gunshot residue tests for that person; correct?

4 A. For the victim?

5 Q. Yeah.

6 A. Yes.

7 Q. And that can tell us a whole lot; can't it?

8 A. It could have.

9 Q. It can tell you -- You can get things off of people's
10 clothes and show that that's gunshot powder on his clothes,
11 that can be done; right?

12 A. Yeah, but on the victim naturally it's gone be some on
13 it.

14 Q. Okay. Just like naturally there's gone be blood on
15 that shotgun, just like naturally there's gone be
16 fingerprints on that shotgun?

17 A. Not naturally there gone be there, but it wouldn't.
18 You would think that it should be there. There's not a
19 reason it shouldn't be there, but not that they are there.

20 Q. We didn't do that test; did we?

21 A. No.

22 Q. Officer, did you go out this past week and do some
23 more investigation after a year and a half other than this
24 gunshot -- other than this gun test you sent off Friday
25 afternoon?

1 A. The -- No.

2 Q. No. Well, Officer, do you think -- You still in
3 charge; right?

4 A. Yes.

5 Q. And you wouldn't think that somebody was in your
6 department would go out be -- do some investigation on a
7 murder case that's getting ready to start the trial on
8 Monday morning. They wouldn't go out there without at
9 least telling you would they?

10 A. I mean, yes.

11 Q. You say they would?

12 A. Yes, if they felt like it was necessary or something
13 that overlooked and yes.

14 Q. Well, did you -- Did you send two uniformed deputies
15 out there last week with a video camera taking pictures and
16 measurements of the scene?

17 A. Okay. The Lieutenant Keith Lutcken as best I can
18 recall he might have went back out there. I don't know.
19 He said he was that he was gone think about going back out
20 there. So if someone was there, that must have been who it
21 was.

22 Q. Well, it -- I thought I understood earlier if people
23 do what they suppose to do in this case, this is an
24 important case. Their gonna tell you -- They gonna tell
25 you what they found and where they found it. Have you said

1 that over an over?

2 A. Yes.

3 Q. And has anybody told you that they went out last week
4 and made some video so that maybe we could have something
5 to help this jury?

6 A. The video should have been done by Keith Lutcken.

7 Q. No. No. My question is has anybody told you, first
8 of all, that they had planned to go out there and take a
9 video camara and get some pictures so that they would have
10 them for this trial. Has anybody told you that they were
11 gonna do that me?

12 A. Keith Lutcken told me that he was gone go get -- If he
13 couldn't find or we didn't have a copy of a video, he was
14 gone go do one.

15 Q. He did. When did he tell you that?

16 A. That would have been sometime earlier in week. I
17 didn't know when he went or even if he went.

18 Q. I understand. And so to this day, you don't know if
19 Keith Lutcken went out there or not. He just told you he
20 was going?

21 A. If you said there's an officer there, that would have
22 had to been him.

23 Q. Well, I really can't testify. I'm just asking you?

24 A. Okay.

25 Q. If you're aware of two officers in uniform?

1 A. No.

2 Q. You don't know about that?

3 A. No, not two officers.

4 Q. One officer?

5 A. Now, that's possible that could have Lieutenant Keith
6 Lutcken cause he told me that he was possibly gone do that.

7 Q. But it's impossible that two could have been there
8 with a video camera last week?

9 THE COURT: No, sir, that's not what he said. Now,
10 come on let's move on.

11 Ladies and gentlemen of the jury, step back here
12 just a minute please.

13 (The jury was excused to the jury room.)

14 THE COURT: Ten years I watched it get worse and
15 worse. This man's not on trial every officer that works a
16 case goes on trial. Let's move on this case. The jury's
17 tired of it. I'm tired of it. Now, that was a totally
18 improper question that last one, Mr. Deberry. Let's take
19 10 minutes.

20 MR. DEBERRY: Your Honor, I realize that I am as you
21 phrase it putting an officer on trial and it's not always
22 the most pleasant thing to do and I apologize. But I will
23 represent to you that my intentions are for the benefit of
24 my client

25 THE COURT: I understand that.

1 MR. DEBERRY: And I feel that that is something that
2 I have to do. I have nothing personal against him. I
3 don't intend that everybody's perfect and we all know that,
4 but I feel that that whatever I'm doing I'm doing it
5 because I feel like it's necessary.

6 THE COURT: All I'm saying is please don't take it
7 end degree. I know you got a job to do some cases it's
8 legitimate, but you went a step too far with that last
9 question in my opinion. Take 10 minutes.

10 (Court's in recess.)

11 (Court's reconvened.)

12 MR. RUSSO: Your Honor, if I may before we resume,
13 and if I may preface this by saying, I don't see this in an
14 accusing way cause I don't think anything is being done
15 rhetorically or intentionally or if anything
16 inappropriately is being done. I would just like an
17 instruction. I notice that there's a relative of the
18 defendant here in court who's not on the witness list, but
19 she's here in court. And that during the breaks, the
20 defendant and his family all get together in this room out
21 here. And I just, you know, for the purpose of the
22 sequestration is that the case isn't discussed and the
23 witnesses are kept out. I would just ask that that there
24 be an instruction that during the breaks and all together
25 that there's no discussion going on about the testimony and

1 what's going on in the courtroom. I just think that would
2 be proper.

3 THE COURT: Mr. Deberry, you better take care of
4 that. We don't want any problem popping up on that.

5 MR. DEBERRY: Your Honor, I have pursuant to your
6 instruction I have fully advised my client and all of the
7 witnesses that I am aware of that are on my list. They
8 have been fully instructed on more than five occasions.
9 They've been constantly warned. And I do not suspect
10 anything to be going on other than exactly -- They've even
11 come back and talk to me about, can we talk about this.
12 Only thing you can't talk about is what somebody says in
13 that courtroom and you cannot mention a word about it and
14 that's it.

15 THE COURT: Well, I need to cover everybody in the
16 courtroom. Nobody is to discuss any of this testimony or
17 what's going on here with any of those pending witnesses;
18 that means everybody.

19 Now, while we're on the subject of what happened
20 about the break. I've reflected on that as it transpired.

21 Mr. Hanna, I'm gone have to get on you a little bit
22 too. You quite~~be~~ being evasive with your answers and cut out
23 the games. Now, I've watched this developed in our court
24 system ever since the O. J. Simpson trial. It was a
25 patterned set of attacking the police officer's

1 credibility. And there's been a pattern of the police
2 officers reacting by trying to play games and be evasive.
3 So you have exacerbated the situation somewhat, too. And
4 Mr. Deberry's not totally the one at fault with what's gone
5 on. Okay.

6 MR. HANNA: Yes, sir.

7 THE COURT: So both of you beware.

8 Mr. Russo, you bet not be smiling over there cause
9 as long as this trial's taken, your turn will be coming to.

10 MR. RUSSO: I'm not, Your Honor.

11 THE COURT: All right. Let's keep our minds on what
12 we should be doing here and move on.

13 Bring the jury in.

14 (The jury returned to the courtroom.)

15 THE COURT: All right. You may proceed.

16 Q. Officer Hanna, I understand that Lieutenant Lutcken
17 will testify later. And I will not ask you any more
18 questions about what occurred out there last week outside
19 of your presence. I apologize I'll ask him, okay?

20 A. Yes, sir.

21 Q. Now, tell me what -- There's been some obvious errors
22 in recollection unintentional obviously about the daylight,
23 darkness?

24 A. Yes, sir.

25 Q. Can you help us in that regard some how -- in some

1 way?

2 A. Yes, at the call come in at 1555 -- No, 16 -- 1755.

3 Q. 1755?

4 A. Yeah, 5:55.

5 Q. Five minutes to six?

6 A. Right. That time of the year it's normally dark. By
7 the time I got there, it was dark.

8 Q. Well, if you left even -- You say by the time I got
9 there. I kind of take it that may mean that it could have
10 been light when you left. Let's just look at something
11 here a minute all right?

12 A. Okay.

13 Q. Would you -- Would you disagree with the fact that
14 sunset time -- sunset which is documented in the paper
15 everyday and so forth was like 5:06 that night. That sound
16 about right to you?

17 A. Yes, that sounds right.

18 Q. Okay. And so if it were 5:06 and a call came in at
19 five minutes to six?

20 A. Okay.

21 Q. Okay. Help me figure that out how many minutes is
22 that?

23 A. Well, 50 -- 55 minutes. 50 minutes.

24 Q. Let's call it 50, 50 minutes. So we get apples to
25 apples. I looked in the paper the other day when I was

1 going out there and sunset now is eight o'clock. Does that
2 sound about right?

3 A. Yes, sir.

4 Q. Okay. So if we wanted to get apples and apples and
5 try to see exactly what the sun had any bearing on this
6 case, if any. We should go to sunset today at eight
7 o'clock and then weigh it for 50 minutes after that and go
8 outside and look; is that right?

9 A. Yes, sir.

10 Q. That should have help us; shouldn't it?

11 A. Yes.

12 Q. Now, did you instruct anybody to -- And again, I'm not
13 gone talk about last week. If you instructed anybody right
14 after the incident or any time to go out there and try to
15 be out there after this day that it occurred and get there
16 and make some pictures or video of that same time of day or
17 same time of night?

18 A. No, there was a film made but not for the same time
19 period. Just to put into perspective where the mobile
20 homes were at and it was done.

21 Q. And do you think that if we had the ability to show
22 the jury exactly what the vision was on that night as far
23 as darkness. And let's say we were able to put the same
24 lights up there. That be helpful; wouldn't it?

25 A. Yes, it would.

1 Q. Okay. And now, the let's talk about the lights for a
2 minute all right. Did -- And there may be some discrepancy
3 maybe some in what all has come out in that regard. I've
4 heard mentioned to the fact that there was a lamp post
5 there that night?

6 A. Seem to recall there was a lamp post. I'd have to
7 refer back to the pictures to see.

8 Q. Okay. And if there was also some flood lights if
9 you're facing -- Takes me a minute sort of to get oriented
10 here, but obviously this is the road here?

11 A. Callie Young Road.

12 Q. And y'all would have come from that way because the
13 law enforcement center is down over here somewhere. It's
14 only four or five minutes away; right?

15 A. Yes.

16 Q. And y'all would come down here and the driveway sort
17 of comes in maybe straight towards that carport. Maybe,
18 that's why is -- is that the way the driveway?

19 A. Yeah, that sounds about right.

20 Q. And got a concrete pad here?

21 A. Uh-huh.

22 Q. And this is Tracy's residence here. And this is the
23 room in here where the table was; right?

24 A. Yes.

25 Q. And where the foods was on the table; right?

1 A. Right.

2 Q. Now, and here's the carport?

3 A. Yes.

4 Q. And that's Tracy's red truck that he does his plumbing
5 out of?

6 A. Correct.

7 Q. And that came up that we know it was there that night
8 because Mary McDougal saw Donald put a shovel back in
9 there?

10 A. Correct.

11 Q. And she also saw him go to a trunk of his car; isn't
12 it. Is there a picture that helps us where Donald's car
13 was parked that night?

14 MR. DEBERRY: Your Honor, I'm referring to State's
15 Exhibit Number 12.

16 Q. Tell the jury if you would what does that show there?

17 A. It's a picture of the victim's car parked in front of
18 the defendant's residence with the door open.

19 Q. And is that where it was based on your investigation
20 when he died that nobody moved it?

21 A. Right, no one had moved it.

22 Q. And door's open?

23 A. Yes.

24 Q. And I believe there's a some pictures here somewhere
25 shows a picture inside the truck as well; is that right?

1 A. Yes.

2 Q. All right. And is that your car there?

3 A. No, that's an unmarked Camaro. So that would be one
4 of the either Mark Fuleihan's or Curt Summerford's or one
5 of those.

6 Q. And would say that this picture here is, which is No.
7 12, if you would come ---

8 MR. DEBERRY: And would you mind, Your Honor?

9 THE COURT: Sure step down.

10 Q. Would you say that that is a true representation of
11 the way the lighting was on the night that you were out
12 there when the car was there and hadn't been moved and the
13 door was still open?

14 A. Yeah, the only problem is -- There's a motion detector
15 light right here and if no one is moving ---

16 Q. The motion-detector light is over here?

17 A. It's right there.

18 Q. Okay.

19 A. And if no one's moving in here, it don't come on. So
20 if someone was standing up there moving around, that light
21 would come and it would be a little more light.

22 Q. Okay. All right. Now, so it doesn't really show a
23 lot of other lights here. We can't even see the motion
24 lights in this picture. We gonna need some help; right?

25 A. Right.

1 Q. Okay. What you start to say?

2 A. You finished.

3 Q. You can have a seat. So the motion lights that you're
4 talking about is that true that they were on this corner
5 here?

6 A. I think down at that area. It's on the service pole,
7 which is a little closer. Almost at the end, but more long
8 right here according to the pictures here on.

9 Q. All right, sir.

10 A. On this service pole light right the top of it.

11 Q. Okay. It may not be important. I don't recall being
12 there. Let me get another picture.

13 A. Okay. Down in that area it appears that there on
14 there.

15 Q. I can't put my hand on one right now. But you -- The
16 motion lights that we're referring to. If they're not on
17 that pole, if that's the service pole that there no lights
18 on and there attached to the very top corner of this house.
19 They're either there or like you remember being on that
20 service pole; is that right?

21 A. Yes.

22 Q. In any event and looking from this direction here
23 where Mary McDougal was looking out that triangular pane.
24 You remember that?

25 A. Yes.

1 Q. Looking from there to a subject here, this light would
2 be more distant further away; is that right?

3 A. You talking about the light ---

4 Q. These motion lights. Assuming they were on?

5 A. Right.

6 Q. And it's hard to tell when motion lights come on and
7 when they go off; isn't it?

8 A. No.

9 Q. It's not?

10 A. No.

11 Q. I'm talking about -- You never know when they gone go
12 off. Seems like to me in the backyard, can you tell every
13 time when yours gone go off?

14 A. Long as someone is moving there not gone go off.

15 Q. Okay. And the -- And if you stand still for a period
16 of time, obviously they go off?

17 A. Yes.

18 Q. You move they come back on?

19 A. Right.

20 Q. Will they come back on immediately?

21 A. If someone is moving.

22 Q. Okay. Well, other than these lights that are either
23 attached to this house or up on that pool like you said?

24 A. Uh-huh.

25 Q. There's another light over here; isn't it?

1 A. Yes, that's a regular yard light.

2 Q. Regular yard light. Now, do you remember anything
3 about a post right here?

4 A. I'm not sure if that was a lamp or a bird feeder or
5 something.

6 Q. There's a bird feeder?

7 A. I think it was a bird feeder. I don't know.

8 Q. We don't think we have any light coming from here?

9 A. No.

10 Q. We have a light from here; is that right?

11 A. Right.

12 Q. And we have light from here?

13 A. Right. And the lights on inside the house.

14 Q. On inside the house. And I believe that it's been
15 determined that even though that there was a little light
16 here for these steps, it was not on. It was not on. It
17 was not that night. There's no indication that that light
18 was on; right?

19 A. Right. Well, I can't tell. It doesn't appear that
20 it's on.

21 Q. Okay. And you didn't make a note in your
22 investigation of securing the scene at all. That that
23 light came into play at all. It appears to be off; right?

24 A. Right.

25 Q. Now, the -- And tell us about these steps. There was

1 some indication that that this shot came from the platform
2 as you step out of the trailer. That information came to
3 you; didn't it?

4 A. Yes.

5 Q. And that came as the fatale shot came from a person
6 and Tracy was standing up here on a platform; is that
7 right?

8 A. Yes, I think that was also -- I can't remember -- Yes,
9 that did come out. I don't know which officer, but someone
10 testified to that.

11 Q. Okay. And we know that the shot -- First of all, we
12 can get the height of that platform; can't we?

13 A. Yes.

14 Q. And I assume -- Did you get it?

15 A. I didn't.

16 Q. Well, somebody in your direction they got it for you?

17 A. Not that I'm aware of, no. If it's on there, they got
18 it and I didn't know about it. I didn't tell no one to get
19 it the height of it.

20 Q. So -- Well, did you think that it may be significant
21 that we would need to know from where the shot came from?

22 A. At the time I didn't.

23 Q. Okay. Now, we also know that the pellets -- Tell the
24 jury what kind of shot was this?

25 A. This was a buckshot.

1 Q. And you found I believe there were double-ought (00)
2 buckshot; is that right?

3 A. Yes, that's correct.

4 Q. Okay. And double-ought (00) buckshot, how many
5 pellets do they have?

6 A. Seems they have nine.

7 Q. Okay. And you got some right. You found some. One
8 was discovered and acquired by the pathologist?

9 A. Yes.

10 Q. And you went in the house with Mary McDougal and I
11 believe you even got one of the pellets?

12 A. Yes, out of her house.

13 Q. You got it?

14 A. Oh, I didn't the forensics team recovered it out of
15 the house.

16 Q. You seen it?

17 A. Yes.

18 Q. And you understand it came -- It was picked up by who?

19 A. It had to be Jason Dore.

20 Q. Okay. And where did Jason Dore report to you that he
21 got it from?

22 A. It was in the hallway of her home.

23 Q. And get up if you would and point where the hallway
24 is?

25 A. This the back door to her residence. And it's a small

1 mobile home. There's a small hallway right through here
2 going into the back bedroom. It would have been in that
3 hallway right there around that door.

4 Q. Okay. So we got to two pellets?

5 A. Yes.

6 Q. One that the pathologist brought here and one that
7 Jason Dore found in that hallway?

8 A. Yes.

9 Q. Now, tell us if he told you -- If you don't know, you
10 don't know. But where did he find it in the hallway?

11 A. That I'm not -- I don't know. I just know it's in the
12 hallway.

13 Q. Well, if it comes to light in this case that it's very
14 important that we know how high those pellets hit on that
15 trailer over there. Where he found that pellet, would be
16 very crucial; couldn't it?

17 A. I guess. I don't see how right now.

18 Q. Let me show you a picture. By the way while I'm
19 looking here, do you remember Ms. McDougal calling you
20 after y'all had left. And you had already written case
21 cleared. Calling you up and saying I found another pellet;
22 remember that?

23 A. It's possible. It could have have happened.

24 Q. Okay. Do you remember telling her that -- Maybe, it
25 refresh your recollection. Do you remember telling her

1 that we already got one, so we really don't need another
2 one?

3 A. I don't remember saying it.

4 Q. Okay. And again, I don't mean to be picking at you
5 if you weren't there. And if you don't know, but do you
6 recall that Mr. Dore said that right by her face, right
7 behind her that that pellet had imbedded in a cabinet that
8 was above the washer and dryer appliance. The kind of
9 cabinet that are not low but above her washer and dryer?

10 A. Now, who said this?

11 Q. Well, just asking. Do you remember seeing a picture
12 where the pellet that Jason Dore got had the struck the
13 cabinet about this high right behind Mary McDougal?

14 A. I don't remember, but if you got the picture I could
15 see it I can recognize it.

16 Q. I understand. And did you learn that another pellet
17 had gone in the back bedroom here in this area here about
18 head high?

19 A. That sounds right.

20 Q. That sounds right?

21 A. Yes.

22 Q. And we know from the investigation and from talking to
23 the autopsy person that those pellets went through the
24 throat of Donald before they went through that trailer;
25 didn't they?

1 A. Yes.

2 Q. Ever one of them?

3 A. Yes.

4 Q. And I believe it's been testified that that stick
5 there is about two feet tall this platform that I believe
6 you said you didn't measure?

7 A. Right. I don't know how high.

8 Q. You wouldn't deny it be about two feet tall?

9 A. That sounds about right.

10 Q. That would be -- Somebody if they were on that on that
11 platform come off of that trailer they would be standing up
12 two feet taller than where I'm standing. They be standing
13 up this high; right?

14 A. Yes.

15 Q. So somebody standing there if they were able to hit up
16 on this trailer here right by her face to go right behind
17 and then hit and imbed in the cabinet back there, we need
18 to take a look at that line of travel of those bullets to
19 see if the information that you were given that the person
20 was standing on that platform was true. We need to look at
21 it; wouldn't we?

22 A. Yes.

23 Q. Because it couldn't happen; could it?

24 A. I'm not -- Yes, I think it could happen.

25 Q. You think it could happen?

1 A. Yes. I'm not an expert in that field, but I think it
2 could.

3 Q. We got experts; don't we?

4 A. Yes.

5 Q. They could help us, couldn't they?

6 A. Yes, I think they could.

7 Q. We got ballistic expert; don't we?

8 A. Yes.

9 Q. You use them before?

10 A. Yes.

11 Q. You didn't get one that night; did you?

12 A. No.

13 Q. You didn't get one following up -- even up to this
14 trial?

15 A. No.

16 Q. And that's something unlike the other things that are
17 forever gone. That's something that could still be done?

18 A. No.

19 Q. That can't be done?

20 A. The house has been moved. It's no longer there.

21 Q. Well, did you know that I went to the house as
22 recently as a few days ago?

23 MR. LAWSON: Objection, Your Honor ---

24 MR. RUSSO: Objection, Your Honor. It doesn't
25 matter what Mr. Deberry does.

1 Q. Do you know where the house is now?

2 A. No.

3 Q. Okay. You have an opportunity to talk with Mary
4 McDougal; right?

5 A. Yes.

6 Q. You know where she lives now; right?

7 A. I don't remember her address. She might have told me,
8 but I don't remember the address.

9 Q. But let's face it. If it needed to be reconstructed
10 and the house was still available, that can be done; is
11 that true?

12 A. My belief in the problem with that when you move a
13 mobile home I don't know if you gone get the same height as
14 where it is now compared to where it was then. I don't
15 think it can be.

16 Q. Come dog on close to it; can't it?

17 MR. RUSSO: Your Honor, I'm gone object. When he
18 ask the officer a question and get the answer, we don't
19 need to ask it again.

20 THE COURT: It's getting to where that's
21 argumentative. So I'm gone have to sustain the objection.

22 Q. Do you know if you could get the steps, the same
23 steps. Do you know if the same steps are still right
24 there?

25 A. Where there at now -- I mean, where the house was

1 originally.

2 Q. Do you know if the same steps are still available?

3 A. No, I don't know that.

4 Q. Now, can you -- You had this sketch done here at your
5 direction right?

6 A. Yes.

7 Q. And tell me how many pellets hit that house, if you
8 recall?

9 A. I don't recall. That would be in the report the
10 Lieutenant Keith Lutcken has. The final report of his or
11 Jason Dore I'm sorry.

12 Q. And I believe that you got the door where the pellets
13 hit the door, right. You took the door off?

14 A. No, I didn't.

15 Q. Well, did you know the door was gone. A new door was
16 put up?

17 A. Yes.

18 Q. And do you know where the old door is?

19 A. No.

20 Q. Well, before it was taken off, did you take
21 measurements as to where the pellets hit?

22 A. It was photographed at the crime scene. I mean, at
23 the incident location. But as far as the measurements of
24 how high they were up, I don't believe so.

25 Q. Okay. Well, did you take any measurements other than

1 -- You said you didn't know the door, but you think you got
2 pictures; right?

3 A. Yes.

4 Q. Did you take any measurements of the pellets that hit
5 the house on each side of the door?

6 A. The photographs is what the forensics team -- You
7 asking me the ones that hit the house. I'm sorry I
8 misunderstood your question.

9 Q. What I was asking you is the pellets that hit the
10 house on either side of the door, did you take any
11 measurements of where those pellets hit?

12 A. No.

13 Q. And can you tell the jury where there pellets that hit
14 the house on both sides of the door?

15 A. Yes.

16 Q. And how many?

17 A. That I don't recall.

18 Q. At least two because you said they were on both sides
19 of the; right?

20 A. Yes.

21 Q. And can you recall how high they were on the house?

22 A. I could possibly refer back to the pictures and give
23 you an estimate.

24 Q. Go ahead.

25 MR. RUSSO: Your Honor, I'm posing an objection at

1 this point. And let me if I may. I know officer Hanna is
2 trying his best to help, but I'm gonna objected to an
3 estimate. If he doesn't know, then he doesn't know. But
4 having him look at a photograph and make an estimate, I
5 would object to that. Mr. Deberry by his own comments has
6 been out to the place. If he wants to submit the
7 measurements, let him submit the measurements.

8 THE COURT: I'm gone let the officer answer the
9 question and according to his answer and the next question
10 pose, feel free renew the objection.

11 MR. RUSSO: Yes, Your Honor.

12 A. I thought I had a picture with it given from ground
13 up, but it's not -- It's not so I really don't know because
14 I don't know how far it is off the ground.

15 Q. The shells that you found two spent shells, both of
16 them red Winchester double-ought (00) buck; right?

17 A. Yes.

18 Q. Did you send those shells along with the gun for
19 testing?

20 A. I don't think they were. I'd have to look back at the
21 forensics -- Lieutenant had that sent off for me. I mean,
22 I don't know what he sent with it. I know we sent the gun
23 for testing, but I'm not sure about the shells.

24 Q. And when you say you sent it for testing, there's
25 various things that you can ask somebody to do about

1 testing the gun?

2 A. Yes, sir.

3 Q. And do you generally give the specifics if I wanted
4 this gun tested for x, y, z?

5 A. Yes.

6 Q. And in this case, what did you tell them you wanted
7 this gun tested for?

8 A. Told them to test for fire to make sure it was firing
9 correctly and would fire and the trigger pull.

10 MR. DEBERRY: Okay. That's all I have. Thank you.

11 REDIRECT EXAMINATION BY MR. RUSSO:

12 Q. Phil, let first ask you. Any information that you may
13 have gathered through your investigation with regards to
14 the events that occurred with the defendant and the victim
15 and all of that, any of that information where would you
16 have gathered that information. Where would that have come
17 from?

18 A. It come from the witnesses.

19 Q. And who would that have been?

20 A. The defendant and Mary McDougal.

21 Q. All right. Now, but -- I'm I correct Ms. McDougal
22 statement begins at a quarter to six when she arrives?

23 A. Yes.

24 Q. So anything prior to that would have been information
25 solely gotten from the defendant?

1 And tell me what Ms. McDougal told you that night where she
2 saw the defendant standing when he killed the victim?

3 A. Okay.

4 Q. All right. Where did she tell you he was standing
5 when he killed the victim?

6 A. On the ground.

7 Q. On the ground. You recall hearing the defendant's
8 statement which was played in court yesterday, the
9 audiotape?

10 A. Yes.

11 Q. I want to ask you again just -- not to read out loud,
12 but just to reflect your memory with regards to that
13 information which you were given. What did the defendant
14 tell you when or where did the defendant tell you he was
15 standing when he killed the victim?

16 A. He was on the ground or on the porch.

17 Q. Did he know?

18 A. He didn't know.

19 Q. All right. So your investigation reveals he was
20 standing on the ground?

21 A. Correct.

22 Q. And from a eyewitness. And he says he doesn't know?

23 A. Correct.

24 Q. So all these questions about the height of this
25 platform and that the fatal shot came from the platform.

1 A. Correct.

2 Q. And you would had ~~know~~ way of knowing whether he was
3 being truthful or honest or deceitful; is that correct?

4 A. That's correct.

5 Q. Let me -- I want to address a couple of matters that
6 Mr. Deberry brought out. He kept referring to the height
7 of this step. And if I'm not mistaken his exact question
8 to you was, the investigation determined that the fatal
9 shot from the platform. Now, would you agree with me that
10 your information came from the eyewitness?

11 MR. DEBERRY: Your Honor, I don't how he's gone
12 phrase this, but I can't imagine the questions starts out
13 if you agree with me, can't be legal.

14 THE COURT: Think about it.

15 Q. Where did you get the information with regards the
16 where the fatal shot was fired?

17 A. I got it from the victim, Ms. Mary McDougal.

18 Q. I think she would be the witness.

19 A. I'm sorry, the witness.

20 Q. That's okay. That's all right. I'm gonna ask you
21 look and see if this will recollect your memory with
22 regards to what Ms. McDougal told you with regards to where
23 she saw the defendant standing when he shot the victim?

24 A. It starts out okay ---

25 Q. Well, just read it reflect, recollect your memory.

1 That's not what the evidence shows; does it?

2 A. No.

3 Q. When you spoke with Ms. McDougal, she shared with you
4 what she heard; is that correct?

5 A. Correct.

6 Q. What she saw?

7 A. Yes.

8 Q. Is that correct?

9 A. Correct.

10 Q. And I tell you Ms. McDougal can speak for herself.
11 But I'm gonna ask you, do you recall in your recollection
12 of your conversation with Ms. McDougal at any time ever did
13 she tell you the victim kicked over a gas grill?

14 A. No.

15 Q. Did she ever tell you she saw the victim do anything
16 with the gas grill other than pick it up?

17 A. No, she didn't.

18 Q. The gun that was sent to SLED for testing, the test
19 you asked -- I think you testified that you asked for a
20 trigger-pull test and a functionality test?

21 A. Yes.

22 Q. What was the condition of this gun when you sent it
23 off to SLED compared to the condition of the gun when your
24 team took possession of it that night?

25 A. It was the same. It was secured in a box so that it

1 could not be harmed or disturbed.

2 Q. All right. I want to -- Is this the box you're
3 referring to?

4 A. Yes.

5 Q. Now, it was placed in this box?

6 A. Yes.

7 Q. Has anyone from your office or anyone other than SLED
8 attempted to operate or fire this weapon or use this
weapon?

10 A. No, they haven't.

11 Q. So what if any advantage would have been for the
12 trigger-pull test and functionality test. What if any
13 advantage was there to send it a year and a half ago or six
14 months ago or last week?

15 A. To get those results none.

16 Q. Would have made no difference?

17 A. Would have made no difference.

18 Q. There was some discussion as to this porch light and
19 that this porch light is off; is that correct?

20 A. Correct.

21 Q. Okay. That's the way you found it when you arrived;
22 is that correct?

23 A. Yes.

24 Q. Do you know or have any idea what the condition of
25 that light was at the time the defendant killed the victim?

1 A. No, I don't.

2 Q. Is there a chance that could have been turned off?

3 A. Yes, because that -- I was already -- several other of
4 the officers who was there before me.

5 Q. Please explain to the jury. I've heard a lot about on
6 your report it ends with case cleared by arrest or
7 something of that nature. Does that mean your
8 investigation is over and done?

9 A. No.

10 Q. What does that mean tell the jury?

11 A. Every case that we get we have to turn in a narrative
12 to our sheriff. So that he can read it and know what's
13 happened. And so, of course, at the end of it, it should
14 have been addressed respectfully cleared by arrest. So
15 that he would know that it's been clear but not over.

16 Q. Okay. So that phrase doesn't mean you're done?

17 A. No.

18 Q. The -- And I don't know. I just want to clear up if
19 there was any confusion. When Mr. Deberry asked you who is
20 in charge of forensics, you answered Lieutenant Lutcken?

21 A. That's correct.

22 Q. All right. And I guess in the great scheme of things,
23 everyone in forensics works under Lieutenant Lutcken's
24 authority; correct?

25 A. That's correct.

1 Q. But who is actually the forensics officer that work
2 this case?

3 A. Jason Dore.

4 Q. It was not Lieutenant Lutcken?

5 A. Well, he participated, but Jason Dore would have been
6 the main one there.

7 Q. All right.

8 A. Well to clarify it. Keith Lutcken come there and he
9 would have been the supervisor on the scene for forensics.

10 Q. Okay. And we'll let him testify to that. You were
11 asked if you had spoken to a Mr. Ray Jones, and you
12 indicated you had not?

13 A. Right.

14 Q. What -- Let me rephrase the question. Donald
15 Leffingwell was killed right around six o'clock; is that
16 correct?

17 A. That's correct.

18 Q. Would you have had any knowledge or what knowledge
19 would you have had if the defendant and the victim were at
20 Ray Jones' business earlier that day. What knowledge or
21 what information would you been able to gather that they
22 were together from that time straight through and never
23 parted?

24 A. I wouldn't have known.

25 Q. So if you would have spoken with Ray Jones and he said

1 yes they were at my business at 1:30 that afternoon, what
2 information would that have given you to help this jury
3 render a decision on whether or not the facts and
4 circumstances surrounding six o'clock that evening
5 occurred?

6 A. None.

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

8 MR. DEBERRY: Your Honor, we don't have any further
9 questions either.

10 THE COURT: You may step down. Thank you.

11 (The witness left the witness stand.)

12 MR. RUSSO: Your Honor, the State would call
13 Ms. Jennifer Stoner. Mr. Lawson has gone to get her.

14 JENNIFER STONER, being first
15 duly sworn, testifies as follows:

16 DIRECT EXAMINATION BY MR. RUSSO:

17 Q. State your full name for the record?

18 A. Jennifer M. Stoner.

19 Q. Jennifer, where are you employed?

20 A. I work for the South Carolina Law Enforcement Division
21 in the trace evidence department.

22 Q. All right. And how long have you been -- And that's
23 referred to as SLED; is that correct?

24 A. That's correct.

25 Q. All right. How long have you been with SLED?

1 A. I have been there since October of '97.

2 Q. Have you been in the trace evidence department since
3 you been with SLED?

4 A. I have been there since November of '98.

5 Q. Okay. If you would please, could you give us the
6 benefit of your educational background?

7 A. I have a Bachelor of Science Degree in chemistry,
8 which obtained I from California University of Pennsylvania
9 in 1997. I then started in a training program at SLED. I
10 successfully complete the criminal justice academy. I
11 went through a drug training program and then I am
12 currently still in training in trace evidence. It's
13 continuing program.

14 Q. Now, during your time with SLED, is part of your
15 duties to examine what we call GSR gunshot residue gun kit?

16 A. Yes, it is.

17 Q. Do you have an estimate of how many times you've done
18 that during your course with your career with SLED?

19 A. I have done at least a 1,000 kits because our training
20 program starts with the gunshot residue. And so we
21 received all of the gunshot residue for little bit for over
22 a year. So we do all the kits from the whole state for
23 over a year.

24 Q. And you've done approximately somewhere in the
25 vicinity of a 1,000 of these in investigating and

1 examination?

2 A. Yeah.

3 MR. RUSSO: Your Honor, at this time, I would
4 present Ms. Stoner as an expert with regards to trace
5 evidence especially in the area of gunshot residue kit.

6 THE COURT: Any objection?

7 MR. DEBERRY: No, objection.

8 THE COURT: So qualified.

9 Q. Jennifer, did you have an occasion to run an
10 examination on kit submitted to you back in -- the incident
11 date of 12-4-99 and the subject was a Mr. Tracy Willard
12 Daniels?

13 A. Yes, I did.

14 Q. You have a copy of your report?

15 A. Yes, I do.

16 Q. All right. Can you tell me when that kit was
17 submitted to your laboratory?

18 A. The kit was submitted on 12-7-99.

19 Q. And when were your test conducted?

20 A. I took custody of the kit on 12-14-99. And I was
21 through by 12-22-99.

22 Q. If you would Jennifer please, explain to the jury
23 exactly what a gunshot residue kit or test is?

24 A. The gunshot residue test is a two-part test. And it
25 actually picks up residue on the hands of a person who is

1 suspected of either firing a weapon, holding a weapon or
2 being near a weapon when it was fired.

3 The first part of the kit is -- They're called
4 particle lift. It's a small rounded object that is sticky
5 on one side. And you tap it on each area of the hand to
6 pick up actual particles of gunshot residue. After you do
7 the right palm, the right back, the left palm, and the
8 left back, each with a separate particle lift, you then
9 take swabs with a dilute solution of nitric acid and you
10 swab the hands. This actually picks up any metals that are
11 on the hands. And that is what we test in this case.

12 Q. Okay. Now, for lack of a better term the evidence
13 which is gathered pursuant to this procedure, is it -- How
14 would you describe it with regards it's -- is it permanent
15 evidence? Is it fragile evidence or is it temporary. How
16 would you describe this procedure?

17 A. According to policy gunshot residue kits they must be
18 collected within six hours of the incident because this
19 residue is very fragile. And if you are a live suspect and
20 you have residue on your hands, within six hours we don't
21 expect to find anything because of all the factors that can
22 remove this evidence. Your body naturally absorbs the
23 metals into your body. If you wash your hands, you're
24 going to totally obliterate the evidence. Anything you do.
25 You can sweat, put your hands in your pockets, run.

1 Anything the rubs up against your hands, it's going to
2 remove that evidence. And I like to kind of make a
3 comparison to if you're baking and you get flour on your
4 hand. That's basically the light dusting on your hands.
5 And if you brush your hands off or wash them, it's gone.
6 And there's no way for us to find it after it's gone.

7 Q. So if someone -- So what's important to know is once
8 someone fires a weapon for your information, what the
9 condition of how his hands were treated from that point to
10 whenever the test was taken; is that correct?

11 A. Right we do need to know that. But basically, we just
12 look at the time of the incident and when it was collected
13 first off to make sure it was collected within a time
14 frame. And then anything else that happens it does have
15 bearing on the results.

16 Q. Now, in your course of this some 1,000 and some odd
17 kits would you have tested over your career with SLED, how
18 many, if any, have resulted in a negative examination even
19 though you know that individual did in fact fire a weapon?

20 A. Normally, we have almost as many positives as we have
21 negatives. And I can't give you a number, but I have had
22 cases where you know they fired a weapon. I've actually
23 collected kits myself where I knew the person fired a
24 weapon and they were negative because you don't know what
25 events have happened after that firing with a gun.

1 Q. And that could go with regards to what you said
2 earlier on whether your hand was stuck in your pocket, when
3 you sat on your hands or washed your hands or whatever; is
4 that correct?

5 A. Right. Anything that you do, any activity.

6 Q. Any activity?

7 A. Yes.

8 Q. Could alter that and show a negative result even
9 though they actually fired the weapon?

10 A. That's correct.

11 Q. Now, the paperwork that you received with this
12 particular kit. Does that tell you -- Do you have a time
13 frame as to when the incident occurred and when kit was
14 actually collected. Does that information -- You have that
15 in your paperwork?

16 A. In the kits, there's a information form that say
17 gunshot residue analysis information form.

18 Q. Okay?

19 A. It lets the collecting officer, the suspect if they're
20 right or left hand or if they're deceased or not because
21 with a deceased individual with a live suspect, there's
22 difference in the time frame. If they've washed their
23 hands, if there's anything present on their hands. If
24 they're possibly missing a hand and that's the reason they
25 didn't collect it. And it also gives us the time and date

1 of the incident and the time and date of collection and the
2 of type of weapon, if they know.

3 Q. Is there any reflection in that report with regards to
4 the defendant having injury to his hand?

5 A. It add that one question with any degree any blood on
6 subjects hand. And then it's marked yes. And then it says
7 blood slash dirt.

8 Q. All right. Would that effect the result of the test?

9 A. If the hands are bloody and dirty, that could have a
10 baring on it. But like I said it's a two part test. The
11 part that I tested was actually swabs, which looks for any
12 metals on the hands. The blood want effect that other than
13 it could wash it off if it's a lot of blood on the hands.
14 But the blood will effect the second part of the test, but
15 that wasn't performed since the first part was negative.

16 Q. All right. Do you have -- Could you please tell the
17 jury according to the paperwork that you received at what
18 time was this GSR kit sample collected?

19 A. They were collected at 9:20 p. m.

20 Q. 9:20?

21 A. Yes.

22 Q. And that's not military time?

23 A. Well, it's 2120.

24 Q. Okay. 9:20 in the evening?

25 A. On 12-14.

1 Q. All right. Then the date it was collected?

2 A. 12-4-99.

3 Q. So in your opinion as someone who deals with these
4 kits and the procedures that are appropriate in taking
5 these kits, if this shooting occurred at six minutes to six
6 on 12-4-99 and this kit was collected at 9:20 12-4-99,
7 would it be your opinion that the kit was properly
8 collected in an appropriate time?

9 A. Yes, it was collected within the six hours.

10 Q. Do you know -- Does that paperwork give you
11 information on the type of weapon that was allegedly fired?

12 A. They do write down the type of weapon.

13 Q. And through your involvement in this case to the
14 extent that you're involved in it, have you been given
15 further information to know in a little bit more detail the
16 type of weapon which was used in this case?

17 A. 12-guage shotgun.

18 Q. All right. And base on your understanding of this
19 particular weapon, could you say that you would more likely
20 or less likely expect to find gunshot residue on someone's
21 hands who shot this particular weapon?

22 A. It depends a lot on the weapon which I have not seen,
23 but with a long barrel weapon which will be a shotgun or
24 riffle. The end of the barrel was away from your hand
25 unless your hand is up near the barrel. The barrels were

1 most the majority of the gunshot residue is dissipated
2 from. And it exits the gun in a circle or like a
3 elliptical pattern. If your hands aren't in that area,
4 there's less likely of a chance that you're going to have
5 gunshot residue deposited on your hands.

6 So if I have a .45 say revolver, you're gonna get
7 gunshot residue -- It's closer to your hand and there's
8 more chances of getting it on you. If you have a shotgun
9 and you actually have your hands down with the -- If you
10 don't have your hand up at the end when you're firing it,
11 you possibly could not even get it on your hand.

12 Q. Would it make a difference if a weapon is considered
13 -- You mentioned a .45. Would it make a difference if a
14 weapon is considered a close breach weapon or a revolver or
15 a semiautomatic type weapon?

16 A. If it's a closed breach, you wouldn't expect to get
17 the residue that comes out of like the cylinder gap whether
18 it's an open breach or a semiautomatic. You actually get
19 the residue on any opening of the gun that it's gonna come
20 out of. So if it's a closed breach and it's tightly
21 closed, you probably wouldn't get that much out of it.

22 Q. If any?

23 A. True.

24 Q. Jennifer, I'd like to show you what's been marked as
25 State's Exhibit Number 39. And just -- Can you identify

1 that for the jury please?

2 A. This is a copy of my signed report on this case.

3 Q. And is it a fair and accurate copy of the report that
4 you gave?

5 A. Yes, it is.

6 MR. RUSSO: Your Honor, at this time I would move
7 State's 39 into evidence.

8 MR. DEBERRY: No objection, Your Honor.

9 THE COURT: Without objection.

10 (Forensic lab report entered as evidence as State's
11 Exhibit Number 39.)

12 Q. I gone get you if you would to refer to your copy.
13 Could you tell me what the results were of the examination
14 you did on the kit that was submitted in this case on
15 Mr. Tracy Willard Daniel?

16 A. In this case, I only received one item of evidence
17 which was the GSR kit. And in the sample submitted in the
18 kit labeled Tracy Willard Daniels, the quantities and
19 metals detected did not indicate the presence of gunshot
20 residue.

21 Q. All right. Now, in your opinion in your experience,
22 Jennifer, is that depositive as to whether or not an
23 individual in this case Tracy Willard Daniels. Is that
24 depositive of whether or not he fired a gun?

25 A. From whenever we get a negative result, all we can say

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1 is that we have no evidence to support he fired a gun. But
2 we don't know what happened from the time the gun was fired
3 to the time the kit was collected. So it doesn't mean he
4 didn't fire a gun. It just means there's no residue there
5 to tell me that he did.

6 MR. RUSSO: All right. Thank you. I have no
7 further questions. Please answer any questions Mr. Deberry
8 may have.

9 CROSS EXAMINATION BY MR. DEBERRY:

10 Q. It's Ms. Stoner; is that right?

11 A. Yes, sir.

12 Q. Ms. Stoner, you have selected a very unique field to
13 go into as a career; is that correct?

14 A. I guess you could say so. I think there's more people
15 getting into now.

16 Q. And exactly what do you call yourself?

17 A. A forensic chemist.

18 Q. Okay. And you specialize in what field of forensics?

19 A. Trace evidence analysis.

20 Q. Trace evidence analysis. And you done a 1,000 of them
21 already?

22 A. In every kit -- We have kits from certain counties
23 where they'll have a suicide and they'll submit 15 gunshot
24 residue kits. So I have done well over a 1,000 in the time
25 that I've been with SLED.

1 Q. Okay. And a residue -- Trace residue is what you have
2 referred to ---

3 A. Gunshot residue.

4 Q. Gunshot residue. Okay. And that can tell a lot can't
5 it?

6 A. Yes, it can.

7 Q. And tell the jury what all instances that can be.
8 What all it can tell that help people in a important
9 decision?

10 A. I'm not exactly sure what you're asking. What does
11 the gunshot residue show?

12 Q. Yeah.

13 A. The gunshot residue basically -- If we a positive
14 result which we have gunshot residue on the hand, we can
15 say they fired a weapon. They were near a weapon when it
16 was fired or they handled a weapon that had recently been
17 fired. So it can basically can tell you if they were near
18 a weapon, fired a weapon or handled the weapon or if they
19 there's no evidence to support they were near a weapon.

20 Q. Okay. Now, did you do anything as far as the
21 distance. You spoke of this thing as sort of like a cloud;
22 is that right?

23 A. That's correct.

24 Q. Tell the jury what you mean by that?

25 A. Whenever -- If you've ever fired a weapon, whenever

1 the bullet exits the weapon, there's also a cloud like a
2 burst that comes out and contains all the gunshot residue
3 that is in the primer mixture in the barrel and in the
4 bullet itself.

5 Q. And would there be more or less of that cloud and
6 residue from a shotgun blast then there would be say a
7 riffle or a pistol?

8 A. It depends on how you're looking at it. If I have
9 pistol -- If I have a .22, I'm not gone that much gunshot
10 residue out of it. But still the .22 is closer to your
11 hands then the end of the barrel on a shotgun.

12 Q. Maybe, I didn't make myself clear. Regardless of
13 whether we find it, whether it gets on your hand or not.
14 Question is in compared to a shotgun with a shell about
15 that big around say. Would there be more or less of that
16 cloud from a shotgun then there would be from a pistol or a
17 riffle?

18 A. It's going to depend on your ammunition. What kind of
19 pistol are you're talking about. A 50 caliber weapon would
20 leave a lot of residue, which could be comparable to a
21 shotgun but it's -- It depends on where -- You may have
22 more residue, but it's also further away from you. It
23 depends on the caliber of weapon, the type of gun, there's
24 many factors influencing it.

25 Q. Okay. And how would categorize this case where here

1 about. Was that a lot coming from a -- Did you know what
2 what shell fired?

3 A. I have no knowledge of that. I just know it was a
4 12-guage shotgun.

5 Q. And do you sometimes have the benefit of having the
6 actual shell that was fired, the casing?

7 A. We do not get the shell casings. We can possible get
8 a swabbing of the shell casing, but I don't do firearms.

9 Q. So it wouldn't have helped if you had the casing with
10 you?

11 A. No.

12 Q. And if I tell you now it was Winchester 12-guage
13 double-ought (00) buckshot, that wouldn't make any
14 difference; right?

15 A. Not really. I would have to shoot the ammunition or
16 to see how this gun was fires or what it does.

17 Q. That could be done; right?

18 A. It could be done. But we do it for distance
19 determination not for gunshot residue.

20 Q. So you do distance determinations, too; is that right?

21 A. Only if it is only clothing and there's a actual
22 bullet hole where we can prove it's a bullet hole.

23 Q. How about if it's on a body?

24 A. No, we do not.

25 Q. You don't?

1 A. No.

2 Q. Did you know that in this case that the -- that Donald
3 Leffingwell had clothes on?

4 A. Who did?

5 Q. The deceased in this case?

6 A. I have no knowledge of anything other than I received
7 this gunshot residue kit. I have a form that tells me when
8 it was collected, what type of gun it was and who collected
9 it.

10 Q. Okay. So as I understand it though what came out you
11 sometimes do distances studies, too; is that right?

12 A. We do distance studies if clothing is submitted and
13 which there is ---

14 Q. Any were submitted?

15 A. Not according to this. If there is actually a bullet
16 hole in the clothing.

17 Q. Okay.

18 A. If they get shot in the head or the arm and they don't
19 have a long sleeve shirt on, there's nothing we can do with
20 it.

21 Q. What if they got shot right here in and they were
22 fully clothed?

23 A. Is that a hole in the clothes.

24 Q. I don't think so. In the front part of the clothes
25 maybe in the rear?

1 A. You can't do anything with the rear. It has to be --
2 cause that would be considered a moving object. What we
3 test for ---

4 Q. Excuse me just a minute. If it was correct for a
5 change, it was only a hole in the back of the clothing that
6 wouldn't have helped you?

7 A. No, it would not because that's considered the exit if
8 they were shot from the front. And we need to have the
9 area where the muzzle was pointed towards to do our test.

10 Q. So if we have certain things, you could help us with
11 distance and help us recreate how far away the end of that
12 barrel was from the person that it struck?

13 A. If I have the clothing where supposedly the bullet
14 went through, and it was the actual entrance shot.

15 Q. Okay. What if you had -- were able to look at the
16 person's body and you were able to see gunshot residue in a
17 circular around the person's body?

18 MR. LAWSON: Your Honor, I object. I don't believe
19 there's been any testimony in the record that gunshot
20 residue that -- But I think that's ---

21 MR. DEBERRY: Let me see if she...

22 MR. LAWSON: There's a difference.

23 THE COURT: Well, it was stippling. I want to
24 give him some leeway. I think I know that the answers gone
25 be. He can ask it.

1 Q. You weren't here when they took a picture and put it
2 up in here on a blowup thing and I think it's in evidence
3 here somewhere. I'm gone look at State's Exhibit 1 here
4 and ask you if you see all those little grey spots all
5 around in that area right there?

6 A. Yes, I do.

7 Q. Okay. And can you see a wound there?

8 A. Yes.

9 Q. And if you had the benefit of looking at the records
10 to see that that was one inch and one tenth opening?

11 A. If I was told that by record.

12 Q. Okay. And if you had any indication or has anybody
13 indicated to you that there was statements to the effect
14 that the gun was shot when somebody was two to three feet
15 away?

16 A. I have no knowledge of that.

17 Q. Looking at that picture there, can you tell tell us
18 what that appears to be without pointing to those little
19 spots there?

20 A. Not from this picture. I have not tested this. I
21 haven't looked at these particles.

22 Q. I understand that.

23 A. I don't know if that's dirt. I don't know if that's
24 from the gun. So I really can't make an educated statement
25 on this because that's not -- That is not expertise. This

1 was an autopsy I haven't looked at this. If this were on
2 clothing I found stippling, if that's in fact what it is,
3 then I could test it, but this is on a body.

4 Q. Does gunshot residue look like that right there?

5 A. You can't see gunshot residue. Gunshot residue is
6 basically the cloud of -- You can't see.

7 Q. What is the difference in gunshot residue and
8 stippling?

9 A. Gunshot residue is everything that exits the barrel of
10 the gun. Stippling and tattooing is caused by pieces of
11 actual particles that are exiting the gun at a high rate of
12 speed at high temperature and actually imbed themselves in
13 the skin and can burn it or stay in the skin. If it's just
14 a portion that could be considered gunshot residue, but
15 gunshot residue encompasses everything.

16 Q. Now, in those cases where you have two people that
17 allegedly were close together and there's a firing ---

18 MR. RUSSO: Your Honor, I object. Can we approach.

19 (A bench conference was held in the presence of the
20 jury, but of the hearing of the jury.)

21 Q. If you -- In cases where's it's alleged that two
22 people were close together at the time of a gunshot, in the
23 1,000 cases that you have done assume some of them are like
24 that; is that correct? Some of them were in close range?

25 A. Yes, sir.

1 Q. All right. And as a general rule, would it be a fair
2 statement to say that you got gunshot residue kits from
3 both individuals unlike this case where you only got one?

4 A. In some cases I do and some cases I don't.

5 Q. In this case, you got nothing from Donald Leffingwell
6 the decedent in this case; right?

7 A. I received one item of evidence and that was the GSR
8 from Tracy Willard Daniels.

9 Q. Now, tell us if a gunshot residue kit had been taken
10 from the decedent in this case, what would they have done
11 to his hands? How would they ---

12 A. During the taking of the kit?

13 Q. Yes.

14 A. They take the kit exactly the same way they would on
15 the live suspect.

16 Q. And tell us if you had gotten that kit, what could you
17 have done with what you found there?

18 A. It depends on what I found.

19 Q. All right.

20 A. If I find -- If I had this kit and I found gunshot
21 residue on it, all I could tell you is six hours prior to
22 when that kit was taken, prior to when he died, he was near
23 a weapon, wired a weapon, handled a weapon or was near one
24 when it was fired.

25 Q. Now, tell me if you had -- were there been anyway --

1 Do you often find defensive evidence of defensive move by
2 somebody that's been shot when you find something on there
3 hand like that?

4 MR. RUSSO: Objection, Your Honor. That's -- This
5 witness out her scope of testimony in this case. She's
6 simply was sent a GSR Kit to be tested. She tested the GSR
7 Kit. That was her involvement in this case.

8 THE COURT: Rephrase your question.

9 Q. When you are given the GSR Kits from the deceased is
10 one thing that you're able to determine sometimes is
11 whether or not somebody put up a defensive type mood, can
12 you get evidence to help us in that regard?

13 A. Rarely can we get evidence like that. Because if you
14 do have your hands up in front of you and the barrel of the
15 gun is in front of you pass the point of your hands, they
16 very well could have been a defensive posture and we could
17 not pick that evidence up because the barrel was pass that
18 point. So rarely I haven't even had a case were I
19 testified to a defensive posture because you can get high
20 levels if you're on the side of a gun where it's going not
21 necessarily in defensive posture.

22 Q. Okay?

23 A. So it's not very scientifically correct of me to say
24 with a 100 percent that was a defensive posture when there
25 are other scenarios that could contribute to it.

1 Q. Can you tell when you get the gunshot residue case,
2 can you tell which side of the hand it's on?

3 A. We test right palm, the right back, the left palm,
4 the left back separately.

5 Q. And they're separate?

6 A. Yes, they are.

7 Q. All right. So is it -- Are there times when you been
8 able to tell whether or not somebody had something in their
9 hand or whether their hand was protected in some ways prior
10 to the shot?

11 A. I wouldn't necessarily say something was in their hand
12 to protect it. It could have been bladed away from the
13 shot in their pocket. You could still have something in
14 your hand to get residue on your hands.

15 Q. Okay. Is there any indication though if you test all
16 of the test samples brought from a hand, can you tell
17 somebody could have been grabbing something like this at
18 the time of the shot went off?

19 A. It's kind of sketchy. I mean you can or you can't
20 because you can get get gunshot residue in these creases.
21 And if they pick it up when they're swabbing it, they're
22 swabbing the whole area. You still have areas that are
23 exposed. So we're still going to pick up that residue. So
24 I can't say if there were something in the hand. I can
25 just say possibly the hand was bladed from the shot.

1 Q. Okay. In your field of expertise, obviously a very
2 specialized field; right?

3 A. We actually have several different disciplines in our
4 area. We don't do only gunshot residue.

5 Q. Okay. Well, does your area would never have a chance
6 to be involved with what they call blood splatter?

7 A. No, that is not in my area.

8 Q. And you never work in that conjunction with those
9 people?

10 A. I do not.

11 Q. That would be somebody within your department, but in
12 a different ---

13 A. Within SLED, but in a different department.

14 Q. And that's available?

15 A. Yes, it is

16 Q. Thank you. Did you happen to know how old this gun
17 was?

18 A. The gun?

19 Q. Yeah.

20 A. No, I have no knowledge of that.

21 Q. Did you happen to know what type of cocking mechanism
22 it had on it?

23 A. No.

24 Q. Did you know what -- whether or not it was a gun that
25 was -- would be breached or not?

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1 A. I did not see the weapon. All I have is the 12-gauge
2 shotgun that's all I know.

3 Q. That's all you knew?

4 A. That's all I know.

5 MR. DEBERRY: That's all I have.

6 MR. RUSSO: I have no further questions, Your Honor.
7 Your Honor, we would ask that special agent done her duty
8 to be excused.

9 THE COURT: You're excused at this time. I'm Paul
10 Burch Circuit Judge in the Forth Circuit. Tell Steve Smith
11 I send my regards.

12 MS. STONER: I will.

13 (The witness left the witness stand.)

14 MR. RUSSO: Your Honor, the State would now call
15 Special Agent Ira Parnell.

16 IRA PARNELL, being first duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. RUSSO:

19 Q. State your full name for the record?

20 A. My name is Ira Bird Parnell, Jr.

21 Q. Special Agent Parnell, where are you employed?

22 A. I'm employed by the South Carolina Law Enforcement
23 Division otherwise known as SLED.

24 Q. How long have you been employed with SLED?

25 A. Been employed by SLED for almost 29 years.

1 Q. What is your position with SLED today?

2 A. I'm the supervisor of the firearm and tool mark
3 identification laboratory at SLED headquarters in Columbia.

4 Q. Okay. And if you would, sir, could you please give
5 the jury the benefit of your education, experience, and
6 your training with regards to firearms?

7 A. I attended the University of South Carolina where I
8 achieved a degree in the area of criminal justice. During
9 the last couple of years with my college program, I was
10 also undergoing training at SLED. I was working full-time
11 and going to school full-time. I studied under three court
12 qualified firearms examiners at SLED headquarters because
13 at that time there was no college degree program or higher
14 education program that you could attend that taught the
15 discipline of firearm and tool mark identification. Upon
16 completion of my internship, I went to the South Carolina
17 Criminal Justice Academy. I've also attended the FBI
18 National Academy and numerous other courses at the FBI
19 National Academy where I've received additional training in
20 firearm and tool mark identification. I'm a member of the
21 association of firearm and tool mark examiners, which is a
22 group of individuals that's worldwide. We meet once a year
23 for a week where we discuss the latest trends in techniques
24 and firearm and tool mark identification. This is
25 considered continuing education in that area. I also read

1 the FD Journal, which is the publication put out by the
2 association of firearm and tool-mark examiners when I can't
3 attend the seminar. I've testified approximately 515 times
4 as an expert witness in the state, federal, and in North
5 Carolina court in the area of firearm and tool mark
6 identification.

7 Q. Thank you, sir.

8 MR. RUSSO: Your Honor, at this time we would
9 present Special Agent Parnell as an expert in firearms.

10 MR. DEBERRY: I'm sorry. No objection.

11 THE COURT: So qualified.

12 Q. Special Agent Parnell, I'm going to turn your attention to this
13 particular case. You were asked to examine a weapon
14 involving this case against Mr. Tracy Daniels; is that
15 correct?

16 A. Yes, sir, I was.

17 Q. When was that?

18 A. That was last week.

19 (Gun marked for identification as State's Exhibit
20 Number 40.)

21 Q. All right. I want to show you what's been marked
22 for State's Exhibit 40 for identification purposes at this
23 time. Do you -- Can you identify this box?

24 A. Yes, sir I can. That's the box which I sealed the
25 shotgun in question in. It still bears my signed and

1 initialed and dated evidence seal at the access points.

2 Q. All right. We need a knife of some sort.

3 MR. RUSSO: Your Honor, I'm gone let him handle it
4 from here on.

5 Q. Special Agent Parnell, is that the gun that you were
6 sent to examine?

7 A. Yes, sir, it is. It bare my case number specimen
8 number and initials described on the gun.

9 Q. If you would for the ladies and gentlemen of the jury,
10 would you please describe to them exactly what type of
11 weapon this is?

12 A. Ladies and gentlemen, this is what we refer to as a
13 single barrel shotgun. It's subcall because it has, of
14 course, one barrel and it only holds one shell at the time.
15 It's manually operated. This is the breach lever right
16 here which operates the gun. In order to load State
17 Exhibit 40 for identification at this point, you must open
18 the action of the gun, insert a shotgun shell into the
19 chamber and close it. And it's at that point loaded.

20 Q. Now, how would this be closed breached, open breach.
21 How would this gun be described as?

22 A. It's definitely a closed breach gun because there's no
23 openings here at all. The whole gun is closed once it's
24 loaded and closed down. There's no ports or other orifices
25 here for anything come out of it.

1 Q. Now, how is that different from say a semiautomatic
2 weapon or a revolver or a pistol -- semiautomatic pistol?

3 A. Well, first of all this is a shotgun. It's not a
4 handgun. A single barrel oppose to say a semiautomatic or
5 a pump. In either one of the two that I mentioned before a
6 pump or semiautomatic, there's an injection port out of
7 which comes the fired shell casings when the gun is fired
8 with the single barrel there's no ports here. It's all
9 closed up. And in order to reload, you must activate the
10 breaching lever and open the action remove the shell casing
11 put in a new cartridge, close it back and then start the
12 process over again.

13 Q. Now, also the triggering mechanism with regards to
14 this weapon. How do you actually fire this weapon?

15 A. State's Exhibit 40 for identification is a single
16 action firearm in that it must be manually cocked and the
17 trigger pulled to make it fire. In other words, the action
18 of the trigger acting on the hammer, and the hammer hitting
19 the firing pen, the firing pen hitting the shell causes the
20 whole thing to fire. And there's no -- nothing happens
21 when you just pull the trigger. You must first cock it.
22 So this is what we call a single action firearm.

23 Q. And how is that different from say double action?

24 A. A double action is typically referred to a handgun
25 like a revolver or semiautomatic. And in a double action

1 when you pull the trigger, the internal mechanism of the
2 firearm itself will cause it to cock and fire with no other
3 action being done other than the trigger being pulled.

4 That is oppose to a single action. This is a single action
5 and you have to cock it to make it shoot.

6 Q. So for this weapon to be what I call cocked, opening
7 the breach and inserting the shell and closing the breach,
8 if that's all you do, then if you have a weapon that's in
9 proper working condition, you can't fire that weapon simply
10 by loading the shell and closing the breach; is that
11 correct?

12 A. That's correct.

13 Q. You have to manually pull back the hammer?

14 A. Yes, sir. It has to be activity pulling this hammer
15 back whether you hold the trigger back and let the hammer
16 go or whether you cock it and fire it.

17 Q. So when that hammer's forward pulling that trigger all
18 day long want fire that weapon?

19 A. It does nothing, no, sir.

20 Q. Now, could you tell me can you tell me or can you tell
21 me through your examination of that weapon about the year
22 that it was made?

23 A. Well, State's Exhibit 40 for identification does not
24 have a serial number stamped on it. So that means that it
25 was manufactured before 1968 when serial numbers were

1 required on firearms after that point. It was sometime
2 prior to 1968.

3 Q. Okay. So had it been some time after '68, you would
4 have seen a serial number. So that's how you're able to
5 tell at least prior to '68?

6 A. Yes, sir.

7 Q. All right. Now, you performed various tests on this
8 particular shotgun; is that correct?

9 A. That's correct.

10 Q. Would you please share with the jury exactly what you
11 were doing with the shotgun?

12 A. I was asked what we refer to as a safety function
13 test. That's where we take various measurements. We make
14 sure that State's Exhibit 40 for identification is working
15 properly basically. I test fired it. I measured the
16 trigger pull and pounds which amounts to the amount of
17 pressure required to make the hammer fall. In other words,
18 when you pull the trigger, it requires between two and a
19 half and three pounds of pressure to make that hammer
20 dislodge and fire. I checked the ejector. The thump that
21 you just hear or just heard rather. It's working properly.
22 Basically, I found no malfunctions involved which State's
23 Exhibit 40 for identification.

24 Q. Now, if I were to tell you that on December the 4th of
25 1999 that gun was picked up by the Sheriff Department

1 placed in that box and secured in that box as we saw it and
2 no further operation of that weapon had occurred, what
3 would you -- Would that weapon be in the same condition
4 today as it was back in December 4th as far as the
5 functionality of it?

6 A. Assuming that the facts that you stated are correct
7 and they was put in the box. And I took it out of the box
8 in the same condition. Then when I took it out of the box
9 it was functioning properly.

10 Q. In other words, age or time wouldn't have effected the
11 functionality in the scenario I just gave you?

12 A. No, sir.

13 Q. All right. When you test fired the weapon, did you
14 use double-ought (00) buckshot when you test fired the
15 weapon?

16 A. No, sir, I did not.

17 Q. What did you use?

18 A. I used Winchester light trap loads.

19 Q. And why did you make that selection versus the
20 double-ought (00)buck?

21 A. Well, there were two reasons. One of them is the
22 recall is severe with a buckshot shell and a fire of this
23 light weight. And the others I was just checking to see if
24 it would fire. I didn't know anything else to test it
25 with.

1 Q. And your experience in dealing with firearms and those
2 that work for you in that area, other than actually being
3 shot by weapons and handling of a weapon of this nature and
4 firing of a weapon of this nature have you experienced any
5 injuries as a result of shooting a heavy load out of a
6 shotgun of this nature. The way it's set up?

7 A. Other than the discomforting your shoulder that the
8 breaching lever has pinched my hand and I know others from
9 our department who have been cut to the point that we had
10 to take them for stitches.

11 Q. And that type of injury where would that occur as far
12 as on your body?

13 A. In the web of your hand. Between the thumb and
14 forefinger.

15 Q. Would that be underneath or on top?

16 A. It's generally on top. Normally, what happens it
17 slides through and catches the top of your hand above the
18 web or in the web itself.

19 Q. Okay. Special Agent Parnell, again, I'm going to give you
20 a scenario and ask you a question in regards to that. A
21 weapon of this type, this particular weapon loaded with
22 double-ought (00) buckshot. If it's fired within a range
23 of anywhere from two to three feet from a target, what if
24 any effect would you have found from that as far as -- And
25 I don't know the name of the test maybe you can tell me

1 where you're testing the spread of the shot. I don't ---

2 A. It's a distance determination.

3 Q. Distance determination. Okay. Now, there are various
4 ways to do that if you actually have a body. There's ways
5 to determine that; is that correct?

6 A. We have a standard procedure that we use to determine
7 the spread. If I went to the crime scene myself and I
8 observed the victim or the area that had been fired or hit
9 with a loaded shot and I took my own measurements and
10 photographs, then I would return to our laboratory and get
11 shells, if none came with the gun. I would get shells out
12 of our reference library of ammunition that are just like
13 or close to just like what is in evidence as we have. And
14 I would normally do a series of test patterns.

15 I would take a tape measure and measure generally in
16 one foot increments from contact with target back to say 15
17 feet. If I took the measurements myself and I know that
18 the spread of the shot from whatever gun is involved is
19 approximately six inches, then I would shoot test patterns
20 that are smaller than a six inch spread and go back till I
21 have a significantly larger pattern than a six inch spread.

22 So I can safely say that the pattern that I observed
23 and measured myself was between A and B in range. Shotguns
24 are variable. Two guns that are just a like sometimes will
25 cause different spreads in their patterns using the same

1 type of shells. The pellets are moveable. They come out
2 of the barrel moving. Sometimes they spread a little
3 different, sometimes they stay a little tighter. The age
4 of the shell has effect on the spread. Sometimes older
5 shells will cluster tighter together because they get
6 corroded. The pellets get corroded and they stick together
7 tighter. There are many variables involved, but basically,
8 I would shoot from contact say out to 15 feet in one foot
9 increments.

10 Q. As a shell and in this case I want to keep referring
11 to a double-ought (00) buck load. As those leave a weapon,
12 they come out of the weapon obviously a group together
13 coming out of the barrel. And at some point, they begin to
14 spread and that spreading -- Let me see how I can word
15 this. Can you tell me or can you give me your opinion
16 based on once that load leaves with the shotgun, and say in
17 this case, enters the neck of a victim comes out the other
18 side, the backside. What would you expect to -- What would
19 you expect to occur with that grouping of pellets as it
20 goes through and comes out the other side?

21 A. One thing that would happen is the pellets would be
22 disrupted. If they went in as a single unit or very close
23 to a single unit without spreading out any and once they
24 encounter a target whether that's a body or a pane of glass
25 or board, anything -- Once they disrupt and they begin to

1 spread out, that's normally what happens.

2 Q. Would in your experience with weapons and testing and
3 firing and everything in the scenario that we have here
4 where an individual was shot through the neck and the
5 pellets exited through the back?

6 MR. DEBERRY: Your Honor, I'm not so sure we aren't
7 getting a little far fetched here in what this witness was
8 brought here for.

9 MR. RUSSO: I brought the witness here, judge. I
10 know what he was brought here for.

11 MR. DEBERRY: If he's done some test in this field,
12 fine. If he's tested this case -- But we're asking some
13 hypothetical questions here that I don't think that's been
14 a proper ---

15 MR. RUSSO: Your Honor ---

16 MR. DEBERRY: Excuse me just a minute may I finish.
17 I think this person has been asked some hypothetical
18 questions here that are just too farfetched. I don't think
19 he's laying a proper foundation.

20 THE COURT: I'm gone overrule the objection. If he
21 can't answer it, he will certainly tell us that I would
22 think. And, of course, hypothetical questions are
23 permissible if they are formed and expressed in the correct
24 fashion.

25 Q. Double-ought (00) buck load shot from this shotgun

1 through the neck of the victim and exits the back, would it
2 be in your opinion based on your experience and your
3 testing of various things. Would it be unusual for you to
4 find that?

5 MR. DEBERRY: Objection. That's leading.

6 THE COURT: Sustained.

7 MR. RUSSO: Just trying to think of how to word it,
8 Your Honor.

9 THE COURT: Take your time.

10 Q. Once those pellets left the deceased and went out the
11 back, what would you expect the condition of those pellets
12 -- What would you expect the action of the pellets to do?

13 A. Well, number one they will be losing velocity.
14 Number two they would be as I said dispersing and going in
15 other directions and spreading out. And they were continue
16 in the direction that they were generally heading in until
17 they either gravity pulls them down or they encounter
18 something else and change directions.

19 Q. Would you find it unusual to find a spread of some
20 numerous feet on an object back behind the individual.
21 Would that be unusual?

22 A. I would not find that out of the realm of
23 possibilities because as I said when they -- when pellets
24 encounter something what we call intermediate target
25 between where they're fired from and where they ultimately

1 wind up. When they run into that resistance, it disrupts
2 the pattern as they swarm a shot and they can go in various
3 directions. So I would not be surprised to find a large
4 spread.

5 Q. All right. Now, this particular weapon I think you
6 described as closed breached weapon?

7 A. Yes, sir.

8 Q. Have you in your experience with firearms and dealing
9 with them. Are you familiar with gunshot residue and how
10 it is disbursed and effected?

11 A. Yes, sir.

12 Q. And would you please tell the jury with a weapon of
13 this particular type of what you would expect with regards
14 to someone firing this weapon and whether or not you would
15 find gunshot residue or more likely than not would you find
16 an amount of gunshot residue. And why -- What you based
17 that opinion on?

18 A. Well, I don't do gunshot residue test in the
19 laboratory. I'm very familiar with firing guns. I have
20 assisted in doing gunshot residue test for 28 years. What
21 happens when a gun is fired is the residue or the gases
22 that are produced as a result or a by product of the actual
23 firing of the shotgun shell. They got to go somewhere. So
24 when the primer is at the back end of a shotgun shell, it
25 has residues within it that are left there when the primer

1 compound explodes or ignites. It further explodes and
2 ignites the powder that's inside the shotgun shell. All
3 these produce gases which are in effect waste products of
4 the actual combustion. And there's no way on this gun or
5 guns like this for that residue to go except out the
6 muzzle.

7 Unless there's some other hole in the back end of
8 that cartridge case, which is very and highly unlikely that
9 there no other orifices for that residue to come from
10 except out the front. And this cloud is very fine dust
11 type of residue. And it generally swirls and follows the
12 shot down for a certain distance. And then settles to the
13 ground or on whatever objects are close by.

14 Q. So in firing a weapon -- In firing this weapon, when
15 you fire this weapon, what would you have expected to find
16 with regards to gunshot residue on your hands?

17 A. From a position back here, I would not be surprised at
18 all if there were no residue found on my hands firing from
19 this position. This hand here if I were in still air and
20 just stood still after I fired the gun, then there may be
21 residue that settled on my front hand or my fore-end hand,
22 but again I would not be surprised if I didn't have any on
23 there because it's far away from my hand when it's fired.
24 It's probably a good two feet away from my hand.

25 Q. In your training and your experience, have you ever

1 heard of or yourself been trained with regards to what --
2 And I may have the term wrong, but shotguns with regards
3 ricochet shooting. And I may have that term wrong?

4 A. I have seen demonstrations and have been told where
5 not to stand in order not to be hit by a ricochet. So I'm
6 familiar with what you're are talking about. So yes, I'm
7 familiar with ricochets.

8 Q. And essentially what is the danger there with what we
9 call ricochet?

10 A. First of all, with a shotgun you have multiple
11 projectiles. And when they come out of the muzzle, there
12 in a state of motion. They're not just being still.
13 They're kind of moving against each other and their round.
14 So whenever they encounter anything that disrupts their
15 flight, then they're gonna spin off or they're gonna
16 particularly if it's a hard object. If it's a hard object,
17 they could easily hit that object and bounce whichever
18 direction it happens to be going in. So a ricochet
19 particularly with a large pellet shotgun load is not
20 unusual.

21 Q. And let me ask you this. If it's industry standard in
22 NA -- And I'll use the casing we have here. In a
23 Winchester load double-ought (00) buck, how many pellets
24 would typically be in that particular load? Is there an
25 industry standard with regards to that?

1 A. If it's a standard two and three quarter inch shell,
2 it's gone have nine pellets. If it's two and three quarter
3 inch Magnum, it will have 12 pellets. If it's a three inch
4 Magnum, it will have 15 pellets.

5 Q. I'm gone ask you if you can. And I'm not sure how
6 this photograph will work. I want to show you what's been
7 marked as State's 17 as well as State's 2. In using that
8 magnifying glass, are you able -- Can you determine the
9 type of shell we have in this particular case? And if that
10 photograph doesn't help, then this one may since showing
11 the back?

12 A. I can't tell looking from this photograph, Solicitor.

13 Q. From either one?

14 A. Neither one, no, sir. That just definitely
15 double-ought (00) buckshot according to the manufacturer's
16 markings, but I can't tell otherwise.

17 Q. But in the range we're discussing in a double-ought
18 (00) buck ---

19 MR. RUSSO: Beg the Court's indulgence for just one
20 moment, please.

21 (Shotgun shell marked for identification as State's
22 Exhibit Number 41.)

23 Q. I hand you what's been marked as State's Exhibit No.
24 41 for identification purposes. Special Agent Parnell, can
25 you tell me what that is?

1 A. Yes, sir, this is a fired Winchester Double X (XX)
2 Magnum double-ought (00) buckshot shotgun shell casing.

3 Q. So based on your training and your knowledge, how many
4 pellets would you have expected to find in that particular
5 shell when it was loaded?

6 A. Twelve pellets.

7 Q. Twelve pellets.

8 MR. RUSSO: All right. Thank you.

9 THE COURT: I'm assuming from the nod that that's in
10 without objection?

11 MR. DEBERRY: I don't think he's offered it, but I
12 don't have an objection.

13 MR. RUSSO: I'll move it in at this point, Your
14 Honor.

15 THE COURT: Without objection. I want to make sure
16 we're clear.

17 (Shotgun shell entered as evidence as State's
18 Exhibit Number 41.)

19 Q. If you can, I'm gone show you what's been marked as
20 State's 1. In viewing and looking at this photo if you
21 need this glass, does that photo give you any help or does
22 it give you any information from which you can form an
23 opinion as to the distance from the muzzle to the victim's
24 neck when this injury occurred, when this shot was fired?

25 A. Nothing other than the obvious would be close. And I

1 use the fact that there are what we call stippling marks,
2 which are actual places where burned -- burning powder
3 impacts the skin and it tatoos or makes a dark impression
4 in the area. Also got the white polyethylene filler, which
5 is also a component that is packed around the pellets in a
6 buckshot shell and certain other high quality shells to
7 cushion the shot that keep them around. That's evidence as
8 in the photograph on the left shoulder. The white little
9 particles that look almost like grits or cream of wheat or
10 something. All this is indicative of a close range wound.

11 Q. And in your experience, how would you define a close
12 range?

13 A. Again, I didn't see the body and I didn't measure the
14 wound. But if we don't have any significant spread of
15 pellets, which indicate little further away and it wasn't
16 contact by contacted the gun being against the neck, then
17 I would say potentially one to four, five feet without
18 testing this gun. I can't give you an definitive answer.

19 Q. Yes, sir.

20 MR. RUSSO: Thank you, sir. I have no further
21 questions. Please answer any that Mr. Deberry may have.

22 (A bench conference was held in the presence of the
23 jury, but out of the hearing of the jury.)

24 THE COURT: It's over into the lunch hour.
25 Everybody can grab s sandwich. Let's be back here at two.

1 Everybody else remain seated while the jury departs for
2 lunch.

3 (The jury was excused for lunch.)

4 (Court recess for lunch.)

5 (Court has now reconvened.)

6 THE COURT: Ready counsel.

7 MR. DEBERRY: Yes, sir. I need -- And he just asked
8 me if I had some photographs that I hadn't shown. I do. I
9 have them there in a digital camera and Stephen Hill is
10 downstairs as we speak. I just asked him what was taken so
11 long. He's down loading them and printing them out. He
12 suppose to be coming up here momentarily, but it is some
13 more pictures just like this that I wanted to use with him.
14 I don't know why -- Soon as they bring them, I will show
15 them to him if that's all right.

16 THE COURT: We need to hold up until you get them?

17 MR. DEBERRY: Let me make one quick call to see if
18 they are on the way. Half of them are through and they
19 should be on the elevator. They ought to be here in a
20 minute.

21 MR. RUSSO: And Johnny, I told the judge I want to
22 get a clarification at this time it is my understanding and
23 if it's not the understanding, then I would move at this
24 time that subject to your objections all of those
25 photographs -- essentially everything up here is in

1 evidence subject to the objections you made earlier.

2 MR. DEBERRY: That's my understanding. I mean --
3 What are you pointing. Have you moved the gun in evidence?

4 MR. RUSSO: No, I haven't, but I was going to at
5 this time or I'll wait to do it through Jason if you want
6 me to do that.

7 MR. DEBERRY: Want we just put the gun in through
8 Jason.

9 MR. RUSSO: Okay. That's fine. But everything
10 other than the gun is in.

11 THE COURT: Other than the gun everybody in
12 agreement?

13 MR. DEBERRY: I'm not buying a pig in a blanket.
14 Only these things that have been marked and that I have
15 been shown; right?

16 MR. RUSSO: Correct.

17 MR. DEBERRY: And this shell and this exhibit that's
18 all we got; right?

19 MR. RUSSO: Well, we got these forms for right
20 there. The Miranda form -- The one's marked with an orange
21 stickers are in evidence with the exception of the gun.

22 THE COURT: Subject to any objections that you
23 previously put on the record.

24 MR. DEBERRY: Thank you.

25 (Photographs entered into evidence as State's

1 Exhibits Numbers 1-5 and 8-34.)

2 (Diagram entered into evidence as State's Exhibit
3 Number 35.)

4 (Photograph entered into evidence as State's Exhibit
5 Number 36.)

6 MR. RUSSO: I've got a question. I shared with Mr.
7 Deberry he's got numerous photos here that just this past
8 weekend that he went out and took himself. My problem and
9 I guess my objection with the use of these photos is in
10 light of his cross examination of my witness, how they went
11 out last week and did some further work involving this
12 case. And he intimated to the jury that all of this should
13 have been done along time ago and here you are the final
14 hour doing this.

15 Now, if uses these photographs and he's the one who
16 took them, I can't cross examine him and do the exact same
17 thing that he's doing to the state's witnesses. So I would
18 object to the use of these photographs. It would be
19 different if his investigator took them and I could put his
20 investigator on the stand and question him as he has
21 questioned Investigator Hanna. But Mr. Deberry took these
22 photographs and I can't cross examine him. And he took
23 them this past weekend in preparation for this case. And,
24 you know, I don't think I would object if it wasn't for the
25 fact that he is really done a great job.

1 MR. DEBERRY: He just want to get me back, judge.

2 MR. RUSSO: And getting this jury to -- He attacked
3 the State's case based on this very issue. And I'm
4 confident knowing Mr. Deberry that he'll continue to drive
5 that nail in in further opportunities through closing or
6 through other witnesses. And based on that, I certainly
7 have an objection to the use of these photographs, which he
8 himself took just a few days ago.

9 THE COURT: Well, it's hard for me to rule on that
10 without knowing the nature of his cross on it. If it's
11 gonna get into how the photographs were taken and
12 measurements and all that could go to the actual
13 photographer.

14 MR. RUSSO: I certainly would go into when they were
15 taken, who took them.

16 MR. DEBERRY: I'm gone say right off the bat they
17 were taken between -- That lady wouldn't see me until after
18 the ribbon cutting at the Y, which was two o'clock. And
19 she left there about 2:30. And I met her at three o'clock
20 Sunday afternoon where her trailer had been moved to from
21 the scene. And I met her there to get some information.
22 One of which is the ---

23 MR. RUSSO: Several of these holes have been
24 repaired or patched I guess it's a patch since this
25 occurred. And, Your Honor, just as the State is under Mr.

1 Deberry's scrutiny about how you perform your
2 investigations. Mr. Deberry's been on this case from the
3 get go as well. And his office has been on this case.
4 And, again, I'm not shifting any burden. But once a
5 defendant chooses to actually put up a defense, then I have
6 to right to attack that defense.

7 And if my people are going to be under attack the
8 way they performed an investigation, then I should be able
9 to attack the defense and items they're trying to put in.
10 And I don't see how I can cross examine Mr. Deberry on why
11 he waited until this weekend to do it. When he did it.
12 Where the trailer was. What was the condition of the
13 trailer. Was it in the same location, it wasn't. Had the
14 holes been repaired, they had. Is that the door that was
15 on there that night, no it was not. I mean, there's just
16 -- It's a myriad of problems. And it's just in my opinion
17 it's not fair for him to have carte blanche to attack the
18 State's investigation and I can't lay a glove on his. And
19 that's why I think these photos will be improper to be used
20 and that would be my objection.

21 MR. DEBERRY: I think like you said until there's
22 some attempt to use them or taking of the pictures or
23 timing of the pictures or the fact that the lawyers took
24 the pictures cause some problems, it's not gonna cause a
25 problem.

1 MR. RUSSO: I can tell the Court right now I intend
2 to want to go into that. So I can tell the Court -- My
3 reason for doing that it now instead of bringing the jury
4 out and sending them back, I'm just trying to be judicious
5 with our time. That's gonna be an issue that I'm gone
6 attempt to raise. Now, if the court doesn't allow me to do
7 that that's one thing, but I think I have the right to
8 based especially on the way he has attacked the State's
9 case. I think I have that right and I can't do it. Now
10 again, I say, Your Honor, it will be a different situation
11 if someone else -- I mean, basically it kind of puts Mr.
12 Deberry in the position of being a witness.

13 MR. DEBERRY: I'm not gone put myself in that
14 position, Your Honor.

15 MR. RUSSO: If he intends to publish these
16 photographs to the jury, then he's in that position because
17 I would objection to that.

18 MR. DEBERRY: I don't agree with what he just said.

19 THE COURT: I don't necessarily agree with that.

20 MR. RUSSO: Your Honor, how am I going to -- Who am
21 I going to ask when was these photographs taken, where was
22 this trailer when you took these, what was the condition of
23 the trailer, and how does that relate.

24 MR. DEBERRY: I got that covered.

25 MR. RUSSO: Okay.

1 MR. DEBERRY: And I'm not gone take the stand.

2 MR. RUSSO: I already knew you wouldn't. But -- And
3 then be able to go into, Well, wouldn't it have been better
4 if you had done this back just as he did to Investigator
5 Hanna and I'm sure he's gonna do with the rest of the
6 investigators who testify. Wouldn't it have been better if
7 you had a done this earlier.

8 THE COURT: See he can go forward here. He might
9 ask Mr. Parnell questions here and not even be necessary
10 that he introduce these into evidence.

11 MR. RUSSO: And obviously, we wouldn't have that
12 problem. I'm just trying to head off one before it
13 happens.

14 THE COURT: I don't know -- Solicitor, I don't know
15 how to help you until we get to that bridge and it actually
16 happens.

17 MR. RUSSO: Yes, sir.

18 THE COURT: And you know quite often especially in
19 civil cases you have attorneys that have made photographs
20 of a wrecked automobile or whatever. And I mean quite
21 commonly come in and you got to look at the nature in this
22 case the cross examination of how it's going to develop.
23 If it gets into the technical parts of the actual taking of
24 the photographs, angles, time and the light conditions. If
25 he gets into something that brings in all that, then it may

1 well be a problem.

2 MR. RUSSO: Well, I guess it kind of comes in the
3 fact, Your Honor, that none of those questions were an
4 issue with regards to this videotape which he spoke to
5 Investigator Hanna about and essentially all he did was
6 intimate to the jury that y'all waited until now to do all
7 this you stuff and that's just not proper.

8 THE COURT: This is how I'm gone rule.

9 MR. RUSSO: Yes, sir.

10 THE COURT: I'm gone allow him to go forward on the
11 bases that he can use these photographs at this point in
12 time for demonstrative purposes. Now, if it's an attempt
13 to introduce the photographs, we'll just have to take it as
14 it comes.

15 MR. RUSSO: Yes, sir.

16 THE COURT: You'll just have to object and we'll
17 send the jury out. That's what you're trying to avoid
18 doing, but I know know how we gone avoid it.

19 MR. RUSSO: That's fine, judge. Thank you.

20 THE COURT: All right.

21 (The jury returned to the courtroom.)

22 THE COURT: It's Mr. Deberry's turn.

23 CROSS EXAMINATION BY MR. DEBERRY:

24 Q. Mr. Parnell, I'm Johnny Deberry. I'm not sure we've
25 meet maybe sometime back?

1 A. Yes, sir.

2 Q. I understand that you have testified here that your
3 role in this case up until you took that stand was that you
4 received that shotgun and that you did testing on that
5 shotgun and that you boxed it back up and sent it back
6 presumably to where it came from; is that right?

7 A. That's correct, sir.

8 Q. Would you tell this jury first of all that was last
9 Friday; wasn't it?

10 A. Let me refer to my notes here. It was the 26th when I
11 started my examination and completed it on the 27th.

12 Q. Okay. What was that Thursday and Friday?

13 A. I believe it was, yes, sir.

14 Q. And it would be a fair statement for you to tell this
15 jury right here that before you got that on the 26th,
16 before you received that shotgun, you had no information
17 about this case whatsoever?

18 A. That's correct.

19 Q. And from the time that you released sealed that thing
20 up and send it back to Florence sometime Friday, I guess;
21 is that right?

22 A. Yes, sir.

23 Q. After that in between that time and when you took took
24 that stand right there, did you receive any information in
25 between?

1 A. I spoke with Solicitor and Mr. Lawson ---

2 Q. Mr. Lawson?

3 A. Yes, sir. Just for -- talking about the case but no
4 further information, no.

5 Q. All right. Let me see if I understand that answer.
6 Talking about the case, but no further information, no,
7 sir. Was that your answer?

8 A. What do you mean by information?

9 Q. I was trying to repeat what understand you to say?

10 A. Start over again. Would you repeat the question.

11 Q. All right. Question is when you put that seal on
12 there that you testified to the jury you did sent this gun
13 on Friday?

14 A. Correct.

15 Q. From that moment, until you took this stand here I ask
16 you if you received any additional information?

17 A. I can't recall anything additional to what I was
18 already aware of before I did my comparison. So my answer
19 would be, no.

20 Q. All right. Now, then you said that you had an
21 opportunity to talk with the Solicitor; is that correct?

22 A. Yes, that's correct.

23 Q. Okay. And when was that that you had an opportunity
24 to talk with the Solicitor?

25 A. This morning.

1 Q. Prior to your testimony; right?

2 A. Yes, sir. Well, prior to coming into court at all,
3 yes.

4 Q. Okay. And as a result of that conversation with the
5 Solicitor, did you learn anything additional about this
6 case that you hadn't already had in your possession during
7 the testing of the gun?

8 A. Knowledge or evidence?

9 Q. Anything either one?

10 A. It was made aware of a few more items of information
11 that I didn't know prior, but that was superfluous to the
12 actual examination of the function of the gun.

13 MR. DEBERRY: Can we take up a matter outside the
14 presence, Your Honor.

15 THE COURT: Uh-huh.

16 Ladies and gentlemen of the jury, if you will step
17 back please.

18 (The jury was excused to the jury room.)

19 THE COURT: You want to proffer?

20 MR. DEBERRY: I would like proffer if I could.

21 Q. Tell me what was it you learned this -- I ain't want
22 to be fishing in front of the jury. Tell me what you
23 learned and knew?

24 A. That there was holes in the side of a trailer that was
25 adjacent to the scene. Damage I assumed to the trailer

1 that you're talking about here in these other photographs,
2 which I didn't know prior to today.

3 Q. Tell me what you learned about holes in the side of
4 the trailer?

5 A. That they exist.

6 Q. What else did they say about it?

7 A. There was basically behind where the victim was
8 standing as he was shot.

9 Q. And were you shown illustrations or pictures of that?

10 A. No, sir.

11 Q. Were you given any distance or charts or anything to
12 makeup or help you with your testimony or anything?

13 A. No, sir.

14 Q. So you say that you were told -- A minute ago you said
15 you were told some things. Right now I understand that you
16 recall that you were told that there was some holes in a
17 trailer that were behind where the victim was shot; is that
18 right?

19 A. In that general direction, yes, sir.

20 Q. In that general direction?

21 A. Uh-huh.

22 Q. Was there any talk there about your -- formulate an
23 opinion as to whether or not those bullets could have
24 ricochetted or something like that?

25 A. Ricochetted was discussed, yes. The possibility of

1 could that happen.

2 Q. And were you given anything -- any concrete
3 measurements or anything to be able to form an opinion and
4 give this jury some of opinion?

5 A. No, sir.

6 Q. Okay. Now, so if I ask you in front of this jury out
7 here now if you had any any whatsoever, were you prepared
8 to give any testimony about a ricochet or something that
9 nature. You had no information to go on to formulate an
10 opinion; is that right?

11 A. I was asked if that possibility could exist. There
12 were holes in this adjacent mobile home in the direction
13 behind the victim. Could there have been a result of a
14 ricochet. My answer is that would be, yes, that could be
15 the result of a ricochet.

16 Q. Do you have any information -- Have you required any
17 information to formulate an opinion to a reasonable degree
18 of certainty as to how those pellets would have hit that
19 trailer?

20 A. No, sir.

21 Q. ^{None} Known whatsoever? Anything that you attempted to
22 portray or to influence this jury of on as far as the
23 direction of that pellet travel, in all fairness would be
24 speculation based on what you had; is that true?

25 A. It would be, yeah, speculation based on prior

1 experience and the possibilities. I'm not saying that
2 happened, but, you know, how could these holes have
3 resulted -- How could these holes have gotten in the side
4 of this trailer. That could be the result of a ricochet,
5 but I don't know that.

6 Q. That would be speculation?

7 A. Sure. I mean, I have facts to back that up. I was
8 not there.

9 MR. RUSSO: Your Honor, I object. I think he said
10 it was based on his experience and his ---

11 THE COURT: I apologize. I have to stop the proffer
12 at this point. You know, proffer is done for me to review
13 the admissibility of evidence. I wanted to be as lenient
14 as I could. I can't allow proffer to be carried forth to
15 protect you on cross examination in the nature of your
16 questions. And I'm afraid that's the path we've gone down.
17 So you need to keep that in mind. If we were to start
18 doing that, you could really wreck a trial every time you
19 came ---

20 MR. RUSSO: That's my objection, Your Honor. It's
21 like we're asking questions to see what kind of answer
22 we're gonna get to decide whether or not we want to ask it
23 in front of a jury.

24 THE COURT: Now, I can't allow a proffer to go
25 forward for that now. I can to check the admissibility of

1 evidence.

2 MR. DEBERRY: Your Honor, as far as what he stated
3 up to this point and in view of his testimony that the very
4 minute limited amount of factual information that this
5 witness was provided there at the last minute to try to
6 help this jury with the way bullets would travel after
7 striking this gentlemen, I think he's been honest with us.
8 And he's told us that opinions in that area are
9 speculative. And I would ask that they be stricken. What
10 he said earlier on direct examination be stricken.

11 I mean to come in here and ask a witness who was
12 asked to test a gun and do what he did in a professional
13 manner he did his job. And then for him to be brought in
14 here at the last minute and then to be stretched that thin.
15 And to try to insinuate to a jury what bullets might have
16 done in this particular case. And it's right on the point.
17 It's gone hit us right in the heart of this case. I just
18 don't think the proper foundation was laid to have this
19 witness speculate as the way he was gone on direct
20 examination. And I move that that testimony be stricken.

21 THE COURT: All right. I'll have to deny that
22 motion for obvious reasons.

23 MR. RUSSO: Your Honor, my response would have been
24 that Special Agent Parnell is not the most prominent
25 firearms guy in South Carolina is he's one of the top

1 firearm guys in his experience. And I think he can
2 testify based on his experience which is extensive with
3 regards to dealing with firearms.

4 MR. DEBERRY: I understand you already ruled on
5 this; is that right?

6 THE COURT: Move on.

7 Q. Now, what else you said that there was some things
8 that you learned and that you talked about the case; right?

9 A. We talked about what was in my report.

10 Q. Tell us what else besides this scenario of some shots
11 in the trailer behind the person was shot?

12 A. The trigger pull, which is in my report.

13 Q. Okay.

14 A. The fact that the gun was made prior to 1968, which it
15 doesn't have a serial number. That the gun functioned
16 correctly. Yes, it did. Especially, how the gun worked.
17 Gunshot residue which we've already talked about and where
18 does it come from does get on you. Does the fact that
19 there was known found, would that be unusual; that's
20 basically it. Just whatever was in the report plus the
21 things that I have mentioned.

22 Q. You test fired the gun yourself; right?

23 A. I did.

24 Q. And you test fired it by pulling the trigger?

25 A. I did.

1 THE COURT: I got to stop. I thought I already
2 made myself clear about this proffer.

3 MR. DEBERRY: I don't think I have anything else.

4 THE COURT: You understand.

5 MR. DEBERRY: I know. I know.

6 THE COURT: I can't let you use a proffer to protect
7 you on cross examination.

8 MR. DEBERRY: I know. I appreciate what you did. I
9 have interviewed everybody I thought I should interview. I
10 have read every report that I thinks been provided to us
11 under the rules. And then all of a sudden I got a witness
12 in here that's testifying to things I hadn't heard before.
13 And I want to know if he had something I didn't know about.
14 I didn't want to fish in front of the jury.

15 THE COURT: That's why I gave some leeway.

16 MR. RUSSO: He had knowledge of this witness last
17 week, Your Honor.

18 THE COURT: Sometimes I just have to take a stand on
19 things and can't allow a proffer to go forward like that.

20 MR. DEBERRY: I had knowledge on Friday that he was
21 in existence. And I was furnished by fax his report and I
22 read it and I didn't think it was necessary to interview
23 him.

24 THE COURT: Okay. Bring them back in.

25 (The jury returned to the courtroom.)

1 Q. So, Officer Parnell, as we left off, this shotgun was
2 sent to you and you received it on the 26th and you shipped
3 it out on the 27th; is that correct?

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

5 Q. And tell the jury the exact instructions you were or
6 the request that was made of you as far as what test to do
7 on this gun?

8 A. It's what we call a safety function test, which
9 amounts to measuring the trigger pull and determining
10 whether or not the firearm is operating properly.

11 Q. Okay. Now, Mr. Parnell, as far as examining a shotgun
12 or a firearm that's been involved in a serious crime, there
13 are many many other tests that can be performed other than
14 that limited test that you were asked to do; is that
15 correct?

16 A. Certainly depends on the circumstance of the case and
17 what's requested.

18 Q. Okay. And I thought I understood you to say awhile
19 back before lunch on direct examination with the
20 prosecutor, that I hear you to say that if you were at the
21 scene -- And obviously, you can't go all over the state and
22 be at the scene on each one. But if you had been there
23 that you would have photographed that weapon in the
24 position where you found it first; is that rule Number 1?

25 A. No, sir. I think what I testified about the

1 photographs and had I been able to go to the scene would be
2 relative to the victim. But certainly photographing
3 evidence in it's position is important.

4 Q. One of which would be the gun; is that right?

5 A. The gun was at the scene, yes, sir.

6 Q. Okay. And if you -- I'm sure you had read many
7 publications and you have guidelines and checklists and
8 things like that that people are suppose to do when they go
9 to the scene and they want to have a thorough investigation
10 and testing of a weapon. There's steps that you do that
11 are known in the industry; is that right?

12 A. There are protocols, yes, sir, depending on the
13 department itself.

14 Q. Okay. Have you heard before the five step procedure?

15 A. Not as a five step procedure.

16 Q. Well, I'll go through it and ask if you heard. Have
17 you heard that that if there is evidence of blood on the
18 gun, that blood stains should be preserved?

19 A. That's an important step, yes, sir.

20 Q. Okay. And that it should be photographed?

21 A. I can understand that, yes, sir. Go ahead.

22 Q. And that you would certainly be able take blood
23 samples from the gun to be analyzed by the lab; is that
24 right? Is that the normal procedure?

25 A. That is possible, yes, sir.

1 Q. Now, I'm not asking just what's possible. What I want
2 to know is what a prudent person would do if they were in
3 charge of investigations ---

4 MR. RUSSO: Objection, Your Honor.

5 MR. LAWSON: Objection, Your Honor, he's pitting the
6 witness.

7 MR. RUSSO: Also, Your Honor, with he regards to his
8 question as the officer stated -- As the special agent
9 stated, that you have to know the particular circumstances
10 surrounding the case on whether or not you're going to do
11 these items.

12 THE COURT: You gone need to rephrase your question.
13 You can't -- You are pitting him.

14 Q. Officer, do you think it would be reasonable to
15 collect blood off a gun for a sample for testing?

16 A. It's a reasonable examination, yes, sir.

17 Q. And, officer, do you think that it would be customary
18 and reasonable to take fingerprints to preserve the
19 evidence?

20 MR. RUSSO: Objection, Your Honor. In what
21 relationship depending on the case.

22 MR. DEBERRY: I think I laid that foundation, Your
23 Honor.

24 MR. RUSSO: If he wants to relate it to this to this
25 particular case.

1 THE COURT: Well, points made go ahead.

2 Q. Do you think it would be reasonable to take
3 fingerprints off of a weapon that you came upon the scene
4 that somebody had just recently been killed at?

5 A. That is certainly an examination that could be done.
6 I want say in every -- each and every case, but that
7 certainly when it could be done.

8 Q. And do you think it would be reasonable for the spent
9 cartridges and shells in the case would be like a shotgun
10 would be selected?

11 A. Yes, sir.

12 Q. And do you think it would be reasonable that those
13 cartridges be shipped with the gun to the person that was
14 like you that was going to examine that gun?

15 A. Normally, yes, sir, under the limited examination just
16 function on it. It's really not necessary to do that part
17 of it, but it could be done, yes, sir.

18 Q. And you referred to this particular one as a limited
19 examination?

20 A. Function testing only.

21 Q. Function testing only?

22 A. Yes, sir.

23 Q. And there you've been called to give a full testing
24 before rather than a limited testing; haven't you?

25 A. Yes, sir, if I may explain. What I mean by limited is

1 that a certain examination requested. In this case, it was
2 function of the firearm. In other cases, we could for
3 instance compare five components or fire shell casings or
4 other things that might be requested in other cases, but in
5 this case it was a limited examination.

6 Q. And another step that is commonly in your field is to
7 have that gun immediately sent to the -- Do you have a
8 trace department?

9 A. Yes, sir, we did do.

10 Q. And you have that readily available there in your
11 facility?

12 A. Yes, sir.

13 Q. And a normal procedure would be to send that gun on
14 for trace analysis as well; right?

15 A. It's possible but not ---

16 Q. Wasn't done in this case?

17 A. No, sir. What are we asking about what particular
18 comparison?

19 Q. A trace?

20 A. Yes, sir.

21 Q. We'll go into that in just a minute.

22 A. Okay.

23 Q. But if you would, if you want to go ahead now. What
24 -- Tell the jury what is a trace analysis?

25 A. It really depends on what you're trying to find.

1 Trace could be -- I think we've already heard about gunshot
2 residue. Traces, hairs, fibers, paint transfers other
3 kinds of small amounts of evidence that are on or within a
4 particular piece of evidence being a trace a small amount.

5 Q. Okay. Now, when you tested this gun, I believe ,you
6 said that you test fired it; correct?

7 A. I did.

8 Q. And I think you used it from regular stocked shells
9 that you had there what you would call low brass like bird
10 shot?

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

12 Q. Okay. And, of course, did you -- How many times did
13 you fire it the bird shot?

14 A. Four times.

15 Q. And you yourself fired it?

16 A. I did.

17 Q. And did you hold it yourself?

18 A. I did.

19 Q. No -- You don't put it in any vice or any type machine
20 or anything like that; is that right you don't do that?

21 A. No, sir.

22 Q. Is there a method of doing that if you wanted to check
23 recall?

24 A. There probably is, but we don't have that at our
25 laboratory. There may be away of determining recall in

1 pounds or foot pounds, but we don't have that equipment.

2 Q. You don't really need that equipment to give us some
3 comparisons, do you?

4 A. No, sir, not really.

5 Q. Okay. And how would you compare -- How would you
6 describe the recall on a single shot 12-gauge shotgun? Say
7 compared to a automatic?

8 A. It's probably more felt recall with a single shot than
9 it would be with a semiautomatic.

10 Q. Okay. And that's because there's no internal recall.
11 It's all against the shoulder or all the motion going in a
12 backwards direction every bit of it they are in a single
13 shot fix bolt; right?

14 A. That's correct. There's nothing to bleeding any of
15 that gas off.

16 Q. Okay. And the recall on the bird shot would be
17 different than recall on buckshot; is that correct?

18 A. That's correct, yes, sir.

19 Q. It would be greater with the buckshot?

20 A. That's correct.

21 Q. And even more so if the buckshot were a Magnum grade?

22 A. I would call it substantial.

23 Q. Substantial?

24 A. Yes, sir.

25 Q. And you made some comments as far as this lever

1 catching on somebody's hand. That recall could be such
2 that it could cut somebody's hand; is that right?

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

4 Q. But you can shoot that gun many many times if you
5 shoot it properly. And that recall if you're harmed and
6 you shoot that gun, that recall -- It want hurt you will
7 it?

8 A. That's right.

9 Q. If held properly?

10 A. That's correct.

11 Q. And if your hand gets cut from shooting a shotgun from
12 the shooting of a shotgun, isn't that an indication that
13 that gun wasn't held properly?

14 A. Certainly could be, yes, sir.

15 Q. More than likely; right?

16 A. Depending on where you're cut and other factors. But
17 if it's not held correctly, it could easily cut you that's
18 correct.

19 Q. Now, officer, I believe that prior to coming here and
20 addition to what evidence you had on Friday, you learned
21 this morning that the fact that there was some pellets in a
22 trailer behind where the shots further away from where the
23 shot was fired from; is that correct?

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

25 Q. And I guess that's precipitated the testimony about

1 some possibilities; is that right?

2 A. Yes, sir.

3 Q. And you, however, haven't had the opportunity to visit
4 the scene; have you?

5 A. No, sir, I have not.

6 Q. And as a matter of fact, have you had the opportunity
7 to even have the distances from one place where the shot
8 was fired from to where the trailer was. Do you even --
9 Has anybody even told you the distance there?

10 A. No, sir.

11 Q. And so could you in any way assist this jury with the
12 possibility of a spread pattern?

13 A. No, sir. There would be no way to begin to do a
14 spread pattern. No, sir.

15 Q. And when you talked earlier about ricochet, ricochet
16 is is -- I've heard before that a ricochet is something
17 that hits some type object and skips up. Is that a good
18 definition of a ricochet?

19 A. Layman's terms, yes, sir.

20 Q. And you've heard -- Did you have the autopsy report
21 when you did this testing?

22 A. Let me look real quick to see what I have if you don't
23 mind, sir, but I don't think so. No, sir.

24 Q. How big was the hole -- How big did you understand the
25 hole in this person to be when you were asked to come here

1 and testify?

2 A. Approximately one inch roughly.

3 Q. And have you seen photographs of it?

4 A. Yes, sir, I have.

5 Q. Before you testified?

6 A. No, sir.

7 Q. Now, you have seen the photographs where this shot
8 went in the person's neck; right?

9 A. I have.

10 Q. And you have not had a chance to talk with the
11 pathologist you said that?

12 A. No, sir, I have not.

13 Q. Okay. Now would you -- From looking -- From the
14 information that you have been provided, would you say that
15 -- Would it be a fair statement to say that those pellets
16 sort of entered that body as one?

17 A. Yes, sir, by looking at the photograph and the
18 information that I've heard here, yes. One single
19 projectile -- One group of projectiles entering as one.

20 Q. Okay. And as they left out from the other side, would
21 you anticipate that those bullets would -- Those pellets
22 would start to spread?

23 A. I would anticipate that, yes, sir.

24 Q. And the further that went away obviously, the more
25 they would spread; is that correct?

1 A. That would be a fair statement, yes, sir.

2 Q. Okay. And would you assume that there would be some
3 form or pattern if you found all 12. I'll tell you one of
4 them left was in the body. Did you know that?

5 A. No, sir, I did not.

6 Q. Okay. The other 11 would you assume that they had
7 pretty much reached their destination fairly going in the
8 same direction?

9 A. Not necessarily. And the reason I say that. I think
10 we talked earlier about interrupting the pattern as it
11 leaves anything that interrupts the flight of these
12 pellets, is going to disrupt their flight pattern. They
13 may go straight through. And once they go through, they
14 may begin to go off to one side or the other. They may not
15 go exactly straight like we might think they would.

16 Q. If -- Could you look -- If you went to a trailer house
17 and saw door on trailer and some places -- some indications
18 where it look like pellets had gone in there. And if you
19 had been given the opportunity to go out there and inspect
20 it thoroughly, could you then use your expertise to sort of
21 shed some light on from which direction those pellets were
22 fired from if you had that many places that you can take
23 measurements and look at carefully?

24 A. It's possible. What you would have to have in order
25 to give directionality would be an uninterrupted flight,

1 which we don't have here. I would need to have at least
2 two points of reference like an entrance and a resting
3 place for a pellet or projectile in order to get angle
4 coming in and in anyway predict the point of origin. So
5 I don't think that I could do anything as far as
6 directionality here because the fact that apparently that
7 information had already gone through from the object being
8 the victim.

9 Q. What if the people before they told you to go out
10 there and do that, what if they told you to take to assume
11 -- They ask you to assume that that -- First of all, I'm
12 going ask you to assume the distance from this trailer here
13 to here is accurate as shown here 96 feet. All right.

14 A. Okay, sir.

15 Q. And if the pellets were clustered around this area
16 here right where I'm move my that's. And you assumed that
17 they were correct. They've asked you to assume that the
18 shots the shots -- Those pellets came from one shot in the
19 vicinity of either on top of this step or down on the
20 ground right here somewhere within an eight foot to three
21 foot measurement there to the foot?

22 A. I do, yes, sir.

23 Q. Would that narrow down -- Certainly that would narrow
24 down to the origin of the shot towards the trailer; right?

25 A. Potentially, it could, yes, sir. How many pellets do

1 we have in the trailer over here we asking about. We got
2 three?

3 Q. I'm not sure yet. Well, three -- I'm not sure right
4 now we'll get into it?

5 A. Okay.

6 Q. Certainly, that would help you if they gave you some
7 guidelines as to where the shot was fired from; right?

8 A. That would be essential to know where they allegedly
9 originated from.

10 Q. And the feet would help?

11 A. About 33 steps, yes, sir -- 33 yards.

12 Q. And the distance up from the ground to where the shots
13 hit the trailer that would be something you would certainly
14 want to look at right?

15 A. Yes, that would be a measurement of I would take.

16 Q. And you certainly want to know if there's any
17 allegation that the shot was fired from this stoop here
18 before you started down the steps. That would be a help
19 to; right?

20 A. It could be. That would be a factor I would have to
21 take into consideration certainly.

22 Q. But you were not asked to do that?

23 A. No, sir.

24 MR. DEBERRY: Thank you, Mr. Parnell, I appreciate
25 your help.

1 MR. PARNELL: Yes, sir.

2 REDIRECT EXAMINATION BY MR. RUSSO:

3 Q. Special Agent Parnell, let me ask you. Mr. Deberry
4 asked you holding a shotgun properly. And I just want to
5 get a clarification as to your answer. Did you say that if
6 it was held properly -- And let's talk about this
7 particular type of gun. This single barrel closed breach
8 shotgun shooting a Magnum double-ought (00) buck round.
9 And I'm asking was your testimony that if it was held
10 properly that it would not injure your hand?

11 A. If I said it would not definitely would not, then
12 that's incorrect. If it's being held properly, you're
13 less likely to get cut or pinched then you would be if it
14 was held improperly.

15 Q. Yes, sir. Now, a proper holding of this weapon -- And
16 I don't have the weapon and I'm not gone pull the weapon
17 out again. But if I'm right-handed would be up against my
18 right hand -- my right shoulder; correct?

19 A. Yes, sir.

20 Q. With my right hand near the trigger and my left hand
21 up somewhere under the bell?

22 A. That's correct.

23 Q. It really wouldn't be possible for you if I'm standing
24 away from you and I'm holding it that way. It wouldn't
25 really be possible for you to tell if I'm holding it

1 properly would it because I may be holding it very loosely
2 and may not have it firm against my shoulder. So visually
3 you wouldn't be able to tell, would you?

4 A. No, I would not think so.

5 Q. If I have this weapon to my shoulder and I appear to
6 be holding it properly and yet I got it very loose in my
7 hand and I pull that trigger, I'm gonna suffer more requell
8 than if I held it firmly; correct?

9 A. That's correct.

10 Q. This -- We talked about ricochet. And I think you
11 were telling Mr. Deberry that you would have been -- You
12 would have been helpful in determining some additional
13 information had this been a direct shot. But in this case
14 because it went through a victim's body ---

15 MR. DEBERRY: Your Honor, please can -- Can we
16 approach a minute.

17 THE COURT: Yes, sir.

18 (A bench conference was held in the presence of the
19 jury, but out of the hearing of the jury.)

20 Q. What would the significance be in being able to
21 determine any information from this if the pellets pass
22 through a body versus a clean shot or unimpaired in a shot?

23 A. If your question is about directionality or patterns
24 spread, then certainly the pellets that have gone
25 unincumbered or without going through anything will be the

1 one's that would be the most informative. The
2 possibilities start to expand once those pellets go through
3 any intervening object be it a person, a pane of glass or a
4 piece of wood just like I testified earlier. Once they go
5 through an intervening object, they begin to disperse in
6 the direction. And the way that they disperse can be
7 direction each shot that their fired through that same
8 material. So the fact that you have pellets in an object
9 behind where the victim -- close to behind where the victim
10 was standing is not as significant as it would be if the
11 shot was just fired straight into the side of the trailer.

12 Q. Okay. So I believe that Mr. Deberry asked you that --
13 And his layperson's belief about ricochet being bouncing
14 off an object and ricocheting. Is it possible -- We're
15 talking about these 12 pellets inside this surround?

16 A. Yes, sir.

17 Q. Is it possible for them to ricochet off each other if
18 they hit an object?

19 A. Yes. If they were going into the victim at this
20 point, they're in contact with each other. They're
21 bouncing like big balls inside of a cluster. And once they
22 go through an intervening object, then yes they can
23 ricochet off each other as well as off of and through
24 whatever they hit after leaving the muzzle.

25 Q. So they don't necessarily have to hit off an external

1 object? They could ricochet off each other?

2 MR. DEBERRY: That's leading, Your Honor.

3 THE COURT: Sustained.

4 Q. What is the effect of this ricocheting of this
5 grouping of pellets based on your expertise as they hit an
6 object such as going through the neck of this person? What
7 would be the effect of those pellets cluster -- What would
8 the effect be?

9 MR. DEBERRY: Your Honor, please I just -- He's
10 asking a question -- I like for him to rephrase the
11 question. He's asking this man to make some assumptions
12 without first laying a foundation. He's asking him to
13 speculate. He's doing a good job, but I just do not think
14 it's proper thing for him to ask these type questions and
15 fish around this witness like this. He's got to lay the
16 foundation.

17 THE COURT: All right. Pose the question, please.

18 Q. Based on your experience and your expertise and your
19 handling of various firearms over your 28 year career, what
20 would be the effect of a grouping of pellets from firing a
21 shotgun like this? What would you expect the effect to be
22 once they penetrated through a body such as a victim's
23 neck?

24 THE COURT: I'm not sure that I follow that
25 question. It's wide open.

1 MR. RUSSO: Let me think about a way to rephrase it
2 and make it more direct, Your Honor.

3 THE COURT: You mean after it goes through?

4 MR. RUSSO: Yes, Your Honor. The effect of that
5 clustering after it passes through an object.

6 THE COURT: That's a wide open question. If he can
7 answer it, you may proceed.

8 MR. RUSSO: And if he can't, Your Honor, I'll accept
9 his answer. I guess just based on all the firing of
10 weapons he's done and the experience he's had over 28
11 years.

12 MR. PARNELL: May I use the blackboard, Your Honor?

13 THE COURT: Yes, sir.

14 MR. DEBERRY: If you don't mind just move to the
15 right there and use that space.

16 A. Let me just start by back up just a little bit so
17 these folks will understand what I'm talking about. A
18 charge of pellets from a shotgun shell comes out of barrel
19 ---

20 MR. DEBERRY: Your Honor, please, can we approach
21 just a minute?

22 THE COURT: The reason I'm looking at you is I'm
23 worried about the preservation of this. We need to be
24 putting this on paper otherwise both of you gone need to be
25 under the understanding that you gone have to photograph

1 this this evening before it can be I erased.

2 MR. RUSSO: If Mr. Deberry has no objection, Your
3 Honor, I would have no objection to using the back of this
4 which is already in evidence. It can go back with the
5 jury.

6 MR. PROPPS: There's some paper in the room there.

7 MR. RUSSO: A pad?

8 MR. PROPPS: Yes.

9 A. Ladies and gentlemen, the way the buckshot pellets are
10 loaded in the buckshot shell they're done in layers. And
11 then on the size of the pellets bigger pellets -- more
12 pellets and then sometimes less layers. They're just
13 bigger. They're stacked up in here kind of in a random
14 fashion. And then in between them are the little white
15 polyethylene filler pellets. It's little thing that keeps
16 you from getting mashed against each other once they done
17 expired. This the way they're sitting in the shell rather.
18 When they leave the barrel or out of the muzzle, they're
19 leaving out there in a stack or a cluster. Because they
20 can't all spread out going down the barrel. They got to go
21 in a column once they leave the board.

22 It's been just for illustrative purposes here. I'm
23 not an artist. But they leave the barrel in a line. The
24 smoke and the residue comes out around them and get out
25 from behind him and behind here or the components of the

1 widening or some other parts of the load. Keep the pellets
2 and the powder separated.

3 When you pull the trigger, the shell fires and the
4 pellets come out of the barrel. The further away from the
5 muzzle they get, the more they want to spread out into a
6 cone shape. The further away from the muzzle you get, the
7 more spread you get from the pellets. It comes out in a
8 cone shape. They stay together just for a short distance
9 maybe three, four feet and they begin to separate a little
10 bit because they're constantly trying to get ahead of each
11 other.

12 Ones in the front they are slowing down the little
13 ones and the back ones are still pushing. They start
14 spreading. If they hit something while they're still in
15 this clustered configuration, they run through a board.
16 The ones in the front are gonna hit the board first. Ones
17 in the back are gonna run into the ones that are slowed
18 down by hitting the intervening object very much like the
19 bigger balls. All this happens very quickly, but it does
20 happen. These that are behind running into the one's in
21 the front, they could cause them to spin off to the side or
22 could push them straight ahead. They could cause them to
23 curve upward. It could cause them to curve downward.

24 It's just no rhyme or reason to know exactly what
25 they gone do every time you can't say that because they're

1 constantly moving. But they do and they will run in each
2 other and kick out at odd angles. So when they go through
3 something -- When pellets go through something, the ones in
4 the back are gonna be pushing the ones in the front that
5 hit that object first. And they could ricochet off of each
6 other. And even after they hit pass this point, they can
7 still hit it a hard object the ground, water, whatever dirt
8 and ricochet again once they ricochet or bounce off of each
9 other. It's in the object that they just hit. It's kind
10 of a -- just depends on circumstances of the situation.
11 You can't say it every time.

12 When they hit something or pellets run into
13 something, the ones behind the front pellets are gonna be
14 pushing those in front out of the way they get -- Sometimes
15 they get flattened. They get misshapened and they don't go
16 straight. They could curve just because they get flattened
17 or misshapened. That's the explanation of a ricochet
18 coming out of a shell.

19 MR. RUSSO: Thank you, sir. I have no further
20 questions or excuse me beg the Court's indulgence just a
21 moment. Your Honor, at this time I would move to introduce
22 the sketch that's basically an obvious sketch and move it
23 into evidence as an State's Exhibit.

24 MR. DEBERRY: No objection.

25 (Sketch entered into evidence as State's Exhibit

1 Number 42.)

2 MR. RUSSO: I have no further questions. Thank you,
3 sir.

4 THE COURT: Mr. Deberry, anything else?

5 MR. DEBERRY: That's all I have. Thank you.

6 THE COURT: May this witness be excused?

7 MR. DEBERRY: I have no objection.

8 MR. RUSSO: No objection, Your Honor, I was gone ask
9 that.

10 THE COURT: Thank you, sir.

11 MR. PARNELL: Thank you, Your Honor.

12 THE COURT: Good seeing you.

13 MR. DEBERRY: Your Honor, I'd like a moment if I
14 could to talk with him before he leaves.

15 THE COURT: Let's go ahead and take -- We gone have
16 to shut down close to four because of another scheduling.
17 So let's go ahead and take 10 minutes. We'll come back and
18 run to four or shortly thereafter.

19 (The jury was excused to the jury room.)

20 THE COURT: How long is this next witness?

21 MR. RUSSO: The State's next witness is Lieutenant
22 Keith Lutcken. It ~~want~~^{won't} be a lengthy witness for the State.
23 And, of course, I know Johnny want know until after he
24 hears the testimony of how long his cross. But I think the
25 State it wouldn't probably be than a five minute direct.

1 THE COURT: You see any problem with that?

2 MR. DEBERRY: Sir?

3 THE COURT: You see any problem with our timing?

4 MR. DEBERRY: I don't. You got to be through by
5 four?

6 THE COURT: Close to there.

7 Bring them in.

8 (The jury returned to the courtroom.)

9 THE COURT: All right, Solicitor.

10 MR. RUSSO: The State would call Lieutenant Keith
11 Lutcken to the stand.

12 KEITH LUTCKEN, being first
13 duly sworn, testifies as follows:

14 DIRECT EXAMINATION BY MR. RUSSO:

15 Q. State your full name for the record?

16 A. My name is Keith Lutcken.

17 Q. Lieutenant Lutcken, where are you employed?

18 A. I'm employed with Florence County Sheriff's Office.

19 Q. And how long have you been involved with law
20 enforcement?

21 A. I been in law enforcement 15 years be 16 in September.

22 Q. Okay. And how long have you been with the Florence
23 County Sheriff Department?

24 A. That entire time.

25 Q. What is your position with the Florence County Sheriff

1 Department?

2 A. Currently, I'm the supervisor over the forensics and
3 the crime scene unit for the Sheriff's office.

4 Q. How long have you been in charge with forensics?

5 A. Been in charge for forensics for right now going on
6 five years. I been with the unit for 12 years.

7 Q. As the supervisor of forensics, you have other
8 forensics officers that work under you?

9 A. Yes, I do.

10 Q. How many?

11 A. There are three others that work under me.

12 Q. And how do you and your staff work the -- work the
13 county and work the calls?

14 A. I supervise the unit once again. Every week we have a
15 forensic investigator that is on call for that week. Call
16 runs from Sunday night at 12 a. m. and it goes to the
17 following Monday morning at 7 a. m. That officer is on
18 call for any call that we may be called out on. We
19 specialize in major crimes. And we also special in crimes
20 not so serious as burglaries, larcenies anything of this
21 nature. If the officer feels they need us, they call the
22 on call person to come out to the location where they are
23 to take photographs, dust for fingerprints or whatever
24 maybe needed at the scene.

25 Q. Do you know or do you recall the forensic's officer

1 who was on call during the week that included December the
2 4th 1999?

3 A. Yes, sir. December the 4th 1999, Investigator Jason
4 Dore was on call for the forensics unit. I want to add
5 that anytime anything major occurs a death investigation,
6 which may involve a homicide, suicide or a questionable
7 natural death that the coroner request us. I respond to
8 them also.

9 Q. So even if you're not the on call -- Do you take calls
10 in that rotation?

11 A. Per se I don't take calls in that rotation, but I am
12 on twenty-four seven (24/7) call everyday of the year for
13 anything major that may happen.

14 Q. Did you respond to the scene on Callie Young Road on
15 December the 4th 1999 involving this case against the
16 defendant?

17 A. Yes, I did.

18 Q. Do you know or do you recall about what time you
19 arrived at the scene?

20 A. Mr. Russo, I'm wanting to say somewhere around 6:30
21 p. m. somewhere along in that range.

22 Q. Were other officers on the scene when you arrived?

23 A. Yes, sir. I arrived about 45 minutes after -- I'm
24 sorry 35 minutes after the original call.

25 Q. All right. When you arrived, was the Deputy Jason

1 Dore already there?

2 A. Yes, he was.

3 Q. And what was your role or your duty when you responded
4 that evening?

5 A. My duties I was notified by Corporal Dore to respond
6 to the scene. State we did have shooting and did have a
7 victim at the scene. In turn, I did respond to the scene.
8 When I arrived, there were already other officers present
9 including Corporal Dore. As I said I arrived approximately
10 35 minutes later. When I got on to the scene, Corporal
11 Dore had already began his investigation by preliminary
12 photographs and examining the scene. My primary duties
13 were to assist him in any way that he may need assistance.
14 He was the primary what we refer to as CSI crime scene
15 investigator on that scene.

16 Q. With regards -- Now, you're there to assist in anyway
17 he may need your assistance?

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

19 Q. If you would please to the best of your recollection,
20 just tell the members of the jury essentially what your
21 role was that night?

22 A. Essentially when we arrive on the scene, we try to get
23 as much briefing as to what transpired or what is alleged
24 transpired at the scene. After we are briefed, then we
25 begin our observations -- doing an over all observation of

1 the scene trying to locate any evidence so it's not
2 disturbed during our investigation. Any evidence is
3 documented and once it is documented through photography
4 and also through diagrams, then we also begin in this case
5 examining the deceased and any other pieces of evidence
6 maybe at the scene. On this particular evening,
7 Investigator Dore informed me of what had allegedly
8 transpired. We begin our investigation and I assisted him
9 with the examination of the body.

10 Q. Would it be accurate to describe the situation as --
11 Is it Corporal Dore?

12 A. Yes, sir, it is.

13 Q. That Corporal Dore was the forensics officer in charge
14 and you were there as the supervisor just to over see
15 things?

16 A. That's correct.

17 Q. During that time and during your investigation that
18 evening, I know you indicated that photographs were taken?

19 A. Yes, sir.

20 Q. Do you use video cameras with regards to your
21 forensics investigation?

22 A. In investigations, normally we do not use video
23 cameras at all.

24 Q. Is that just the policy of your department or what has
25 been your experience in your relationship with other

1 departments throughout the State?

2 A. It's been my experience with other departments. The
3 entire time that I been with our department we have not
4 used video cameras unless we were in certain cases
5 requested to do so.

6 Q. At any time or let me more specifically let me refer
7 to last week were you requested by anyone to go to the
8 scene and take some video?

9 A. Yes, I was.

10 Q. And tell the jury how that came about?

11 A. Mr. Russo, as you well know, he contacted me last week
12 and wanted me take some video.

13 MR. DEBERRY: I'm sorry I didn't understand who he
14 meant. He said Mr. Russo as you know, he contacted me last
15 week

16 A. I'm sorry, Mr. Deberry. Mr. Russo had he contacted me
17 himself. He himself, Mr. Russo, had wanted me to go out to
18 the scene. And for his trial preparation to view and video
19 the scene to what he could prepare for trial of this week.

20 Q. What was your understanding as far as the or what I
21 was asking for you to do? What was your understanding?

22 A. My understand ---

23 Q. My need for the video what was your understanding?

24 A. You just need the video for trial preparation and that
25 was it. It was not to be used as a jury presentation or

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1 for evidence. It was just to be done as his trial
2 preparations.

3 Q. And other than what you just shared with the members
4 of the jury, is there any other involvement that you had in
5 this case during the investigation and the processing of
6 the various items?

7 A. No, there is none.

8 MR. RUSSO: Please answer any questions Mr. Deberry
9 may have.

10 CROSS EXAMINATION BY MR. DEBERRY:

11 Q. Mr. Lutcken?

12 A. Yes, sir.

13 Q. When you started on this scene, obviously you couldn't
14 have started before five minutes to six on December the 4th
15 of 1999, soon thereafter you heard about it; right?

16 A. Yes, sir, that is correct.

17 Q. And I believe you said you got there about 35 minutes
18 later or about 6:30?

19 A. Yes, sir. I arrived about 35 minutes after Corporal
20 Dore had arrive on the scene.

21 Q. And you stayed there for how long?

22 A. I was there for the duration of the scene.

23 Q. Which was for how long?

24 A. Mr. Deberry, I guess it's approximately two hours, two
25 and a half hours.

1 Q. Okay. And during that time, you were in charge of
2 forensics there or what is your assistant's name?

3 A. Jason Dore.

4 Q. Okay. And who was in charge you or him?

5 A. Well, he was the primary crime scene investigator on
6 the scene. I am his supervisor. So, yes, I would have
7 been there the supervise the scene and supervise him.

8 Q. Okay. And as being in that position, it would be
9 customary for you to fully preserve all evidence that might
10 need to be examined or tested or anything of that nature.
11 It's your responsibility; is that right?

12 A. Yes, sir.

13 Q. Okay. And you didn't leave the scene and then
14 delegate something afterwards to him? Whatever was done
15 was done while you were there right or wrong?

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

17 Q. And when you left there to your knowledge, no further
18 evidence was gathered for you; right?

19 A. After we left the scene?

20 Q. Yeah.

21 A. No, sir, no other evidence was gathered.

22 Q. So while you were there you were shown the gun that
23 was the suspect gun that the man had died with?

24 A. Yes, sir, I was.

25 Q. Tell this jury where was it when you first saw it?

- 1 A. The officer had already taken it into custody.
2 Corporal Dore had already taken it into his position. Now,
3 if you want me ---
- 4 Q. I'd rather be a little more specific here?
- 5 A. He had already placed it in his vehicle.
- 6 Q. Okay. And I tell you the vehicle hadn't left?
- 7 A. No, sir.
- 8 Q. Okay. So when you got there, the shotgun was in a
9 officer's vehicle?
- 10 A. Corporal Dore's vehicle.
- 11 Q. Corporal Dore's vehicle. And tell me when did you see
12 it in the vehicle?
- 13 A. Did I see it, no, sir. He said he already put in the
14 vehicle. He had already placed it there.
- 15 Q. So ---
- 16 A. If I may, the weapon itself was retrieved from the
17 inside of the residence. It was photographed in place and
18 then photographed on the table and then was placed in
19 Corporal Dore's vehicle.
- 20 Q. Okay. And, of course, I take it you obviously just
21 said it. When you got there it was already in the car?
- 22 A. Yes, sir.
- 23 Q. So you can't help us with who touched it. Who moved
24 it. Who photographed it other than by hearsay; is that
25 right?

1 A. That is correct. That's correct.

2 Q. And did you ever see it?

3 A. Are you asking have I seen the weapon?

4 Q. I understand you didn't see it out there that night.

5 A. No, sir, I didn't. I didn't see the weapon.

6 Q. When did you first see it for the first time ever?

7 A. In evidence. It was already -- Sir?

8 Q. Not where. And when did see it for the first time
9 ever?

10 A. It may have been the day after. I can't be sure.

11 Q. Okay. I understand. If you can't be sure, that's all
12 I want to know?

13 A. Yes, sir.

14 Q. Would it be your best recollection that you saw it
15 within a day?

16 A. It would have been the following day.

17 Q. The following day?

18 A. Yes, sir. I cannot give a time, but it would have
19 been the following day.

20 Q. And can you say now once we know approximately when
21 you saw it for the first time? Would it have been out at
22 the law enforcement center somewhere?

23 A. Yes, sir. It would have been the evidence room at the
24 law enforcement center.

25 Q. All right. And for what reason and tell us what

1 occasion did you have to look at?

2 A. Well, as part of the forensics unit, we also maintain
3 the evidence room for the Sheriff's office. So I am also
4 over that evidence room. And I come in and out of that
5 evidence room numerous times during the days course of time
6 and I would have seen it then. The reason I would have
7 been in there would have been to have been logged into our
8 evidence.

9 Q. Well, did you look it for the purpose of examining it?

10 A. No, sir, I have never touched the weapon, no.

11 Q. Well, did you look at it to see if it had any blood on
12 it?

13 A. No, sir, I did not.

14 Q. So you didn't examine it for the purposes of this
15 crime?

16 A. No, sir, as I stated I was the supervisor on the
17 scene.

18 Q. I understand.

19 A. The on call CSI was Corporal Dore.

20 Q. CSI?

21 A. Crime scene investigator. His responsibility is to
22 examine the weapon. Okay. He was the primary person on
23 that scene, okay.

24 Q. So I think I got your extent of your involvement with
25 the shotgun?

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

2 Q. Tell me what the extent of your involvement with
3 anything else as far as gathering forensic information or
4 evidence there?

5 A. Well, I was there to over see Corporal Dore. And he
6 had collected -- Well, he had photographed and documented.
7 And we began the collection of the evidence. Other than
8 that, the only thing I did other than that was assist him
9 in take measurements and doing the diagrams.

10 Q. Okay. Let's start one at a time. What was the first
11 thing you did as far as taking evidence? The gun already
12 been taken; right?

13 A. Yes, sir.

14 Q. And you said you assisted him in taking evidence.
15 What did you do?

16 A. Well, the items were photographed in place. There
17 were several items that were taken.

18 Q. Wait a minute. The items were photographed in place.
19 Is that what you said?

20 A. Yes, sir.

21 Q. Okay. What do you mean by that?

22 A. The items -- When we look locate evidence, evidence
23 has to be photographed as it is in place where it's at
24 before it can be removed.

25 Q. Okay. I want to direct your attention just to this

1 case?

2 A. Yes, sir.

3 Q. What items are you referring to?

4 A. There were some car keys, a lighter. I believe there
5 was a pocket knife, a shotgun hole that was located on the
6 ground. And there were one or two shotgun pellets that
7 were recovered from Ms. McDougal's residence.

8 Q. Okay. And were they recovered in your presence?

9 A. Yes, sir.

10 Q. All right. Start off you said there were some keys?

11 A. That's correct.

12 Q. Where were they?

13 A. Near the body.

14 Q. And on the ground?

15 A. Yes, sir. On the ground, yes, sir.

16 Q. Okay. And you saw those and supervise those been
17 photographed; right?

18 A. Yes, sir.

19 Q. And were measurements -- You took measurements too
20 from where the body were to the keys?

21 A. No, sir. No, sir.

22 Q. Do you know if anybody did that?

23 A. No, sir. It was not done. The keys to the body was
24 not photographed -- I mean was not measured excuse me.

25 Q. All right. Then what's the next piece of evidence as

1 the forensic person in charge that you saw was taken into
2 evidence?

3 A. We were -- As I said I don't remember them in order,
4 but there were the keys, the lighter, the shotgun ---

5 Q. Where was the lighter?

6 A. It was also near the body. It was right there with
7 the keys as I remember.

8 Q. And no measurements taken there either, I guess?

9 A. No, sir.

10 Q. All right. What else ---

11 A. All of these items were laying there at the body
12 except for the shotgun.

13 Q. Except for shotgun hole?

14 A. The spent shell.

15 Q. Okay. And where was that?

16 A. In relation to the body?

17 Q. Whatever -- However you want to?

18 A. Well, it's in my diagram. The spent ---

19 Q. Where is your diagram?

20 A. The shotgun hole was located here. This is the body
21 where the spent shell was located.

22 Q. Okay. And the -- I see there are some measurements
23 there. You took those measurements that night; is that
24 right?

25 A. Yes, sir.

1 Q. Okay. And took the measurement -- The one that's 96
2 -- The longest one is 96 feet?

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

4 Q. And you yourself assisted with that?

5 A. Yes, sir, I did.

6 Q. Okay. And the -- You got a measurement here of four
7 feet ten inches. Is that the distance of the ---

8 A. That's from the steps from shotgun shell, yes.

9 Q. Okay. And the foot of the deceased back to the steps
10 you got a distance here of 8.3?

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

12 Q. And the distance from the carport over to here is 18?

13 A. Eighteen, yes, sir.

14 Q. Tell me did you ever go back out there after you left
15 there that night? You were there for about two hours. Did
16 you ever go back out there?

17 A. I went back last week.

18 Q. Other than last week?

19 A. No.

20 Q. Who did you go with last -- There were two of you
21 there; right?

22 A. Yes, sir. Last week it was myself and Corporal Dore.

23 Q. Okay. And at that time y'all took some video?

24 A. Yes, sir, that's all we did. We took some video.

25 Q. No measurements?

1 A. No. We took video and we left the scene.

2 Q. And the trailer -- This trailer on top Mary McDougal's
3 trailer?

4 A. Yes, sir.

5 Q. It had been moved; right?

6 A. Yes, it's no longer there.

7 Q. Okay. And did you go to -- Did you go to where the
8 trailer is presently?

9 A. Yes, sir.

10 Q. Okay. I'm sorry maybe -- They moved the trailer to
11 another location?

12 A. No, sir -- Yes, sir.

13 Q. Did you go to that other location?

14 A. No, I did not go to the new location.

15 Q. You never been to the new location?

16 A. No, I have not.

17 Q. Hadn't seen the trailer at all?

18 A. I have no idea where it's at.

19 Q. Now, did you take any measurements on that night, on
20 her trailer?

21 A. Measurements, no. The only measurements that were
22 taken is the one's actually from awning to the corner of
23 her trailer and from the defendant's steps to her door.

24 Q. Did you see evidence of shotgun pellets that hit her
25 trailer?

1 A. Yes, sir, I did.

2 Q. Did you see one about head high and she described it
3 as being hit no further than that away from where she was
4 looking through the window?

5 A. I don't -- I'd have to look at the photographs again
6 to recall, but I mean there were pellets in the door, yes.

7 Q. How many?

8 A. I don't recall. That's why I'm saying I'd have to
9 look at the photographs.

10 Q. Did you notice pellets around the door in the side of
11 the trailer?

12 A. No, sir.

13 Q. Okay. Did go inside of her trailer?

14 A. Yes, briefly.

15 Q. Okay. Did you see any evidence where any had come
16 through and damaged anything on the inside of the trailer?

17 A. Some had come through.

18 Q. And did you see evidence where it was damaged on the
19 inside?

20 A. No, did not.

21 Q. Did not?

22 A. Did not.

23 Q. Okay. And then how did know that the pellets had come
24 through?

25 A. Well, she had stated that the pellets had come

1 through. And when we began looking, when we looked in the
2 hallway, that's where we found one of the pellets.

3 Q. And that pellet was loose on the floor; right?

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

5 Q. It wasn't imbedded in anything?

6 A. No, sir, it was not.

7 Q. Did she ever call you later and tell she found an
8 additional pellet?

9 A. No, sir. No.

10 Q. As far as filling and seeing what all was done with
11 the gun before you got there, the best officer you can
12 think of to helps us with that would be who?

13 A. Corporal Dore he's the one that recovered the weapon.

14 MR. DEBERRY: Thank you that's all I have.

15 MR. RUSSO: I have no further questions.

16 THE COURT: Thank you, sir. You may step done.

17 (The witness left the stand.)

18 THE COURT: All right, ladies and gentlemen, we'll
19 stop for the evening. Remember don't discuss the case.
20 Remember my instructions about the press. We will fire up
21 at 10 in the morning. I'll be here a little earlier. But
22 as far as this case, we will start back at 10. Have a good
23 night and see you in the morning.

24 Everybody else remain seated while the jury departs.
25 Court's in recess.

1 (The jury was excused for the day.)

2 (Court adjourned for the day.)

3 (Court has reconvened.)

4 THE COURT: Bring them in.

5 (The jury returned to the courtroom.)

6 THE COURT: Good morning, ladies and gentlemen of
7 the jury, I apologize for the delay. I can assure you it
8 was for legitimate means. As I told you, I am the judge of
9 the law and you are the finders of the facts. Sometimes it
10 takes a little time to work through the matters of law
11 outside your presence. Also we had another matter that
12 popped up over at the Effingham Detention Facility. I had
13 to go ahead and resolve this morning. So with your
14 patience, I was able to do that. We're ready to resume the
15 trial at this time.

16 Counsel waive polling of the jury this morning?

17 MR. RUSSO: State waives, Your Honor.

18 MR. DEBERRY: Defense does, Your Honor.

19 MR. RUSSO: Your Honor, at this time the State would
20 call Corporal Jason Dore.

21 JASON DORE, being first
22 duly sworn, testifies as follows:

23 Q. State your name for the record?

24 A. Jason Dore. ,

25 Q. Corporal Dore, where are you employed?

1 A. Florence County Sheriff's office.

2 Q. And how long have you been employed at the Sheriff's
3 office in Florence?

4 A. I been employed for four and a half years. I left the
5 Sheriff's office and went to Richland County Sheriff's
6 office for about ten months. Came back in February of '97
7 -- I'm sorry '98 and I been employed there since then.

8 Q. So what is your -- What has been your entire length of
9 experience as a law enforcement officer?

10 A. A little over eight years.

11 Q. Eight years; is that correct?

12 A. Yes, sir.

13 Q. I'm gone ask you if you would because you're a little
14 bit soft spoken. If you'd speak loud enough for me to
15 hear, then the members of the jury can hear, okay?

16 A. Okay.

17 Q. What is your position with the Sheriff's Department?

18 A. Forensics technician.

19 Q. All right. And who is your immediate supervisor?

20 A. Lieutenant Keith Lutcken.

21 Q. All right. How many people work in forensics?

22 A. Four.

23 Q. And you take calls; is that correct?

24 A. Yes, sir.

25 Q. Do you work set shifts or you essentially on call?

1 A. We work -- There's three of us that rotate calls. The
2 two that are not on call work 8:30 to five Monday through
3 Friday. The person who is on call comes in at four p. m.
4 and works until midnight and is on call midnight to seven
5 and the following weekend.

6 Q. Okay. Now, I'm gone take you back to December of 1999
7 precisely December the 4th of 1999. What was your shift or
8 what was your status at that point?

9 A. I was on call that entire week including Saturday.

10 Q. And this was Saturday; is that correct?

11 A. Correct.

12 Q. So your familiar with the situation involving the
13 defendant?

14 A. Yes, sir.

15 Q. All right. And when did you first receive a call
16 involving this situation?

17 A. It was sometime after six p. m., not very long after
18 six p. m. Dispatch paged me and put in my pager the typed
19 written message into my pager that there had been a
20 shooting on Callie Young Road and that I needed to respond.

21 Q. All right. And you in fact did that?

22 A. Yes, sir.

23 Q. Now, what type of car did you drive?

24 A. I drive a Chevrolet Suburban.

25 Q. All right. And this is a marked vehicle?

1 A. Yes, sir.

2 Q. All right. So it has the Sheriff's markings and
3 everything?

4 A. Yes, sir.

5 Q. And what do you know about what time you arrived on
6 Callie Young Road?

7 A. If I recall correctly, I was at my parents house when
8 I got the page. So I had to drive back home, which is
9 about five to six minute drive. I changed into my uniform
10 and then drive back out there. So it's probably in the
11 neighborhood of a half hour.

12 Q. Okay. So somewhere between 6:30 and seven; is that
13 correct?

14 A. Correct, yes, sir.

15 Q. Okay. When you arrived, what did you find?

16 A. When I pulled up in the yard, the first thing I
17 noticed was some crime scene tape, taped up around the
18 trees and the front yard. The deputies had done that after
19 their arrival. There was several deputies there outside
20 their vehicles and also some members from the investigative
21 unit of the Sheriff's office.

22 Q. All right. If you would please take the jury through
23 from the time you arrived, what your investigation detailed
24 and what steps you took?

25 A. After I arrived, I got out of my car, approach the

1 scene, spoke to some of the deputies that were there to
2 find out -- get them to brief me on what they had done so
3 far. I believe I talk to Deputy Scott Brown advise who --
4 or told me that there had been a shooting. Then started
5 walking me through the crime scene showing me where
6 different pieces of evidence laying on the ground. After
7 that he, he me into the house. As we went into the front
8 door, he advised that there was a shotgun in the kitchen
9 leaning against the wall with some blood on it. And he
10 walked me through the rest of the residence and then came
11 back out.

12 Q. All right. What if anything, did you ask him with
13 regards to the shotgun?

14 A. After he pointed out the shotgun to me, I asked him if
15 he or if any other deputies or anybody there had touched
16 the shotgun or moved the shotgun or if they had hand
17 touched or handled any other pieces of evidence from the
18 scene.

19 Q. Okay. And what did he tell you?

20 A. No, not to his knowledge.

21 Q. All right. Now, as you're doing this walk through, do
22 you have your rubber gloves on or how are you dressed?

23 A. My normal uniform is a BDU's, battle dress uniform,
24 which is if anyone familiar with anyone's who ever been in
25 the Army. It's their camouflage uniform except ours aren't

1 camouflage they're green. We wear the green pants with
2 pockets on the sides, a green shirt with a star embroidered
3 on the front and Florence County Sheriff's office on the
4 back as well as black boots. On my initial approach to the
5 scene, I didn't have gloves on. What I do when I make a
6 walk through of the scene, I keep my hands in my pockets so
7 that I don't touch any vitals pieces of evidence to leave
8 my fingerprints on.

9 Q. Is that standard every crime scene that you work?

10 A. Yes, sir.

11 Q. Okay.

12 A. After the walk through, I went back out to my vehicle
13 and then put on my gloves and got my camera.

14 Q. Okay. And then what did you proceed to do?

15 A. When we start photographing the crime scene, we start
16 with our over all photos stepping back from the scene
17 taking photos. We don't have the camera lens zoomed in.
18 So that we're not getting close ups. We try to take over
19 all photos first. Then our medium range photos we may come
20 a little closer to the scene and some photograph some close
21 up items. And then what we do last is photograph our
22 extreme close-ups where we're doing measurements with --
23 say with a ruler any vital piece of evidence to get close-
24 up photos.

25 Q. And is that what you proceeded to do?

1 A. Yes, sir.

2 Q. Now, as you photographed items, supposedly what is the
3 condition of those items?

4 A. As they're found when we there.

5 Q. So no one is supposed to be touching anything?

6 A. No, sir.

7 Q. As you photograph items, do you collect them at that
8 time or do you finish all your photographs and then go back
9 and collect?

10 A. Depending on what kind of scene we're in. If we're in
11 a scene where there's a possibility of the suspect coming
12 back, the scene is not quite secure. We may collect them
13 as we go. In this case, the scene was secure. So after I
14 would photograph them, I would leave them where they were
15 so that I could get through with all my photographs and
16 take care of one thing at a time. Get my photographs out
17 of the way and then come back and collect the evidence.

18 Q. Now, any of these items which you collected prior to
19 you -- I mean are you the one who physically collects them?

20 A. Yes, sir.

21 Q. Prior to you actually physically collecting them, has
22 anyone tampered with them or touched them?

23 A. No, sir.

24 Q. So you finished taking your photographs; is that
25 correct?

1 A. Yes, sir.

2 Q. Jason, let me show you what's been marked as State's
3 12 and ask if you can identify that, please?

4 A. That would have been one of the first photographs I
5 took as I got out or as I -- after I come back to my
6 vehicle and gotten my camera, of an over all photo of the
7 -- trying to get as much of the entire scene in the picture
8 as possible.

9 Q. Okay. This is the scene as it appears when you drove
10 up?

11 A. Yes, sir.

12 Q. Let me show you what's been marked as State's 27, 26,
13 13 and 28. And ask you to please identify those?

14 A. Twenty-eight is a photograph of a gunshot to an awning
15 right beside the residence. It appeared that someone had
16 shot it with a shotgun.

17 Q. Okay.

18 A. Thirteen, 26 and 27 would all be the same thing with
19 the exception of this one is a little closer up taken from
20 the outside of the awning.

21 Q. And this is 27; correct?

22 A. Correct. Thirteen and 26 are taken from the inside
23 facing back toward the trailer.

24 Q. Okay. Now, let me ask you if I can please. When you
25 took these photographs, did you all also do a visual

1 examination of these holes in the awning?

2 A. Yes, sir.

3 Q. What if any rust or whatever did you find there?

4 A. I didn't find any rust. All of it looked like fresh
5 torn metal.

6 Q. Okay. I have State's 11, 14, 32 and 34. And just a
7 brief description if you would of what those are?

8 A. Eleven will be a close up to scale photograph of a,
9 zipper lighter and some keys. Fourteen is a close up
10 photograph without the scale of a lighter and keys.
11 Thirty-two is a medium range photo of a lighter keys and a
12 pocket knife. Thirty-four is the same thing just trying to
13 tie it in relation to the body.

14 Q. Okay. You went into the house; is that correct?

15 A. Yes, sir.

16 Q. All right. And I think you said you found a shotgun
17 in there?

18 A. Yes, sir.

19 Q. I'm gone show you what's been marked as 20 and 30.
20 Twenty first then 30. If you could identify that?

21 A. Twenty is a photograph of the shotgun leaning against
22 the wall.

23 Q. All right. And 30?

24 A. The same photos just a little closer.

25 Q. Now, these photos 20 and 30, do they depict the

1 shotgun as you found it on the scene.

2 A. Yes, sir.

3 Q. And at the time that you took these photographs, did
4 you have any knowledge that if this shotgun had been
5 touched by anyone with your team?

6 A. I do not have any knowledge of it.

7 Q. All right. Seventeen, 18 and 19 -- State's
8 17, 18, and 19 can you identify those please?

9 A. Starting with 19 to be a photograph of a shotgun
10 shell. You're facing the residence to the right of the
11 staircase leading up to the front door.

12 Q. Now, this shotgun shell that's in State's 19 using
13 this diagram of State's 35, can you show the members of the
14 jury where this shell was found?

15 A. Approximately right here.

16 Q. All right. And is that the one that has four feet ten
17 inches?

18 A. Yes, sir.

19 Q. All right. What was the condition of that shell when
20 you found it?

21 A. It was in a fired condition. It had been fired prior
22 to being put on the ground.

23 Q. Okay.

24 A. Number 18 is the same shotgun shell with a scale or a
25 ruler in it.

1 Q. Okay?

2 A. And Number 17 is a close up photo of the shotgun
3 shell.

4 Q. Same shell?

5 A. Yes, sir.

6 Q. All right.

7 MR. DEBERRY: Note my objection.

8 MR. RUSSO: Subject to his previous objections, Your
9 Honor.

10 THE COURT: All right.

11 Q. I'm showing you State's two, nine, ten and eight. And
12 if you can please describe those, please?

13 A. Number ten is the victim's left hand.

14 Q. That's his left hand?

15 A. Yes, sir.

16 Q. All right.

17 A. Number 9 is the victim's right hand holding a fired
18 shotgun shell.

19 Q. All right.

20 A. Number 8 is also the victim's right hand holding a
21 shotgun shell.

22 Q. This a little closer?

23 A. Yes, sir. Number 2 is a victim -- I'm sorry a
24 photograph of the victim's right hand holding the shotgun
25 shell. As we found him, his hand was closed around the

1 shotgun shell. And Lieutenant Lutcken is holding his
2 fingers open so that we can photograph the end of the
3 shell.

4 Q. Okay. I'm going to hand you up a bag and tell me if you
5 can identify that?

6 A. It would be the shotgun shell I picked up off the
7 ground.

8 Q. Okay. This is in fact the shotgun shell, which is
9 shown on the ground; is that correct?

10 A. Yes, sir.

11 Q. All right. And State's 41 which is already in
12 evidence which came out the bag marked State's 41. Can you
13 identify that?

14 A. That would be the shotgun shell removed from the
15 victim's right hand.

16 Q. Okay.

17 MR. RUSSO: Your Honor, at this time we would move
18 State's 47 into evidence.

19 MR. DEBERRY: No objection, Your Honor.

20 THE COURT: All right. Without objection.

21 (Shotgun shell entered into evidence as State's
22 Exhibit 47.)

23 Q. State's 29 would you please identify that?

24 A. That's a medium range photograph depicting the shotgun
25 shell on the ground in relation to the front steps.

1 Q. Okay. Who mobile home is that?

2 A. That will be Mr. Daniels.

3 Q. All right.

4 MR. RUSSO: Your Honor, State's 44 and 43 we would
5 move at this time to enter those without objection is my
6 understanding.

7 THE COURT: Okay.

8 (Photographs entered into evidence as State's
9 Exhibit Numbers 43 and 44.)

10 Q. I'm gone show you a picture please State's Number 43
11 would you identify that?

12 A. It's a photograph of the kitchen area. The mobile
13 home as it was when I enter into the residence.

14 Q. Okay. As you entered the residence this was ---

15 A. That was the condition that it was in.

16 Q. All right. State's 25?

17 A. A photograph of the table depicting plates and a
18 bottle of Mountain Dew and a bottle of steak sauce.

19 Q. State's 44?

20 A. A photograph of the trash can behind the table.

21 Q. Is that in the kitchen?

22 A. Yes, sir.

23 Q. All right.

24 A. Depicting some trash and some bottles -- some cans of
25 beer.

1 Q. Now, State's 33?

2 A. A photograph of the trash can as well as some cans of
3 beer and a bottle of beer appears to be Smirnoff Vodka that
4 I removed from the trash can and placed on the counter for
5 the purpose of photographing it.

6 Q. Okay. So State's 44 I think this is the photograph
7 of that trash can?

8 A. Yes, sir.

9 Q. Is that prior to you removing anything from it?

10 A. Yes, sir.

11 Q. All right. And then States 43?

12 A. Thirty-three.

13 Q. Thirty-three is where you removed those items; is that
14 correct?

15 A. Yes, sir.

16 Q. All right. What was the purpose of moving those items
17 from the trash can?

18 A. To show that alcohol consumption had been taking place
19 there or that they been drinking.

20 Q. Now, but at the time these were taken, you have any
21 information with regards to when that alcohol was consumed?

22 A. No, sir.

23 Q. Jason, I'm gone show you ---

24 MR. DEBERRY: Those are subject to the objection,
25 Your Honor.

1 THE COURT: All right. Noted.

2 Q. State's 3, State's 5, State's 6, 7, and State's 9.

3 And if you just give a brief description and if -- And tell
4 if that was in the condition you found it those items --
5 those pictures?

6 A. When we photograph a body, a vehicle anything of that
7 nature, we try to take photographs from all sides of
8 whatever we're photographing. In this case, I was taking
9 pictures from all sides of the victim. Number 4 depicts
10 the victim's left side. And all these -- In all the these
11 photographs, the only people who touched the victim or who
12 could have altered the victim were EMS personnel.

13 Q. Now, the in corner of the photograph, I see an item
14 can you describe what that is? It's a -- some type of
15 post?

16 A. A bird feeder.

17 Q. Okay. And those next two?

18 A. The victim -- It's on the left side of the victim.

19 Q. All right. Is that a concrete ---

20 A. Yes, sir. To the left side of the victim is a
21 concrete a pad.

22 Q. Okay.

23 A. It's a little better in this picture. It depicts the
24 victim's right side showing the concrete pad with the grill
25 on it.

1 Q. All right. And that's a gas grill you say?

2 A. Yes, sir.

3 Q. Okay.

4 A. Photograph Number 6 is a photograph of the victim from
5 his head towards or facing the defendant's trailer.

6 Q. And this was the position that the victim was in when
7 law enforcement arrived; is that correct?

8 A. Yes, sir.

9 Q. Is this before EMS has gotten there?

10 A. No, sir. EMS has already done what they need to do to
11 the victim to determine whether or not he was deceased.

12 Q. Do you know if they moved his body from the spot they
13 found it?

14 A. I do not know.

15 Q. Okay?

16 A. Photograph Number five is a photograph, my back would
17 have been towards the defendant's trailer, taking a
18 photograph of the victim's feet and also depicts a metal
19 T-bar water shut off valve. Photograph Number 3 I would
20 have been standing over the concrete pad also taken a
21 photograph of the victim's left side.

22 Q. Okay. State's 15 and 16?

23 A. Fifteen is a photograph of the buckshot and breaching
24 mechanism or trigger area of the shotgun found in the
25 kitchen depicting blood on those areas.

1 Q. Okay. Sixteen?

2 A. Sixteen pretty much the same thing just from a
3 different view from the top of a shotgun.

4 MR. RUSSO: This is State's 45 and 46.

5 MR. DEBERRY: No, objection.

6 MR. RUSSO: Your Honor, this is State's 45 and 46
7 that we would submit at this time into evidence without
8 objection from the defendant.

9 THE COURT: All right.

10 (Photographs entered into evidence as State's
11 Exhibit Numbers 45 and 46.)

12 Q. Would you describe those please?

13 A. State's Number 45 is a picture of the sink inside the
14 victim's bathroom in the hallway bathroom.

15 Q. That's a hallway, bathroom?

16 A. Yes, sir. The reason we took note of this. There was
17 some red stain -- small red stains in the bottom of the
18 sink. Also some water with some red tint to it where it
19 appeared that it was either some dry blood or made like
20 somebody tried to wash some blood off their hands.

21 Q. Both of these are ---

22 MR. DEBERRY: Your Honor, please, I object to that
23 characterization. It's highly speculative. He took a
24 picture of what he saw; that's what he saw. He says it
25 look like somebody might have tried to wash some blood off

1 their hands. He wasn't there at that time. And my
2 position is he can only testify as to what he found there.

3 MR. RUSSO: Well ---

4 MR. DEBERRY: If, Your Honor, please...

5 THE COURT: That's a close call considering
6 everything, but I'm gone sustain the objection. The jury
7 will disregard the testimony. However, the picture's in
8 they can see it.

9 MR. RUSSO: Just to get a clarification, Your Honor,
10 I would ask that at least Corporal Dore be able to testify
11 as to from his experience what it appeared to be as far as
12 -- not necessarily what someone may have done but what this
13 appears to be.

14 THE COURT: He can testify as to what he saw, but he
15 can't speculate anything unless he's an expert.

16 MR. RUSSO: Yes, sir.

17 Q. Corporal Dore, relating to the photograph you took and
18 the water goblets that are shown in that sink, from your
19 experience what did you see? What did you -- just describe
20 what you saw? Not what you think it was, but what you
21 describe you saw?

22 A. A dried red stain also red tented color water.

23 Q. Okay. That's fine?

24 A. And 46 the same thing with a scale or a ruler in it.

25 Q. Okay. State's 40 you identify this?

1 A. This is the (shotgun we recovered from the kitchen
2 area.

3 Q. Now, when you recovered this State's 40, were you the
4 one who did the recovery on it?

5 A. Yes, sir.

6 Q. To your knowledge had it been touched or tampered with
7 before you took possession of it?

8 A. Not to my knowledge.

9 MR. RUSSO: Now, at this time we would move State's
10 40 into evidence.

11 MR. DEBERRY: No objection.

12 THE COURT: Okay.

13 (Shotgun entered into evidenced as State's Exhibit
14 Number 40.)

15 Q. Jason, let's talk about the shotgun in after I think
16 you testified that you had been -- seen the shotgun on your
17 first walk through?

18 A. Right.

19 Q. All right. Once you actually put your gloves on and
20 began your work, please tell the jury how you handled the
21 photograph and the taking possession of the shotgun?

22 A. As we walk -- As I came into the kitchen on taking my
23 photographs, came into the front door photographed a
24 picture. It's like a half wall that comes out from the
25 back wall where you can have access to the kitchen and the

1 living room. Standing in the between them, you can see the
2 shotgun leaning in the corner by I think it was a clothes
3 driver. I photographed the shotgun as it was leaning
4 against the wall. Then took some photographs -- several
5 photographs as it was. The shotgun is here leaning against
6 the wall next to the dryer behind the table. After taking
7 as many photographs as I wanted to as it was, I walked over
8 and picked the shotgun up.

9 Q. All right. Now, let's talk about that. The shotgun
10 is leaning against the wall as you have here?

11 A. Yes, sir.

12 Q. Are you wearing gloves?

13 A. Yes, sir.

14 Q. All right. Tell the jury how you went about handling
15 the shotgun and what you did?

16 A. I walked over to the shotgun. I had already been
17 advised there was some blood on the shotgun. So looking
18 for a clean place on the barrel. I wasn't sure exactly
19 where blood was and where blood wasn't. So I was looking
20 for a clean place and I found it, a clean place near the
21 muzzle of the barrel, which is the end where the shot
22 actually comes out. I picked the shotgun up and examined
23 it. I look to see where blood was and where blood wasn't.
24 I noticed there was hardly any blood on the fore stock or
25 the forward wooden part where someone would hold on to the

1 front of the shotgun.

2 Q. Let me get -- All right. I'm referring now to State's
3 Exhibit Number 16?

4 A. Okay. This is a top view of the shotgun. The
5 breaching mechanism, the hammer then the barrel goes
6 forward. A few inches up from the barrel on the bottom
7 side is a wooded piece where you can hold on to the
8 shotgun. After finding not much blood there, I grabbed
9 that part which freed up my right hand. At that point, I
10 can place my hand on the rear checking to make sure the
11 weapon was unloaded. I breached the shotgun, which is near
12 breaking it down. And finding nothing in there, no shells,
13 no empty shell casing or no live rounds. I then closed the
14 shotgun.

15 Q. Okay. And then what did you do with it at that point?

16 A. Placed it on the table. I moved some stuff back on
17 the table so I could lay it down on the table to get
18 photographs and close ups of the bullet on the left.

19 Q. After you finished photographing -- Now, during this
20 time, who if anyone else is assisting you with this?

21 A. I believe Scott Brown or Deputy Brown was there with
22 me.

23 Q. All right. Who if anyone besides yourself was
24 handling the weapon?

25 A. No one.

1 Q. After you finished your photographing of everything,
2 what did you then do with the weapon?

3 A. After photographing the blood, I went and placed it on
4 the counter of where I could take some more close ups of
5 the shotgun with what we call a scale. And you keep
6 hearing me refer to a scale. A scale is nothing more than
7 than a ruler. This we get through a scientific laboratory,
8 which has markings on it to where we can actually blow it
9 up original size if we need to blow a picture up either do
10 a photograph, studio, or a computer.

11 Q. Now, what did do with shotgun after you finished
12 photographing it?

13 A. After I finished photographing, I left it on the
14 counter and walked back out to my vehicle and got a bio
15 hazard bag since the gun did have blood on it. I came back
16 in and put it in the biohazard bag and took it back out to
17 my vehicle and secured it there.

18 Q. Was there anyone else in the mobile home when you went
19 to get the biohazard bag?

20 A. Deputy Scott Brown.

21 Q. I guess anyone other than law enforcement officers?

22 A. No, sir.

23 Q. You then secured the weapon in you car; is that
24 correct?

25 A. Yes, sir.

1 Q. Then what did you do?

2 A. Went back into house and resumed photographing the
3 rest of the residence and doing whatever processing I
4 needed to do in there.

5 Q. Let me just -- Corporal Dore, can you identify that
6 item please?

7 A. It's a T-bar metal bar used for shutting off water
8 valve.

9 Q. All right. And where did you find that?

10 A. This was on the ground near the victim's feet outside
11 the residence.

12 MR. RUSSO: Your Honor, at this time we would ask
13 that this be moved into evidence as State's 48.

14 THE COURT: That's without objection.

15 (Water shut off tool entered into evidence as
16 State's Exhibit Number 48.)

17 Q. When you found this T-bar or this water cut off tool,
18 did you also examine it?

19 A. Yes, sir.

20 Q. And what if anything did you find on that?

21 A. Nothing. Didn't appear to be any blood on the item.

22 Q. Did you examine it completely?

23 A. Yes, sir.

24 Q. The entire bar?

25 A. On the scene, I picked up and did a visual inspection

1 of it on the scene. And then later with a magnifying
2 glass.

3 Q. You did do it with a magnifying glass?

4 A. Yes, sir.

5 Q. Did you find anything that -- On it you that you found
6 unusual or what you describe as blood or anything?

7 A. No, sir.

8 Q. What did you do after that?

9 A. I left that item where it was after photographing it
10 and continued photographing it.

11 Q. Okay. When you completed your photographing of all of
12 the various items and you collected the items ---

13 MR. RUSSO: Beg the Court's indulgence for just a
14 moment.

15 Q. Did you have an occasion that night to process or at
16 least if not maybe process is the wrong word. Did you have
17 the occasion that night to go to any other mobile home in
18 that area?

19 A. Yes, sir.

20 Q. All right. And where was that?

21 A. It was the residence next door to Mr. Daniels.

22 Q. At the time you went over there, did you know whose
23 residence that was?

24 A. No, sir.

25 Q. And does it appear on this sketch?

1 A. Yes, sir, here.

2 Q. All right. And you subsequently learned whose
3 residence that was?

4 A. Yes, sir, I did.

5 Q. And whose residence was that?

6 A. At that time it was Ms. Mary McDougal.

7 Q. All right. What was your reason for going over there?

8 A. We had learned that she had been the one who called
9 into 911. And after -- I don't know who spoke with her,
10 but word gotten back to us that her residence had been hit
11 by several pellets when the shooting occurred.

12 Q. So you went over there. Did you find any evidence of
13 shotgun fire?

14 A. Yes, sir.

15 Q. All right. I'm gone show you what's been marked as
16 State's 31, 22, 24, 21, and 23. And just briefly if you
17 just go through quickly and let the jury know what we got
18 in those photographs there?

19 A. Twenty-one a photograph of where a pellet penetrated
20 the wall. Twenty-four is a photograph taken to make sure
21 as many pellet holes as I could.

22 Q. Okay. This is the back door of the witness's trailer?

23 A. Correct.

24 Q. Mary McDougal?

25 A. Right.

1 Q. Okay.

2 A. Twenty-three is a photograph of two pellet marks on
3 the -- I'm sorry the witness's back door. Thirty-one and
4 22 are the same thing. They been scaled.

5 Q. Okay. Now, when you were in Mr. McDougal's residence,
6 did you find anything?

7 A. Yes, sir. We found one buckshot pellet and in hallway
8 of her mobile home.

9 Q. It's a little item. I'm just gone ask you can you
10 identify that?

11 A. Yes, sir, a buckshot pellet.

12 Q. All right. And was this the pellet you found in
13 Ms. McDougal's residence?

14 A. Yes, sir.

15 Q. All right. If you would please...

16 MR. RUSSO: And I believe we would at this time move
17 State's 49 into evidence a pellet he found.

18 MR. DEBERRY: No objection.

19 THE COURT: In without objection.

20 (Shotgun pellet entered into evidence as State's
21 Exhibit Number 49.)

22 Q. Where did you find this pellet -- Where did you find
23 the pellet?

24 A. In the hallway of the witness's mobile home near the
25 back door.

1 (A pause in proceedings.)

2 MR. RUSSO: We move at this time to enter State's
3 50, 51, 52 and 53.

4 MR. DEBERRY: No, objection.

5 THE COURT: In without objection.

6 (Photographs entered into evidence as State's
7 Exhibit Numbers 50, 51, 52, and 53.)

8 Q. Jason State's 51, 52 and 53 if start with 50 there and
9 identify that please?

10 A. Number 50 is a photograph of the carpet just inside
11 the defendant's mobile home just inside the front door
12 depicting several drops of red substance on the floor that
13 appear to be blood.

14 Q. Okay?

15 A. Fifty-one is a photograph of ---

16 Q. Excuse me. Do the next one in line if you would that
17 relates to this one?

18 A. Okay. Fifty-two is a close up of the same photograph
19 of the carpet area just inside the front door.

20 Q. A close-up of what we see in 50?

21 A. Yes, sir.

22 Q. Okay.

23 A. Fifty-one I'm sorry -- Yes, 51 is a photograph of the
24 defendant's front door just above the handle to open the
25 door found what appear to be a bloody fingerprint and some

1 kind of red substance.

2 Q. All right.

3 A. Fifty-three is a photograph of the same fingerprint
4 with the scale of the photograph and partial ridge detail
5 in the fingerprints.

6 Q. All right. You gone through the scene you done your
7 photography. You've collected these various items. At
8 this point then what do you do?

9 A. I believe after we collected the items that's when we
10 went over there to Ms. McDougal's residence to photograph
11 and collect over there.

12 Q. Okay. And then you took those photographs what you
13 referred to?

14 A. Yes, sir.

15 Q. And you collected that pellet?

16 A. Yes, sir.

17 Q. All right. And then what did you do?

18 A. We had to wait for the EMS transport unit to come back
19 and photograph -- I'm sorry. At that time, we went and
20 started taking our photographs of the victim.

21 Q. You photographed the victim?

22 A. Yes, sir.

23 Q. And various -- And then once you completed the
24 processing of the victim, then what happened?

25 A. We waited for EMS to come back with their transport

1 unit, which transports the deceased to the morgue at McLeod
2 Hospital. We assisted in helping load the victim into the
3 ambulance. And then myself and Lieutenant Lutcken left the
4 scene and went to the law enforcement center.

5 Q. Now, Jason, while you were on the scene, do you recall
6 how long you were there from the time you arrived and you
7 call -- Rather the minutes or hours how long you were
8 there?

9 A. Approximately two hours maybe a little longer.

10 Q. All right. And while you were at the scene, did you
11 through the investigation, did you learn any information
12 from the statements taken from any individuals?

13 A. Yes, sir.

14 Q. All right. And you learned this information while you
15 were at the scene; is that correct?

16 A. Yes, sir.

17 Q. And I'm not asking you to repeat exactly what was told
18 to you, but were you informed that the defendant had made
19 statement there?

20 A. Yes, sir.

21 Q. At the scene?

22 A. Yes, sir.

23 Q. And were you informed of the contents of that
24 statement?

25 A. Yes, sir.

1 Q. All right. Were you inform with regards to Ms. Mary
2 McDougal that she made a statement?

3 A. Yes, sir.

4 Q. And the contents of that statement?

5 A. Yes, sir.

6 Q. So you had this information while you were at the
7 scene before you left?

8 A. Yes, sir.

9 Q. All right. Now, what if any processing with regards
10 to the shotgun and any further processing did you do with
11 regards to the shotgun?

12 A. None.

13 Q. Were any fingerprints taken?

14 A. No, sir.

15 Q. Can you tell jury why you didn't take fingerprints off
16 the shotgun?

17 A. Based on the information that we had. Based on the
18 contents Ms. McDougal's testimony or statement. We knew
19 that the subject -- The defendant and the victim had both
20 handled the weapon. And had we taken fingerprints, we
21 would have found exactly would have expected to find and
22 both the defendant's and the victim's fingerprints on
23 there.

24 MR. DEBERRY: We object to that.

25 MR. RUSSO: He's just explaining why he didn't take

1 the prints.

2 MR. DEBERRY: I know what I heard. He said if we
3 had taken the fingerprints, we'd have found exactly what we
4 expected to find. I object to that.

5 THE COURT: Overrule. You can cross examine him on
6 it.

7 Q. What if any information did you have with regards to
8 this scene in this area of anyone else handling that
9 weapon?

10 A. None. We didn't have any other information with
11 anyone else handling the weapon.

12 Q. There was blood on the weapon; correct?

13 A. Yes, sir.

14 Q. Was that processed?

15 A. No, sir.

16 Q. Why wasn't that processed?

17 A. Again, based on the evidence that we had we knew for a
18 fact that only two people bleed at that scene. There was
19 never any question of a third party being there.

20 Q. Who -- And I don't mean ask you. Who was bleeding at
21 the scene?

22 A. The victim was bleeding and the subject was bleeding,
23 the defendant.

24 Q. And why was the subject bleeding?

25 A. Because he had a large hole -- gunshot wound into his

1 throat.

2 Q. Excuse me I'm sorry. Not the victim, but we refer to
3 him as the defendant. We know why the victim was bleeding?

4 A. Yes, sir.

5 Q. What indication you had that the defendant was
6 bleeding?

7 A. A cut on his right hand.

8 Q. And where was that cut located?

9 A. In the web between the thumb and index finger.

10 Q. Can you hold it, please?

11 A. In here.

12 Q. Of which hand?

13 A. His right hand.

14 Q. So why did you feel it not necessary to take blood
15 samples or process the blood?

16 A. Because with only two people bleeding at that scene it
17 could be two sources of blood. One would have been the
18 victim who or I'm sorry. One could have been the defendant
19 who we knew had a cut on his hand and had probably put the
20 blood on that shotgun.

21 Q. Now, you shown us some photographs of blood on the
22 excuse me -- on the defendant's door and inside the door?

23 A. Yes, sir.

24 Q. Okay. How did you know that wasn't the victim's
25 blood?

1 A. Because based on what we had at the scene, it appeared
2 once the victim had been shot that he did not move any
3 after that.

4 Q. All right. As a forensic officer -- And I know you're
5 not a medical person. But you photographed the victim; is
6 that correct?

7 A. Yes, sir.

8 Q. And you examined the body at least visually?

9 A. Yes, sir.

10 Q. All right. Other than the gunshot wound in the neck,
11 did you see any other areas on the victim that were either
12 open wound or any bullets come from any other area?

13 A. No, sir -- Well, I did. There was also an exit wound
14 out of the back.

15 Q. Okay. And I apologize. Other than the wound created
16 by the shotgun blast ---

17 A. Right.

18 Q. --- any other blood or areas that blood was coming
19 from the victim other than the wound from the shotgun
20 blast?

21 A. No, sir.

22 Q. In your examination of the area where the victim was
23 lying the deceased ---

24 A. Yes, sir.

25 Q. What if any blood did you find in that area?

1 A. Well, what blood did you found in that area of the
2 victim was the blood coming from his throat and also
3 forming a pool underneath his body from where it was
4 draining out of the back from the exit wound.

5 Q. Okay. Would have been -- And I think you shown us
6 photographs of the victim who was lying on his back;
7 correct?

8 A. Correct.

9 Q. So would that pool of blood been underneath the
10 victim's head?

11 A. Yes, sir.

12 Q. Was there any other indication of blood anywhere else
13 in that vicinity or in that area?

14 A. No, sir.

15 MR. RUSSO: Beg the Court's indulgence for just one
16 moment.

17 Q. Corporal Dore, I want to ask you to handle this gun?

18 MR. DEBERRY: Your Honor, may we take a break.

19 MR. LAWSON: Your Honor, we would ask for a recess
20 at this point.

21 THE COURT: Ladies and gentlemen, if you will step
22 back to your room please for just a minute.

23 (The jury was excused to the jury room.)

24 MR. LAWSON: Your Honor, this is the second time
25 that the defendant has reacted this way in relation to the

1 gun. If he cannot handle the fact that he has to look at
2 this gun during this trial, I'm gone ask that he be removed
3 from the courtroom during periods that the State refers to
4 the gun. I think it's highly prejudicial to the State to
5 have the defendant break down that way in relation to the
6 firearm and that's the State's position on that.

7 THE COURT: Well, I know emotions can run high in a
8 case such as this.

9 Mr. Daniels, you gone need to try to control
10 yourself now. I know it's not the most pleasant experience
11 that you ever gone through.

12 Mr. Deberry, if you'll speak with him about that. I
13 don't want to take any drastic measures. I mean, after ten
14 years up here, I can see how the jury can take things like
15 that in various ways. But still we need to try to keep
16 that from happening.

17 All right. Let's take ten minutes everybody relax.

18 (Court in recess.)

19 (Court reconvened.)

20 THE COURT: Bring them in.

21 (The jury returned to the courtroom.)

22 Q. Corporal Dore, I'm gone ask you if you would please --
23 Would you please go ahead and check it to make sure. If
24 you would -- And you might want use the wall there behind
25 you. If you would sit the gun against that wall and show

1 the members of the jury when you found the gun -- And I
2 know that initially when you found it and you looked at it.
3 You took photographs of it in place. And then at some
4 point you took possession of it. Show the jury how you
5 went about taking possession of the weapon please?

6 A. It would have been a little more upright than this.
7 The chalkboard get it that high. I walked up to it looked
8 at the barrel seen the blood. This being the muzzle.
9 Picked it up inspected it closely as I could. Grabbed it
10 by the fore stock, reached around to the back to this
11 breaching mechanism, push it all the way over. Checked the
12 shotgun to make sure it was unloaded.

13 Q. And it was?

14 A. Yes, it was.

15 Q. What did you do?

16 A. After observing it, I closed it back up. I put it on
17 the table from my photographs.

18 Q. All right. Now, if you would step down here. I want
19 you to show the members of the jury the areas where you
20 found what you believe to be blood on the shotgun?

21 A. The blood started right in here and all the way back
22 to here.

23 Q. So in this area right here is where you saw the
24 beginning of what you thought would be blood?

25 A. Correct.

1 Q. Beyond that area up to the muzzle, anything that you
2 observed that you felt or you thought might have been
3 blood?

4 A. No, sir.

5 Q. All right. Was there any greater concentration of
6 what you thought to be blood in any particular area?

7 A. The greatest area of concentration of the red
8 substance on here about right and right here.

9 Q. And I'm -- If you need more later on we got more. I
10 don't think you need the gloves any longer. Is there a
11 trash can. Now, Corporal Dore, today we see this gun and
12 it's in a box?

13 A. Yes, sir.

14 Q. Initially, you indicated that you had put it in a
15 biohazard bag?

16 A. Yes, sir.

17 Q. Okay. How did it end up being in this box?

18 A. We don't carry those boxes with us in our vehicles.
19 After taken it out at the law enforcement center and
20 entering it into evidence, it was taken out of the
21 biohazard bag and placed in a box. We keep those kind of
22 boxes in the evidence room.

23 Q. All right. And is it just placed in the box and the
24 box shut or how ---

25 A. No, sir. If you will notice if you hold it up.

1 There's holes in the bottom of the box. We take these wire
2 tabs place them through the holes and around the barrel or
3 around the hand of the shotgun.

4 Q. And what's the purpose of doing that?

5 A. Just to keep it immobile while in the box.

6 Q. All right. Now, from the time you took possession of
7 the shotgun and do what you did and transferred it into the
8 box put it in the box and entered it into the evidence
9 room, has anyone handled that gun outside of your presence?

10 A. Not that I know of, no. Well, when I took it to SLED
11 for testing.

12 Q. Okay. And I apologize. Besides when it was taken to
13 Special Agent Parnell besides that, it's been in your care
14 and custody; is that correct?

15 A. Yes, sir.

16 MR. RUSSO: Thank you, Corporal Dore, I have no
17 further questions at this time. Please answer anything Mr.
18 Deberry may have.

19 CROSS EXAMINATION BY MR. DEBERRY:

20 Q. Mr. Dore, just as you said there at the scene during
21 the approximately two hours that you testified that you
22 were there, you learned that Tracy Daniels said that he
23 shot this person?

24 A. Yes, sir.

25 Q. And you learned from that Mary McDougal also said that

1 he shot the person?

2 A. Yes, sir.

3 Q. And you learned that both of them were -- held the
4 shotgun?

5 A. Both the victim and Mr. Daniels?

6 Q. Yeah.

7 A. Yes, sir.

8 Q. And you learned that they stood together within an
9 arms length and they passed it back and forth. That was
10 information that you had; is that right?

11 A. Yes, sir.

12 Q. And right then you formed an impression that this a
13 pretty easy case; right?

14 A. I wouldn't say that it would be easy. We knew who our
15 suspect was.

16 Q. And from that point forward wasn't a lot done; was it?

17 A. There was -- Once we took possession of the shotgun, a
18 lot more was done at the scene as far as photographs and
19 collecting evidence.

20 Q. From the time you left there say after the next day
21 when you wrote everything up and all, wasn't a lot down
22 after that was it?

23 A. No, sir.

24 Q. Even up until today with the exception of Thursday or
25 Friday when you decided to send it off right?

1 A. Right.

2 Q. And you pretty much figured it was a cut and dry case
3 when you left that there night; wouldn't that be a fair
4 statement?

5 A. No, sir. Because as far as my responsibility it's not
6 up to me to decide if he's guilty or not. I mean I knew
7 who our suspect was. And I knew he had fired the weapon.

8 Q. Okay. And the truth of the matter is, we sort of
9 stopped there; didn't we?

10 A. Sort of, yes, sir.

11 Q. There was some other things that I been over with
12 other people here granted. You preserve that -- You were
13 careful with that gun preserve the fingerprints but we
14 never got them did we?

15 A. No, sir.

16 Q. Just took it for granted?

17 A. We ---

18 Q. You understand the prints would have been on there
19 didn't you say?

20 A. Yes, sir.

21 Q. We sort of took it for granted?

22 A. I wouldn't say I took for granted, but I knew who --
23 Had we done them, we had an expectation of who we would
24 find.

25 Q. Okay. And the blood we made some assumptions there

1 and we stopped; right?

2 A. No, sir, I wouldn't say that was an assumption.

3 Q. Really?

4 A. Yes, sir.

5 Q. Well, did you assume it was anybody's blood on that
6 gun other than Tracy Daniels?

7 A. No, sir.

8 Q. So we made an assumption it as Tracy Daniel's blood
9 that you saw right?

10 A. Yes, sir.

11 Q. And so we didn't do anything further?

12 A. No, sir.

13 Q. And obviously, you have a serology place to send it to
14 be test; right?

15 A. Yes, sir.

16 Q. That's why -- That's why I believe you said even have
17 clothes -- You wear a uniform that have pockets so you can
18 make sure your hands are in your pockets when go on a
19 scene. So you don't touch something accidentally; is that
20 right?

21 A. Yes, sir.

22 Q. And your trained to keep your hands in your pockets so
23 you wouldn't dare touch something that might put your
24 fingerprints on it; is that right?

25 A. Yes, sir.

1 Q. And, officer, you -- We didn't do any stippling -- We
2 didn't send the gun off for any stippling test; right?

3 A. No, sir. Stippling is what occurs when unburned
4 powder enters the skin.

5 Q. Right. Well, in order to go to stippling and the
6 testing of the gun as far as distance and pattern, that
7 wasn't done either, was it?

8 A. No, sir. The stippling would be handled by the
9 forensic pathologist. He would determine the stippling
10 pattern on the throat and give us a distance of
11 approximately how far the weapon was when it as fired.

12 Q. And even though we had information there that Tracy
13 had given -- Tracy had given that he was 12 to 15 feet away
14 when he shot this person. You were aware that he said
15 that; right?

16 A. No, sir.

17 Q. You weren't aware of that?

18 A. No, sir.

19 Q. Do y'all work together even though you're in the
20 forensics part of it and some other people do something
21 else like maybe other things. Do y'all also work together?

22 A. Yes, sir.

23 Q. But you were unaware of the fact that Tracy Daniels
24 had said he was between 12 and 15 feet away when the weapon
25 was fired?

1 A. I do not recall hearing that when I was there.

2 Q. Did that surprise you?

3 A. Yes, sir.

4 Q. And so do you think maybe the fact that you were
5 unaware of that at some bearing on whether or not you
6 thought it was necessary to have the blood on the gun
7 checked?

8 A. No, sir, I would for almost certain that with the
9 amount of stippling and tattooing would be same thing on
10 the victim's neck. That there would be no way that
11 Mr. Daniels could be 12 to 15 feet away.

12 Q. Well, the ---

13 A. Had I been I informed of that, I would have
14 disregarded that information.

15 Q. Okay. Now, the -- Exactly when was it that you
16 decided that you pretty much had the suspect -- sort of
17 knew what happened there? You were there for two hours?

18 A. Yes, sir.

19 Q. At what point of that two hours do you think you made
20 that first impression?

21 A. When I arrived at the scene, I was told immediately
22 the suspect was in custody and that he already made a
23 statement.

24 Q. Now, there's some other things obviously in hindsight
25 that sight could have been done might shed some light on

1 that, but it weren't done; right?

2 A. I don't think so.

3 Q. Okay. Well, were you -- You went in the house of
4 Mr. Mary McDougal; right?

5 A. Yes, sir.

6 Q. And you were aware that there were -- her was house
7 hit?

8 A. Yes, sir.

9 Q. And you were aware that it was about over 96 feet from
10 where she was looking back to the steps there Tracy's;
11 right?

12 A. Yes, sir.

13 Q. And you were aware that the was a cluster of pellets
14 there. Turn around and look back there if you would?

15 A. Yes, sir.

16 Q. Was her door kind of off set to the right?

17 A. I don't get what you mean.

18 Q. Was her door a little bit right or center from her
19 trailer?

20 A. Center of the trailer?

21 Q. Yeah.

22 A. Yes, sir.

23 Q. Does it kind of show that was right and center?

24 A. Yes, sir.

25 Q. And did you -- Do you remember that there was a

1 triangular window there that she was looking out?

2 A. Yes, sir.

3 Q. And did you see that pattern of bullets there around
4 that door and in that door -- not bullets but holes?

5 A. Assuming that this is not the window. It would be a
6 pellet shot there, a pellet here, and a pellet here.

7 Q. Do you see that there?

8 A. Yes, sir.

9 Q. And is that a fair representation of where at least
10 some of the pellets were?

11 A. I think so, yeah.

12 Q. All right. Tell me did you -- Did you take
13 measurements of those?

14 A. Yes, sir.

15 Q. And you have those measurements?

16 A. I don't know.

17 Q. Okay. Have you seen those measurements?

18 A. I believe Lieutenant Lutcken did those measurements.

19 Q. All right. So who was in charge of forensics there
20 you or Lieutenant Lutcken?

21 A. I was first responding forensics officer there.

22 Q. I didn't ask you who was the first one but just tell
23 me who ---

24 A. Lieutenant Lutcken would be.

25 Q. What?

1 A. Lieutenant Lutcken would be.

2 Q. He would be?

3 A. Yes, sir.

4 Q. And you were under him second in command?

5 A. I wouldn't say I was second in command, no sir.

6 Q. As far as forensics?

7 A. As far as forensics, yes, sir. We were the only two
8 forensic's officers there.

9 Q. Okay. So you understand that he's one that was
10 responsible and took those measurements?

11 A. He measured from that door to the steps. Now, whether
12 or not he measured the exact pellet marks, I don't know.

13 Q. You were with him; right?

14 A. Yes, sir.

15 Q. The whole time; right?

16 A. Yes, sir.

17 Q. Okay. And you were helping him?

18 A. Yes, sir.

19 Q. Okay. And can come into trial here -- You've looked
20 at that sketch?

21 A. Yes, sir.

22 Q. How far from the ground up was the pellet on the
23 right? Do you remember?

24 MR. RUSSO: Objection, Your Honor. He's asked him
25 did you take measurements. He said he didn't. It's asked

1 and answered. And what's the -- And also, Your Honor ---

2 THE COURT: He could possibly give an estimate of
3 it.

4 MR. RUSSO: And I'd like for him to show relevance.

5 THE COURT: Answer it if you can.

6 A. I don't know.

7 Q. Okay. And did you see somebody take -- Did you see
8 Lieutenant Lutcken take the measurements of that?

9 A. No, sir.

10 Q. Did you see him take measurements on the door?

11 A. No, sir.

12 Q. Did you see him take measurements inside the house?

13 A. No, sir.

14 Q. Did I understand you a minute ago to say there was
15 some sketches with measurements or did I ---

16 A. The sketches that I'm referring to is sketches of the
17 outside sketches like they're present here or in front of
18 the stand.

19 Q. These are the only sketches that you were referring to
20 this one here?

21 A. Yes, sir.

22 Q. You haven't seen any others?

23 A. No, sir.

24 Q. You haven't seen any other documentation of any
25 measurements whatsoever?

1 A. With the exception of where I scaled the two pellet
2 marks.

3 Q. I'm not talking about the measurements. Oh, go ahead
4 I'm sorry.

5 A. The section where I scaled the two pellet marks on the
6 door for photography purposes. No, I haven't.

7 Q. How high was the platform of the steps from Tracy's
8 house you come out of the door and the first platform is
9 relatively leveled with the door; right?

10 A. Yes, sir.

11 Q. And then it comes out for a good ways and then start
12 the steps?

13 A. Right.

14 Q. That platform right there. How far up is that up from
15 the ground?

16 A. Without making an estimate I don't know.

17 Q. Okay. Have you seen a picture here in evidence of it?

18 A. Yes, sir.

19 Q. Can you give us an estimate?

20 A. I would say three feet.

21 Q. Okay. And the steps on hers, is that how far --
22 What's your best estimate?

23 A. I don't know. I never even measured the steps at her
24 back door. I wouldn't even know.

25 Q. But you took a lot of pictures?

1 A. Yes, sir.

2 Q. Did you start out far away and then get up close;
3 right?

4 A. Yes, sir.

5 Q. Okay. And I haven't seen a picture here but maybe you
6 seen a picture. Have you seen a picture taken from the
7 window looking back -- looking back so that we have -- The
8 jury would have a vision of what kind of view Mary McDougal
9 had?

10 A. I don't recall taking that picture without looking at
11 them I wouldn't be able to tell you.

12 Q. And did you look at the pictures in evidence here
13 before you testified?

14 A. Not today, no, sir.

15 Q. Any time in question?

16 A. Yes, sir.

17 Q. You want to tell us the jury again if you remember
18 seeing a picture taken from that window looking out?

19 A. No, I don't.

20 Q. And if you seen one you more or likely would remember
21 it; right?

22 A. With the amount of photographs I took, I can't say for
23 sure whether I would or not. I took a lot of photographs.

24 Q. I understand. How many pellets did you -- How many
25 pellets did you retrieve?

1 A. One.

2 Q. And you say that one was found on the inside of her
3 trailer?

4 A. Yes, sir.

5 Q. And did you -- How many pellets actually went on the
6 inside of the trailer?

7 A. As far as we know one.

8 Q. Okay. And did you -- Did you ever receive a call from
9 Mary McDougal or ever received information that Mary
10 McDougal had called?

11 A. No, sir.

12 Q. I haven't finished yet.

13 A. I'm sorry.

14 Q. Did you ever receive a call or did you ever receive
15 any information that she had called later and said she
16 found a second pellet in side of her trailer?

17 A. No, sir.

18 Q. If you learned that there was a second pellet found
19 and available, would you have gone and gotten that pellet
20 as well?

21 A. Had I been asked to, yes, I would have.

22 Q. Now, you took the picture of the bottle of vodka.
23 It's kind of hard to tell, but you were there in person
24 that. That bottle was practically empty; wasn't it?

25 A. Yes, sir.

1 Q. And it was what we refer to commonly as a quart or a
2 liter size?

3 A. I don't know measurements of a liquor bottle. I don't
4 know.

5 Q. Tell me if you -- Tell the jury how many times you
6 went back to this scene after you were there that night in
7 the dark for two hours?

8 A. Once.

9 Q. And tell them when that was?

10 A. Friday, I believe.

11 Q. Okay. And you went there for what purpose?

12 A. To -- I went there with Lieutenant Lutcken to, I went
13 there with Lieutenant Lutcken to film a video of the entire
14 area.

15 Q. And you -- Before that had you filmed it -- done a
16 video?

17 A. I had not, no, sir.

18 Q. And by the time you went back there last week,
19 Ms. McDougal's trailer had long since been moved; right?

20 A. Yes, sir.

21 Q. You're aware that the gun was not sent off until the
22 end of last week, too?

23 A. Yes, sir.

24 Q. Do you know of anything else that was done last week
25 other than you and Lieutenant Lutcken going out there and

1 doing a video of the scene and then sending that gun off
2 end of last week?

3 A. No, sir.

4 Q. The ---

5 MR. DEBERRY: Excuse me just a minute. I think
6 that's all I got.

7 REDIRECT EXAMINATION BY MR. RUSSO:

8 Q. Corporal Dore.

9 A. Yes, sir.

10 Q. Mr. Deberry had asked you if you knew everything other
11 people were doing at the scene. What was your
12 responsibility that night?

13 A. To document and collect forensic evidence.

14 Q. And would it be common for you to know everything that
15 occurs at a crime scene?

16 A. No, sir.

17 Q. Your responsibility if I'm correct were limited to
18 forensics?

19 A. Yes, sir.

20 Q. Now, we have heard a lot about these pellets and Ms.
21 McDougal's house and all. You went over and looked at her
22 house; is that correct?

23 A. Yes, sir.

24 Q. And based on your experience as a forensics officer,
25 were you able to determine what caused those holes in her

1 house?

2 A. It appeared to be from buckshot pellets.

3 Q. All right. Now, there's been talk about measurements
4 being taken not being taken. In your position as a
5 forensics officer in this investigation, what if any
6 relevance do the pellets in Ms. McDougal's house have to do
7 with the defendant killing Donald Leffingwell?

8 A. None.

9 MR. RUSSO: Thank you. No further questions.

10 THE COURT: Anything further?

11 MR. DEBERRY: No, sir. I don't have any -- I don't
12 have anything.

13 THE COURT: All right. You may step down.

14 (The witness left the witness stand.)

15 THE COURT: We'll stop here now for lunch. Let's
16 break for lunch and be back ready to go at 2:15. Everybody
17 else remain seated while the jury departs for lunch.

18 (The jury was excused.)

19 (Court in recess.)

20 (Court reconvened.)

21 THE COURT: Counsel, y'all ready to go?

22 MR. RUSSO: Yes, sir, Your Honor.

23 THE COURT: Mr. Deberry?

24 MR. DEBERRY: Yes, sir.

25 THE COURT: Bring them in.

1 (The jury returned to the courtroom.)

2 THE COURT: Okay. You may call your next witness.

3 MR. RUSSO: Thank you, Your Honor. At this time the
4 State would call Mary Arion or Mary McDougal Arion.

5 MARY MCDUGAL ARION, being first
6 duly sworn, testifies as follows:

7 DIRECT EXAMINATION BY MR. RUSSO:

8 Q. State your full name for the record?

9 A. Mary Louise Arion.

10 Q. You go by Mary; is that correct?

11 A. Yes.

12 Q. Mary, you're a little soft spoken. So I'm gone stand
13 back here and if you would please speak loud enough for me
14 to hear you. Then we can be sure that the members of the
15 jury panel can hear, okay. We're do you live, Mary?

16 A. [REDACTED] in Florence.

17 Q. Now, are you currently married?

18 A. Yes.

19 Q. And who's your husband?

20 A. Brett Arion.

21 Q. At the time in December of 1999, did you go by Mary
22 McDougal; is that correct?

23 A. Yes.

24 Q. How long have you lived in Florence County are?

25 A. Since 1990.

1 Q. And where are you employed?

2 A. Champions.

3 Q. And what do you do at Champions?

4 A. I'm a CA2.

5 Q. What this?

6 A. Claims Associate 2.

7 Q. Okay. Mary, what I like to do is go ahead direct your
8 attention to December the 4th of 1999. Do you recall the
9 events surrounding that evening?

10 A. Yes.

11 Q. Okay. Now, do you recall what day it was or what day
12 of the week that was?

13 A. It was on a Saturday night.

14 Q. All right. And what not necessarily in great detail,
15 but basically what were your activities earlier that day
16 what were you doing?

17 A. Shopping for an outfit to ^{wear} where to the company
18 Christmas party.

19 Q. And when was the company Christmas party?

20 A. That night.

21 Q. Okay. Excuse me. Do you recall about what time you
22 arrived home that night?

23 A. It was about a quater to six.

24 Q. All right. Now, could you tell the jury what the
25 lighting conditions when you arrived home as far as the

1 position of the sun or lack of it?

2 A. It was dark. It was night.

3 Q. Okay. You had to have your headlights on to drive
4 home?

5 A. Yes.

6 Q. Tell the jury please if you would, Mary. You arrived
7 home at a quater to six. What did you do once you got to
8 the house?

9 A. Once I got home, I started cleaning out my car. I had
10 some friends that were gonna ride with me to the Christmas
11 party. So in order to make room, I was cleaning out the
12 coffee cups and papers.

13 Q. Okay. Let me -- Just to assist you in your testimony
14 and the jury and their understanding. If you would
15 familiarize yourself with this sketch right here. And
16 according to this sketch, where is your residence located?

17 A. Right here.

18 Q. All right. And you see where it says Callie Young
19 Road?

20 A. Yes.

21 Q. All right. Although it's not written on this sketch
22 right here. Could you explain to the jury exactly how the
23 entrance to your home is, the driveway?

24 A. The entrance to my home, which the road is a little
25 further out from my house as you come in here like I'm

1 facing the defendant's house. But I have to turn around
2 through and come around to mine and I park in the front.

3 Q. All right. And, of course, this isn't to scale. This
4 Callie Young Road is further up?

5 A. Yes.

6 Q. So as you come in off of Callie Young, is there a way
7 to go straight?

8 A. Yes.

9 Q. All right. What did you consider that if you went
10 straight?

11 A. I would go to the defendant's house.

12 Q. All right. And the road to your house went which way?

13 A. It branched off to my right as coming in.

14 Q. And it came around to the front of your residence?

15 A. Yes.

16 Q. Where's the front of your residence?

17 A. Right here.

18 Q. Okay. When you arrived that night and parked your
19 vehicle, and again this isn't to scale, but can you give us
20 a rough estimate of where your vehicle was parked when you
21 parked?

22 A. Right here. I would park at the edge because my steps
23 to my back door were on this end.

24 Q. Okay. But your steps going into your house would have
25 been in the front of the house; is that correct not on the

1 side?

2 A. Not directly on the side. It's like a foot pass the
3 end of the trailer.

4 Q. Okay. Now, when you arrived and you begin cleaning
5 out your car, what if anything caught your attention?

6 A. The neighbor and his guest were arguing.

7 Q. All right. And if you would, Mary, I'm gone ask you
8 to the extent you can recall and ask you to be as detail as
9 you can. Could you see anyone over there?

10 A. I could see the victim and I could see the neighbor
11 from the waist down.

12 Q. All right. Now, did you know at the time when you
13 arrived home, did you know who that was in the defendant's
14 yard. The person you described as the victim did you know
15 who that was?

16 A. No.

17 Q. All right. Had you seen him before?

18 A. Yes.

19 Q. Okay. And when had you seen him before?

20 A. Usually on the weekends he would come over.

21 Q. Come over where?

22 A. To the neighbors.

23 Q. All right. And is that Tracy Daniels' place?

24 A. Yes.

25 Q. Did you have any personal acquaintance with the victim

1 Donald Leffingwell?

2 A. No.

3 Q. Did you know his name at the time?

4 A. No.

5 Q. Now, you indicated that you could see Donald
6 Leffingwell standing in the yard; is that right?

7 A. Yes, sir.

8 Q. Approximately, where would you see him standing?

9 A. He was standing right around in here.

10 Q. All right. And ---

11 MR. DEBERRY: I'm sorry. I didn't see where she was
12 pointing.

13 Q. Go ahead point and point to where he was standing?

14 A. He was standing somewhere around right in here.

15 Q. Now, you said that you saw Tracy Daniels, but you can
16 only see him from the waist down why is that?

17 A. Because of the awning that was over his vehicles.

18 Q. Okay. Let me real quick here see if I can -- Let me
19 show you what's been marked as State's 28. And if you
20 would look real closely at that, Mary, and kind of orient
21 yourself to it. And then tell me if you can -- Tell the
22 jury what that is?

23 A. It's the awning over his truck and car.

24 Q. All right. Can you see your house in that picture?

25 A. I can see my back door.

1 Q. All right. Can you see where your car would have been
2 parked? Not necessarily can see your car, but can you see
3 the area where it would have been parked?

4 A. Yes.

5 Q. All right. Thank you. And you could not see the --
6 Why couldn't you see Tracy Daniels from the waist up?

7 A. Because of the awning in the way.

8 Q. Where was he standing then?

9 A. In his door way.

10 Q. All right.

11 A. He was on the top of the steps.

12 Q. Okay. There's a little landing there; correct?

13 A. Yes.

14 Q. And he was standing up on top of those?

15 A. Yes.

16 Q. Now, let me ask, Mary. If he was standing on the
17 steps and you could only see his legs down below his waist,
18 how did you know that that was Tracy Daniels?

19 A. I could hear his voice.

20 Q. Okay. And how long have you known Tracy Daniels?

21 A. I would say approximately about six years.

22 Q. And during that entire six years, did know him as a
23 neighbor?

24 A. Yes.

25 Q. Okay. So you all lived next to each other; is that

1 right?

2 A. Yes.

3 Q. Could you hear what was being said? You said that
4 they were arguing; is that correct?

5 A. Yes.

6 Q. All right. Would you describe it as a verbal argument
7 or was it a physical actual fighting type argument?

8 A. Verbal.

9 Q. Could you hear what was being said?

10 A. No.

11 Q. Now, you finished cleaning out your car and you
12 getting ready to go inside. What do you either see or hear
13 at that point?

14 A. Before I walk up the steps as I come around my car, I
15 see the victim walking off. And as he walked off, I
16 couldn't see him anymore.

17 Q. All right. And again, let me -- If you would, I just
18 want you to give the jury a general direction of where he
19 was walking. You said the victim was walking off, which
20 direction was he walking in?

21 A. He was going this way.

22 Q. All right. And you lost sight of him?

23 A. Yes.

24 Q. All right. Could you hear anything else?

25 A. As I was coming up the steps, I heard a noise.

1 Q. Okay. But before you heard that noise, at any point
2 when you were out there and they were arguing, did you hear
3 any words?

4 A. About the only words was ---

5 Q. And I know it's not comfortable for you if you would.
6 But I need for you for the purpose of this case and for
7 jury. I need for you to say what you heard and who whether
8 you heard say whatever you heard?

9 A. I heard Tracy saying get the fuck out my yard."

10 Q. All right. Why is it that you heard that -- Those
11 words where as before you didn't hear any others?

12 A. It was louder.

13 Q. Okay. So he raised his voice?

14 A. Yes.

15 Q. All right. And then you -- I think you said you
16 turned to go up your steps?

17 A. Yes.

18 Q. At the time you turned to go up your steps, could you
19 then see into the back of in the front of Tracy's front
20 yard?

21 A. No.

22 Q. Go ahead say you heard?

23 A. I heard a noise.

24 Q. All right. At that time, did you know what it was?

25 A. No.

1 Q. All right. Then what happened?

2 A. I went on to my front door and before I could get the
3 keys in, I heard a gun go off.

4 Q. All right. Now, you heard a noise as you begin up the
5 steps and then before you could actually get your keys in
6 the door, you said you heard a gunshot?

7 A. Yes.

8 Q. Are you sure it was a gunshot?

9 A. Yes.

10 Q. Any doubt in your mind?

11 A. No.

12 Q. What did you do at that point?

13 A. I went inside and didn't turn on any lights. I put
14 down all my stuff and went to the -- As I was heading to my
15 bedroom, I looked out the to back door.

16 Q. Now, let me ask you. Why didn't you turn on any
17 lights?

18 A. I was scared.

19 Q. Okay. Let me show you what's marked as State's 24.
20 Can you recognize that?

21 A. Yes.

22 Q. What is that?

23 A. A back door.

24 Q. All right. Is that the door that you went to and
25 looked out the window?

1 A. Yes.

2 Q. All right. And that little -- The term diamond shape
3 window is that the window you looked out of?

4 A. Yes.

5 Q. All right. Mary, if you can, the best you can
6 estimate. From the time you heard that gunshot to the time
7 you got to your back door and looked out the window, about
8 how long a time would that have been?

9 A. Around about five seconds.

10 Q. Okay. And you got to your back window and you looked
11 out your window. What did you see?

12 A. I saw Tracy standing in the door way holding the gun
13 with it pointed up in the air.

14 Q. Okay. I'm gone tell you what I'm gone do. I'm not
15 gonna pull this gun out and ask you use it. But let's use
16 the yardstick. If you would stand using the yardstick as
17 the gun, could you show the jury the way he was holding the
18 gun. All right. Thank you. Thank you very much. All
19 right. And let me go ahead. Do you see Tracy Daniels in
20 the the courtroom today?

21 A. Yes, sir.

22 Q. Would please point for the jury? Let the record
23 reflect that she pointed to the defendant. Is this the
24 same man you saw on the doorstep with that shotgun about
25 somewhere around five seconds or so from the time you heard

1 the first shotgun blast?

2 A. Yes, sir.

3 Q. What was he doing?

4 A. He was standing there.

5 Q. All right. What else did you see? Did you see anyone
6 else out there?

7 A. I saw the victim.

8 Q. Okay. Where was the victim?

9 A. He was standing in the yard.

10 Q. All right. And again, not to scale this is not for --
11 Just roughly where would he have been standing when you
12 looked out your window?

13 A. Closer over here.

14 Q. Okay.

15 MR. DEBERRY: I'm sorry again I didn't see it.

16 A. Close around in here.

17 Q. All right. As you looked out your window and you saw
18 Tracy in the door, you saw the victim over by the concrete
19 pad. What did you see happen? What went on?

20 A. I walked off.

21 Q. Okay.

22 A. Went in the bedroom. When I came back, Tracy was
23 gone. And the victim was picking up a grill and putting a
24 lid on it.

25 Q. All right. At that time, what did you -- The grill

1 was turned over; is that correct?

2 A. Yes.

3 Q. All right. Did you know or did you have any reason to
4 know the condition of the grill before you got home?

5 A. No.

6 Q. Were you able to -- After you saw what you saw, were
7 you able to relate -- And if you were, how were you able to
8 relate the grill being turned over with regards to what you
9 heard earlier?

10 A. The sound of you it. I have a gas grill, too.

11 Q. So it's your belief that the first sound you heard was
12 the grill being turned over?

13 A. Yes.

14 Q. Did you see that grill get turned over, Mary?

15 A. No.

16 Q. Did you ever see who or what turned that grill over?

17 A. No.

18 Q. But when you came back to your window, the defendant
19 was gone and the victim was picking up the grill; is that
20 correct?

21 A. Yes.

22 Q. Exactly what did he do?

23 A. He picked it put up and put the lid back on it.

24 Q. All right. Then what else did you observe?

25 A. He walked over to the defendant's truck and put a

1 shovel in the back of it.

2 Q. All right. And where was the truck?

3 A. It was under the awning.

4 Q. Under that shed or awning?

5 A. Yes.

6 Q. What else did you observe?

7 A. I observed him walk up to the defendant's door and he
8 stood on the outside at the door and then he turned around
9 and walked off.

10 Q. Okay. When he was at the door, did he knock on the
11 door?

12 A. No.

13 Q. Did he actually go up to the steps on to the platform?

14 A. Yes.

15 Q. All right. Did you hear anything?

16 A. No.

17 Q. All right. And then you said he went back out in the
18 yard; is that correct?

19 A. Yes.

20 Q. What did you observe then? Well, let me ask you this.
21 At that time, did the victim, Donald Leffingwell, did he
22 have anything in his hand that you could see?

23 A. Yes.

24 Q. What did he have in his hand?

25 A. He had something that looked like a metal rod.

1 Q. All right. Did you -- Could you tell what that was?

2 A. No. I mean -- It looked just like a metal rod. I
3 couldn't describe. I know it was long.

4 Q. Well, Mary, let me ask you which brings me to this
5 point. You said it was nighttime?

6 A. Yes.

7 Q. All right. But yet you could see these events
8 occurring; is that correct?

9 A. Yes.

10 Q. How were you able to see with it being nighttime?

11 A. There's a security light in his yard.

12 Q. Okay. And I guess there's no way to measure, but just
13 on -- Could you see what was going on?

14 A. Yes.

15 Q. Is there any doubt in your mind you could see the
16 things your testifying to?

17 A. No.

18 Q. All right. Had you seen this metal rod before?

19 A. No.

20 Q. The victim then comes down the steps back into the
21 yard; is that correct?

22 A. Yes.

23 Q. Then what do you observe?

24 A. I observed Tracy coming out the door with the gun
25 open.

1 Q. Okay. And when you say open, can you describe what
2 you mean?

3 A. It was broken.

4 Q. Broken down?

5 A. Yes.

6 Q. Okay. And how was he carrying it?

7 A. By his side. And then he just brought it to the front
8 like he was trying to fumble, but look like he was trying
9 to take the shell out.

10 Q. All right. Could you see a shell or anything like
11 that?

12 A. No.

13 Q. What did he do?

14 A. He walked out to the victim and handed him the victim
15 gun.

16 Q. All right. I'm gone ask you if you would, Mary,
17 please to step down here and just for purposes. Let's
18 assume that you are standing at the door. If you're the
19 defendant and you're standing at the door, how far can you
20 estimate the victim may have been from the defendant when
21 he was standing at the door?

22 A. When he was standing at the door?

23 Q. Right. If you can estimate?

24 A. I don't think I can estimate.

25 Q. Okay. Let me use the steps as a reference. There's

- 1 some steps that come down; is that correct?
- 2 A. Yes.
- 3 Q. Was the victim standing right at the bottom of the
- 4 steps?
- 5 A. No.
- 6 Q. Okay. Some distance back off; is that correct?
- 7 A. Yes.
- 8 Q. All right. You observed the defendant then do what?
- 9 A. He walked down the steps coming out to him with it
- 10 open.
- 11 Q. Now, at this point, you observed anything in the
- 12 defendant's hands?
- 13 A. He had the look like the metal bar.
- 14 Q. The defendant's hand?
- 15 A. I'm sorry. The gun -- He had the gun in his hands.
- 16 Q. All right. Now, what did the victim have if anything
- 17 in his hands?
- 18 A. The metal bar.
- 19 Q. All right. And as the defendant approached the
- 20 victim, what did you watch? What did you observe?
- 21 A. The victim just standing with his hands to his side.
- 22 The defendant walked up with the gun open. And it look
- 23 like he was trying to take the shell out. And he walked up
- 24 and the victim handed it to him.
- 25 Q. All right. What does he do with the metal rod?

1 A. He lays it on the ground.

2 Q. Okay. Now, at any time that you're watching, did you
3 observe the victim in any way or make an aggressive move or
4 raise that metal bar or in your view attempt to use that
5 metal bar in anyway as a weapon?

6 A. No.

7 Q. Okay. The whole time observed him, where did he have
8 it?

9 A. Beside of him.

10 Q. All right. So the defendant approaches him and the
11 victim lays the metal bar down?

12 A. Yes.

13 Q. All right. And then what happens?

14 A. And then Tracy hands him the gun.

15 Q. Hands it to the victim?

16 A. Yes.

17 Q. Okay. Then what do you observe?

18 A. I observed the victim taking the shell out. And when
19 finished, he dropped something on the ground. And I see
20 him pick it up and that's small enough to put it in his
21 hand.

22 Q. What's the condition of the gun at this time?

23 A. It was open.

24 Q. It's open?

25 A. Yes.

- 1 Q. Okay. And so what does he do?
- 2 A. He reaches down and picks it up what he drops.
- 3 Q. All right. Then what happens?
- 4 A. He stands ^{up} ~~it~~ and closed it. Stood there for a couple
- 5 seconds.
- 6 Q. All right. Now, now let me ask you because I want the
- 7 jury to be clear. At this time, is the like the victim's
- 8 back to you like this?
- 9 A. No.
- 10 Q. All right. If you would, which way should I turn to
- 11 give you the angle you saw?
- 12 A. This way.
- 13 Q. This way?
- 14 A. About ---
- 15 Q. This way. Here?
- 16 A. Yes.
- 17 Q. About this angle?
- 18 A. Yes.
- 19 Q. Okay. And he just handed the gun; correct?
- 20 A. Yes.
- 21 Q. All right. So you can see his hands; is that correct?
- 22 A. I can see the one on this side.
- 23 Q. This one the right hand?
- 24 A. Yes.
- 25 Q. Is that the one he used to pick up, the item up?

1 A. Yes.

2 Q. All right. At any time after he picked that item up,
3 ~~did you see him appear to place~~ anything back in the gun?

4 A. No.

5 Q. All right. But did close it?

6 A. Yes.

7 Q. All right. He closes the gun then what does he do?

8 A. Stood there for a second.

9 Q. All right. Was there any conversation or could you
10 hear anything?

11 A. I couldn't hear anything.

12 Q. All right. Was there any movement or either follow
13 toward each other or were they just talking?

14 A. Just talking.

15 Q. All right. Can you -- Any idea how long the talk in
16 that situation, the victim holding the gun, the defendant
17 standing there?

18 A. Maybe a minute.

19 Q. Okay. Then what did you observe?

20 A. He opened -- The victim opened the gun back up.

21 Q. Okay.

22 A. Handed it back to Tracy.

23 Q. All right. Now, did he hand it back or did the
24 defendant take it way from?

25 A. He handed it back.

1 Q. The victim handed it back?

2 A. Yes.

3 Q. All right. And I know this doesn't break down so
4 don't be concerned about that, but at this point he opened
5 the gun back up?

6 A. Yes.

7 Q. And the victim has handed it back to the defendant; is
8 that correct?

9 A. Yes.

10 Q. All right. And you're still observing? What do you
11 see?

12 A. He takes the gun and then he closed it. Steps back.
13 You want me to show that, too?

14 Q. Please if you would?

15 A. He closed it and stepped back and pointed it at him.

16 Q. All right. And then what?

17 A. Then a second later he fired it.

18 Q. Okay. Have a seat. Thank you. Mary, after he shot
19 Donald Leffingwell, what did you observe? What happened --
20 What did you do when he fired that gun?

21 A. I ducked.

22 Q. All right. What if anything did you hear?

23 A. I heard the pellets hitting the side of my trailer.

24 Q. I didn't hear you.

25 A. I heard pellets hitting the side of my trailer.

1 Q. Okay. Did you yourself get hit?

2 A. No.

3 Q. What did you do next?

4 A. I grabbed the phone. I had tried to call the landlord
5 earlier. So I hit redial trying to get him, messed up. So
6 then I tried 911.

7 Q. All right. Did you in fact reach 911?

8 A. The first time I didn't. I don't know if I dialed
9 wrong. That second time got 911.

10 Q. All right. What's the lighting condition in your
11 house now while you're trying to dial?

12 A. It was dark.

13 Q. All right. So you're feeling ---

14 A. I was feeling the numbers.

15 Q. All right. But you did reach 911?

16 A. Yes.

17 Q. All right. You told them that there was a problem?

18 A. Yes.

19 Q. What did they tell you to do?

20 A. They had asked me did I see the defendant.

21 Q. All right. What did you say?

22 A. I told them I was hiding. So they asked me if I would
23 go look. I went and look and didn't see him anywhere.

24 Q. All right. When you did look though, what did you
25 see?

- 1 A. I saw the victim laying on the ground.
- 2 Q. All right. Were you looking for anyone else?
- 3 A. I was looking for Tracy.
- 4 Q. Did you see him?
- 5 A. No.
- 6 Q. What did you do then?
- 7 A. I went back in my bedroom.
- 8 Q. Okay. At this time have you hung up or are you still
- 9 on the phone?
- 10 A. I'm still on the phone.
- 11 Q. All right. And what are you instructed to do?
- 12 A. To stay on the phone until the police arrived.
- 13 Q. And then what happened next?
- 14 A. Then I heard a car pull up and she told me to look and
- 15 see if that was the police.
- 16 Q. All right. And as I ask you -- As you go to look, is
- 17 it the same door you going to every time?
- 18 A. Yes.
- 19 Q. All right. Did you go to the door?
- 20 A. Yes.
- 21 Q. And what did you see?
- 22 A. I saw a Camaro. I told her it wasn't the police.
- 23 Q. Why would you tell her it wasn't the police?
- 24 A. It was an unmarked car.
- 25 Q. All right. Look like a regular Camaro to you?

1 A. Yes.

2 Q. Then what did you observe?

3 A. I observed the guy getting out and he was in an
4 uniform.

5 Q. All right. At that point, what did you tell 911?

6 A. That they were there.

7 Q. All right. Is there anything else you told 911? Did
8 she ask you anything else in regards to the defendant?

9 A. She asked me did they have him in custody.

10 Q. What did you tell them?

11 A. I told her that the cop that was there had pulled his
12 gun and he was in the doorway.

13 Q. All right. You said he was in the doorway. Who are
14 you referring to?

15 A. Tracy.

16 Q. All right. And could you see him in the doorway?

17 A. Yes.

18 Q. Did you give 911 a description of his clothing?

19 A. Yes.

20 Q. And you were able to see what was wearing?

21 A. Yes.

22 Q. At that point what did you observe?

23 A. I observed the laser dot on Tracy's belly. And then
24 she told me that they were there that she would let me hang
25 up.

1 Q. All right. And did you hang up?

2 A. Yes.

3 Q. Then what did you?

4 A. I backed in -- call family members. And then a cop
5 came and knocked on the back door.

6 Q. Now, Mary, do you know from the time you hung up with
7 911, until the time the police officer came to your door,
8 do you have any estimate of how long that was?

9 A. No.

10 Q. Is it a few minutes or half hour?

11 A. It was just a few minutes because I was on the phone
12 when they knocked.

13 Q. Okay. Do you know who it was?

14 A. No.

15 Q. What did police the officer -- Did you let him in?

16 A. Yes.

17 Q. All right. And what did he as you?

18 A. He asked me if I was the one that reported it.

19 Q. And you told him what?

20 A. Yes.

21 Q. Okay. At any time that night, Mary, did you either on
22 your own or through being escorted by law enforcement, did
23 you ever go over to the area where the shooting occurred?

24 A. No.

25 Q. That entire evening did you remain at your home?

1 A. No.

2 Q. What did you do?

3 A. After everything was -- I had to stay and give a
4 statement. Once, it was all over with. I went and spent
5 the night with a friend.

6 Q. All right. Did you in fact give a statement at your
7 home that night?

8 A. Yes.

9 Q. And who did you talk with?

10 A. Phil Hanna.

11 Q. All right. And you told Phil essentially what you
12 just told this jury today; is that correct?

13 A. Yes.

14 Q. Did you continue to live there?

15 A. No.

16 Q. How long did you stay there after this occurred?

17 A. I stayed the night after. And then stayed two other
18 nights, but I had family members staying with me.

19 Q. Now, did you rent that mobile home or did you own that
20 mobile home?

21 A. I owned the mobile home.

22 Q. Did you own that property?

23 A. No.

24 Q. You leased the property; is that correct?

25 A. Yes.

1 Q. Do you know how long after this occurred, that you had
2 your mobile home moved?

3 A. It was moved on January the 13th.

4 Q. Okay.

5 MR. RUSSO: Beg the Court's indulgence for just one
6 moment.

7 Q. At any time during this whole evening when you
8 observed Donald Leffingwell and Tracy Daniels, other than
9 the exchange of the gun which you observed, did you at any
10 time every observe any physical contact with between these
11 two people?

12 A. No.

13 Q. Other than the shooting him, did you observe any
14 aggressive behavior physically of Mr. Daniels toward
15 victim?

16 A. No.

17 Q. Okay. Did you -- Was there any observation on your
18 part of any aggressiveness or physical move by the victim
19 toward the defendant?

20 A. No.

21 Q. And now I want to ask you it's not a pleasant thing to
22 ask you to relive, but it's important. When you saw the
23 defendant snap the gun shut and step back -- You said he
24 stepped backwards; is that correct?

25 A. Yes.

1 Q. All right. He pulled the gun up?

2 A. Yes.

3 Q. Hesitated a moment?

4 A. Yes.

5 Q. And he fired. You saw that happen?

6 A. Yes.

7 Q. Did you see the victim actually get shot -- get hit?

8 A. Yes.

9 Q. All right. What did you observe of the victim when he
10 got shot? What happened? What did you see?

11 A. 'It threw him back.'

12 Q. Okay. When you say threw him back -- I mean, did he
13 just fall back or did he get?

14 A. It looked like it picked him up and threw him back.

15 Q. Now, Mary, you indicated that when the gunshot went
16 off you, you then ducked and you heard some pellets -- What
17 you felt was pellets hitting your house?

18 A. Yes.

19 Q. When if any time, did you go and inspect the damage
20 that was done?

21 A. When the policeman came over to ask me if I was the
22 one who called 911. And I told him, yes. Then he asked me
23 before he would come in the house to turn on the lights.
24 So I turned on my hall light. And as he was talking to me,
25 I stepped back in my hallway and notices the two in my back

1 door. It was two pellets in my back door. And then I
2 looked up and saw say one that had came through my wall.

3 Q. All right. At some point and if you could remember
4 when and tell the jury when. Did you find anything inside
5 your home?

6 A. Yes.

7 Q. And what was that?

8 A. That night the pellet that came through the wall was
9 in the floor where I was standing at my feet.

10 Q. You found that; is that correct?

11 A. Yes.

12 Q. And did law enforcement take possession of that?

13 A. Yes.

14 Q. That night did you find any damage to the inside of
15 your home?

16 A. No -- Well, I found the one in the hallway wall.

17 Q. The hole?

18 A. Yes.

19 Q. All right. Any other damage that night?

20 A. That night the two on the door.

21 Q. Okay. Anything inside?

22 A. No.

23 Q. Now, at some time -- Some later date, did you find
24 anything else?

25 A. Yes.

1 Q. All right. And what was that?

2 A. Later I found an indention above my washing machine
3 and dryer where the pellet had came through the wall in the
4 hall.

5 Q. Do you remember when that was?

6 A. No.

7 Q. And try to just -- And if you don't remember that's
8 fine. But was it the next day or was within a week, do you
9 recall?

10 A. I would say it was probably the next day.

11 Q. All right. Did you find any other pellets in your
12 home?

13 A. Yes.

14 Q. And did you -- What did you do with regards to that?

15 A. The pellets?

16 Q. The pellets you found in your home, yeah?

17 A. My ex-husband took it out of the wall.

18 Q. Okay. So it wasn't laying on the ground. It was
19 imbedded?

20 A. Yes.

21 Q. And what did you do with regards to that pellet?

22 A. He had it. I don't know what my ex-husband did with
23 it.

24 Q. Did you have an occasion to call anyone with regards
25 do that?

1 A. Yes, I called the sheriff's department to see if they
2 needed it. And they said no.

3 Q. Okay?

4 MR. RUSSO: Thank you, Mary. I don't have any
5 further questions please answer any may have Mr. Deberry.

6 CROSS EXAMINATION BY MR. DEBERRY:

7 Q. Mary, as you remember, we've meet before. I'm Johnny
8 Deberry. You talking with me?

9 A. Yes, sir.

10 Q. First thing I'd like to do is get your help if you
11 would with establishing the lighting situation as best we
12 can out there all right?

13 A. Yes, sir.

14 Q. If you would look at this diagram that you've already
15 looked at. Sometimes when I put something one place to
16 another I need to get reoriented; do you?

17 A. Yes.

18 Q. You realize where you are and which way you're
19 looking?

20 A. Yes.

21 Q. Okay. The -- When you came up -- Let's first get your
22 trailer. I believe everything light in trailer was off; is
23 that right?

24 A. Yes.

25 Q. And there's no exterior light from your trailer coming

1 into play in this case; are they?

2 A. No.

3 Q. Okay. So -- And on Callie Young Road there's no
4 lighting out there?

5 A. No.

6 Q. So there's a telephone pole here with one of those --
7 One of those I think they call them aerial lights that you
8 pay a monthly fee and they come on at dark and go off. And
9 the telephone company -- The light company puts those up?

10 A. Yes.

11 Q. Is that the type light that is?

12 A. Yes.

13 Q. And it's on a globe a round globe?

14 A. Yes.

15 Q. It illuminates the area around; right?

16 A. Yes.

17 Q. Okay. That thing even though it's said that it's not
18 to scale. Do you recall that it is say to the rear of this
19 carport?

20 A. Roughly, yes.

21 Q. And certainly from where you were looking, it would be
22 further away from you than the people you were looking at;
23 is that right?

24 A. Yes.

25 Q. Now, there's been said here that there's either

1 another light and maybe you could help us. It's been
2 unclear as to whether there are two flood lights that are
3 on a motion device, too, where people move. I didn't mean
4 to say two. This one is on photo cell or something like
5 that; right?

6 A. Yes.

7 Q. Comes on ---

8 A. When it gets dark.

9 Q. Goes off in the daytime?

10 A. Yes.

11 Q. Now, unlike the photo, are you familiar with the
12 motion lights?

13 A. Yes.

14 Q. All right. Did you -- There's been a little confusion
15 as to whether or not there's the two motion lights that are
16 here are actually attached to the top corner of this
17 trailer or if they're on a utility pole that's about right
18 here. Do you know?

19 A. No.

20 Q. Do you know that there are two two exterior flood
21 lights like you find at Lowe's or somewhere like that?

22 A. Yes, I know there's lights over there. I just don't
23 know where to look.

24 Q. Okay. And did you know that they control by motion?

25 A. Yes.