

Vol I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

ROGER EUGENE SHEPARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002721

APPENDIX

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State of South Carolina

In the Court of General Sessions

County of Pickens

The State,

Plaintiff,

-vs-

Roger Eugene Shephard,

Defendant.

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Case Nos: 2009-GS-39-0941,
0942, 0943, 0944

Transcript of Record

November 16, 2009

BEFORE:

The Honorable, Judge G. Edward Welmaker

APPEARANCES:

Judy Munson, Esquire
Assistant Solicitor for 13th Judicial Circuit
Attorney for the State

John DeJong, Esquire
Attorney for the Defendant

Danette P. Hanks
Circuit Court Reporter

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VOIR DIRE

Juror #	Name	Race	Sex	<u>Strikes</u>			Accept
				Court	Plaintiff	Def.	
109	Tucker, Emily A	W	F			x	
69	Mauldin, Laverne B	W	F				x
106	Summers, Heather P	W	F				x
42	Hammontree, Wayne L	W	M			x	
75	Montjoy, Kenneth M	W	M				x
23	Dobson, Karen G	W	F				x
2	Banegas, Maria D	H	F				x
104	Stevens, John M	W	M				x
16	Cohn, Gary N	W	M			x	
81	O'Shields, Debra T	W	F			x	
98	Robinson, Deborah E	B	F				x
35	Gillespie, Gary M	W	M			x	
95	Rivers, Vicki D	W	F		x		
61	Kirksey, Casper K	B	M		x		
67	Lovejoy, Rick D	W	M				x
72	Menchyk, Denise L	W	F				x
80	Nalley, Edwanda D	W	F			x	
102	Simmons, Jerri L	W	F			x	
49	Holcombe, James E	W	M				x
87	Pittman, Sherry B	W	F			x	
60	Kelley, Charles T	W	M		x		
94	Riley, Kathy A	W	F			x	
14	Carson, Elizabeth D	W	F				x
10	Brown, Gregory H	W	M			x	
78	Mullinix, Barbara L	W	F		x		

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83	Parsons, Paula M	W	F				x
97	Roberts, Sandra F	W	F			x	
57	Keeran, Daniel B	W	M				x
70	Maxwell, Melissa C	W	F				x

1 (WHEREUPON, Court convened with all parties present
2 and the following proceedings were had.)

3 (WHEREUPON, State Exhibit Numbers 1 through 90 were
4 marked for identification.)

5 THE COURT: This is a case of State versus
6 Shephard, Roger Eugene Shephard. This morning I received
7 a list of potential witnesses from the State. I notice
8 that several were from the Easley Police Department. Is
9 there -- out of a world of caution, I discussed with both
10 attorneys the fact that prior to being on the bench I did
11 represent the City of Easley for several years. Of
12 course, that's been more than -- or nearly six years ago
13 that I even represented them. Most of my representation
14 with the City of Easley was through the City Council and
15 advising the mayor and working with their redevelopment.
16 Probably eight or ten years ago I would prosecute some
17 cases of shoplifting and DUI first. I did want to bring
18 this up so that both lawyers would be aware of that if
19 they didn't already know. I, in my own judgment, do not
20 feel that I have any prejudice or bias or in anyway
21 affects my impartiality. But under the Canon 3, I just
22 wanted to make sure for the record that I did place it
23 that if there's any reasonable question of impartiality
24 under the rules, as I understand it, I need to bring this
25 up to the lawyers. And I'll certainly be glad to hear

1 from either one of you if you wish to make any motion for
2 recusal. Obviously we have another judge here today,
3 Judge Williams, will be here this week. But I'll be glad
4 to hear from either one of you if you feel that there is
5 a ground for recusal motion. Be glad to have you, if you
6 haven't already -- I did bring this to your attention
7 earlier, if you need to talk with your clients further
8 about it, I'll be glad to give you an opportunity to do
9 that.

10 MS. MUNSON: Nothing from the State, Your
11 Honor.

12 THE COURT: Okay. Mr. DeJong.

13 MR. DEJONG: May it please the Court, Your
14 Honor. I appreciate the Court's candor. I noticed, Your
15 Honor, on the witness list, of course I am not sure how
16 Ms. Munson will try the case, but on the witness list I
17 notice that there appears to be seven potential witnesses
18 from the Easley Police Department. I realize that Your
19 Honor said that it has been some six years since you
20 worked for the Easley Police -- or for the City of
21 Easley, excuse me. I believe Your Honor further divulged
22 that you did some prosecution for the State -- or for the
23 City of Easley. The defense's position is, Your Honor,
24 that because of your close relationship with the City of
25 Easley in the past, the fact that, from what I gather you

1 did do some prosecution for the city, I believe, Your
2 Honor, that would fall under the Canon where the Judge's
3 impartiality might reasonably be questioned. I would
4 respectfully move that Your Honor recuse himself from
5 this case.

6 THE COURT: All right. Anything from the
7 solicitor?

8 MS. MUNSON: Yes, sir, Your Honor. May it
9 please the Court. The key is reasonably. And in that
10 your duties with the City of Easley, not the police
11 department, about six years ago really didn't involve the
12 police department and your involvement with the police
13 department was eight to ten years ago, we would
14 respectfully submit that it is not at all reasonable to
15 question your impartiality. Thank you, Your Honor.

16 THE COURT: Well, I certainly don't think prior
17 representation this far removed would reasonably bring
18 into question. I bring this up only for the
19 precautionary purposes and to try to comply with the
20 rule. But the fact that I've prosecuted cases for a
21 municipality in the past -- I think we have some judges
22 on the bench now who have been solicitors in the past and
23 started trying cases. So I think time has certainly
24 healed any impartiality issues that may have come up.
25 And I respectfully deny your motion, Mr. DeJong. We'll

1 be ready to proceed with the trial. But certainly your
2 motion is protected on the record.

3 MR. DEJONG: Thank you, Your Honor.

4 THE COURT: Any other matters we need to take
5 care of outside the presence of the jury?

6 MR. DEJONG: Yes, Your Honor.

7 MS. MUNSON: Can I interrupt for just a second?
8 I noticed a juror approached and was talking with you.
9 Can we know who that was and what it was about?

10 THE COURT: I don't remember who she was. She
11 was wanting to be transferred. But I think she decided
12 that she really didn't, because I told her that if she
13 got transferred -- the clerk will certainly give you the
14 name in just a moment.

15 MS. MUNSON: Can we have her name?

16 MADAM CLERK: Vickie Rivers.

17 MS. MUNSON: Vickie Rivers. Thanks.

18 THE COURT: She had some conflicts, but she
19 basically said that the same conflicts would be in future
20 jury service and she decided she was going to make a
21 phone call and get it covered. I think that's the way we
22 left it.

23 MS. MUNSON: Thank you, Your Honor.

24 THE COURT: Yes, sir, Mr. DeJong.

25 MR. DEJONG: Your Honor, one thing that we need

1 to clarify. I realize the jury is not in here at the
2 moment. My client is seated at counsel table in belly
3 chains, handcuffs and leg shackles. While the jury is
4 here I'm going to ask that those be removed. Obviously
5 it's highly prejudicial for the jury to see him that way.
6 If we're going to leave them on him, I might as well
7 leave him in orange rather than going out and trying to
8 find clothes. Plus the fact that he can't write. He's
9 going to have to communicate with me by writing. We have
10 shared that. So therefore, I would respectfully request
11 that when the jury is present in the Courtroom, Your
12 Honor, that he not be in any type of restraints at all.

13 MS. MUNSON: The State's position is, Your
14 Honor, we will defer to courtroom security and Your Honor
15 on that.

16 THE COURT: Yes, sir.

17 MR. GALLOWAY: Your Honor, if I may.

18 THE COURT: If you would identify yourself for
19 the record, please.

20 MR. GALLOWAY: Lieutenant Keith Galloway.

21 THE COURT: All right, sir.

22 MR. GALLOWAY: The sheriff's office considers
23 Mr. Shephard a flight risk. I have several pieces of
24 security on him which includes a shock belt, belly
25 chains, shackles, and leg shackles. I really don't have

1 any issue with removing as much as we did with the Inman,
2 at least partial of the restraints in order for him to
3 write. But the sheriff's office thinks that he is a
4 flight risk. We wish you would take that into
5 consideration before we remove all of the security
6 measures.

7 THE COURT: All right. Does he have leg
8 shackles on?

9 MR. GALLOWAY: He does.

10 THE COURT: All right.

11 MR. DEJONG: Your Honor, if I may just respond
12 to that?

13 THE COURT: Yes, sir.

14 MR. DEJONG: Regarding the shock belt, I don't
15 know if he's got a shock belt on or not.

16 MR. GALLOWAY: Yes, sir.

17 MR. DEJONG: They've got the knee braces that
18 lock if he tries to run. He doesn't need to be in the
19 shackles and the handcuffs. That's highly prejudicial
20 for him to be.

21 THE COURT: Well, I think he just said he's
22 going to take the cuffs off.

23 MR. GALLOWAY: We can -- yes, sir, I don't have
24 any problem -- if I can refer back to the way we treated
25 the Inman trial. We actually released his hand that he

1 wrote with and that was the hand that we released the
2 entire length of the trial for him to correspond with his
3 counsel. That would be my request.

4 THE COURT: All right. If the leg shackles
5 need to stay on, I would like something -- we can get a
6 piece of cardboard or whatever to cover the table.
7 Again, I'll defer to Officer Galloway on that. But I
8 want -- I don't want the jury to be able to see that he's
9 got on the leg shackles. So we can put some covers up in
10 front of the ---

11 MR. GALLOWAY: Do you want the hands ---

12 THE COURT: If you're okay with the hands being
13 free, we'll certainly give him an opportunity to write.

14 MR. DEJONG: Well, I'm asking that the chains
15 come completely off, Your Honor.

16 THE COURT: Yeah. I understand what you're
17 asking. They're coming off the hands for him to write.
18 And the legs, they either need to be -- the table needs
19 to be covered or if security feels like the leg
20 restraints need to stay on, then I'll ---

21 MR. GALLOWAY: It's the position of the
22 sheriff's office that we at least maintain the shock belt
23 and the leg shackles.

24 THE COURT: Okay.

25 MR. DEJONG: I don't have a problem -- well, I

1 don't have a problem -- you're talking about the leg
2 shackles on the knees.

3 MR. GALLOWAY: That's -- I'm talking about the
4 ones on the ankles.

5 MR. DEJONG: Well, I have a problem with that.
6 But if we're going to drape my table, we're going to have
7 to drape the solicitor's office table too.

8 THE COURT: All right. We'll get a piece of
9 cardboard to cover on each side of the table. I don't
10 think they'll be able to see in the front. We'll just
11 have the back ... Do you have a piece of posterboard
12 somewhere?

13 MISTER CLERK: I'll see if we've got something.

14 THE COURT: Two pieces.

15 MR. DEJONG: He's never been convicted of any
16 type of trying to escape or anything else.

17 THE COURT: All right. Well, we'll get that
18 covered. And that way I don't believe the jury will be
19 able to view that. Or we can put trash cans or something
20 else up there.

21 MR. DEJONG: We're also going to have to make
22 sure, Your Honor, that every time that he moves, the jury
23 is out of the Courtroom.

24 THE COURT: Well, we'll take care of that.
25 Well, we need a little more. I don't know if he wants

1 that there. Can you turn it sideways or something?

2 MISTER CLERK: I was going to tape that down.

3 THE COURT: Okay. Yeah. Just cover both
4 sides, their side over there, the State's table and that
5 table. We can do that before the jury comes back in.

6 MR. DEJONG: Just so the record is clear, I'm
7 not arguing with Your Honor's ruling. I take exception
8 to it, Your Honor, that he is in any kind of visible
9 restraints in the Courtroom.

10 THE COURT: Well, I think we're going to
11 protect his rights as far as what the jury sees this way,
12 and so we'll -- we certainly want to do that. Maybe you
13 can tape it, if you can, on the inside. I hate for you
14 to have to crawl under there, but -- that way. Then you
15 can put the trash can on the outside of it.

16 Mr. DeJong, anything else we need to take care of
17 before the jury comes back in?

18 MR. DEJONG: Yes, Your Honor. With regard to
19 the indictments themselves, a couple of issues, Your
20 Honor. The designation on the front part of the
21 indictment, and the front part, I'm speaking of where it
22 says The State versus Roger Eugene Shephard, apparently
23 the grand jury purportedly true billed the Defendant on
24 July the 15th of 2009. The question I am raising is, on
25 the indictment it says witnesses, who I presume are the

1 witnesses for the Pickens County Grand Jury. It says
2 Gene Patterson of Easley Police Department. I'm not
3 questioning any of that. But I am questioning the June
4 the 6th, 2008. I am not sure if that is the date they
5 are saying he appeared before the Grand Jury or exactly
6 what that designation is.

7 Secondly, on the flip side of the indictment, if
8 we're looking at the two page indictment, Your Honor, the
9 date has been left blank on when -- at least on the
10 copies that I have, the date has been left blank as to
11 when the Pickens County Grand Jury convened on this
12 particular case. On none of my indictments is there a
13 date for that particular block. I would submit that -- I
14 think I have to raise it because I think it's a defect in
15 the indictment, the face of the indictment, Your Honor.
16 That date not being in there I submit it's a fatal
17 defect, Your Honor, and this case should be returned to
18 the grand jury for further deliberation.

19 THE COURT: And the date that you're
20 questioning is the date that the grand jury met or the
21 date that the true bill was signed?

22 MR. DEJONG: No. The question I have is on the
23 witnesses.

24 THE COURT: Yeah. I understand that date.

25 MR. DEJONG: Right.

1 THE COURT: I thought you had two issues.

2 MR. DEJONG: Well, that's one issue ---

3 THE COURT: All right. I ---

4 MR. DEJONG: If it is an issue. And the
5 second, on the face of the indictment, there is no date
6 in there that the Pickens Count Grand Jury convened to
7 consider these indictments.

8 THE COURT: Do you need to see these?

9 MS. MUNSON: No. I know what he's talking
10 about, Your Honor.

11 THE COURT: All right. Ms. Munson.

12 MS. MUNSON: As to the issue about the -- on
13 the face of the indictments, June 6th of 2008, that is
14 the date the Defendant was served with these warrants.
15 The incident happened in '06, but he wasn't brought back
16 from Canada until that date. All of our indictments are
17 that way.

18 THE COURT: Okay.

19 MS. MUNSON: And as far as the inside, I agree
20 that at a Court of General Sessions convened on, and
21 there's a blank space, it's the State's position that
22 that is not at all fatal to the indictment because it has
23 nothing to do with what the Defendant is being put on
24 notice about that he allegedly did. On the face of the
25 indictment it tells the Grand Jury action and when the

1 true bill was, which it's the State's position is the
2 most important thing. So our position is that it should
3 have no effect at all.

4 THE COURT: And the date appears on the true
5 bill on the back of the indictment? Okay. Mr. DeJong,
6 did you hear what the solicitor said as far as the June
7 date?

8 MR. DEJONG: The June date I don't have that
9 much of an issue with, Your Honor. On the indictment
10 itself, though, I do have an issue. I understand that
11 indictments are a notice giving document. I certainly
12 understand that. But I think the indictment that is --
13 he is also entitled to know when that particular grand
14 jury convened. I don't know if they ever convened. All
15 I know is some foreperson of some Grand Jury signed an
16 indictment.

17 THE COURT: I believe the face of the
18 indictment gives the Defendant adequate notice and is
19 otherwise in proper form. I'll deny your motion for
20 quashing of the indictments, if that's what it was, on
21 the fact of no date of when they convened. I believe
22 it's clear when the action was taken and the absent date,
23 I believe, is certainly not fatal to the indictment.

24 MR. DEJONG: Thank you, Your Honor.

25 THE COURT: Anything else?

1 MR. DEJONG: Yes, Your Honor. My client
2 requested, and I'm not a hundred percent sure, he's put
3 it in two different postures in what he is requesting.
4 He has requested on one point that he be allowed to cross
5 examine some witnesses. And then he just handed me a
6 note that he wanted to be appointed as co-counsel. I
7 shared with him on both -- well, he had raised the co-
8 counsel issue with me before. I have shared with him
9 that would be a matter that we would have to take up with
10 Your Honor. If Your Honor wishes to voir dire my client
11 with respect to that particular issue, I certainly offer
12 him to the Court, Your Honor.

13 THE COURT: Why don't we wait until the -- you
14 let me know when the witness -- you said there were a
15 couple of witnesses like that? You let me know when
16 those witnesses testify and ---

17 MR. DEJONG: I know one for certain at this
18 point in time, Your Honor. And that would be Donald L.
19 Thompson. There may be others, but that was one he has
20 designated at this point in time, Your Honor.

21 THE COURT: All right. Well, let's, let's
22 cross that bridge when it comes up, Mr. DeJong, if you'll
23 just remind me. And when that witness is ready to
24 appear, we'll take that up.

25 MR. DEJONG: I'm not trying to be

1 disrespectful, Your Honor, but we have the jury panel
2 coming in. I'm trying to see what they can see from this
3 side of the Courtroom ---

4 THE COURT: All right, sir.

5 MR. DEJONG: -- with respect to the shackles.
6 I think they would still be visible to some of the -- if
7 I may have a moment ---

8 THE COURT: With you sitting there you think
9 they would? Well, just turn the table sideways if you
10 need to.

11 MR. DEJONG: The only thing is, Your Honor, and
12 I'm not trying to be argumentative. I think we're making
13 the matter worse than we're making it better. And I
14 still think it is prejudicial. I'm not going to reargue
15 that. The Solicitor's side is four inches off the floor.
16 My side goes all the way to the floor. I've got an issue
17 with the jury panel coming in here from the far corner
18 back there, the line of sight up here, to all of those
19 particular seats up there. Enough said.

20 THE COURT: All right. Just so that we want to
21 do our best to protect the record, as you've done, Mr.
22 DeJong, let me try to state on the record. We have a
23 jury panel in the pews in the back. Mr. DeJong is seated
24 closest to the jury. His client is beside him. The
25 jurors will be coming forward to -- for the strikes. The

1 table is papered so that no one can see underneath the
2 tables of either counsel table as they come forward.

3 I believe that the few who may have a view toward
4 the Defendant from the full panel will be blocked in
5 their view of any shackles by the presence of Mr. DeJong
6 there. We'll also have a bailiff who will be standing
7 over here to escort the jurors up to the front for their
8 qualifications. And I believe that'll further block any
9 view. Once the jury is empaneled, I think the tables are
10 well marked with paper to disallow the -- any of the
11 jurors who are selected from seeing the restraints on the
12 ankles of the Defendant. So I deny your motion.

13 MR. DEJONG: Thank you, Your Honor. I
14 appreciate the Court's observation, but just so my
15 objection is on the record.

16 THE COURT: Yes, sir. All right. Are we ready
17 for our jury?

18 MS. MUNSON: One more thing, Your Honor. While
19 Mr. DeJong provided to me his requests for voir dire - do
20 you have those, Your Honor?

21 THE COURT: I do.

22 MS. MUNSON: As to number one, I don't object
23 to that, although I will tell you that SLED is not
24 involved in this case. The Bureau of Alcohol, Tobacco,
25 Firearms and Explosives is, along with the Montreal

1 police. Other than that, I do not object to number one.
2 I do not object to number two. I do not object to number
3 three. I believe that the Court covered number four
4 anyway. I do not object to it. I do not object to
5 number five. I believe the Court will cover number six.
6 I do not object to it. The same with number seven. And
7 I do object to number eight because this has nothing to
8 do with a sexual assault.

9 MR. DEJONG: That's an error on my part, Your
10 Honor. I would, I would certainly ---

11 THE COURT: All right. That one's withdrawn.

12 MS. MUNSON: And I do not object to number
13 nine, Your Honor. State's ready.

14 THE COURT: All right.

15 MR. DEJONG: Well, the only thing with respect
16 to number eight, Your Honor noted it was withdrawn, I
17 would ask the Court to still ask the jury panel that
18 question but take out the alleged sexual assault, or
19 sexual assault crime, and put in alleged personal --
20 crimes of personal violence.

21 THE COURT: Okay. Victims of crimes of
22 personal violence?

23 MR. DEJONG: Yes, sir.

24 THE COURT: Okay. I'll include that one as
25 well. Anything else?

1 MR. DEJONG: Your Honor, before we bring the
2 jury panel in, I have nothing further at this point in
3 time. But can we use the rest of that ten minutes you
4 gave the jury panel, or five of it?

5 THE COURT: They were to come back at a quarter
6 till. We'll take about a three minute break. Okay?

7 MR. DEJONG: Thank you, Your Honor. Gives me
8 long enough to go down the hallway, but not go down to
9 smoke.

10 (WHEREUPON, Court stood at recess for a short break.)

11 THE COURT: Thank you very much for your
12 patience with us, ladies and gentlemen. We have all of
13 them back?

14 BAILIFF: Yes, sir.

15 THE COURT: All right. Thanks. We're ready to
16 select a jury for the first case, ladies and gentlemen.
17 This is a case brought by the State of South Carolina
18 against Mr. Roger Eugene Shephard. The State has brought
19 charges against Mr. Shephard for several offenses. Among
20 those are, the indictment states, on or about June the
21 15th, 2006 that he unlawfully and with malice aforethought
22 killed a John Bruin by means of shooting the victim in the
23 chest and that Mr. Bruin died as a result of that, being
24 an indictment for murder.

25 There's also an indictment that says or about that

1 same day of June 15th, 2006, with malice aforethought he
2 committed an assault upon a Betty Bruin and the Defendant
3 had the apparent present ability to complete that act, an
4 assault with intent to kill.

5 The third charge is that on or about June the 15th,
6 2006, while armed with a deadly weapon and while engaging
7 -- or while alleging either by action or words that he was
8 armed while using a representation of a deadly weapon or
9 any object which a person present during the commission of
10 a robbery would reasonably believe to be a deadly weapon,
11 he took by means of force or intimidation, goods or monies
12 described as follows. That begin firearm from the person
13 or in the presence of John Bruin at Action Pawn Shop, this
14 being a violation of the code of laws, constituting armed
15 robbery.

16 The fourth charge is that on that date of June the
17 15th, 2006, he possessed or visibly displayed a handgun
18 during the commission or attempted commission of a violent
19 crime, being armed robbery and murder. That being the
20 possession of a weapon during the commission of a crime.

21 Now, ladies and gentlemen, Mr. Shephard has entered a
22 plea of not guilty to these charges. Under our system of
23 justice, every citizen is presumed to be innocent of
24 charges. And the fact that charges have been brought is
25 not any proof. The State of South Carolina has the burden

1 of proving guilt on each element of each of these charges.
2 beyond any reasonable doubt.

3 You and I are going to be judges. I'm going to be
4 the judge of the law in this case. We need to select
5 jurors to be judges of the facts in this case. We need
6 fair and impartial jurors. Mr. Shephard desires to have
7 fair and impartial jurors. He deserves to have fair and
8 impartial jurors. So does the State of South Carolina.

9 I need to ask you some additional questions. You've
10 been qualified to serve this week as jurors, ladies and
11 gentlemen. I need to ask you some additional questions
12 concerning your eligibility to serve on this particular
13 case.

14 First of all, is there any member of the jury panel
15 who has read a newspaper article or a magazine article,
16 television report or radio report, concerning this
17 defendant or the case or have any information, first hand,
18 second hand, from happening upon the scene? If you have
19 any prior information about this matter, would you please
20 stand?

21 All right. What I want you to do, those of you who
22 are standing, I want you to remain standing. I need to
23 ask, first of all your name, please. Your name, please,
24 ma'am?

25 EDWANDA NALLEY: Edwarda Nalley.

1 THE COURT: All right. And your name, please,
2 ma'am.

3 ANGELINE WARNER: Angeline Warner.

4 THE COURT: Your name.

5 DEBRA O'SHIELDS: Debra O'Shields.

6 THE COURT: And your name, please, ma'am.

7 CATHERINE SHERIN: Catherine Sherin.

8 THE COURT: Yes, sir.

9 ROSS WALTERS: Ross Walters.

10 THE COURT: Yes, ma'am, your name.

11 TERESA MOODY: Teresa Moody.

12 GREG WATSON: Greg Watson.

13 THE COURT: All right. Those of you who are
14 standing and have some information, what I'd like for you
15 to do, I'm going to ask each of you in sequence, is the
16 information that you have from anything other than media?
17 Newspapers, radio, television. Any of you that are
18 standing have any information from any source other than a
19 media report? If so, would you please raise your hand, if
20 you have any information other than that?

21 (No response.)

22 THE COURT: Thank you. There's no response from
23 those standing jurors. The fact that you have read or
24 heard something about this incident through the media,
25 would that affect your ability to be a fair juror in this

1 case? In other words, if you've read something about this
2 case or heard something about what happened, we need to
3 have fair jurors to hear this case. And the fact that you
4 have that information certainly doesn't disqualify you.
5 But if you have that information and that's going to cause
6 you in anyway to not be able to listen to the evidence
7 that's presented in this case, the testimony that's given,
8 to follow the instructions that I give, if you believe
9 that what you've read would affect your ability in anyway
10 to be fair to both the State and to Mr. Shephard, I need
11 you to please be seated at this time, if you believe that
12 what you've read will interfere with your ability. If you
13 believe it will, I want you to be seated. All right.
14 Thank you very much. Those who have been seated, I ask
15 you again to state your names for me.

16 TERESA MOODY: Teresa Moody.

17 GREG WATSON: Greg Watson.

18 THE COURT: Mr. Watson. And yes, ma'am.

19 CATHERINE SHERIN: Catherine Sherin.

20 THE COURT: All right. Those of you who are
21 standing, thank you. At this time you may be seated. I'm
22 going to excuse those of you who believe that you could
23 not be fair to ---

24 MR. DEJONG: Your Honor, I didn't get the name
25 of the third person who sat down. I'm sorry.

1 MADAM CLERK: Catherine Sherin.

2 THE COURT: Sherin.

3 MR. DEJONG: Thank you.

4 THE COURT: Those three will be excused from the
5 trial of this case. If you would just stay with us for a
6 few moments. I'll give you a chance to be dismissed a
7 little later. Of course, you don't need to respond to any
8 other questions that I ask, those three of you.

9 There's several witnesses who may be called upon to
10 testify in this case, ladies and gentlemen. Not all of
11 these may be called up. But I'm going to read you a list
12 of these witnesses who may come and testify and after that
13 I need to ask you some follow-up questions. Among the
14 witnesses would be Betty Bruin. From the Easley Police
15 Department Jon Brock, Jeff Guy, Major Tim Tollison,
16 Captain Gene Patterson, Sergeant Brian Cowan, Captain Alex
17 Greer, Detective David Suddeth. From Pickens County EMS,
18 Les Murrell. From Montreal Police Department Sergeant
19 Detective Marco Roy. From Greenville County Crime Lab,
20 Sergeant Renee Sherbert, James Armstrong. Dr. Michael
21 Ward, the Greenville County Medical Examiner. From
22 Pickens County Sheriff's Department, Lieutenant Tony
23 Robinson, J.T. Albrecht. Other witnesses who may be
24 called upon, Joseph Harley Kelley, Peggy Christian,
25 Christopher Wildt, Suzanne Dabkowski, Francis Neeley,

1 Donald Thompson, Shina Thomas, Joe Pace, Melinda Sheril
2 Holcombe. Is there any member of the jury panel related
3 by blood or marriage to any of these potential witnesses?
4 If so, would you please stand.

5 (No response.)

6 THE COURT: Is there any member of the jury
7 panel who has a close business, a social or a personal
8 relationship with any of these potential witnesses? If
9 so, would you please stand?

10 (No response.)

11 THE COURT: Is there any member of the jury
12 panel related by blood or marriage to Mr. Roger Eugene
13 Shephard? If so, would you please stand?

14 (No response.)

15 THE COURT: Is there any member of the jury
16 panel who has a close business, a social or a personal
17 relationship with Mr. Roger Eugene Shephard? If so, would
18 you please stand?

19 (No response.)

20 THE COURT: Thank you. There is no response.

21 Is there any member of the jury panel who in anyway
22 has expressed or formed an opinion about the facts in this
23 case in anyway? If so, would you please stand?

24 (No response.)

25 THE COURT: Is there any member of the panel

1 aware of any bias or prejudice that would interfere with
2 your ability to be a fair juror in this case if you're
3 selected? If so, would you please stand?

4 (No response.)

5 THE COURT: Is there any member of the jury
6 panel or a member of your immediate family who is
7 associated with or related by blood or marriage to anyone
8 employed with the city of Easley Police Department,
9 Pickens County Sheriff's Office or any law enforcement
10 agency? If you have a -- if you or a member of your
11 immediate family is employed in any law enforcement
12 agency, would you please stand?

13 Yes, ma'am. Your name, please.

14 SANDRA FORD: Sandra Ford. My brother is a
15 policeman in Anderson County Sheriff's Office.

16 THE COURT: You have a brother who is a
17 policeman with the Anderson County?

18 SANDRA FORD: Yes, sir.

19 THE COURT: Let me ask you this. The fact that
20 you have a brother in law enforcement, would that affect
21 your ability to be a fair juror if you're selected? Could
22 you make a decision on the evidence that you heard, the
23 law that I give you and that alone?

24 SANDRA FORD: Yes, sir.

25 THE COURT: Thank you very much. You may be

1 seated.

2 Is there any member of the jury panel who is a
3 contributing member of any organization who has its
4 primary concern the promotion of law enforcement or
5 victims' rights, such as MADD or SADD or CAVE or PARR or
6 any of those organizations? If you're a contributing
7 member, would you please stand.

8 (No response.)

9 THE COURT: Thank you. There is no response.
10 Is there any member of the jury panel or a member of your
11 immediate family who has ever been the victim of a crime
12 of violence or a crime in which a weapon was used? If so,
13 would you please stand? If you or a member of your
14 immediate family has ever been a victim of a crime of
15 violence. Yes, sir, again, your name, please?

16 ROSS WALTERS: Ross Walters.

17 THE COURT: Okay. And how long ago was it --
18 was it you or was it a member of your family?

19 ROSS WALTERS: I've been held up in a bank
20 situation.

21 THE COURT: How long ago was that?

22 ROSS WALTERS: It's been at least fifteen years,
23 I would say.

24 THE COURT: All right. In a bank?

25 ROSS WALTERS: Yes, sir.

1 THE COURT: All right. The fact that that has
2 happened to you in the past, do you believe that would
3 affect your ability to be a fair juror in this case? You
4 believe you could be fair to Mr. Shephard, you could be
5 fair to the State? You could make a decision on the law,
6 the facts in this courtroom and that alone?

7 ROSS WALTERS: Yes, sir.

8 THE COURT: Thank you, sir. You may be seated.
9 Is there any member of your immediate family who has
10 ever worked for any organization or agency or business
11 which investigated or counseled victims of crimes of
12 personal violence? If you or a member of your immediate
13 family has ever worked in a capacity with an agency that
14 gives counsel to victims of crimes of personal violence,
15 would you please stand?

16 (No response.)

17 THE COURT: Thank you. There's no response. Is
18 there any member of the jury panel who is a member of any
19 social, political or religious, fraternal organization of
20 any kind whose beliefs and teachings would create a
21 prejudice in your mind in anyway for this particular case
22 so that you could not render a fair verdict? If you
23 belong to any organization whose teachings and beliefs you
24 believe would cause you to be prejudiced, would you please
25 stand?

1 (No response.)

2 THE COURT: Thank you. There's no response. Is
3 there any member of the jury panel who has any physical or
4 mental or emotional condition that you believe would
5 prevent you from giving both the State and the Defendant a
6 fair and impartial trial in this particular matter? If
7 so, would you please stand?

8 (No response.)

9 THE COURT: Thank you. There's no response. Is
10 there any member of the jury panel or a member of your
11 immediate family that has ever been employed by or had any
12 financial connection, been a customer of Action Pawn Shop
13 located at 604 West Main Street in Easley, or any person
14 that may be affiliated with that pawn shop or any other
15 pawn shop in any location? If you are a customer of a
16 pawn shop or have any ties with anyone at this particular
17 pawn shop, would you please stand?

18 (No response.)

19 THE COURT: Thank you. There is no response.
20 At this time I'll ask the attorneys if you would, please
21 stand and introduce yourselves to the jury.

22 MS. MUNSON: May it please the Court, Your
23 Honor. My name is Judy Munson. I work at the Thirteenth
24 Circuit Solicitor's Office.

25 MR. DEJONG: May it please the Court, Your.

1 Honor. I'm John DeJong. I have the pleasure of
2 representing Mr. Shephard today. Also seated at counsel
3 table at the far end is my investigator, Mr. Johnny
4 Duncan.

5 THE COURT: All right. Thank you very much. Is
6 there any member of the jury panel related by blood or
7 marriage to either of these attorneys? If so, would you
8 please stand?

9 (No response.)

10 THE COURT: Is there any member of the panel who
11 has a close business, a social or a personal relationship
12 with either of these attorneys? If so, would you please
13 stand?

14 (No response.)

15 THE COURT: Thank you. There's no response.
16 Ladies and gentlemen, I stated to you earlier, Mr.
17 Shephard, the State of South Carolina, they both desire to
18 have fair and impartial jurors. They deserve to have fair
19 and impartial jurors. Is there any member of the panel
20 aware of any reason whatsoever that you believe that you
21 could not be fair to both the State of South Carolina, to
22 the Defendant, Mr. Shephard, in this case, and if selected
23 that you could make a decision based on the law that I
24 give you, the evidence that you hear in this courtroom,
25 and that alone? If for any reason you believe you could

1 not be a fair juror, would you please stand?

2 (No response.)

3 THE COURT: Thank you. There's no response.

4 Any other questions from the State?

5 MS. MUNSON: Nothing, Your Honor.

6 THE COURT: From the defense?

7 MR. DEJONG: Nothing from the defense, Your
8 Honor.

9 THE COURT: All right. We're going to empanel a
10 jury now. I'll ask the clerk, he'll give you the
11 instructions of what to do when your name is called.

12 MISTER CLERK: If you would as I call your name
13 walk up front right here in front of me and turn around
14 and face the attorneys so that they can see who you are.
15 Number 109, Emily A. Tucker. You may want to bring
16 your -- everything with you in case you are selected to be
17 a juror.

18 What says the State?

19 MS. MUNSON: Please present the juror.

20 MISTER CLERK: And the defense?

21 MR. DEJONG: Please excuse this juror from the
22 trial of this case.

23 MISTER CLERK: Number 69, Laverne B. Mauldin.

24 What says the State?

25 MS. MUNSON: Please present the juror..

1 MISTER CLERK: And the defense?

2 MR. DEJONG: Please swear the juror.

3 MISTER CLERK: Number 106, Heather P. Summers.

4 What says the State?

5 MS. MUNSON: Please present the juror.

6 MISTER CLERK: And the defense?

7 MR. DEJONG: Please swear the juror.

8 MISTER CLERK: Number 42, Wayne L. Hammontree.

9 What says the State?

10 MS. MUNSON: Please present the juror.

11 MISTER CLERK: And the defense?

12 MR. DEJONG: Please excuse this juror from the

13 trial of this case.

14 MISTER CLERK: Number 75, Kenneth M. Montjoy.

15 What says the State?

16 MS. MUNSON: Please present the juror.

17 MISTER CLERK: And the defense?

18 MR. DEJONG: Please swear the juror.

19 MISTER CLERK: Number 23, Karen G. Dobson.

20 What says the State?

21 MS. MUNSON: Please present the juror.

22 MISTER CLERK: And the defense?

23 MR. DEJONG: Please swear the juror.

24 MISTER CLERK: Number 2, Maria D. Banegas.

25 What says the State?

1 MS. MUNSON: Please present the juror.

2 MISTER CLERK: And the defense?

3 MR. DEJONG: Please swear the juror.

4 MISTER CLERK: Number 104, John M. Stevens.

5 What says the State?

6 MS. MUNSON: Please present the juror.

7 MISTER CLERK: And the defense?

8 MR. DEJONG: Please swear the juror.

9 MISTER CLERK: Number 16, Gary N. Cohn.

10 What says the State?

11 MS. MUNSON: Please present the juror.

12 MISTER CLERK: And the defense?

13 MR. DEJONG: Please excuse this juror from the
14 trial of this case.

15 MISTER CLERK: Number 81, Debra T. O'Shields.

16 What says the State?

17 MS. MUNSON: Please present the juror.

18 MISTER CLERK: And the defense?

19 MR. DEJONG: Please excuse this juror from the
20 trial of this case.

21 MISTER CLERK: Number 98, Deborah E. Robinson.

22 What says the State?

23 MS. MUNSON: Please present the juror.

24 MISTER CLERK: And the defense?

25 MR. DEJONG: Please swear the juror.

1 MISTER CLERK: Number 35, Gary M. Gillespie.
2 What says the State?
3 MS. MUNSON: Please present the juror.
4 MISTER CLERK: And the defense?
5 MR. DEJONG: What number please, Mister Clerk?
6 MISTER CLERK: 35.
7 MR. DEJONG: Thank you, sir. Please excuse this
8 juror from the trial of this case.
9 MISTER CLERK: Number 95, Vicki D. Rivers.
10 What says the State?
11 MS. MUNSON: Please excuse the juror in the
12 trial of this matter.
13 MISTER CLERK: Number 61, Casper K. Kirksey.
14 What says the State?
15 MS. MUNSON: Please excuse the juror in the
16 trial of this matter.
17 MISTER CLERK: Number 67, Rick D. Lovejoy.
18 What says the State?
19 MS. MUNSON: Please present the juror.
20 MISTER CLERK: And the defense?
21 MR. DEJONG: Please swear the juror.
22 MISTER CLERK: Number 72, Denise L. Menchyk.
23 What says the State?
24 MS. MUNSON: Please present the juror.
25 MISTER CLERK: And the defense?

1 MR. DEJONG: Please swear the juror.

2 MISTER CLERK: Number 80, Edwanda D. Nalley.

3 What says the State?

4 MS. MUNSON: Please present the juror.

5 MISTER CLERK: And the defense?

6 MR. DEJONG: Please excuse this juror from the
7 trial of this case.

8 MISTER CLERK: Number 102, Jerri L. Simmons.

9 What says the State?

10 MS. MUNSON: Please present the juror.

11 MISTER CLERK: And the defense?

12 MR. DEJONG: Please excuse this juror from the
13 trial of this case.

14 MISTER CLERK: Number 49, James E. Holcombe.

15 What says the State?

16 MS. MUNSON: Please present the juror.

17 MISTER CLERK: And the defense?

18 MR. DEJONG: Please swear the juror.

19 MISTER CLERK: Number 87, Sherry B. Pittman.

20 What says the State?

21 MS. MUNSON: Please present the juror.

22 MISTER CLERK: And the defense?

23 MR. DEJONG: Please excuse this juror from the
24 trial of this case.

25 MISTER CLERK: Number 60, Charles T. Kelley.

1 What says the State?

2 MS. MUNSON: Please excuse the juror in the
3 trial of this matter.

4 MISTER CLERK: Number 94, Kathy A. Riley.

5 What says the State?

6 MS. MUNSON: Please present the juror.

7 MISTER CLERK: And the defense?

8 MR. DEJONG: Please excuse this juror from the
9 trial of this case.

10 MISTER CLERK: Number 14, Elizabeth D. Carson.

11 What says the State?

12 MS. MUNSON: Please present the juror.

13 MISTER CLERK: And the defense?

14 MR. DEJONG: Please swear the juror.

15 MISTER CLERK: Number 10, Gregory H. Brown.

16 What says the State?

17 MS. MUNSON: Please present the juror.

18 MISTER CLERK: And the defense?

19 MR. DEJONG: Please excuse this juror from the
20 trial of this case.

21 MISTER CLERK: Number 78, Barbara L. Mullinix.

22 What says the State?

23 MS. MUNSON: Please excuse the juror from the
24 trial of this matter.

25 MISTER CLERK: Number 83, Paula M. Parsons.

1 What says the State?

2 MS. MUNSON: Please present the juror.

3 MR. DEJONG: Please swear the juror.

4 MISTER CLERK: Number 97, Sandra F. Roberts.

5 This is for alternate number one.

6 What says the State?

7 MS. MUNSON: Please present the juror.

8 MISTER CLERK: And the defense?

9 MR. DEJONG: The number again, please, Mister
10 Clerk?

11 MISTER CLERK: 97.

12 MR. DEJONG: Thank you, sir. Please excuse this
13 juror from the trial of this case.

14 MISTER CLERK: Number 57, Daniel B. Keeran.

15 What says the State?

16 MS. MUNSON: Please present the juror.

17 MISTER CLERK: And the defense?

18 MR. DEJONG: Please swear the juror.

19 MISTER CLERK: Number 70, Melissa C. Maxwell.

20 What says the State?

21 MS. MUNSON: Please present the juror.

22 MISTER CLERK: And the defense?

23 MR. DEJONG: Please swear the juror.

24 THE COURT: Any matters we need to take care of
25 as far as the selection of the jury in this matter?

1 Anything from the State?

2 MS. MUNSON: No, sir, Your Honor.

3 THE COURT: From the defense?

4 MR. DEJONG: Nothing on behalf of Mr. Shephard,
5 Your Honor.

6 THE COURT: Ladies and gentlemen who were not
7 selected for the trial of this case, I can dismiss you for
8 the rest of the day. You have a number to call back
9 tonight. Please call back after six o'clock. There will
10 be instructions for you on the machine as to when you need
11 to report back tomorrow. You're excused for today. Thank
12 you very much for your patience with us. Please call back
13 tonight after six o'clock.

14 (WHEREUPON, the jury panel exited the open court at
15 approximately 12:05 p.m.)

16 THE COURT: Can I see the attorneys here just
17 for a minute? Mr. DeJong, can I see you just for a
18 minute?

19 (WHEREUPON, Ms. Munson and Mr. DeJong approached
20 the bar.)

21 THE COURT: Ladies and gentlemen, let me just
22 make a few preliminary remarks to you. This is in no way
23 to be considered an instruction on the law. I wanted to
24 tell you a little bit about the process by which we'll be
25 working on this case this week. You've seen the process

1 by which you were selected. The fact that these parties
2 picked you of many to serve in this capacity because they
3 felt that you could be fair and impartial to both sides.

4 I'm honored to have an opportunity to work with you
5 in this case. I'm going to be the judge of the law and
6 you're going to be the judge of the facts. You may have
7 some apprehension about that title that I've just thrust
8 upon you of being a judge, thinking to yourself, well, I
9 don't have any training in law. I've never been in a
10 courtroom before in my whole life. This is my first
11 experience. I've never served on a jury before. Let me
12 assure you, ladies and gentlemen, that if you have such
13 apprehension you can set that aside. Because you bring
14 into this courtroom every skill you're going to need to be
15 a judge of the facts. Because you bring into this
16 courtroom the everyday experiences that you have in your
17 home and your work. Social activities wherever you may
18 be. You bring into this courtroom the good common sense
19 with which you've been blessed. And that will serve you
20 well as you listen to the evidence that's presented. You
21 determine the believability of that evidence that's
22 presented to you. And ultimately you'll make a decision
23 as to what the facts are in the case.

24 It makes me proud that you've accepted this
25 responsibilities to these parties that you've set aside

1 the sacrifices that you make to be here this week to hear
2 this case and decide just what the facts are.

3 I'll be the judge of the law. Part of my job, of
4 course, at end of the case, I'll instruct you on what the
5 law is as to the evidence that's been presented. My job
6 is to conduct the trial. To have breaks. We'll set
7 periodic breaks as I told you earlier. We'll usually go
8 an hour, an hour and a half at a time and take breaks when
9 you need them. Please let me know if you need a break and
10 I haven't called for a break. I've just told you, you
11 need to be good listeners. And as good listeners it's
12 primary important that you be comfortable. If we need to
13 take a break, please let some of these folks know. I've
14 introduced you already to the bailiffs, Ms. Masters here
15 and Mr. Smith and Mr. Tate, he'll -- Teal, they'll be glad
16 to help you in any way that they need to. Your fine clerk
17 will certainly help you. The other folks here in the
18 Courtroom, the young lady seated in front of me is Ms.
19 Danette Hanks. She's taking down everything that's said.
20 She's going to protect the record in this case and make
21 sure exhibits are marked and things are done properly,
22 along with the clerk and his staff. Seated beside me is
23 Ms. Anna Lake. She's a recent law school graduate. She's
24 my law clerk. She'll be assisting me quite a bit. You
25 may see her coming and going and taking care of matters at

1 the office and otherwise. But she's a valuable asset as
2 well. Any of these folks will certainly be glad to help
3 you in any way that they can.

4 Cases take place in stages. Normally a case begins
5 with the opening statements of the attorneys. They give
6 you an opportunity to hear a little bit about what the
7 case is and what important things you need to bear in mind
8 as the case develops. After that, testimony will be
9 given. There will be witnesses who will be called. I
10 read a list of some of those witnesses. They'll be
11 brought up here, they'll be placed under oath, they'll
12 testify. They'll be examined, cross examined. After all
13 the witnesses are completed with their testimony, then
14 there will be closing statements. The attorneys again
15 will have a chance to address you. What the lawyers state
16 to you in their opening statements or closing statements
17 are not evidence. The evidence that's going to be
18 presented is any documents that may be identified and
19 marked or tangible evidence. Testimony, obviously that
20 will be evidence that will be presented.

21 When evidence is presented sometimes there's
22 objections made. That's part of my job too is to rule
23 upon those objections. These lawyers have been trained
24 under the rules of procedure and the rules of evidence.
25 If an objection is made oftentimes I can rule upon that

1 objection by saying overruled or sustained and we move on
2 to the next question. Sometimes as you might have just
3 seen, I had a little bench conference with the attorneys.
4 That was for the purpose of scheduling time-wise.
5 Sometimes we can work out legal matters that take place
6 here at the bench.

7 You're going to be the judges of the facts. That's
8 totally and exclusively your position in this case. I
9 don't have anything to do with the facts. The law
10 prevents me from having any opinion about facts. That's
11 totally your prerogative. I am the judge of the law
12 though, and I need to make good decisions about the law,
13 the best that I can make. Sometimes if we can't work this
14 out at a whisper conference or if there is a more detailed
15 legal matter it may necessitate you being removed from the
16 Courtroom, go back to your jury room and we resolve that.
17 It might be that I have to hear some legal argument. It
18 might be that I have to hear some evidence that wouldn't
19 even be presented before you. It might be other matters
20 that I need to work out as far as the law. We have
21 different roles. We're all judges. You're going to the
22 judge. I'm going to be the judge. But we have different
23 aspects to judge. And so that I can do the very best job
24 I need to do it may necessitate you having to be removed
25 from the Courtroom during the course of the trial. I hope

1 you understand that.

2 Ultimately you're going to have all the evidence
3 before you. You're going to have my instruction on the
4 law. You're going to be deciding what the facts are in
5 this case. I'm a fellow judge with you, but I'm not going
6 to be back in your jury room with you giving you factual
7 opinions because I'm not allowed to do that. Just as
8 you're not allowed to make legal decisions. You are
9 obligated to accept the law and apply the law as I'll
10 state it to you at the end of the case.

11 Only when all the evidence is in and I have
12 instructed you on the law would you be discussing the
13 case. When you go back and we take breaks, you can talk
14 about other things. You shouldn't be talking about the
15 case until all the evidence is in and until I've
16 instructed you on the law. I know sometimes as you come
17 and go from lunch or the first of the morning, we have a
18 small courthouse here, of course, and elevators are used
19 by everyone, you may see either these lawyers or someone
20 affiliated with their staff and they may seem unfriendly
21 toward you. It's not that they are unfriendly people.
22 Under their training they want to make sure that there's
23 no question of any impropriety. If they don't seem to be
24 as cordial to you, it's not because they are unfriendly.
25 It's just because they want to make sure that no one

1 thinks that they're talking to you about the case or
2 whatever. So please excuse them if that's the case, as
3 you see them in the hallways.

4 We're going to take a lunch break soon and you may
5 have an opportunity to meet some of your fellow jurors and
6 have lunch or you may have family that you want to get
7 with or business associates. You're going to obviously
8 have some inquiry from family or friends about your jury
9 service. How did it go? Did you get picked? What's the
10 case about? Those kind of things. Obviously you can let
11 your family know that you're -- and your loved ones know
12 that you're serving on a jury. But it would be improper
13 for you to talk about this case with anyone, with your
14 fellow jurors, with anyone on the street or family or
15 others while the case is going on. You'll have an
16 opportunity to share your experiences of this trial when
17 it's over and done with. But not while it is going on.
18 Likewise, there may be some news articles that are in
19 print or on radio or television. And you should refrain
20 from listening to those. Your family can certainly tape
21 or let you see the paper later on. But you have
22 committed, you've been selected. You've committed to
23 these parties to make a decision in this case on what
24 takes place in this courtroom, not anywhere else. So you
25 should refrain and don't listen to any newscast or read

1 anything about this while the case is going on.

2 I would not expect this to happen in anyway, but
3 while you're out and about there may be someone wants to
4 come up and talk with you about the case, or ask you
5 questions, or find out that you're on this trial and want
6 to share information or get information from you. Please
7 explain to an individual if that were to happen that
8 you're on the jury and you have been instructed not to
9 talk about the case in any way and discuss it. If someone
10 were to persist and want to give you information or make
11 inquiry of you, please excuse yourself as soon as you can.
12 And if possible get the name of that person, report it
13 back to us and I'll certainly take care of that matter. I
14 don't expect anything like that to happen, but I want you
15 to understand the importance of the purity of the
16 proceedings, the commitment that you've made to these
17 parties to be fair and impartial jurors, to decide this
18 case on what takes place in this courtroom and that alone.

19 It makes me proud that you've accepted this
20 responsibility. That you've committed to these parties to
21 be fair and impartial and render a verdict that will speak
22 the truth. We're going to take a lunch break now. I give
23 you that information so that -- we've got some -- couple
24 of matters that we need to take care of here. I'm going
25 to ask you to be back in your jury rooms at one forty-

1 five. We'll be ready to start the trial at that time.

2 Ms. Masters will show you where to report and the other

3 bailiffs where to come in.

4 What I want you to do when you come back from your
5 jury room -- the last two jurors who were selected are
6 going to be the alternates. We certainly don't want
7 anything to befall you, an emergency or an illness. But
8 we have these alternates just in case something were to
9 happen that an unforeseen circumstance occurs and you're
10 unable to continue in this trial. They'll always occupy
11 the seats that they're in, that they have been selected
12 for. The others of you as you come and go can sit on the
13 front or the back or wherever you choose to. What I would
14 like for you to do when you come back at one forty-five is
15 to select a foreperson from among the first twelve of you.
16 All of you can select that person. What a foreperson is,
17 is that individual will occupy the front row seat, the
18 seat closest to the witness chair here. The foreperson is
19 -- doesn't mean that they have more votes than anybody
20 else, but sometimes when you're back in your jury room
21 there might be a need that you have. We need someone back
22 there to communicate. One of you may need to, you know,
23 get a phone, make a call about a child or you may have an
24 inquiry of the Court, you may have an inquiry of the clerk
25 about the snacks or whatever it may be. What your

1 foreperson would do, is on behalf of whatever juror has
2 that need would be to write out the need, sign it as the
3 foreperson, give it to one of the bailiffs and we'll see
4 who needs to take care of that and do our best to answer
5 that question that you may have or take care of the need
6 that you have. So that person would sort of be the
7 liaison with the Court to communicate when and if
8 questions do arise. Sometimes exhibits are marked and
9 passed around to jurors and those who have them marked and
10 introduce them may want to give it to the foreperson and
11 let that person look at it and pass it around. Ultimately
12 what your foreperson's responsibility will be is to
13 facilitate discussions. When all the evidence is in and
14 I've given you legal instruction, that foreperson will be
15 the one who makes sure everyone has their say and
16 everybody gets to participate in the discussion of the
17 case so that you can reach a unanimous verdict at that
18 time. So if you would, select that person. Just write
19 that name down on a piece of paper and give it to one of
20 the bailiffs and as soon as you've selected a foreperson
21 when you come back we'll be ready to proceed. The
22 foreperson will always occupy that particular chair. The
23 alternates, the chairs they're in now. The rest of you if
24 you want a front row or a back row or move around that's
25 fine. Or if you want your same seat each time then y'all

1 can work that out. Please select a foreperson when you
2 come back. Obviously you need to select the person that
3 you feel could best serve in those capacities.

4 Have a good lunch, ladies and gentlemen. As soon as
5 you get back we'll be ready to start the trial at one
6 forty-five. You are excused at this time.

7 (WHEREUPON, the jury exited the open court at
8 approximately 12:23 p.m.)

9 THE COURT: All right. Any matters we need to
10 take care of before we adjourn for lunch?

11 MS. MUNSON: I think there are two things I'd
12 like to cover before unless you want to come back earlier
13 than one forty-five.

14 THE COURT: Well, let's cover them now or at
15 least hear about them now.

16 MS. MUNSON: The first thing, Your Honor, is, I
17 guess it's a Rule 5 thing, I'm not sure. Some months
18 after this incident when Ms. Bruin was cleaning up the
19 shop, she found what looked to her like a projectile from
20 a gun. She collected it and gave it to the Easley Police
21 Department. I neglected to direct them to get it tested
22 until like last week. It was tested and the result is
23 that James Armstrong cannot say that it came from the same
24 weapon as the other projectiles and the other shell
25 casings. It's my position that's actually helpful for the

1 defense. And I know, you know, if I'm going to draw an
2 objection I know he doesn't have to say it now. I'm just
3 telling you that that's out there as to that particular
4 piece of evidence. I do intend to introduce it.

5 THE COURT: All right. It's been shared with
6 Mr. DeJong?

7 MS. MUNSON: Yes, he knows about it. It was in
8 the incident reports back when it happened. But I didn't
9 ask that it be tested until recently.

10 MR. DEJONG: Well, it's in the incident report
11 that they thought there was another one. As I recall it
12 wasn't found -- the one you're talking about wasn't found
13 until some months ---

14 MS. MUNSON: Right.

15 MR. DEJONG: -- afterwards.

16 MS. MUNSON: Correct.

17 MR. DEJONG: By some individual other than law
18 enforcement. I'm sure glad Ms. Munson didn't ask for my
19 response right now because I -- frankly I was handed that
20 this morning, but in all candor, Ms. Munson did mention it
21 to me informally late last week. And I frankly don't know
22 what my position is going to be on that at this point in
23 time, Your Honor.

24 THE COURT: Okay.

25 MR. DEJONG: We'll, I guess, address the issue

1 when we come up to it.

2 THE COURT: Anything else?

3 MS. MUNSON: The other thing is, Your Honor, I
4 just got this this morning, but Mr. DeJong already has
5 this. And when I'm talking about this, it's a certified
6 copy of the theft loss report done by the Bureau of
7 Alcohol, Tobacco, Firearms and Explosives. They don't
8 keep the original. They send it off somewhere. And then
9 they send me back a certified copy. Everything that's in
10 here he has and we'll make another copy of it for him.
11 But I just wanted to make sure that I don't give Mr.

12 DeJong a coronary when I try to introduce it.

13 MR. DEJONG: Is that the one that's got the
14 pretty ribbon down the side.

15 MS. MUNSON: It's the third one ---

16 MR. DEJONG: I presume the point of that is
17 you're going to get it under business record?

18 MS. MUNSON: That, and that it's a past
19 recollection reported. There's no way the ATF agent can
20 say, yes, this pistol, this serial number was stolen. But
21 it is a business record.

22 MR. DEJONG: Okay.

23 THE COURT: All right. Anything else? Anything
24 from the defense?

25 MR. DEJONG: Not at the moment, Your Honor.

1 THE COURT: All right. We'll be back at a
2 quarter of one. Have a good lunch.

3 MS. MUNSON: Thank you, Your Honor.

4 MR. DEJONG: Thank you, Your Honor.

5 (WHEREUPON, Court stood at recess for a lunch break.)

6 THE COURT: Thank you very much. Please be
7 seated. We have several members of the media here. Let
8 me just remind you, all of you, off the record, make sure
9 we comply -- that you comply with the rule, and I'm sure
10 you will, I expect you will, Rule 605 to make sure that
11 what you film is appropriate and what you record is
12 appropriate. Certainly nothing showing the jurors and
13 nothing interfering with the Defendant and his right to
14 legal counsel and confidential communications with his
15 clients. I expect everybody to comply with the rule.
16 Anything else we need to take care of before the jury
17 comes in?

18 MS. MUNSON: Nothing from the State, Your Honor.

19 MR. DEJONG: Your Honor, we're getting to one of
20 those points where I've got to raise an issue. I don't
21 believe -- let me put it this way, there is a videotape
22 that was taken at Action Pawn Shop which purports to be
23 the alleged offense. The copy of the video that I was
24 given, I have not seen the original, so I can't address
25 whether this is in the original or not. But the copy that

1 I have of the original, quite far into the video there's
2 like a white line that comes across the screen and then it
3 goes back some few seconds, as memory serves me, back to
4 where we were before the white line came into the screen.
5 Which would certainly leave one to think that -- I don't
6 know if it is only my copy or the original -- that the
7 tape could have been edited, Your Honor. Because you have
8 to look closely, but the actions of one of the parties on
9 the tape is different as you look before the white line
10 and after the white line on the tape. Now, again as I
11 said, I have not looked at the original tape, which I
12 don't know if that same thing is on the original tape or
13 not. But if indeed it is, then -- so I can put this in
14 form of a formal motion, Your Honor, I would move to
15 suppress the tape even though the Court has not seen it at
16 this point in time, on the basis that it certainly appears
17 that the tape has been edited or there has been some
18 editing of some sort or another done on the tape.

19 And again your court has not heard any testimony.
20 But in the discovery packet and information that I was
21 given prior to trial, Your Honor, several people -- this
22 tape went through several hands. Initially I think it was
23 allegedly viewed at the alleged crime scene and then it
24 was taken by Sergeant Cowen to the police department. And
25 then it was given to a SLED agent and it went through

1 several hands, as I read the discovery. So that being the
2 case and what I'm seeing on the tape, Your Honor, I would
3 move to suppress that tape at this point in time.

4 THE COURT: All right. Solicitor?

5 MS. MUNSON: May it please the Court, Your
6 Honor. Going in reverse order, it was a copy that was
7 given to SLED, not the original. I have not looked at the
8 original. What I have -- what I intend to attempt to
9 introduce today is the copy that Mrs. Bruin viewed on July
10 15th of '09 and again this morning and the two Easley
11 police officers viewed again today with their initials and
12 date on here. They will testify that it is an accurate
13 depiction of what they saw. I didn't notice what Mr.
14 DeJong is talking about. However, Mrs. Bruin is certainly
15 subject to cross examination about whether the tape was
16 edited. Brian Cowen is certainly subject to cross
17 examination about any editing. And he has the original
18 and will bring it to court.

19 THE COURT: Do you know what portion of the tape
20 that -- is the tape going to be introduced by the first
21 witness?

22 MS. MUNSON: Not -- I'll ask her to identify it.
23 I don't anticipate getting it in until the other two
24 people that -- there's part of the tape you can't see Mrs.
25 Bruin and the other two officers ---

1 THE COURT: Okay. So the tape -- we'll have a
2 break before the tape is actually ---

3 MS. MUNSON: Absolutely, Your Honor.

4 THE COURT: -- offered. Y'all see if you can
5 work that out. If you can't then we'll certainly address
6 it and see if that tape that she's introducing has the
7 white line.

8 MR. DEJONG: In all candor, Your Honor, Ms.
9 Munson shared with me that she wasn't going to show the
10 tape, she was just going to have it marked for
11 identification. But I wanted to get that motion on the
12 record as early in the proceeding as I possibly could.

13 MS. MUNSON: I didn't mean to mislead him, Your
14 Honor. At some point I do intend to introduce it, but not
15 with Mrs. Bruin.

16 THE COURT: I think he knew that. But at our
17 first break -- how long is the tape?

18 MS. MUNSON: The tape is an hour and eighteen
19 minutes long.

20 THE COURT: Okay. Did you make any notations as
21 to where that ---

22 MR. DEJONG: There was no counter on my copy,
23 Your Honor.

24 MS. MUNSON: And there is not a counter on the
25 tape.

1 THE COURT: You didn't use your watch and say,
2 twenty minutes into it or anything like that, I mean, to
3 know where it is?

4 MR. DEJONG: I could probably come pretty close
5 if I had to fast forward.

6 THE COURT: Well, y'all might can look at it
7 tonight then, even. We just need to make sure that if
8 that is an issue and the tape is being presented by the
9 State then we need to address that.

10 MR. DEJONG: Yes, sir. That's what I said. I
11 didn't really think she was going to try to put it in
12 through the alleged surviving victim. But nonetheless I
13 wanted to raise it at this point in time. I guess we'll
14 have to revisit that down the road.

15 THE COURT: All right, sir. Anything else?

16 MR. DEJONG: I guess at this point in time, Your
17 Honor, I'm just trying to think in advance so we don't
18 have to send the jury out. I don't know that I would
19 object to it for purposes of identification.

20 THE COURT: Right. That's all she said she was
21 going to do this afternoon.

22 MR. DEJONG: But by that I want the record to be
23 very clear. I'm not waiving my motion to suppress on it
24 at the time of its introduction.

25 THE COURT: All right. For identification.

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1 Yes, sir. You're protected on the record on that. Okay.
2 We didn't get a note from the jurors; did we, about a
3 foreperson? Okay. Let's have our jury come in, Mr. Teal.

4 (WHEREUPON, the jury entered the open court at
5 approximately 2:03 p.m.)

6 THE COURT: All right. Thank you very much,
7 ladies and gentlemen. At this time I'm going to ask the
8 clerk if he would administer the oath to you, if you would
9 please stand.

10 MISTER CLERK: After the oath is administered,
11 please answer by saying I will. Raise your right hands.
12 It says, you shall well and truly try the issue joined in
13 this case of the State versus Roger Eugene Shephard, and a
14 true verdict render, according to the law and evidence, so
15 help you God.

16 JURORS: I will.

17 (WHEREUPON, the jury was duly sworn.

18 THE COURT: Solicitor, you may address the jury.

19 MS. MUNSON: May it please the Court, Your
20 Honor, Mr. DeJong.

21 **OPENING STATEMENT**

22 **BY MS. MUNSON:**

23 What you see is what you get. Evidence in this case
24 will both demonstrate and disprove that saying. What you
25 see right now is an innocent man. What you will get is a

1 man guilty of the murder of John Bruin. A man guilty of
2 armed robbery. A man guilty of attempting to kill Betty
3 Bruin. And a man guilty of carrying a weapon during the
4 commission of a violent crime.

5 Evidence in this case will show that June the 15th of
6 2006 started out pretty much like every other day for John
7 and Betty Bruin, until that defendant walked into their
8 shop and took Mr. Bruin's life and forever changed Betty
9 Bruin's. Evidence will show that the Defendant went into
10 the shop and engaged Mr. Bruin in a friendly, polite
11 conversation. No signs of trouble, nothing was wrong. He
12 stayed in the shop for quite some time. And then at some
13 point he reached behind his back and pulled out a Glock
14 model 23, .40 caliber handgun, pointed it at Mr. Bruin and
15 shot. That bullet entered Mr. Bruin's right chest, cut
16 through his chest and ended up in his left biceps. The
17 Defendant then hops over the counter and starts putting
18 guns from the gun case into a bag, a bag that evidence
19 will show he brought into the shop. Mrs. Bruin was trying
20 to get to safety and evidence will show that the Defendant
21 pointed his gun at her and then fired it at her twice.

22 As His Honor told you as I introduced myself, I'm
23 Judy Munson. I'm one of the Assistant Solicitors for
24 Pickens County. It's my duty and it's my great privilege
25 to represent the people of Pickens County in this matter.

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1 And at the close of the case I'm going to ask you to find
2 the Defendant guilty of all charges. Thank you for your
3 time.

4 THE COURT: Mr. DeJong?

5 MR. DEJONG: Thank you, Your Honor. May it
6 please the Court, Ms. Munson, ladies and gentlemen of the
7 jury.

8 **OPENING STATEMENT**

9 **BY MR. DEJONG:**

10 You have now been empaneled to try this case and you
11 have taken an oath to try this case on the testimony and
12 evidence. The -- His Honor has read to you, actually
13 before you were even selected as jurors, His Honor read to
14 you, I believe, four indictments. Now, what we could do,
15 ladies and gentlemen, as far as this trial goes is we
16 could take those indictments and just tear them up,
17 because that is not evidence in any way, shape, form or
18 matter or manner against Mr. Shephard.

19 And indeed when we did our introductions before you
20 were selected as jurors, we were all introduced to you.
21 And one thing, about the only thing probably in this trial
22 Ms. Munson and I will agree on, is that right now as you
23 look over at counsel table and you look at Mr. Shephard,
24 he is the innocent Mr. Shephard. I have the pleasure at
25 this point in time of representing the innocent Mr.

1 Shephard. And I can say that with a great deal of
2 assurance because that's what the Constitution of the
3 United States says, that he is innocent.

4 And His Honor, I believe, shared with you when he was
5 going over those indictments, he touched on what is called
6 the presumption of innocence. Now, the presumption of
7 innocence, ladies and gentlemen, is not legal theory. It
8 is not legal mumbo jumbo that comes over lawyers lips. It
9 is a substantial right afforded every citizen of Pickens
10 County, every citizen of the State of South Carolina, and
11 indeed every citizen of the United states of America.

12 That presumption of innocence, ladies and gentlemen, is
13 sometimes likened to a cloak of righteousness draped about
14 or wrapped around the shoulders of someone charged with a
15 crime.

16 And if you would look very closely at Mr. Shephard,
17 what you can't see but is there is that he is draped with
18 this presumption of innocence from the very top of his
19 head to the very soles of his feet and everything in
20 between. So the fact that Mr. Shephard was arrested for
21 these offenses, which obviously he was, and the fact that
22 he was indicted for these offenses, which obviously he was
23 - His Honor read those indictments to you - is absolutely
24 no proof whatsoever in this trial.

25 Now, what goes along with the presumption of

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1 innocence, and we'll talk about that a little later is,
2 that presumption of innocence does not require a person
3 charged with a crime to come into this courtroom and prove
4 anything. As a citizen of this country if you're charged
5 with a crime, we do not have to prove our innocence. And
6 that goes along with that substantial right afforded every
7 citizen known as presumption of innocence.

8 And the other part of what goes along with that
9 presumption of innocence is what we call burden of proof.
10 And that is something again we'll talk about towards the
11 end of this trial. But I want to touch on it at this
12 point in time to share with you that as I said, Mr.
13 Shephard has nothing to come in here to prove to you
14 fourteen people today. The burden of proof rests solely
15 and squarely on the State of South Carolina. This is the
16 State of South Carolina verses Roger Shephard. So I would
17 ask you to bear that in mind as we go through this trial,
18 both of those particular rights and the burden of proof.
19 The State being required to prove their case beyond a
20 reasonable doubt is likewise -- it may sound a little
21 strange, but that is a constitutional right, if you will,
22 of anyone charged with a crime.

23 Now, as far as talking to you about what you're going
24 to see or not going to see, I'm not going to do that at
25 this point in time. I don't know what the State is going

1 to put up at this point in time. We will come back after
2 all the testimony and evidence is in and we will talk
3 about that then.

4 Mr. Shephard has been charged with some horrendous
5 crimes. But I would ask you that the fact that he is
6 charged with these crimes, don't close your mind. Keep an
7 open mind. Put the State to their test. And don't let
8 the charges in and of themselves close your mind. I think
9 that could be very tempting when you hear the indictments
10 being read by the Court. But I ask you not to do that.

11 On behalf of Mr. Shephard, I would like to thank you
12 for being here today. I would bet that all fourteen of
13 you have a thousand and one places you would rather be
14 than sitting in this jury box right now. I think it was
15 the great Winston Churchill one time said that the
16 greatest service a citizen can give to their community -
17 I'm paraphrasing - is jury service, and he said, in times
18 of peace. We're not necessarily in times of peace right
19 now. But nonetheless as non-combatants you serve one of
20 the highest functions as being a member of this jury this
21 afternoon and for however long this trial may take. So I
22 do thank you very much for being here. If you weren't
23 here there would be no need for His Honor, and I mean no
24 disrespect to His Honor, but there would certainly be no
25 need for him. There would be no need from Ms. Munson and

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Opening Statement by Mr. DeJong

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1 there would certainly be no need for me, because you,
2 ladies and gentlemen, as you sit in that jury box you are
3 the very cornerstone, you are the very foundation of our
4 system. That's how important you are as jurors. And
5 being that important I would ask you to simply remember
6 your oath - I know you will - that you will well and truly
7 try this case on the facts and evidence presented.
8 Remember that the burden of proof is on the State to prove
9 their case.

10 And I believe, ladies and gentlemen, after you have
11 seen that and heard that, I would ask you, return a
12 verdict of not guilty on all four charges. Thank you so
13 much for your time and your attention.

14 THE COURT: You may call your first witness.

15 MS. MUNSON: Thank you, Your Honor. The State
16 calls Ms. Betty Bruin.

17 MISTER CLERK: Place your left hand on the bible
18 and raise your right hand. Do you solemnly swear or
19 affirm the testimony you're about to give in this case to
20 be the truth, the whole truth and nothing but the truth,
21 so help you God?

22 BETTY BRUIN: I do.

23 MISTER CLERK: If you would have a seat and
24 state your name for the record.

25 BETTY BRUIN: Betty Bruin.

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1 **BETTY BRUIN,**

2 **BEING DULY SWORN, TESTIFIED AS FOLLOWS:**

3 **DIRECT EXAMINATION**

4 **BY MS. MUNSON:**

5 Q. Where do you live, Mrs. Bruin?

6 A. , Easley.

7 Q. How long have you been there?

8 A. One year.

9 Q. Okay. Where did you live before that?

10 A.

11 Q. And how long were you there?

12 A. Five years.

13 Q. Okay. Where are you from originally?

14 A. Arkansas.

15 Q. All right. Does anybody live with you?

16 A. No.

17 Q. All right. What do you do for a living?

18 A. I have a pawn shop.

19 Q. What's the address?

20 A. 604 West Main Street.

21 Q. What's the name of the pawn shop?

22 A. Action Pawn.

23 Q. In what county is that?

24 A. Pickens County.

25 Q. All right. Now, are you a widow, Mrs. Bruin?

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- 1 A. I am.
- 2 Q. Okay. What was your husband's name?
- 3 A. John Bruin.
- 4 Q. How long were you married?
- 5 A. Fifteen years.
- 6 Q. I'm sorry?
- 7 A. Fifteen years.
- 8 Q. Okay. Do you have any kids?
- 9 A. No. Not together.
- 10 Q. Okay. Was your husband involved in the shop at all?
- 11 A. He was.
- 12 Q. Okay. How did you come -- was he co-owner?
- 13 A. Yes.
- 14 Q. Okay. How did you two come to own a pawn shop?
- 15 A. He didn't have anything else to do.
- 16 Q. Okay. How long has your pawn shop been at the
- 17 location that it is now?
- 18 A. Since '95.
- 19 Q. All right. Did you have it before '95?
- 20 A. We did, we were at another address.
- 21 Q. Okay. When did you first get ownership of Action
- 22 Pawn?
- 23 A. 1991.
- 24 Q. How old was your husband, Mrs. Bruin?
- 25 A. Sixty-five.

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- 1 Q. Okay. How did he die?
- 2 A. He was shot.
- 3 Q. Do you know the day he was shot?
- 4 A. June 15th.
- 5 Q. Do you know the day of the week?
- 6 A. Thursday.
- 7 Q. Okay. And what year?
- 8 A. 2005.
- 9 Q. About what time of the day was he shot?
- 10 A. It was after lunch.
- 11 Q. Okay. Where was he shot?
- 12 A. At 604 West Main Street.
- 13 Q. All right. Where were you when your husband was
- 14 shot?
- 15 A. Behind the counter by the cash register.
- 16 Q. All right. Was your store open for business at the
- 17 time?
- 18 A. Yes, it was.
- 19 Q. Was anyone else in the building when your husband was
- 20 shot, besides you and him and the person who did the
- 21 shooting?
- 22 A. No.
- 23 Q. Okay. Did you see the person who shot your husband?
- 24 A. Yes, I did.
- 25 Q. Could you briefly describe him as you remember him

- 1 then?
- 2 A. Yes, I did. Shall I do that now?
- 3 Q. Yes, ma'am.
- 4 A. He was five seven, a hundred and sixty, seventy
- 5 pounds, a young man, dark hair, clean cut, very polite.
- 6 Q. Do you remember anything about what he was wearing?
- 7 A. White golf shirt, dark pants, dark shoes. And he had
- 8 at the time I thought it was a black t-shirt.
- 9 Q. Okay. The black t-shirt over or under the white
- 10 shirt?
- 11 A. Under.
- 12 Q. Okay. Did you notice anything else about him?
- 13 A. No.
- 14 Q. Now, did you notice this person come into your shop?
- 15 A. I did.
- 16 Q. How did you know -- back in 2006 was there anyway
- 17 that employees in the store would be notified when someone
- 18 came into the shop?
- 19 A. No.
- 20 Q. Okay. When he came into the shop did he have
- 21 anything with him?
- 22 A. He had a black bag.
- 23 Q. Okay. Where did he go when he came in?
- 24 A. To the gun counter.
- 25 Q. All right. How long was he in the shop before he

1 shot your husband?

2 A. Almost an hour.

3 Q. Did you have any contact with the person that shot
4 your husband?

5 A. I did.

6 Q. And why were you having any contact with him?

7 A. Because I was trying to explain to him how -- why he
8 could not buy two guns at one time unless he filled out
9 federal paperwork.

10 Q. Okay. How -- up until the shooting how was the
11 person who shot your husband acting?

12 A. Just quiet, but polite.

13 Q. Okay. How would you describe the tone of the
14 conversation between the person who shot your husband and
15 your husband?

16 A. John was joking with him. He offered him a coke. He
17 said, you've been in here so long, I'm thirsty, I'm going
18 to have a coke, would you like one.

19 Q. Okay. How close to him did you get?

20 MR. DEJONG: I'm sorry, Ms. Munson, to
21 interrupt. I'm having a difficult time hearing this
22 witness, Your Honor.

23 THE COURT: If you could pull your chair up to
24 the mike as best you could.

25 A. Okay.

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- 1 Q. How close did you get to him before the shooting?
- 2 A. Within two feet.
- 3 Q. All right. Now, how did you know that something was
- 4 wrong between your husband and the shooter?
- 5 A. I heard the shots, the shot.
- 6 Q. Okay. When you heard that, where was John?
- 7 A. Behind the -- it was an L-shaped counter and he was
- 8 behind the gun counter.
- 9 Q. Okay. What did you do when you heard the shot?
- 10 A. I dropped to the floor.
- 11 Q. Okay. When you dropped to the floor what did you do?
- 12 A. I tried to reach the panic button and I couldn't
- 13 reach it.
- 14 Q. Where was the panic button?
- 15 A. It was on the counter by the cash register.
- 16 Q. Why could you not reach it?
- 17 A. I really just couldn't find it. I was too upset.
- 18 Q. Okay. What was the last thing you remember before
- 19 you heard the shot?
- 20 A. Just it being quiet. I think John had said something
- 21 to him and he had replied. There was no loud talking or
- 22 anything. John had just been joking with him and
- 23 explained to him about buying a gun.
- 24 Q. Okay. Now when you dropped behind the counter what
- 25 did you do after that?

1 A. I was -- we had a dog in the shop and I was mixed up
2 in her leash and I was trying to pull her with me and I
3 couldn't get her untangled, so I kind of -- I bent down
4 and crept to the vault. We have a walk-in vault.

5 Q. How far away from where you were when you heard the
6 shot, how far away was the vault?

7 A. Sixteen feet.

8 Q. Okay. Did your husband say anything after he was
9 shot?

10 A. He did not.

11 Q. Did the shooter say anything after your husband was
12 shot?

13 A. Yes, he did.

14 Q. All right. Now, to whom did he say something?

15 A. Me.

16 Q. And where were you when he said this to you?

17 A. On the way to the vault.

18 Q. Okay. On the way to the vault had you -- how did you
19 get to the vault?

20 A. First I was creeping down and then when I reached
21 around the corner, I more or less ran.

22 Q. Okay. And what did ---

23 A. And I stood up -- and I was standing up to open -- to
24 close the door because the door is heavy.

25 Q. Okay. What did the person who shot your husband say

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- 1 to you?
- 2 A. Don't call the police or I'll kill you too.
- 3 Q. Were you looking at him when he said that?
- 4 A. No, I was not.
- 5 Q. Okay. Did you make it to the vault?
- 6 A. I did.
- 7 Q. And on your way to the vault did you hear anything
- 8 else in the shop?
- 9 A. I heard two shots.
- 10 Q. Okay. Did you -- and you made it in the vault?
- 11 A. I did.
- 12 Q. What did you do once you got in there?
- 13 A. I closed the door and called the police.
- 14 Q. Okay. How long did you stay in the vault?
- 15 A. It seemed a long time, but it was really only a few
- 16 minutes.
- 17 Q. Now, at the time in 2006 was your husband wearing a
- 18 gun in the shop?
- 19 A. No, he was not.
- 20 Q. Did you?
- 21 A. No, I was not.
- 22 Q. Did y'all have a policy in place about what to do if
- 23 anybody ever tried to rob you?
- 24 A. Yes, we did.
- 25 Q. What was that policy?

- 1 A. Help them carry the things out.
- 2 Q. Okay. What is it that made you come out of the vault
3 eventually?
- 4 A. A policeman came.
- 5 Q. Now, once the police got to the shop what happened?
- 6 A. I opened the door and came out. They said, don't go
7 back over there where John was. I took the tape out of
8 the VCR that was in the vault and explained to them what
9 the fellow looked like. I didn't know what he was
10 driving. I gave them a description, told them what
11 happened and put the tape in the -- we have a TV at that
12 time with a VCR -- and played the tape for them so they
13 would know what he looked like.
- 14 Q. Okay. Did you ever see that tape again?
- 15 A. Yes.
- 16 Q. Who did you -- who took it?
- 17 A. I saw it at your office.
- 18 Q. Okay. We'll go back to that in a minute. After you
19 -- did you see your husband in the shop after you came out
20 of the vault?
- 21 A. I did not.
- 22 Q. After you left the shop where did you go?
- 23 A. The police station.
- 24 Q. And what did you do there?
- 25 A. I stayed there until they told me that John was dead.

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1 Q. At the time at Action Pawn in June 2006 did you have
2 -- you were talking about tapes, so you had some
3 surveillance equipment?

4 A. Yes.

5 Q. Now, describe for the jury how that was set up.

6 A. There was a camera toward -- pointing towards the
7 counter that took pictures of the front of the store, the
8 entire front of the store inside. And there was a
9 camcorder, an older camcorder, and we had that hooked up
10 to a VCR. We did not have a tape in the camcorder, but it
11 ran -- the wire ran from the camcorder to the VCR in the
12 vault and that tape was changed every day.

13 Q. Okay. Now, the setup with the camcorder to the VCR,
14 when you played those tapes back did that cause anything
15 unusual to show up on the tape?

16 A. I don't understand what ...

17 Q. I'm sorry. The word tape?

18 A. Yes.

19 Q. Okay.

20 A. Because I'm accustomed to seeing that. But because
21 there's no tape in the actual camcorder the camcorder was
22 telling you, you needed to put a tape in the camcorder.

23 Q. Okay.

24 A. As opposed -- because we kept the tape -- the actual
25 recording was done on the VCR.

1 Q. All right. Now, how was that equipment maintained?

2 Did you check it every day?

3 A. We checked it every day and put a new tape in every
4 day.

5 Q. All right.

6 A. Not a brand new tape but a tape for that day.

7 Q. And was it running all day long or ...

8 A. It was.

9 Q. And when you say it took pictures, what do you mean?

10 A. Video pictures, but not sound.

11 Q. Okay. Now, on the date that your husband was shot,
12 and that you were shot at, was that equipment working
13 properly?

14 A. Yes, it was.

15 Q. How do you know?

16 A. Because there was a surge and -- that morning. And
17 normally when there was -- there's a surge it will go out
18 of focus. And I had put it back in focus so I know it was
19 working correctly.

20 Q. Okay. When you say a surge, what are you talking
21 about?

22 A. Electrical surge, the electrical power company.

23 Q. Okay. Mrs. Bruin, I'm showing you State's Exhibit
24 Number 1, if you can take a look at that. Do you
25 recognize that?

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- 1 A. I do.
- 2 Q. How do you recognize it?
- 3 A. It was the tape that I saw.
- 4 Q. Okay. When did you look at that tape?
- 5 A. In July.
- 6 Q. Do you know the exact date?
- 7 A. No. I think the 15th. It's on here.
- 8 Q. Okay. When you say it's on here, what do you mean?
- 9 A. There's a date that I initialed it and put the date
- 10 that I saw it originally.
- 11 Q. Okay. You saw it on the 15th of July?
- 12 A. I did.
- 13 Q. Have you looked at it again?
- 14 A. I did, today.
- 15 Q. Okay. Does State's Exhibit Number 1 accurately
- 16 record what you remember happening that day?
- 17 A. It did. It does.
- 18 Q. All right. Now, at the time in 2006 did you offer
- 19 handguns for sale at Action Pawn?
- 20 A. We did.
- 21 Q. All right. How did you -- did you also take them in
- 22 for pawn?
- 23 A. We did.
- 24 Q. Buy and sell?
- 25 A. Yes.

1 Q. Now, did you have to have any kind of special

2 licensing for that?

3 A. A federal firearms license.

4 Q. Okay. And in whose name was the federal firearms

5 license?

6 A. My name.

7 Q. Why was it not in John's?

8 A. We had taken it out of John's name and put it in my

9 name because he'd had cancer the previous year and he was

10 thinking perhaps that it should be in my name in case

11 something happened to him.

12 Q. What process did you have to go through to get a

13 federal firearms license?

14 A. You make application. They have a phone interview

15 and a premise interview.

16 Q. And did you receive the license?

17 A. Yes.

18 Q. And it was in effect in 2006?

19 A. It was.

20 Q. In good standing?

21 A. Yes.

22 Q. Okay. Now, if someone comes into the shop and wants

23 to buy a handgun, tell the jury what the procedure is that

24 you have to go through with them?

25 A. They fill out a federal form and at that -- no, just

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- 1 a federal form that says that they're not a felon, they
2 have not been convicted of any crime that they could have
3 spent a year or more in jail, they certify it. We fill
4 out -- we do a background check and then if they are
5 approved they are able to walk out with the gun that day.
- 6 Q. Okay. And those forms that are required, what do you
7 actually do with them once it's all filled out and someone
8 has bought a gun?
- 9 A. We keep them in our store.
- 10 Q. Okay. Now, are you required as a federal firearms
11 licensee to keep any inventory of the handguns that come
12 in and out?
- 13 A. We do. We are.
- 14 Q. Is it just the handguns?
- 15 A. No, it's all guns.
- 16 Q. Okay. How do you keep up with the inventory that you
17 have?
- 18 A. We have a log book. It's called an acquisition/
19 disposition book.
- 20 Q. Okay.
- 21 A. And any gun that comes in the store we log in, any
22 gun that goes out of the store we log out by the number of
23 the federal form that the person fills out and that they
24 complete.
- 25 Q. All right. Mrs. Bruin, I'm showing you State's

1 Exhibit Number 2. Take a look at this.

2 MR. DEJONG: Your Honor, the solicitor keeps
3 referring to State's Exhibit. I don't believe they've
4 been introduced. I would ask that she would refer to them
5 as identification or whatever so as not to mislead the
6 jury.

7 THE COURT: For identification it's been marked.

8 Q. Do you recognize it?

9 A. I do.

10 Q. And how do you recognize it?

11 A. It's our acquisition/disposition book.

12 Q. And from where did that come?

13 A. Action Pawn.

14 Q. Okay. If you could just look through it. Does it
15 appear to be in the same condition as when it came from
16 your shop?

17 A. It does.

18 MS. MUNSON: Okay. Your Honor, at this time I
19 offer State's Number 2 into evidence.

20 THE COURT: Any objections to State's Exhibit
21 Number 2 being placed into evidence?

22 MR. DEJONG: If I may have a moment please, Your
23 Honor. May we approach, Your Honor?

24 THE COURT: Yes, sir.

25 (WHEREUPON, Ms. Munson and Mr. DeJong approached

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1 the bar.)

2 MR. DEJONG: Your Honor, I do object to that
3 coming in. It's not clear to me whether that is the
4 firearms transaction log or whatever it is called on the
5 date of the alleged offense or if there have been certain
6 markings, deletions or alterations after the date of the
7 offense. I'm not a hundred percent sure how Ms. Munson is
8 trying to introduce that. But that would be the basis of
9 my objection for it coming in.

10 THE COURT: All right. If you could just ask a
11 follow-up question of the witness as to whether or not
12 there had been any ---

13 MS. MUNSON: I apologize, Your Honor, but she's
14 already said that it's in the same condition. I'm not
15 quite sure what else to ask her. She said it came from
16 her shop.

17 THE COURT: Ma'am, you examined the document?

18 MS. BRUIN: I did.

19 THE COURT: None of the markings -- all of the
20 markings were there at the time?

21 MS. BRUIN: Yes.

22 THE COURT: All right. I'll -- over your
23 objection I'll admit Exhibit 2.

24 (WHEREUPON, State Exhibit Number 2 was admitted into
25 evidence.)

1 Q. Now, Mrs. Bruin the guns, the handguns, that you had
2 on display, how were they displayed?

3 A. On -- inside the counter.

4 Q. Okay.

5 A. Just laying on shelving.

6 Q. Okay. Did the general public that came in have
7 access to those?

8 A. No.

9 Q. Was the case locked?

10 A. Most of the time.

11 Q. Okay. When was it unlocked?

12 A. When someone was down at the counter.

13 Q. Okay. When you close the shop for the day, what did
14 you do with the handguns?

15 A. We put them in the vault.

16 Q. Who was responsible for doing that?

17 A. At that time, John was.

18 Q. Okay. Were the guns on display ever loaded?

19 A. No.

20 Q. Did you sell ammunition at the time?

21 A. Very little.

22 Q. Is there a facility or a place inside your shop where
23 a person can fire weapons?

24 A. No.

25 Q. Mrs. Bruin, I'm showing you State's Exhibits 6, 7 and

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1 8, if you could take a look at those please. Do you

2 recognize those?

3 A. I do.

4 Q. Are they a true and accurate depiction of those parts

5 of your shop on the date of the offense?

6 A. Yes.

7 Q. Now, I'm going to show you State's 3, 4, 5 -- 3, 4

8 and 5. Just take a look at those. Now, do you recognize

9 those?

10 A. I do.

11 Q. When were those photographs taken?

12 A. Thursday. Thursday or Friday of last week.

13 Q. Recently?

14 A. Of last week, yes.

15 Q. Okay. Now, what's depicted in those Exhibits, is it

16 in the same condition that it was back in June of 2006

17 when this happened?

18 A. Yes.

19 Q. Okay. And is that a true and accurate depiction of

20 what the shop looks like now?

21 A. It is.

22 Q. All right. First, let me get them into evidence

23 before I talk about them.

24 MS. MUNSON: All right. Your Honor, at this

25 time I offer State's 6, 7 and 8, 3, 4, and 5 into

1 evidence.

2 MR. DEJONG: I don't have any objection, Your
3 Honor, to 6, 7 and 8, but I do have an objection to 3, 4
4 and 5.

5 (WHEREUPON, State Exhibit Numbers 6, 7 and 8 were
6 admitted into evidence.)

7 THE COURT: What's your objection?

8 MR. DEJONG: The objection is, Your Honor, that
9 what this purports to show, I gather -- well, I don't know
10 that I want to say what it purports to show in the
11 presence of the jury at this point in time and in light of
12 my objection, so if we may approach, Your Honor?

13 THE COURT: Yes, sir.

14 (WHEREUPON, Ms. Munson and Mr. DeJong approached
15 the bar.)

16 MS. MUNSON: Your Honor, I offer State's 3, 4
17 and 5 into evidence.

18 THE COURT: Over objection, Exhibits 3, 4 and 5
19 are admitted into evidence.

20 (WHEREUPON, State Exhibit Numbers 3, 4 and 5 were
21 admitted into evidence.)

22 Q. All right. Mrs. Bruin, I'm showing you State's
23 Exhibits 9 and 10. Will you take a look at them? Do you
24 recognize them?

25 A. I do.

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1 Q. Are they an accurate depiction of the way that your
2 shop looked, that side of your shop looked in 2006?

3 A. Yes.

4 Q. Okay.

5 MS. MUNSON: Your Honor, I offer State's 9 and
6 10 into evidence.

7 THE COURT: Any objections to Exhibits 9 and 10?

8 MR. DEJONG: No objection as to 9 and 10.

9 THE COURT: Without objection they're admitted
10 into evidence.

11 (WHEREUPON, State Exhibit Numbers 9 and 10 were
12 admitted into evidence.)

13 Q. Mrs. Bruin, this is a laser pointer -- this is the
14 little red button you see?

15 A. Yes.

16 Q. All right. Mrs. Bruin, what we're looking at here is
17 State's Exhibit Number 8. Now, on State's Exhibit Number
18 8 can you show the jury where the vault is that you made
19 it to?

20 A. There. Right there.

21 Q. Okay. And does State's Exhibit Number 8 show about
22 where you were standing when you heard the shot?

23 A. Which shot?

24 Q. The first shot.

25 A. I was over here by the cash register.

1 Q. All right. Now, what we're looking at, Mrs. Bruin,
2 is State's Exhibit Number 3. What is that little gray
3 square there on State's Exhibit Number 3?

4 A. It's a bullet hole.

5 Q. Why is the gray there instead of all wood paneling?

6 A. When the police came they were looking for shell
7 casings and there was a hole in the paneling and so they
8 cut that hole.

9 Q. All right. And who is that standing next to that?

10 A. It is me.

11 Q. Okay. Now, Mrs. Bruin, we're looking at State's
12 Exhibit Number 4. What does this show?

13 A. That's a bullet hole that hit the vault door.

14 Q. Okay. And where were you when that happened?

15 A. I was closing the door.

16 Q. And how were you positioned when you were closing the
17 door?

18 A. I was standing up.

19 Q. All right. And again whose head is that?

20 A. It's mine.

21 Q. All right. Thank you. Now, the -- well, let me ask
22 you this, Mrs. Bruin. When did your shop reopen for
23 business after the shooting?

24 A. I think a week. I'm not sure.

25 Q. Okay. Now sometime after you reopened for business

- 1 did you find something in the shop regarding this case?
- 2 A. I did.
- 3 Q. And where were you when you found it?
- 4 A. About four feet from the vault door.
- 5 Q. Okay.
- 6 A. Maybe, you know, it was underneath a shelf.
- 7 Q. How did you find it?
- 8 A. I was sweeping underneath some boxes.
- 9 Q. Okay. What did it look like to you?
- 10 A. Just a piece of flattened metal. I didn't really
- 11 know what it was at the time.
- 12 Q. All right. And what did you do with it?
- 13 A. I gave it to my daughter-in-law and she -- we looked
- 14 at it and decided what it was and called the police
- 15 department.
- 16 Q. Okay. Thank you, Mrs. Bruin.
- 17 MS. MUNSON: I have nothing further at this
- 18 time, Your Honor.
- 19 THE COURT: You may cross examine the witness,
- 20 Mr. DeJong.
- 21 MR. DEJONG: Thank you, Your Honor. May it
- 22 please the Court.
- 23 **CROSS EXAMINATION**
- 24 **BY MR. DEJONG:**
- 25 Q. So what day do you say -- what's the date you say

- 1 this happened, Mrs. Bruin?
- 2 A. June 15th.
- 3 Q. What year?
- 4 A. '05.
- 5 Q. All right. Now, your pawn shop has been there on
- 6 Main Street in Easley since '95; is that correct?
- 7 A. The pawn shop has been on Main Street since '91. At
- 8 the location we are now, '95.
- 9 Q. I'm sorry. I think the address now is 604 West Main
- 10 Street?
- 11 A. West Main Street.
- 12 Q. That's where you've been since '95?
- 13 A. Correct.
- 14 Q. All right. Now, on the date you say this happened,
- 15 this was daytime I gather; right?
- 16 A. Yes.
- 17 Q. And the store was open?
- 18 A. Yes.
- 19 Q. All right. And who had first contact with this
- 20 person that came into the store?
- 21 A. I think I spoke to him. I was -- and then John
- 22 waited on him.
- 23 Q. All right. So would you say you just spoke to him in
- 24 passing?
- 25 A. Yes.

- 1 Q. Much like any customer that would come in the store;
2 right?
- 3 A. Yes.
- 4 Q. You would greet them and say, hi, how are you doing
5 or something like that?
- 6 A. Yes.
- 7 Q. And that was the extent of that?
- 8 A. Yes.
- 9 Q. Now, you say that this person was in the store for
10 some hour?
- 11 A. Yes.
- 12 Q. Now, while that person was in the store for some hour
13 were there other people coming in the store?
- 14 A. Yes.
- 15 Q. Who was waiting on them?
- 16 A. I was.
- 17 Q. Between -- well, let me rephrase that. Other than
18 you and Mr. Bruin, were there any other employees in the
19 store that day?
- 20 A. No.
- 21 Q. Were there -- up until, you say, July 15th of '05,
22 did you have any employees -- other employees? Or did you
23 and Mr. Bruin run it all by yourself?
- 24 A. I didn't understand the question. You said July
25 15th?

- 1 Q. June the 15th. I'm sorry. Yes, ma'am?
- 2 A. Yes, we had another employee.
- 3 Q. Okay. Now, after June the 15th and after you say you
- 4 reopened the store did you have -- do you have other
- 5 employees or did you have other employees?
- 6 A. Yes.
- 7 Q. So how many customers in the hour of time that you
- 8 say this person was in the store, how many other customers
- 9 came in?
- 10 A. Probably four.
- 11 Q. And you waited on them?
- 12 A. I did.
- 13 Q. Any idea how much time that you would have spent with
- 14 those four customers total?
- 15 A. A good maybe thirty-five minutes.
- 16 Q. I'm sorry, ma'am?
- 17 A. Thirty-five minutes.
- 18 Q. So over half the amount of time this individual was
- 19 in the store, you were devoting your time to other
- 20 customers?
- 21 A. I was.
- 22 Q. And those customers, were you giving them your full
- 23 attention?
- 24 A. Yes.
- 25 Q. Okay. The time that you said you had involved with

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1 this particular individual was, if I understood you
2 correctly, was to explain to them that they could only buy
3 one gun at a time? Did I understand you correctly on
4 that?

5 A. Unless they filled out a federal form that we filled
6 it out and send it into the government. You can't buy two
7 or more firearms.

8 Q. Okay. Well, I'm a little confused. I apologize. So
9 if I came into Action Pawn Shop ---

10 A. Handgun. I'm sorry, I'm sorry. Handguns.

11 Q. Okay. If I came into the pawn shop and just wanted
12 to buy one handgun, I would not have to fill out the form?

13 A. You would.

14 Q. Okay. So, one gun, two guns, ten guns, you would
15 still have to fill out the form; right?

16 A. You would.

17 Q. All right.

18 A. That's a different -- it's a different form I was
19 speaking of.

20 Q. I'm sorry, ma'am?

21 A. I was speaking of a different form. There's two
22 forms.

23 Q. Okay. All right. Well, the individual that was in
24 the store I guess the form you're talking about now --
25 well, let me back up just to make sure I'm clear. If I

- 1 want to buy two guns I would have to fill out one form;
2 right?
3 A. Yes.
4 Q. And if I just want to buy one gun I just fill out
5 another form?
6 A. No, sir.
7 Q. Is it two of the same forms?
8 A. No, sir.
9 Q. Okay. Could you help me out here? I'm lost.
10 A. Yes, sir. If you buy any gun there's a form called a
11 4473 that you have to fill out. Everyone completes that.
12 If you buy two or more handguns then there is another form
13 that you fill out.
14 Q. Okay.
15 A. That we fill out and complete and send that to the
16 government.
17 Q. So your discussion with this person was about the
18 4473?
19 A. No. The other -- he wanted to buy more than one
20 handgun at one time.
21 Q. All right. Now, after that discussion, then you went
22 back about your business?
23 A. We talked about that several times.
24 Q. I beg your pardon?
25 A. We spoke to him -- I spoke to him and my husband

- 1 about that several times.
- 2 Q. Well, when you ---
- 3 A. And the background check.
- 4 Q. My apologies, ma'am. I did not mean to cut you off.
- 5 When you spoke to that individual where were you in
- 6 relationship to that individual?
- 7 A. I was on the cash register side of the counter. And
- 8 for a time he was down by the guns. And another time he
- 9 was up across the counter from the cash register.
- 10 Q. All right. And you describe that person as five foot
- 11 seven, a hundred sixty, a hundred seventy pounds?
- 12 A. In that range. I'm not sure.
- 13 Q. White golf shirt?
- 14 A. Yes.
- 15 Q. Dark pants?
- 16 A. Uh-huh (affirmative).
- 17 Q. And possibly a black shirt under it?
- 18 A. Yes.
- 19 Q. That's all you remember?
- 20 A. Clean cut.
- 21 Q. Yes, ma'am. All right. When you say you heard the
- 22 first shot, where were you?
- 23 A. By the cash register, which is ten feet from where
- 24 they were, or so. No. It's fifteen feet from where they
- 25 were.

1 Q. All right. What Ms. Munson was showing you, which I
2 believe was State's Exhibit A and I'm -- 8, and I don't
3 have that equipment but maybe we can do it this way. I'll
4 let you look at the picture. Where was the cash register
5 in relationship to the vault door?

6 A. The cash register is here and the vault door is
7 there.

8 Q. I'm sorry, ma'am?

9 A. The cash register is here, the vault door is there.

10 Q. Okay. So would we be looking down the long side of
11 the building ---

12 A. Yes.

13 Q. -- looking at this?

14 A. Yes.

15 Q. So the vault door would be kind of on the left side
16 and the cash register would be on the right side?

17 A. That's correct.

18 Q. Now, the -- where the guns were displayed, where were
19 they in relationship to the front door? Maybe I can ask
20 my question a little more clearly. Would it be just as
21 you came in the front door that the gun case would be
22 there? Do you have to walk into the store to get to the
23 gun case?

24 A. You have to walk into the store to get to the gun
25 case.

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- 1 Q. All right.
- 2 A. It runs parallel to the length of the building.
- 3 Q. All right. And you say the gun case ran parallel to
- 4 the length of the building. Was -- all guns in those gun
- 5 cases?
- 6 A. No.
- 7 Q. All right. Where were the handguns?
- 8 A. To the front of the section of display cases.
- 9 Q. Almost immediately when you came into the store?
- 10 A. No.
- 11 Q. To the left?
- 12 A. They were to the left as you came in, but they're not
- 13 at the front door.
- 14 Q. Okay, ma'am. Now, these -- you say you had a
- 15 surveillance system in the store?
- 16 A. Yes.
- 17 Q. How many cameras were inside the store?
- 18 A. One.
- 19 Q. All right. And where was it located within the
- 20 store?
- 21 A. In front of the vault door.
- 22 Q. Okay. When you say in front of the vault door, was
- 23 it taking pictures towards the vault door or was it over
- 24 the vault door taking pictures back towards the front?
- 25 A. It was four feet in front of the vault door on the

1 wall that encases the vault facing -- it was pointing
2 towards the front part of the store.

3 Q. Okay. And then there was another one outside, I
4 believe you said?

5 A. I didn't say that.

6 Q. You didn't say that.

7 A. No.

8 Q. So there was only one camera; right?

9 A. Yes.

10 Q. All right. Now, that camera, was that a camcorder?

11 A. Yes.

12 Q. I got a little bit lost on that.

13 A. It was a camcorder.

14 Q. Okay. So it was a camcorder that you had mounted to
15 the wall?

16 A. Yes.

17 Q. And then that camcorder went directly to a VCR, as I
18 understand?

19 A. Yes.

20 Q. Okay. But there was only one camera in the store?

21 A. Yes.

22 Q. Did that camera sweep, did it stay on a particular
23 location or what did it do?

24 A. It stayed on a particular location.

25 Q. All right, ma'am. Now, you said, if I am correct,

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- 1 you heard a shot and you dropped to the floor?
- 2 A. Yes.
- 3 Q. Did you ever stand back up?
- 4 A. Not at that point.
- 5 Q. Okay. When did you stand back up?
- 6 A. When I got -- came around the corner going for the
- 7 vault door.
- 8 Q. Well, you were at the cash register; right?
- 9 A. That's right.
- 10 Q. And what corner would you have come around to get to
- 11 the vault door? If you need to I'll let you look back at
- 12 the State's Exhibit Number 8.
- 13 A. I'll show you. If you see this is a wall here, that
- 14 encases the vault. You go around this corner and there's
- 15 the vault. This wall covers the block that protects --
- 16 that's the vault.
- 17 Q. Again, the cash register was over here on the left --
- 18 and I apologize. It was over here on the left ---
- 19 A. Yes.
- 20 Q. -- as we're looking at the picture?
- 21 A. Correct.
- 22 Q. And this would be the counter right here?
- 23 A. That's the cash register counter.
- 24 Q. Yes, ma'am. Now, so there's another wall that
- 25 blocked you off from getting into the vault if you were

1 behind there?

2 A. No. There's a passage way between this counter,
3 there was a little counter here and you go around there.
4 It's like a closet.

5 Q. All right, ma'am. And how long would you say that
6 you went around that corner -- from the time you stood up
7 again until you closed that vault door, how much time
8 elapsed?

9 A. Hardly any. I mean, it was -- I was fussing --
10 trying very hard to close the door because the door is
11 heavy.

12 Q. Okay. So from where you were when you heard the
13 first shot to the vault, if I understood you correctly,
14 was sixteen feet?

15 A. Something like that. It's not very far. It may be
16 farther than that. I really don't -- I couldn't tell you.

17 Q. All right, ma'am. So you took, if I understand it
18 correctly, you took a tape out of the VCR?

19 A. When?

20 Q. On the day you say this happened?

21 A. After it happened, yes, I did.

22 Q. Okay. You took the tape out of the VCR. Did you see
23 what happened to the tape after you took the tape out of
24 the VCR?

25 A. One of the police officers had it -- took it.

- 1 Q. And after that you didn't see it again until ...
- 2 A. July.
- 3 Q. July the 15th?
- 4 A. Yes.
- 5 Q. Of this year?
- 6 A. Yes.
- 7 Q. Okay. Did you look at the tape on the date of the
- 8 alleged offense?
- 9 A. Part of the tape I did.
- 10 Q. Would you say you looked at the front part, the
- 11 middle part or the back part?
- 12 A. I looked at the part where the person that shot my
- 13 husband came into the store.
- 14 Q. Okay.
- 15 A. I didn't see the part where they -- he shot John.
- 16 Q. Yes, ma'am, I understand. So that was the part you
- 17 looked at?
- 18 A. Yes.
- 19 Q. You didn't watch it from the beginning to the end?
- 20 A. No.
- 21 Q. So without having watched it from -- on the date of
- 22 the alleged offense, you did not watch the whole thing?
- 23 We're clear on that; right?
- 24 A. That's correct.
- 25 Q. Then the next time you viewed what you believe to be

1 the VCR out of the store was July the 15th of this year?

2 A. That's correct.

3 Q. All right. And where it had been or what had been
4 done with it between June the 15th and July the 15th of
5 '09, you don't know; do you?

6 A. I have been told.

7 Q. Yes, ma'am. But on a personal knowledge you don't
8 know?

9 A. No.

10 Q. So without having looked at the tape on that
11 particular day, what was shown to you for purposes of
12 identification, you don't know -- couldn't really say
13 whether it is the same or not, except for the little part
14 that you watched; right?

15 A. That's correct.

16 Q. So you watched a little part on the date of the
17 alleged offense and did you watch that same little part on
18 July the -- I think July the 15th of this year? Or did
19 you watch the whole thing?

20 A. The day of the shooting I watched a lot of the tape.
21 I did not see the part where John was shot. The 15th of
22 July I saw from the time he came in the store until he
23 left the store and the police came.

24 Q. The forms that are used -- well, let me get back to
25 that in just a moment. Let's look at what's been marked

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1 here as State's Exhibit Number 2, which I believe you have
2 called a firearm log registry, something along those
3 lines; is that correct?

4 A. Yes.

5 Q. I note there is some orange markings in there. Did
6 you put the orange markings in there, ma'am?

7 A. We did.

8 Q. Okay. And there appears to be some other handwriting
9 in there in bolder print. Did you put that in there? For
10 example where it says ATF?

11 A. We did not.

12 Q. Who did that?

13 A. The ATF agent.

14 Q. All right. Thank you, ma'am. The forms that are
15 used that we were talking about a few moments ago when you
16 buy a firearm, is that more than one page?

17 A. Yes.

18 Q. Okay. Are those forms, do they have sticky stuff at
19 the top that holds them all together, are they stapled or
20 how do they come?

21 A. They're not stapled and it's not sticky. Well, it's
22 a type of glue that -- they're like almost four pages.

23 Q. So something ---

24 A. It's not at the top. It's in like a booklet form.

25 Q. Like a book form?

1 A. Yes.

2 Q. Well, something like this?

3 A. Yes.

4 Q. That would have a glue and you would flip through the
5 pages?

6 A. Yes. Correct.

7 Q. All right, ma'am. So this object that you say you
8 found when you were sweeping under boxes, when did you
9 find that object?

10 A. I don't know. I can't give you a date.

11 Q. Okay. Would it have been closer to now or closer ...

12 A. Closer to then.

13 Q. To then? And you gave that object to whom?

14 A. One of the policemen.

15 Q. Okay. Maybe I misunderstood what you said earlier.

16 I thought you said you gave it to your daughter-in-law?

17 A. We looked at it together and decided what it was and
18 then we called the police.

19 Q. So who hung on to it until the police got there, you
20 or your daughter-in-law?

21 A. We put in the vault.

22 Q. All right, ma'am.

23 MR. DEJONG: One moment please, Your Honor.

24 Q. How many shots did you say that you heard fired that
25 day?

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1 A. Three.

2 Q. Three?

3 A. Yes, sir.

4 Q. All right. Were they all together, separate or how
5 were they?

6 A. Separate.

7 Q. Okay. Thank you, ma'am.

8 THE COURT: Any redirect?

9 MS. MUNSON: Yes, sir.

10 **REDIRECT EXAMINATION**

11 **BY MS. MUNSON:**

12 Q. Mrs. Bruin, today do you remember the events?

13 A. I do.

14 Q. In State's Exhibit Number 1 that's been marked as
15 identification, how many people do you see in it the whole
16 time?

17 A. The entire time there's six people that come in as
18 customers. Then there's ...

19 Q. Well, I'm sorry, Ms. Bruin, what I mean is, how many
20 people are in this tape at the time of the shot. The
21 first shot?

22 A. Three.

23 Q. And are they on the tape?

24 A. Yes.

25 Q. Okay. Did -- State's Exhibit Number 2, the

1 acquisition/disposition book, on the date that this
2 happened did ATF or anybody else take it out of your shop?

3 A. They did not.

4 Q. Okay.

5 MS. MUNSON: I have nothing further, Your Honor.

6 THE COURT: Thank you, ma'am. You may step
7 down.

8 MS. MUNSON: Your Honor, the State calls John
9 Brock.

10 MISTER CLERK: Place your left hand on the bible
11 and raise your right hand. Do you solemnly swear or
12 affirm the testimony you're about to give in this case to
13 be the truth, the whole truth and nothing but the truth,
14 so help you God?

15 JOHN BROCK: I do.

16 MISTER CLERK: If you would have a seat and
17 state your name for the record.

18 JOHN BROCK: John Brock.

19 JOHN BROCK,

20 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MS. MUNSON:

23 Q. Who do you work for, sir?

24 A. The Easley Police Department.

25 Q. How long have you been with the Easley Police

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- 1 Department?
- 2 A. Eight years.
- 3 Q. All right. What are your duties?
- 4 A. Right now, I'm a road lieutenant.
- 5 Q. All right. What were you doing in 2006 for the
- 6 Easley Police Department?
- 7 A. I was assigned to the Detective Division.
- 8 Q. All right. And did you get a call in reference to
- 9 this case?
- 10 A. Yes, ma'am.
- 11 Q. On what date?
- 12 A. I believe it was the 15th.
- 13 Q. Of what month?
- 14 A. June.
- 15 Q. And what year?
- 16 A. I believe 2006.
- 17 Q. Okay. Where were you when you got this call?
- 18 A. I was actually in my office.
- 19 Q. All right. Were you on duty?
- 20 A. Yes, ma'am.
- 21 Q. And do you know about what time of the day the call
- 22 came in?
- 23 A. It was in the morning.
- 24 Q. Okay.
- 25 A. I believe. I was talking to another officer in my

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- 1 office and we had the radio on.
- 2 Q. All right. When you heard the call, what did you do?
- 3 A. Immediately left for Action Pawn.
- 4 Q. Were you in a marked car?
- 5 A. I was actually in an unmarked car.
- 6 Q. Okay. Was anybody with you?
- 7 A. No, ma'am.
- 8 Q. And were you in uniform or not?
- 9 A. I was in plain clothes at that time.
- 10 Q. All right. How long did it take you to get to Action
- 11 Pawn?
- 12 A. Maybe a minute, two minutes maybe.
- 13 Q. And when you got there was there any other emergency
- 14 personnel or law enforcement there?
- 15 A. Two other vehicles were pulling in the parking lot,
- 16 one marked and one unmarked.
- 17 Q. All right. At some point did you go into Action
- 18 Pawn?
- 19 A. Yes, I did.
- 20 Q. Who all went in?
- 21 A. It was myself and two other officers.
- 22 Q. And how did you go in?
- 23 A. We went in slowly, single file, weapons drawn at the
- 24 time.
- 25 Q. All right. When you got into the shop, what did you

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- 1 do?
- 2 A. The other two officers, one went to the right and one
- 3 went to -- went straight and I went to the left.
- 4 Q. All right. Did you find anybody in the shop?
- 5 A. At the time I found a body laying on the ground.
- 6 Q. Where was this?
- 7 A. On the other side of the counter.
- 8 Q. Okay. Had you ever seen that person before?
- 9 A. I had at the -- initially I didn't recognize him.
- 10 Q. Okay. And what did you do after you saw that?
- 11 A. Actually I stayed with him until the other officers
- 12 notified me that it was clear in the building.
- 13 Q. Okay. Who was it?
- 14 A. It was John -- Mr. Bruin.
- 15 Q. Was he able to speak to you?
- 16 A. No, ma'am.
- 17 Q. Now, eventually was someone else -- did you find
- 18 someone else in the shop?
- 19 A. We were advised on the way to the call that Ms. Bruin
- 20 was actually in the vault.
- 21 Q. Okay. And did you see her that day?
- 22 A. I hadn't -- not until -- I actually had to have
- 23 dispatch call her and tell her to open the door, that it
- 24 was okay.
- 25 Q. Let me show you State's Number 1. You can just take

1 a look at this for identification. Do you recognize that?

2 A. Yes, ma'am.

3 Q. How do you recognize it?

4 A. I believe that's the video Ms. Bruin actually took
5 out of the VCR in my presence.

6 Q. Have you watched that?

7 A. Yes. I have.

8 Q. When?

9 A. Initially right after the incident. I had -- they
10 have a TV/VCR combo right there on the counter. I wanted
11 to get a description so I actually asked her to play it.

12 Q. Okay. How much of it -- the one in the pawn shop,
13 how much of that tape did you watch?

14 A. I just rewound it from where it was last at and just
15 right before the shooting is where I watched it.

16 Q. Okay. And State's Number 1 for identification, is
17 there any markings on here that are yours?

18 A. My initials.

19 Q. And the date?

20 A. Yes, ma'am.

21 Q. And what did you do with this today?

22 A. Today I viewed it again.

23 Q. Okay. From start to finish?

24 A. Yes, ma'am, through the entire thing.

25 Q. Okay. At some point on this tape -- well, what did

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1 you see on the tape that you can say is accurately

2 recorded?

3 A. The shooting.

4 Q. No, when you watched ---

5 A. When I watched it?

6 Q. When you watched the tape, what can you say on the

7 tape is something that you know ---

8 A. Oh, it shows me coming in the building.

9 Q. Okay. With who else?

10 A. Two other officers.

11 Q. All right. And did it accurately record you and the

12 other officers coming into the building?

13 A. Yes, ma'am.

14 Q. Okay.

15 MS. MUNSON: I have nothing further at this

16 time, Your Honor.

17 THE COURT: You may cross examine the witness.

18 MR. DEJONG: Thank you, Your Honor.

19 **CROSS EXAMINATION**

20 **BY MR. DEJONG:**

21 Q. So you were in your office on June the 15th?

22 A. Yes, sir.

23 Q. What time did you go on duty that day?

24 A. Eight o'clock that morning.

25 Q. All right. And what time would you say this call

1 came in?

2 A. I believe it was just prior to lunch or maybe right
3 after.

4 Q. Did you do the report on this case?

5 A. I did some of the report, yes, sir.

6 Q. Did you do the initial?

7 A. I may have started it, yes, sir.

8 Q. All right sir. Do you know what time you put in your
9 report?

10 A. I'd have to look at the report. It's been quite some
11 time.

12 Q. I know it's fairly lengthy, but let me show this --
13 see if that will refresh your memory. Is that a copy of
14 the report?

15 A. Yes, sir.

16 Q. Well, what time do you have on there?

17 A. Actually the dispatched times are not on there, but
18 it shows a -- that would actually be the time the report
19 was probably started.

20 Q. Maybe my question wasn't clear. What time do you
21 have on there?

22 A. It says seven twenty-seven at night.

23 Q. Thank you, sir. So when -- the dispatch did not come
24 to you; is that correct?

25 A. No, sir. It just came out over the radio.

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1 Q. All right. So on June the 15th, whatever date this
2 was alleged to have happened, were you all in the new
3 facility there just across the railroad track?

4 A. Yes, sir.

5 Q. Okay. How far is that from Action Pawn Shop at 604
6 West Main Street?

7 A. Roughly two or three blocks.

8 Q. All right. And so as I gather there really wasn't a
9 dispatch, there was just a call that went out on the
10 radio; is that correct?

11 A. Yes, sir. It was shots fired at Action Pawn.

12 Q. All right. Now, when you get there, there are two
13 officers there; right?

14 A. Yes, sir.

15 Q. What other two officers?

16 A. Officer Jeff Guy and Lieutenant Lovell.

17 Q. All right. And are they with the Easley Police
18 Department?

19 A. Yes, sir, they are.

20 Q. Okay. Officer Lovell, what's his first name?

21 A. Jason.

22 Q. All right. Who was the first person to go in the
23 store?

24 A. I believe he walked in the door, but we were all
25 together, practically on top of each other.

1 Q. Was the door unlocked?

2 A. Yes, sir. It was.

3 Q. How long did you stay on the scene?

4 A. I was there a good bit of time while they were
5 working on Mr. Bruin.

6 Q. All right. Well, after Mr. Bruin was removed, did
7 you leave?

8 A. No, sir. I believe I spoke to the lady next door
9 that lives in the trailer across the parking lot.

10 Q. All right. At that point in time did you ever go
11 back into the store?

12 A. At that time, no, sir, I did not.

13 Q. All right. So you were there basically until EMS got
14 there and through part of EMS; right?

15 A. Through most of EMS when they transported him.

16 Q. How many EMS people came in the store?

17 A. Three or four I believe. I think there were some
18 rescue, but I'm not sure if they went in.

19 Q. Okay. So at that point in time there had been no
20 evidence gathering or anything else; right?

21 A. I believe Officer Cowan was there and they had
22 removed -- they had to move some things around to keep
23 anybody from getting in -- from touching it.

24 Q. They moved things around to do what?

25 A. There was a very compromised space in the middle and

1 they were trying to get the stretcher in there to move Mr.
2 Bruin onto the stretcher. So in order to preserve
3 anything they moved it while they had gloves on their
4 hands, when I saw them.

5 Q. Okay. So they were moving stuff around to preserve
6 stuff; right?

7 A. They were moving it so EMS could work on somebody
8 that was still alive, yes, sir.

9 Q. Yes, sir. So now you're there, Officer Guy's there,
10 Officer Lovell's there, three or four EMS workers are
11 there; right?

12 A. That was later, yes, sir.

13 Q. Okay. At some point in time Officer Cowan is there.
14 How big is this place?

15 A. It's not very, it's not very big, no, sir.

16 Q. Okay. Do you have any estimate on the dimensions?

17 A. I would not even begin to ...

18 Q. And it wasn't just a wide open space; right?

19 A. No, sir.

20 Q. There were -- it's a pawn shop?

21 A. Some tables and stuff like that, yes, sir.

22 Q. It had all sorts of stuff in it; right. Kind of
23 limited space to move around?

24 A. I mean, you could move. It's just not -- you're not
25 going to run ---

1 Q. So at the time you were there we had at least seven
2 or eight different people in there; right?

3 A. Yes, sir. I would imagine.

4 Q. And once you left that would have made it six or
5 seven; right?

6 A. Yes, sir.

7 Q. And while you were there did any more people come?

8 A. While I was there just all I saw was EMS and my
9 immediate supervisor and Officer Cowan and the other
10 officers I arrived with.

11 Q. Now, you talked a little bit about this video. Do
12 you know how long the video is?

13 A. Well, after watching it today it took -- it's right
14 around an hour or little over an hour.

15 Q. All right. So when you were at this alleged crime
16 scene on June the 15th did you watch a little over an hour
17 of videotape?

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

19 Q. All right. How much did you watch?

20 A. I rewound it until I could see a description of the
21 person on the video.

22 Q. Well, would you say that was at the beginning, the
23 middle or the end?

24 A. It was at the end.

25 Q. At the end?

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1 A. Yes, sir.

2 Q. All right. Now, you watched some of the video at the
3 end. Would you say you watched a minute, five minutes?

4 A. Probably two or three minutes.

5 Q. Two or three minutes. All right.

6 MR. DEJONG: One moment please, Your Honor.

7 Q. Did you and the other two cars get there at the same
8 time? Or you first? How did that work?

9 A. There was three cars and we all got there at the same
10 time.

11 Q. All the same time?

12 A. Yes, sir.

13 Q. Okay. Do you know where Lovell and Guy came from?

14 A. No, sir. I do not.

15 Q. All right. Thank you, sir. No more questions.

16 **REDIRECT EXAMINATION**

17 **BY MS. MUNSON:**

18 Q. Officer -- Lieutenant Brock, Mr. DeJong asked you
19 about moving stuff around?

20 A. Yes, ma'am.

21 Q. Take a look at the State's Exhibits Number 42 -- 41
22 and 42. Do you recognize those?

23 A. Yes, ma'am. It's inside the pawn shop.

24 Q. Okay. Is it an accurate depiction of what you saw in
25 the pawn shop when you went in there on the 15th? Is it

1 an accurate depiction of the stuff that was moved?

2 A. Yes, ma'am. Yes, ma'am.

3 Q. And what is it that was moved?

4 A. Just this single portion of the counter.

5 Q. Okay.

6 A. And that was so that Mr. Bruin could be moved so EMS
7 could work on him.

8 Q. All right.

9 MR. DEJONG: Your Honor, I'm going to offer
10 State's 41 and 42 into evidence.

11 THE COURT: Any objections?

12 MR. DEJONG: Without objection, Your Honor.

13 THE COURT: Without objection the State's
14 Exhibits 41 and 42 are into evidence.

15 (WHEREUPON, State Exhibit Numbers 41 and 42 were
16 admitted into evidence.)

17 Q. You can use the laser pointer, Lieutenant. Now, from
18 what angle is that photograph taken?

19 A. That's actually toward the -- where the cash register
20 and the vault would be standing, looking toward the front
21 door.

22 Q. Now, indicate with the laser pointer what counter was
23 moved, where the counter was moved.

24 A. This section that's missing right here was also part
25 of the gun counter. That's the main gun counter right

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1 there that had most of the guns in.

2 Q. ~~of South Carolina~~ where was Mr. Bruin in relation to this?

3 A. He was right on the floor on the back side of this
 4 counter right in front of these long rifles.

5 Q. All right. Now, State's Exhibit Number 41, from what
 6 angle is this taken?

7 A. That's from the front door looking into the pawn

8 shop.

9 Q. Defendant on this exhibit, State's Number 41, can you show
 10 the jury with the laser pointer where Mr. Bruin was?

11 A. He was laying right in this area in front of these
 12 rifles.

13 Q. Okay.

14 MS. MUNSON: I have nothing further, Your Honor.

15 THE COURT: Yes, sir. Briefly.

16 RECROSS EXAMINATION

17 BY MR. DEJONG:

18 Q. ~~John DeJong Esquire~~ gun counter was moved?

19 A. Yes, sir. That section right there WAS.

20 Q. Thank you, sir. No further questions.

21 THE COURT: Thank you, Officer Brock. You may
 22 step down.

23 MS. MUNSON: Your Honor, the State calls Jeff
 24 Guy.

25 THE COURT: Mr. Guy, if you'll come around and

1 be sworn, please.

2 MISTER CLERK: Place your left hand on the bible
3 and raise your right hand. Do you solemnly swear or
4 affirm the testimony you're about to give in this case to
5 be the truth, the whole truth and nothing but the truth,
6 so help you God?

7 JEFF GUY: Yes, sir, I do.

8 MISTER CLERK: If you would have a seat and
9 state your name for the record.

10 JEFF GUY: Jeffrey Hunter Guy.

11 JEFFREY HUNTER GUY,

12 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MS. MUNSON:

15 Q. How long have you been with the Easley Police
16 Department?

17 A. I've been with Easley about eight years.

18 Q. Okay. What are your current duties?

19 A. I'm the school resource officer at Easley High
20 School.

21 Q. What were your duties back in June of 2006?

22 A. Oh, I was working on the road during the summer while
23 school was out. I'm a road officer.

24 Q. Okay. And did you get a call or hear a call in
25 reference to this case?

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Jeff Guy - Direct Examination by Ms. Munson

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- 1 A. Yes, ma'am. I did.
- 2 Q. Were you on duty?
- 3 A. Yes, ma'am. I was.
- 4 Q. Where were you when you heard this call?
- 5 A. I was at the police department.
- 6 Q. All right. About what time was it, if you remember?
- 7 A. I do not remember.
- 8 Q. Okay. Where -- what type call was it?
- 9 A. It was given out as shots fired.
- 10 Q. And what did you do when you heard that call go over
- 11 the radio?
- 12 A. Immediately left the police department and drove to
- 13 Action Pawn.
- 14 Q. Were you dressed as you are now?
- 15 A. Yes, ma'am. I was.
- 16 Q. In uniform? Were you in a marked or unmarked car?
- 17 A. Marked car.
- 18 Q. All right. About how long did it take you to get
- 19 there?
- 20 A. A minute to two maybe.
- 21 Q. Okay. In order to get to Action Pawn from the police
- 22 department, how do you get there, out of the parking lot
- 23 of the ---
- 24 A. Drive out of the police department and cross over the
- 25 railroad tracks and turn right on West Main.

- 1 Q. And it's how far down the road?
- 2 A. It's less than a mile.
- 3 Q. - All right. Now, when you got there -- first of all,
- 4 was there anyone else in the car with you?
- 5 A. No, ma'am.
- 6 Q. When you got there what did you see outside the
- 7 building?
- 8 A. There was nothing outside. Me and Lieutenant Lovell
- 9 pulled in at the same time.
- 10 Q. Okay. Was he in a separate car?
- 11 A. Yes, ma'am. He was.
- 12 Q. All right. And did you go into the building?
- 13 A. Yes, ma'am. I did.
- 14 Q. And what did you observe when you went in there?
- 15 A. Went through to clear the building to make sure
- 16 nothing was there, no one was still there.
- 17 Q. Okay. Now, at some point -- had you ever been in
- 18 that building before?
- 19 A. Yes, ma'am. I have in the past.
- 20 Q. Now, once you got into the building did you have
- 21 contact with anybody other than the police?
- 22 A. No, ma'am. I did not, not at that time.
- 23 Q. Okay. In the building?
- 24 A. Yes, ma'am. Not at that time.
- 25 Q. Okay. At what time did you?

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- 1 A. When Ms. Bruin was brought out of the vault.
- 2 Q. Okay. And where were you when that happened?
- 3 A. I was right there near where the vault was.
- 4 Lieutenant Brock brought her out of the vault.
- 5 Q. Okay. And then what did you do with Mrs. Bruin?
- 6 A. I took her and -- Captain Patterson had came in and
- 7 asked me to transport her to the police department.
- 8 Q. Okay. And did you do that?
- 9 A. Yes, ma'am. I did.
- 10 Q. All right. Now, I'm going to show you State's Number
- 11 1 for identification. If you can take a look at that.
- 12 A. Yes, ma'am.
- 13 Q. Do you recognize that?
- 14 A. Yes, ma'am.
- 15 Q. How do you recognize that?
- 16 A. It's the tape we viewed this morning.
- 17 Q. And how do you know that you viewed it, this same
- 18 tape?
- 19 A. Yes, ma'am. It's my initials and the date, today's
- 20 date.
- 21 Q. Now, are you on this tape?
- 22 A. Yes, ma'am. I am.
- 23 Q. At what part?
- 24 A. Where I entered the building.
- 25 Q. Okay. Is it an accurate video of you coming into the

1 building?

2 A. Yes, ma'am.

3 MS. MUNSON: I have nothing further at this
4 time, Your Honor.

5 MR. DEJONG: May it please the Court.

6 **CROSS EXAMINATION**

7 **BY MR. DEJONG:**

8 Q. So you don't remember what time the call was?

9 A. No, sir. I do not.

10 Q. Were you in, in an office there or where were you?

11 A. Standing in the hallway just outside of Lieutenant
12 Brock's office.

13 Q. Okay. So that's kind of in the back side of the
14 secured part of that building?

15 A. Yes, sir. Right near our parking lot.

16 Q. So you were talking to Brock?

17 A. Yes, sir.

18 Q. Oh, okay. So who left first?

19 A. We all left at the same time.

20 Q. Well, when you got there and Brock got there, was
21 there anybody else there?

22 A. Myself and Lieutenant Lovell went one direction.
23 Lieutenant Brock had went a different direction.

24 Q. All right. So were you and Lovell in the same car?

25 A. No, sir.

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1 Q. When did, when did Detective Patterson get there?

2 A. I don't know the exact time. It was after we had
3 cleared the building and Ms. Bruin had been brought out of
4 the safe.

5 Q. Was Detective Patterson there when EMS got there?

6 A. I was not there when EMS got there, so I do not know.

7 Q. All right. So you had left by the time EMS got
8 there?

9 A. I don't remember them getting there. I was to
10 transport her to the police department.

11 Q. Well, so how many people went into the store
12 initially?

13 A. Three, counting myself.

14 Q. Pardon me?

15 A. Three, counting myself.

16 Q. All right. And how long had you been in the store
17 when Detective Patterson got there?

18 A. Just a few -- wasn't but a few minutes. I don't
19 recall the exact time.

20 Q. Just a few minutes?

21 A. I don't remember the exact time.

22 Q. Well, you say you've looked at this tape, what's been
23 marked as State's Exhibit for identification Number 1, I
24 believe? You say you looked at this tape?

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

- 1 Q. When was the first time you looked at the tape?
- 2 A. Excuse me, I'm sorry?
- 3 Q. When was the first time you looked at the tape?
- 4 A. Today.
- 5 Q. Today?
- 6 A. Yes, sir.
- 7 Q. All right. You didn't look at it on June the 15th?
- 8 A. No, sir. I did not.
- 9 Q. Okay. And so basically you were there, you cleared
- 10 the building and you left?
- 11 A. Yes, sir. As soon as Mrs. Bruin was brought out.
- 12 Q. When you left how many people were there?
- 13 A. I do not know.
- 14 Q. Okay. Did Lovell leave when you left?
- 15 A. I do not know when he left.
- 16 Q. Okay. Well, did Brock leave when you left?
- 17 A. No, sir. Not that I recall.
- 18 Q. Was he still there?
- 19 A. Yes, sir. At that time I believe.
- 20 Q. Thank you, officer. Nothing further.
- 21 THE COURT: Any redirect?
- 22 MS. MUNSON: No, sir.
- 23 THE COURT: Thank you, Officer Guy. You may
- 24 step down.
- 25 THE COURT: Madame forelady, ladies and

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1 gentlemen, I think this will be a good time to take a
2 break. I'll ask you to go back to your jury room and to
3 remind you not to discuss the case with anyone. We will
4 call you back in just a few moments after we take a short
5 fifteen minute break.

6 (WHEREUPON, the jury exited the open court at
7 approximately 3:28 p.m.)

8 THE COURT: All right. Let's take a short
9 break.

10 (WHEREUPON, Court stood at recess for a short break.)

11 THE COURT: All right. Let's have our jury come
12 back in, please.

13 (WHEREUPON, the jury entered the open court at
14 approximately 3:50 p.m.)

15 THE COURT: Solicitor, you may call your next
16 witness.

17 MS. MUNSON: Thank you, Your Honor. State calls
18 Les Murrell.

19 MISTER CLERK: Place your left hand on the bible
20 and raise your right hand. Do you solemnly swear or
21 affirm the testimony you're about to give in this case to
22 be the truth, the whole truth and nothing but the truth,
23 so help you God?

24 LES MURRELL: I do.

25 MISTER CLERK: If you would have a seat and

1 state your name for the record.

2 LES MURRELL: Wilbur Lester Murrell.

3 WILBUR LESTER MURRELL,

4 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MS. MUNSON:

7 Q. Who do you work for, sir?

8 A. Pickens County EMS.

9 Q. How long have you been with Pickens County EMS?

10 A. Four years full time, five years total.

11 Q. All right. What is your job title?

12 A. Paramedic.

13 Q. And what are your duties?

14 A. To provide patient care and advanced patient care to

15 the citizens of Pickens County when the need arises.

16 Q. All right. Do you -- let me try that in English.

17 Are you required to have any certification?

18 A. Yes, ma'am.

19 Q. All right. How do you get that?

20 A. Well, for paramedic I went through the seven months
21 of training, plus clinical procedures that we have to do.

22 Q. Okay. Now, did you get a call in reference to this
23 case?

24 A. Yes, I did.

25 Q. Were you on duty?

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- 1 A. Yes, ma'am.
- 2 Q. On what date did you get the call?
- 3 A. June 15th, 2006.
- 4 Q. Do you know what time the call came in?
- 5 A. We got dispatched at one forty-five, I believe, in
- 6 the afternoon.
- 7 Q. Okay. And where did you go in response to the call?
- 8 A. We were at Palmetto Baptist Hospital in Easley and we
- 9 went up 135 towards downtown Easley.
- 10 Q. Okay.
- 11 A. We were told that gunshots were involved and we
- 12 needed to stage.
- 13 Q. What does that mean?
- 14 A. When there's a crime or domestic violence or anything
- 15 that it's not safe for EMS to enter, then we stage at a --
- 16 any location away from the scene until police arrive and
- 17 secure the scene.
- 18 Q. Okay. Now, eventually did you find your patient?
- 19 A. Yes, ma'am.
- 20 Q. Okay. Where was he?
- 21 A. We entered the pawn shop. He was found behind the
- 22 counter on the left side of the building from the front
- 23 door.
- 24 Q. Okay. In what position was he?
- 25 A. He was face down.

1 Q. All right. In what condition was he?

2 A. Well, I put the cardiac monitor on him. He had a
3 rhythm, what we call a PEA which is a pulseless electrical
4 activity. That simply means that there is a beat but
5 there's no pulse associated with that beat.

6 Q. Now, when you first walked into the pawn shop how did
7 you get to where the patient was?

8 A. We walked to the back of the store. We were advised
9 to try to preserve the scene, not touch anything. As we
10 got to the back we turned the corner behind the counter,
11 went around the cash register and down the left side of
12 the room.

13 Q. Now, when you say towards the back of the store?

14 A. Well, the front of the building -- I don't know where
15 the vault was. I think it was straight back. But we
16 didn't go all the way back to the vault area.

17 Q. Okay. And walked around the counter?

18 A. Yes.

19 Q. And got to him. Now, how did you get him out from
20 behind the counter?

21 A. After I put the monitor on him and saw that I had a
22 rhythm that we had to work, I advised the officers that we
23 needed to move the counter so we can roll the patient over
24 on his back and start our procedures.

25 Q. Okay. And did you help move the counter?

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Les Murrell - Cross Examination by Mr. DeJong

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- 1 A. I don't remember. I think I did.
- 2 Q. Okay. How was the counter moved?
- 3 A. From the bottom side.
- 4 Q. And why was that done?
- 5 A. To protect any prints that might be on the topside or
- 6 anywhere else.
- 7 Q. Okay. And where did you take your patient?
- 8 A. To Palmetto Baptist in Easley.
- 9 Q. All right.
- 10 MS. MUNSON: I have nothing further at this
- 11 time, Your Honor.
- 12 THE COURT: Mr. DeJong, you may cross examine.
- 13 MR. DEJONG: Thank you, Your Honor. May it
- 14 please the Court.
- 15 **CROSS EXAMINATION**
- 16 **BY MR. DEJONG:**
- 17 Q. So you're Pickens County EMS?
- 18 A. Yes, sir.
- 19 Q. Where are y'all stationed?
- 20 A. Stationed in Easley. At that particular time I was
- 21 stationed in Easley next to the fire department on
- 22 Glenwood Street.
- 23 Q. On where?
- 24 A. On Glenwood Street.
- 25 Q. All right. Is that ---

1 A. Right off of Olive.

2 Q. Right. Okay. All right. You got dispatched about
3 what time?

4 A. About one forty-five in the afternoon.

5 Q. Okay. So how far was it from there, that Olive
6 Street location, how far was it from there to Action Pawn
7 Shop?

8 A. Well, we were actually at the hospital on another
9 call. We had just come off of another call and cleared
10 when we got this call. So we left from Palmetto Baptist.

11 Q. So you were actually basically on Fleetwood?

12 A. Yes, sir.

13 Q. Okay. And you left Fleetwood to go to Action Pawn
14 Shop?

15 A. Yes, sir.

16 Q. How far was that?

17 A. I'm guessing two miles.

18 Q. Well, when you got there, there being Action Pawn
19 Shop, were there any police cars there at that point in
20 time?

21 A. Yes, sir.

22 Q. How many?

23 A. I don't recall.

24 Q. All right. Well, how many people were with you?

25 A. I had two other on the ambulance with me. It was my

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Les Murrell - Cross Examination by Mr. DeJong

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- 1 regular partner and a paramedic student.
- 2 Q. Okay. So a total of three?
- 3 A. Yes, sir.
- 4 Q. Now, when you got into the building do you know how
- 5 many people were in there?
- 6 A. No, sir.
- 7 Q. Okay. More than one?
- 8 A. Yes, sir.
- 9 Q. All right. So you go in, as I gather, and you
- 10 immediately try to check on this person?
- 11 A. Correct.
- 12 Q. Face down?
- 13 A. Yes, sir.
- 14 Q. Okay. So you moved a counter?
- 15 A. Yes, sir.
- 16 Q. When you moved the counter -- let me see. I have to
- 17 try to ask this question. When you moved the counter did
- 18 you move it back closer to the center of the store?
- 19 A. Yes, sir.
- 20 Q. All right. Was it picked up, scooted, slid, both, or
- 21 what?
- 22 A. Slid.
- 23 Q. Pardon?
- 24 A. Slid. Several people helped move it.
- 25 Q. Several people?

- 1 A. Yes, sir.
- 2 Q. Those your people or ...
- 3 A. Police and my people.
- 4 Q. Okay. So at least now we know there were several
- 5 people in there when you got there?
- 6 A. At the time, well ---
- 7 Q. Including you?
- 8 A. At the -- at there -- assessing the patient, yes.
- 9 Q. How long were you there?
- 10 A. Twenty minutes.
- 11 Q. How long?
- 12 A. Twenty minutes.
- 13 Q. Twenty minutes? While you were there did you notice
- 14 other police officers coming and going?
- 15 A. No, sir. My concern was for the patient.
- 16 Q. Okay. So there could have been. You just wouldn't
- 17 know?
- 18 A. Yes, sir.
- 19 Q. Thank you, sir.
- 20 THE COURT: Any redirect?
- 21 MS. MUNSON: Nothing further, Your Honor. We'd
- 22 ask that this witness be excused.
- 23 MR. DEJONG: No objection, Your Honor.
- 24 THE COURT: Without objection. This witness may
- 25 be excused for the day. Thank you very much, sir.

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Peggy Christian - Direct Examination by Ms. Munson

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1 MS. MUNSON: Your Honor, the State calls Peggy
2 Christian.

3 MISTER CLERK: Place your left hand on the bible
4 and raise your right hand. Do you solemnly swear or
5 affirm the testimony you're about to give in this case to
6 be the truth, the whole truth and nothing but the truth,
7 so help you God?

8 PEGGY CHRISTIAN: Yes.

9 MISTER CLERK: If you would have a seat and
10 state your name for the record.

11 PEGGY CHRISTIAN: My name is Peggy Christian.

12 PEGGY CHRISTIAN,

13 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MS. MUNSON:

16 Q. Who do you work for, ma'am?

17 A. Avis Budget Group.

18 Q. How long have you been with them?

19 A. Eighteen months.

20 Q. All right. Where did you work before that?

21 A. I was a law enforcement officer in Miami-Dade County
22 for thirty years.

23 Q. Okay. What is your job title?

24 A. Security manager for Avis Budget.

25 Q. And what are your duties?

1 A. Anything that falls under security involving
2 customers or employees, vehicle security. And I also
3 represent the company in corporate cities.

4 Q. Okay. As far as security, would records have
5 anything to do with that?

6 A. Yes. I have access to any records that I would
7 normally need in the course of my daily work.

8 Q. Okay. Are you familiar with the procedure with Avis
9 for a person to rent a car?

10 A. Yes. I am.

11 Q. Okay. Do you know if the procedure was different in
12 2006 than it is now?

13 A. No. It's not.

14 Q. Okay. What is the procedure that a person has to go
15 through when they rent a car from Avis?

16 A. They have to present a picture identification, a
17 driver's license from a state. And they have to have a
18 credit card or a debit card. And our rental agent takes
19 that driver's license and would compare the picture on the
20 license with the person standing in front of them. And
21 once the transaction is completed and the person who's
22 renting the vehicle signs the contract, they would then
23 also compare the signature on the identification, the
24 driver's license that was presented and the signature that
25 is put on the contract.

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Peggy Christian - Cross Examination by Mr. DeJong

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1 Q. Okay. What documents are generated once a person
2 rents a car?

3 A. The -- it's called a rental agreement. And they all
4 have numbers on them.

5 Q. Okay. Are these rental agreements regularly kept in
6 the Avis business proceedings?

7 A. Yes. They are.

8 Q. I'm showing you State's Number 12 for identification.
9 If you could just take a look at that. Do you recognize
10 the document?

11 A. Yes. The document that was inside the folder is the
12 -- is a rental contract. And the folder is a generic
13 folder that goes along with the contract.

14 Q. Okay.

15 MS. MUNSON: Your Honor, I have nothing further.

16 THE COURT: You may cross examine.

17 MR. DEJONG: May it please the Court.

18 **CROSS EXAMINATION**

19 **BY MR. DEJONG:**

20 Q. There is a procedure that is supposed to be followed;
21 correct?

22 A. Correct.

23 Q. The -- what's been marked as State's Exhibit for
24 identification -- 12? Thank you, ma'am. -- that you just
25 looked at?

1 A. Yes.

2 Q. You had nothing to do with generating that document?

3 A. No. I did not.

4 Q. Basically all you can say is that's an Avis document;
5 right?

6 A. Correct.

7 Q. Whether the procedure was followed or not, you don't
8 know; do you?

9 A. I don't know.

10 Q. All right. Thank you, ma'am.

11 MS. MUNSON: Nothing further, Your Honor. We
12 ask that this witness be excused.

13 MR. DEJONG: No objection, Your Honor.

14 THE COURT: Without objection this witness may
15 be excused. Thank you, ma'am.

16 MS. MUNSON: Your Honor, the State calls Shina
17 Thomas.

18 MISTER CLERK: Place your left hand on the bible
19 and raise your right hand. Do you solemnly swear or
20 affirm the testimony you're about to give in this case to
21 be the truth, the whole truth and nothing but the truth,
22 so help you God?

23 SHINA THOMAS: I do.

24 MISTER CLERK: If you would have a seat and
25 state your name for the record.

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1 SHINA THOMAS: My name is Shina Thomas..

2 SHINA THOMAS,

3 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MS. MUNSON:

6 Q. Who do you work for, ma'am?

7 A. The post office in Easley.

8 Q. How long have been with the post office?

9 A. Almost sixteen years.

10 Q. What are your duties?

11 A. I'm a city letter carrier.

12 Q. Okay. Were you a city letter carrier in 2006?

13 A. Yes, ma'am.

14 Q. Okay. What do you -- how do you deliver the mail?

15 Personal vehicle or ...

16 A. A city vehicle, postal vehicle.

17 Q. Okay. Is it a truck or car?

18 A. It's a truck.

19 Q. All right. What was your route, your normal route --

20 first of all, do you have a normal route that you're

21 assigned to?

22 A. I do.

23 Q. And what was your normal route in June of 2006?

24 A. It's the same as it is today.

25 Q. Okay. And what is that route?

- 1 A. It's C-3.
- 2 Q. And would it include Action Pawn Shop?
- 3 A. That is on my route.
- 4 Q. Okay. Now, do you remember the events that bring us
- 5 here today?
- 6 A. Yes, ma'am.
- 7 Q. What were you doing on that day?
- 8 A. I was delivering the mail.
- 9 Q. Okay. And did you go to Action Pawn?
- 10 A. I did.
- 11 Q. Do you know about what time?
- 12 A. I believe it was early afternoon.
- 13 Q. All right. Did you notice anything unusual at Action
- 14 Pawn?
- 15 A. I did.
- 16 Q. What was that?
- 17 A. There was a car that had backed up to the curb beside
- 18 Action Pawn under the crepe myrtle trees and the whole
- 19 parking lot was empty except for that one car. And the
- 20 reason I remembered it is because the motor was left
- 21 running. And I was thinking that's not very wise to do
- 22 that over here in this area. And also because I had to
- 23 get out of my truck to deliver the mail because the person
- 24 had the box blocked.
- 25 Q. Okay. Normally you don't have to get out?

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- 1 A. Correct.
- 2 Q. Your steering wheel ---
- 3 A. I should be able to pull right up beside the box and
- 4 put the mail in and then drive on my way.
- 5 Q. Okay. And you couldn't do that?
- 6 A. I couldn't do it.
- 7 Q. What can you tell us about the car?
- 8 A. It was a small white car. And like I said, the motor
- 9 was running.
- 10 Q. Okay.
- 11 A. And on the -- it was backed up to the curb.
- 12 Q. Was there anybody in it?
- 13 A. No.
- 14 Q. Do you know how many doors it had?
- 15 A. I don't recall how many doors. It could have had two
- 16 or four. It was just a smaller car.
- 17 Q. Okay. Did you go into Action Pawn?
- 18 A. No.
- 19 Q. After you had delivered the mail, where did you go?
- 20 A. I pulled on out of that driveway and I turned to the
- 21 right and went up into the funeral home that's right
- 22 beside of it.
- 23 Q. Okay. And what did you do there?
- 24 A. Delivered the mail.
- 25 Q. And did you just keep on down that way?

1 A. Keep on going, yeah.

2 Q. All right. At some point did you come back on the
3 opposite side?

4 A. I did.

5 Q. Is that how your route works?

6 A. It is.

7 Q. All right. And when you came back in the opposite
8 direction what did you notice?

9 A. I noticed that the parking lot was full of police
10 cars.

11 Q. Okay. Did you hear anything?

12 A. I did. I don't recall exactly how long after I had
13 left the pawn shop, but I go up West Main Street and then
14 I continue going -- it turns into Gentry Memorial. And I
15 remember hearing just sirens everywhere. It just -- and I
16 was thinking, what happened? And when I came down the
17 other side of the road, I saw the police cars all in the
18 parking lot.

19 Q. What did you do when you saw that?

20 A. I went over there.

21 Q. Okay. How did you get over there?

22 A. I don't remember if I drove my truck over there or if
23 I just parked at the store and walked across. I don't
24 recall.

25 Q. Parked at what store?

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- 1 A. The Hot Spot, which is right across the street from
- 2 the pawn shop.
- 3 Q. Okay. And who did you talk to when you went back
- 4 over to Action Pawn?
- 5 A. I don't recall his name, but it was an officer.
- 6 Q. Do you remember whether or not if he was in uniform?
- 7 A. He was.
- 8 Q. Okay. And after speaking with the officer, where did
- 9 you go after that?
- 10 A. I went on about my way.
- 11 Q. Okay. Did you ever give a written statement in this
- 12 case?
- 13 A. I don't recall.
- 14 Q. Okay. Let me show you what's already in evidence,
- 15 Ms. Thomas, State's Number 9. Just take a look at that.
- 16 Do you recognize that?
- 17 A. I do.
- 18 Q. What is it -- what does that look like to you?
- 19 A. It's exactly the way the pawn shop, the side of the
- 20 pawn shop looks. And normally I should be able to pull up
- 21 beside of it and make a delivery out of the right hand
- 22 side of the truck.
- 23 Q. Okay. Is that an accurate depiction of what it
- 24 looked like back in 2006?
- 25 A. Uh-huh (affirmative).

1 Q. Okay. Now State's Number 10, if you can take a look
2 at that.

3 A. Uh-huh (affirmative).

4 Q. Do you recognize that?

5 A. I do.

6 Q. And what is that?

7 A. It's the side of the pawn shop.

8 Q. Okay. Now I'm going to ask you to use the laser
9 pointer there to answer these next questions. Okay. Now,
10 Ms. Thomas, where is the mailbox that you deliver to at
11 Action Pawn?

12 A. It's right there.

13 Q. Okay. And using the laser pointer can you describe
14 for the jury where the car was parked?

15 A. It was somewhere over in this area. Like I said, it
16 was backed up to that curb there and the nose of it was
17 sticking so far out into the parking lot that I couldn't
18 maneuver my truck to even go around that way. I had to
19 actually turn it off, park it and get out and make a
20 delivery.

21 Q. So it was backed up to the curb to the right or left
22 of the no parking sign?

23 A. I don't recall exactly. It had to be right near it
24 because I remember being irritated because I had to get
25 out of the truck.

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1 Q. All right. And on State's Exhibit Number 10, can you
2 indicate on State's Number 10 where the car was parked?

3 A. It was right around here somewhere.

4 Q. Okay. The back end was where?

5 A. The back end was right around here.

6 Q. And the front end was where?

7 A. And the nose of it came out into the parking lot.

8 Q. Okay.

9 MS. MUNSON: Nothing further, Your Honor.

10 THE COURT: You may cross examine the witness,
11 Mr. DeJong.

12 MR. DEJONG: Your Honor, may it please the
13 Court.

14 **CROSS EXAMINATION**

15 **BY MR. DEJONG:**

16 Q. The mailbox for Action Pawn, does that, does that
17 front on West Main Street?

18 A. The front of the mailbox?

19 Q. Yes, ma'am.

20 A. No, sir.

21 Q. Where is it?

22 A. The front of the mailbox is to the side of -- into
23 the parking lot.

24 Q. Okay. So you would have had to get off of West Main
25 Street to go into the parking lot to deliver mail?

1 A. I would have had to pull off of the street, yes.

2 Q. Now, the mailbox, where is it, if you can tell me,

3 Ms. Thomas, in relationship to the front door?

4 A. It is right beside the walkway.

5 Q. Okay. And nothing particularly distinguishing about
6 the car; was there?

7 A. Yes, sir. I saw it had a tag on the front of it. I
8 couldn't recall exactly what was on it, but I remembered
9 it was two letters stacked on top of one another and then
10 it had other numbers out to the side.

11 Q. The vehicle itself, though, there was nothing
12 distinguishing about that?

13 A. I don't recall model name. Uh-uh (negative). Just
14 that it was a small white car.

15 Q. And as far as the make, model or kind, you don't know
16 that either; do you?

17 A. No, sir.

18 Q. Okay. When you came back down -- I say back down
19 Main Street. I guess you were going back into Easley at
20 that point in time; right?

21 A. Yes, sir.

22 Q. And you parked your vehicle where?

23 A. I couldn't recall if I had just parked it across the
24 street at the Hot Spot because that's on my right as well.
25 Or if I had driven it across the road into the parking lot

1 of Action Pawn.

2 Q. Okay. Well, when you went to Action Pawn, did you go
3 into the store?

4 A. No, sir.

5 Q. And as to time, you don't recall other than early
6 afternoon?

7 A. No, sir.

8 Q. So you said you believed the engine to be running?

9 A. It was running, yes, sir.

10 Q. Okay. So that wasn't a very smart thing?

11 A. No, sir.

12 Q. Why?

13 A. Well, to leave your vehicle running while you go in a
14 store is unwise.

15 Q. All right. Now, the -- can you tell me -- look at
16 State's Exhibit Number 10. You told Ms. Munson where the
17 back of the car was. Where was the front of the car?

18 A. It was sticking out, like that. It was backed into
19 that, so the front of the car was pulled up into the
20 parking lot. And I have -- I pull in over this way to
21 deliver these -- some boxes over here and then I make a U-
22 turn and come back up this way.

23 Q. The car, was it inside -- were these lines there on
24 that day, do you recall?

25 A. I don't recall.

1 Q. Okay. And I believe you said you don't recall if the
2 no parking sign was there that day or not?

3 A. I believe it was, yes, it is.

4 Q. Okay. But you're not sure about the lines; right?

5 A. Correct.

6 Q. You didn't get any tag number from the car; did you?

7 A. No. As I said, it was backed into against the ...

8 But I did notice the tag on the front, but I didn't recall
9 any numbers specifically.

10 Q. Thank you, ma'am.

11 MS. MUNSON: Nothing further, Your Honor. We
12 ask that this witness be excused.

13 MR. DEJONG: No objection.

14 THE COURT: Without objection, the witness may
15 be excused. Thank you very much for coming.

16 MS. MUNSON: Your Honor, may we approach?

17 THE COURT: Yes, ma'am.

18 (WHEREUPON, Ms. Munson and Mr. DeJong approached
19 the bar.)

20 THE COURT: Madame forelady, ladies and
21 gentlemen, there's some legal matters we need to take care
22 of. I don't know how long this may take. But I don't
23 want you to have to wait too long and then all of a sudden
24 it's getting toward the end of the day, while we do this.
25 I think rather than letting you stay in your jury room,

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1 I'll just dismiss you for the day. We'll get this worked
2 out so we'll be ready to hit the ground running in the
3 morning, hopefully. If you would be back at nine o'clock
4 in the morning. We'll be ready to start at that time with
5 additional witnesses.

6 Let me remind you again not to discuss the case with
7 anyone. Don't let anyone discuss it with you. As I
8 stated before, you'll have an opportunity to share your
9 thoughts and your experiences later. Refrain from all the
10 communication, reading or listening, as I've suggested to
11 you earlier. You remember what I said, I'm sure, from
12 lunch time. Remember that you've made a commitment to
13 these parties that you're going to make this decision on
14 what takes place here and not anywhere else. With that
15 instruction, I'll ask you to be dismissed for the day. Be
16 back at nine o'clock in the morning and we'll be ready to
17 start at that time.

18 (WHEREUPON, the jury exited the open court at
19 approximately 4:18 p.m.)

20 THE COURT: All right. I understand -- yes,
21 sir.

22 MR. DEJONG: Your Honor, I have one matter that
23 I need to get on the record if Your Honor will indulge me,
24 please, sir.

25 THE COURT: Yes, sir.

1 MR. DEJONG: That is in reference to Exhibits 3,
2 4 and 5 which have been introduced. They were introduced
3 over my objection, Your Honor. My objection was stated at
4 the -- a bench conference, was not a part of the record.
5 My objection being that that does not reflect that was
6 something that they went back and did. It's not in my
7 opinion consistent with the testimony and therefore it
8 should not -- that was the basis of my objection. I'm not
9 arguing with Your Honor's ruling, but that was certainly
10 the basis of my objection, that it would be confusing and
11 misleading to the jury.

12 THE COURT: All right. And again I interpreted
13 the testimony somewhat differently from you that she had
14 testified that she had stood up and ran into the vault.
15 But that will be certainly subject to your argument to the
16 jury. Your objection is noted.

17 I understand there might be some time that counsel
18 can look over the videotape so that perhaps we can
19 expedite the procedures tomorrow. So if y'all can just
20 take time to do that this afternoon.

21 MR. DEJONG: I plan on doing that this evening,
22 if Ms. Munson will buy the pizza.

23 THE COURT: All right. So we'll have all those
24 matters worked out if we need to be here first thing -- if
25 I need to be here to work that out. But I'm confident

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1 that y'all will be able to do that. All right. We'll be
2 ready ---

3 MR. DEJONG: I would like for Officer Cowan to
4 hang around. I may need to talk to him to resolve this
5 issue.

6 THE COURT: He can hang around to make sure we
7 get everything right on the tape. Okay? All right.
8 We'll be at ease until nine o'clock in the morning.

9 (WHEREUPON, court stood at recess for the day.)

10 11/17/09

11 (WHEREUPON, court convened with all parties present
12 and the following proceedings were had.)

13 THE COURT: Please be seated, ladies and
14 gentlemen.

15 Yes, sir. Mr. DeJong?

16 MR. DEJONG: Your Honor, the first thing -- I
17 really don't like to keep harping on this, but I'm going
18 to keep harping on it. I noticed this morning that the
19 counsel tables are draped with cloth. And I'm not
20 faulting our good clerk, Your Honor. I think he's
21 certainly trying to do the right thing. But I think it
22 only exacerbates the problem we discussed yesterday. We
23 started out with paper up here, we've now gone to cloth.
24 I think it's very obvious that something is trying to be
25 hidden. It was shared with me yesterday that someone

1 that was watching the jury, the jurors that sat in the
2 back corner up here were craning around, leaning around,
3 trying to see what's under the tables. I know Your Honor
4 has ruled. I'm not trying to argue with Your Honor's
5 ruling, but it still upsets me. I don't think it is
6 proper. But I just want that on the record, Your Honor.

7 THE COURT: Again instead of the paper cover we
8 now have, for the record, cloth covers over both tables.
9 The State's and the Defendant's table too. Again, I try
10 to weigh any prejudicial effect with the security of the
11 Courtroom. I think the ruling was proper. And you're
12 protected on the record, Mr. DeJong. Anything else?

13 MR. DEJONG: Yes, Your Honor. With regard to
14 the video. I did have an opportunity to view the original
15 video last night. And I apologize for coming into the
16 Courtroom late, but I was discussing that with my client
17 down the hallway. At this point in time, Your Honor, and
18 having talked with the solicitor, I'm not trying to put
19 words in her mouth, but I would withdraw my motion to
20 suppress the video. With that withdraw of my motion it is
21 my understanding that only one video would be published to
22 the jury, assuming of course, Ms. Munson can lay the
23 proper foundation and chain of custody on the original,
24 Your Honor. The copy that I was objecting to had been
25 marked, I believe, for purposes of identifications only at

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1 this point in time. Ms. Munson asked about introducing
2 both copies. I have a problem with that and Ms. Munson
3 can certainly addressed that issue. If both are
4 introduced and only one shown, I feel certain that the
5 jury, one of the first things that they would want to do
6 is wonder what in the world is on that second video. So I
7 guess I am putting some qualification on my withdrawing
8 that motion to suppress, Your Honor, in that if the State
9 introduces -- lays the proper foundation and introduces
10 the original video, I would not object to that. The copy
11 I still have some objections -- would still have objection
12 to. But I'm not a hundred percent sure how the solicitor
13 wants to proceed on that, Your Honor.

14 THE COURT: Solicitor?

15 MS. MUNSON: May it please the Court, Your
16 Honor. What I would suggest we do is I would put Brian
17 Cowan on the stand to lay the foundation about the
18 original. And I suppose what we could do is just put the
19 original in this cover that's been marked State's Exhibit
20 Number 1. I do have some concerns about the jury hearing
21 that Mrs. Bruin and the other officers watched and dated
22 this. If I could just have a little leeway with Sergeant
23 Cowan to explain that what they looked at was a copy but
24 he's got the original, and then I would not even need to
25 put the copy into evidence.

1 MR. DEJONG: I would fully suspect, Your Honor,
2 not to interrupt you, Ms. Munson, I apologize, but I fully
3 suspect that my good Officer Cowan is going to get into
4 that anyway. And certainly having talked with him
5 yesterday with Ms. Munson's permission I think he would
6 certainly have an explanation for that.

7 MS. MUNSON: Then that's exactly what I would do
8 then, Your Honor. Take the original and put it in the
9 sleeve that is already marked State's Exhibit Number 1 for
10 identification and that's the one that I would introduce
11 into evidence and publish with the Court's permission,
12 assuming I could lay my foundation.

13 MR. DEJONG: With that assumption then, Your
14 Honor, I would withdraw my motion to suppress.

15 THE COURT: All right.

16 MS. MUNSON: Just one other thing, Your Honor.
17 I talked with Mr. DeJong about this and I don't want to
18 spring anything on him or on you but just so we all can be
19 thinking about it. At some point in the trial I intend to
20 ask the Court to force the Defendant to show the jury the
21 tattoo on his left forearm. I'm just telling you that
22 now. I'm not going to do it now, maybe not even until
23 tomorrow, but just so we all can be thinking about it and
24 preparing our arguments for that.

25 MR. DEJONG: That was shared with me, Your

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1 Honor, but based on Ms. Munson's statement, I don't think
2 now would be the appropriate time to argue that.

3 THE COURT: Thank you for sharing that, Ms.
4 Munson. Anything else?

5 MS. MUNSON: Nothing from the State, Your Honor.

6 MR. DEJONG: I don't believe I have anything
7 else right now, Your Honor.

8 THE COURT: All right. Let's have our jury come
9 in.

10 (WHEREUPON, the jury entered the open court at
11 approximately 9:21 a.m.)

12 THE COURT: Good morning, ladies and gentlemen.
13 Thank you very much for your patience with us. We are
14 ready to proceed with the trial of the case. Solicitor,
15 you may call your next witness.

16 MS. MUNSON: May it please the Court, Your
17 Honor. The State calls Suzanne Dabkowski.

18 MISTER CLERK: Place your left hand on the bible
19 and raise your right hand. Do you solemnly swear or
20 affirm the testimony you're about to give in this case to
21 be the truth, the whole truth and nothing but the truth,
22 so help you God?

23 SUZANNE DABKOWSKI: I do.

24 MISTER CLERK: If you would have a seat and
25 state your name for the record.

1 SUZANNE DABKOWSKI: My name is Suzanne
2 Dabkowski.

3 SUZANNE DABKOWSKI,
4 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MS. MUNSON:

7 Q. Who do you work for, ma'am?

8 A. The Bureau of Alcohol, Tobacco, Firearms and
9 Explosives.

10 Q. How long have you been with them?

11 A. Approximately four and a half years.

12 Q. Okay. What sort of training did you have to get
13 before you could be a officer or agent, what's the proper
14 title?

15 A. My actual title is Industry Operations Investigator.

16 Q. Okay.

17 A. And I had training at the Federal Law Enforcement
18 Training Center in Glencoe, Georgia for approximately two
19 months before I was permitted to go out in the field, and
20 then there was on the job training.

21 Q. Okay. Are you a certified law enforcement officer?

22 A. No.

23 Q. Okay. Now, what are your duties for the ATFE?

24 A. I go out to anybody who is a federally licensed
25 firearms dealer or a federally licensed explosives dealer.

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1 And I conduct compliance investigations to make sure that
2 they are complying with the regulations pertaining to
3 record keeping and inventory that accompany those
4 licenses.

5 Q. Okay. Where are you currently assigned?

6 A. Currently I am working out of the Cleveland area
7 office out in Cleveland, Ohio.

8 Q. All right. Where were you assigned with ATFE in June
9 of 2006?

10 A. I was assigned to the Columbia, South Carolina
11 satellite office at that time.

12 Q. All right. And did you get -- how did you get
13 involved in this case?

14 A. I received a call from my supervisor one evening
15 saying that there had been a robbery at the pawn shop and
16 they needed to have someone conduct a -- what we call a
17 theft loss investigation. So I proceeded up to the pawn
18 shop, actually to the law enforcement center that night.
19 And we didn't actually do the inventory until the
20 following morning.

21 Q. Okay. Who did the inventory?

22 A. There was myself and there were two other ATFIOIs
23 with the same training that I have who conducted that
24 inventory.

25 Q. Okay. Out of the three of you was one of you in

1 charge?

2 A. I was the lead investigator for that assignment.

3 Q. Okay. Now, what is a theft loss report?

4 A. A theft loss report is a form that ATF requires
5 federal firearms licensees to complete when there has been
6 any inventory missing, stolen from their licensed
7 premises.

8 Q. Okay. And did you do a theft loss report in this
9 case?

10 A. Yes.

11 Q. The theft loss report, is that a record that is done
12 in the normal course of business with the ATF?

13 A. Yes. Anytime the situation happens where firearms
14 are missing or stolen.

15 Q. Okay. Explain to the jury how you go about doing a
16 theft loss report.

17 A. Well, we go in and a federally licensed dealer is
18 required to keep an acquisition and disposition record.
19 It's sort of like your checkbook. Where when they get a
20 firearm in, it's logged in and it doesn't get logged out
21 until it leaves the premises. So there is a blank next to
22 anything that should be at the business. So we went
23 through and we conducted a full inventory of all of the
24 firearms that were at the premises and checked them off in
25 the book and then whatever doesn't have a checkmark by it

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- 1 is missing.
- 2 Q. Okay.
- 3 A. And that's what we put on the form.
- 4 Q. On the theft loss report?
- 5 A. Yes.
- 6 Q. Now, in your duties with the ATF, are you familiar
- 7 with the procedures that are required when a person
- 8 purchases a handgun?
- 9 A. Yes.
- 10 Q. And what is required?
- 11 A. An individual who goes to a licensed dealer is
- 12 required to present identification to the dealer and they
- 13 fill out what is called a ATF form 4473 where they provide
- 14 their personal information. Again, the identity is
- 15 confirmed. You have to present a valid ID. And then the
- 16 licensed dealer is required to call in a background check
- 17 to verify that the person is not prohibited from having a
- 18 firearm. And assuming all of that goes properly then the
- 19 firearm can be transferred.
- 20 Q. Okay. And is the 4473, is that also a record that is
- 21 kept in the normal course of business?
- 22 A. Yes.
- 23 Q. I'm showing you what's been marked as State's Exhibit
- 24 Number 77, if you could just take a look at that.
- 25 A. Okay.

1 Q. Do you recognize that document?

2 A. Yes.

3 Q. And how do you recognize it?

4 A. It is the theft loss report that we completed that
5 day of what was missing from the business premises.

6 Q. Okay.

7 MR. DEJONG: Your Honor, with regard to the
8 theft loss which this witness says she recognizes, I have
9 no objection. The first two pages I'm not sure of their
10 relevance, however, Your Honor.

11 MS. MUNSON: The relevance is, Your Honor, is
12 Rule 9021 that that is a document under the Seal of the
13 United States and it's self authenticated. That proves
14 that it is a certified copy.

15 THE COURT: All right.

16 MR. DEJONG: I think she had already
17 authenticated it, Your Honor. But having said that, no
18 objection.

19 THE COURT: All right. Exhibit 77 is admitted
20 into evidence without objection.

21 (WHEREUPON, State Exhibit Number 77 was admitted into
22 evidence.)

23 Q. All right. Agent Dabkowski, I'm handing you State's
24 Exhibit Number 2 that is already in evidence. If you
25 could just take a look at this. And I'm handing you back

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- 1 State's Number 77 which is now in evidence. And what I
2 would like for you to do, Agent, on State's Exhibit Number
3 2, do you notice blue tabs? Or red ones?
4 A. Yeah. Red ones.
5 Q. What I would like for you to do is go through State's
6 Exhibit Number 2.
7 A. Uh-huh (affirmative).
8 Q. And when you find in State's Exhibit Number 2 a
9 firearm that is listed as stolen tell the jury whether or
10 not it's on your theft loss report.
11 A. Okay. The first one here, a Firestorm Model 45
12 Compact. Do you want me to read out the serial number and
13 everything too or just ...
14 Q. Please.
15 A. Serial number 71-04-06250-03 which was a .45 caliber
16 handgun is listed as stolen on June 15th of '06 with the
17 appropriate ATF theft loss report number noted next to it
18 and it's on the theft loss report.
19 Q. Okay.
20 A. And there is a Glock Model 22C, serial number
21 CFF175US, also .40 caliber handgun also listed as stolen
22 and it is on the theft loss report also. There is a Smith
23 & Wesson Model SW40. Serial number, it looks like
24 PAF9494, also listed as stolen. A Charles Daly Model
25 1911-A1, serial number CD007476, .45 caliber handgun,

1 listed as stolen. And it is on the second page of the
2 theft loss report. A Renato Model SABG2001, serial number
3 100025, .380 caliber handgun. And it is also listed on
4 the theft loss report. A Ruger Model GP100, serial number
5 170-15811, 357 revolver listed as stolen. And it's on the
6 theft loss report. A Hi Point Model C9, serial number
7 P1267029, a .9 millimeter handgun listed as stolen and is
8 on the theft loss report. And a Taurus Model PT945 with a
9 Serial number NUJ04589, .45 caliber pistol also listed as
10 stolen. Did I get everything there? That's all the ones
11 we have tabbed.

12 Q. Now, is there a gun that was listed as stolen on the
13 theft loss report that in fact was not stolen?

14 A. Yes.

15 Q. Which weapon is that, that's on the theft loss
16 report?

17 A. That is the EAA Witness Model, serial number EA13324,
18 a .45 caliber handgun.

19 Q. And explain to the jury why it was listed as stolen
20 and it wasn't.

21 A. It was listed as stolen originally because it had not
22 been logged out of the book. I received a telephone call
23 a few days later from Ms. Spong, I believe, saying that

24 ---

25 MR. DEJONG: Objection, Your Honor.

1 MS. MUNSON: Your Honor, this is a part of
2 documentation that is in State's Exhibit Number 77.

3 MR. DEJONG: I don't have an objection to what's
4 in the report. I have an objection as to what somebody
5 else told her.

6 THE COURT: Just refer to the report.

7 Q. If you could just read what's on that ---

8 A. Sure.

9 Q. -- that page.

10 A. Under the recovery notes in the actual report
11 attached to the original that was mailed in, it says, RE:
12 Serial number EA13324 per Stacy Spong, the paperwork was
13 found for this firearm.

14 Q. Okay. Now, I'm showing you State's Exhibit Number
15 78. Can you take a look at that? And what is State's
16 Exhibit Number 78?

17 A. It is a 4473 form.

18 Q. And is it a record that is normally kept in the
19 business of the ATF?

20 A. Yes.

21 Q. And you have knowledge and access to those type
22 records?

23 A. Yes.

24 Q. Okay.

25 MS. MUNSON: Your Honor, at this time I move

1 State's Number 78 into evidence. And again, I would refer
2 to report 901 -- 9021. It's a certified document under
3 the Seal of the United States.

4 MR. DEJONG: At this point in time, Your Honor,
5 I'd object to it on grounds of relevance.

6 THE COURT: What's the relevance of the
7 document?

8 MS. MUNSON: I don't think Mr. DeJong wants me
9 to say that in front of the jury. It's -- this weapon ---

10 MR. DEJONG: May we approach, Your Honor?

11 THE COURT: Yes, sir. Yes, sir.

12 (WHEREUPON, Ms. Munson and Mr. DeJong approached
13 the bar.)

14 Q. Thank you, Agent Dabkowski.

15 MS. MUNSON: I have no further questions at this
16 time, Your Honor.

17 THE COURT: You may cross examine the witness.

18 MR. DEJONG: Thank you, Your Honor. May it
19 please the Court.

20 **CROSS EXAMINATION**

21 **BY MR. DEJONG:**

22 Q. So Ms. Dabkowski?

23 A. Dabkowski.

24 Q. I'll murder it, I promise you. Okay? How about if I
25 call you Agent, would that be all right? So you've been

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- 1 with ATFE for about four and a half years?
- 2 A. Yes, sir.
- 3 Q. And in '06 you had been with them about a year, year
- 4 and a half?
- 5 A. A little over a year.
- 6 Q. Okay. And at that point in time you were in
- 7 Columbia?
- 8 A. Yes.
- 9 Q. Now, basically what you do is an accounting function;
- 10 right?
- 11 A. Yes. A portion of it.
- 12 Q. What you do is take a log from a business similar to
- 13 what's been marked as State's Exhibit Number 2?
- 14 A. Yes.
- 15 Q. Now, this inventory that you did was not done until
- 16 June the 16th of '06; is that correct?
- 17 A. Yes.
- 18 Q. And when you -- where did you do the inventory? Did
- 19 you physically do it at Action Pawn Shop?
- 20 A. Yes.
- 21 Q. All right. When you got to Action Pawn Shop do you
- 22 recall what time of the day you got there?
- 23 A. It was early in the morning. We came first thing in
- 24 the morning.
- 25 Q. And how did you gain access to the building?

- 1 A. The law enforcement officers let us in.
- 2 Q. Okay. When you gained access to the building did the
- 3 law enforcement officers meet you there?
- 4 A. Yes.
- 5 Q. All right. And so law enforcement then let you in?
- 6 A. Yes.
- 7 Q. So this with -- well, strike that. Now, you take
- 8 this log and you physically compare that to guns that are
- 9 on the premises; is that correct?
- 10 A. Yes.
- 11 Q. Now, these logs obviously can have errors in them;
- 12 can't they?
- 13 A. Yes.
- 14 Q. All right. Did in the log -- what I'm referring to a
- 15 log which is State's Exhibit Number 2, which I guess that
- 16 is a fire transact -- firearms transaction log?
- 17 A. We call it a acquisition and disposition record.
- 18 Q. Okay. If you need to see it, I'll let you see it.
- 19 Okay? Now that contains both long guns and handguns;
- 20 right?
- 21 A. Yes.
- 22 Q. Did you make any markings or notations in the log
- 23 itself?
- 24 A. I don't recall.
- 25 Q. All right. Well, there are certain markings such as

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1 -- let me let you look at it. There are some Xs in the
2 far -- that would be the far left hand column. Did you
3 make the notation as to the Xs?

4 A. I'm sorry. I don't recall if we made those Xs or if
5 that was from a different time the inventory was done at
6 the shop.

7 Q. All right, ma'am. Now, also you will notice, I
8 think, some orange highlighting. Did you do the orange
9 highlighting?

10 A. I don't recall.

11 Q. Now, were you the only one that worked with the log
12 or were the other two people that were with you, did they
13 work on the log as well?

14 A. They worked on the log as well.

15 Q. All right. And I gather they're not here today?

16 A. No.

17 Q. You were the chief so to speak; right?

18 A. (No verbal response.)

19 Q. These -- well, let me back up a minute. So when you
20 did your inventory, how many guns did you say that were
21 missing?

22 A. The original theft loss report had ten firearms
23 listed as missing.

24 Q. Okay. And when was it determined that, I gather,
25 there were only nine?

1 A. In the end, yes, there were only nine missing.

2 Q. When was that determined?

3 A. I don't recall the exact date. It was probably four
4 or five days later.

5 Q. All right, ma'am. Now, this form 4473, those are
6 forms that are maintained by, I gather, licensed dealers;
7 right?

8 A. Yes.

9 Q. And there would be forms furnished to them in bulk, I
10 gather; is that correct?

11 A. Yeah. The blank forms. Yes.

12 Q. Yes, ma'am. And how -- well, whether a form was
13 initially presented to somebody and then not filled out or
14 whatever, you would have no way of knowing then; would
15 you?

16 A. Actually the dealers are supposed to keep any forms
17 that are partially completed on file for approximately --
18 well, for five years.

19 Q. Yes, ma'am. I understand the completed form. I'm
20 talking about the bulk uncompleted forms?

21 A. Oh, the uncompleted forms. No. There's no
22 requirement that they keep those.

23 Q. Certainly uncompleted forms could be handled by many
24 people before it was ever filled out?

25 A. Possibly.

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1 Q. One moment please, ma'am. Thank you, ma'am.

2 MR. DEJONG: No objections for her being
3 excused, Your Honor.

4 MS. MUNSON: I have some brief redirect, Your
5 Honor.

6 THE COURT: You may redirect.

7 **REDIRECT EXAMINATION**

8 **BY MS. MUNSON:**

9 Q. Agent Dabkowski, do you generally, when you're doing
10 a theft loss report, highlight and check and do other
11 things?

12 A. We try not to leave too many marks in a dealer's
13 book. So we may have checked and erased or we may have
14 checked, or if we see that they've already used checkmarks
15 to do a previous inventory, maybe we'll use a dot that
16 time so we know what we are doing. So that's why it's
17 difficult for me to determine ---

18 Q. Okay.

19 A. -- what might have been my checkmarks or somebody
20 else's.

21 Q. But the writing that's in State's Exhibit Number 2
22 where it refers to ATF theft loss number and stolen, that
23 was done by you and your team?

24 A. Yes.

25 Q. Okay. Now, how did that go? Were you all together

1 doing it?

2 A. We -- to do it as quickly as possible, we took
3 different areas of the store. Some of us worked in the
4 vault to inventory what was there. Some worked out front
5 to inventory what was there. And then we went through the
6 book and compared our lists to what was open in the
7 acquisition and disposition book to figure out what we
8 hadn't written down from elsewhere.

9 Q. Okay. And then you -- each person goes to different
10 places and then you get together?

11 A. Yes.

12 Q. And sort of check each other?

13 A. Yeah. We're all going through our lists, you know,
14 we'd go through the book and find it -- an open line and
15 we'd look at our lists and say, okay, I have that one on
16 my form.

17 Q. Okay.

18 A. And then, you know, when we get to one where nobody
19 had it on their lists, and we would know that was one that
20 needed to be reported.

21 Q. Okay.

22 MS. MUNSON: I have nothing further, Your Honor.

23 MR. DEJONG: One follow-up if I may please,
24 ma'am. Please, Your Honor, I'm sorry.

25

RECROSS EXAMINATION

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1 BY MR. DEJONG:

2 Q. When you got to Action Pawn Shop on June the 16th,
3 were there guns in the gun case?

4 A. I believe there were.

5 Q. Thank you, ma'am.

6 MS. MUNSON: Nothing further, Your Honor.

7 THE COURT: All right. Thank you, ma'am. You
8 may step down. Without objection, you may be excused.

9 MS. MUNSON: Your Honor, may we approach
10 briefly?

11 THE COURT: Yes, ma'am.

12 (WHEREUPON, Ms. Munson and Mr. DeJong approached
13 the bar.)

14 THE COURT: Madame forelady, ladies and
15 gentlemen, we need to take a short break before the next
16 witness is called. I don't think it will be very long,
17 about ten minutes, if you'll take a break. We'll take
18 care of some business we need to take care of here. Don't
19 discuss the case while you're back in your jury room.

20 (WHEREUPON, the jury exited the open court at
21 approximately 9:50 a.m.)

22 THE COURT: All right. We'll be at ease for ten
23 minutes.

24 (WHEREUPON, Court stood at recess for a short break.)

25 THE COURT: All right. Solicitor, are you ready

1 to proceed?

2 MS. MUNSON: Yes, sir.

3 THE COURT: Mr. DeJong?

4 MR. DEJONG: Ready, Your Honor.

5 THE COURT: All right. Let's have our jury come
6 in.

7 MS. MUNSON: I'm sorry, Your Honor, we need to
8 do a Jackson v. Denno.

9 THE COURT: All right.

10 MS. MUNSON: The State calls Sergeant Detective
11 Marco Roy. And Your Honor, he -- this is Mrs. Beyerle.
12 She'll be his interpreter.

13 MISTER CLERK: Ms. Beyerle, if you would, please
14 stand. Place your left hand on the bible and raise your
15 right hand. Do you solemnly swear or affirm the
16 translation you make will be a true and accurate
17 translation, that you will interpret and translate from
18 French to English the questions asked of the witness and
19 the answers received of the witness and that you will omit
20 no part of the testimony or add any to any testimony?

21 GLORIA BEYERLE: I do.

22 MISTER CLERK: Can you translate for him?

23 GLORIA BEYERLE: Yes, of course.

24 MISTER CLERK: Do you solemnly swear or affirm
25 the testimony you're about to give in this case to be the

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1 truth, the whole truth and nothing but the truth, so help

2 you God?

3 MARCO ROY: I do.

4 MISTER CLERK: If you would have a seat and

5 state your name for the record, please, sir.

6 MARCO ROY: Marco Roy.

7 MARCO ROY,

8 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

9 IN-CAMERA DIRECT EXAMINATION

10 BY MS. MUNSON:

11 MR. DEJONG: Your Honor, could we get him a

12 little closer to the microphone or turn the sound up a

13 little bit?

14 THE COURT: Hang on just a minute. Yes, sir.

15 You need to hear the interpreter.

16 MR. DEJONG: I gather the interpreter is going

17 to have to interpret back and that's going to be a problem

18 with the sound.

19 THE COURT: Well, if you don't hear you let us

20 know. And obviously if you want to come closer that will

21 be fine.

22 MR. DEJONG: Thank you, Your Honor.

23 THE COURT: All right, Solicitor.

24 Q. Sergeant Detective Roy, who do you work for?

25 A. He works for the City of Montreal, Canada. Montreal

1 Quebec, Canada.

2 GLORIA BEYERLE: Can you hear me? Do you want
3 me to speak louder?

4 MR. DEJONG: Please, ma'am.

5 GLORIA BEYERLE: Okay. He works for the City of
6 Montreal in Quebec, Canada.

7 MR. DEJONG: If you can keep your voice right
8 there that will be fine. Thank you.

9 Q. Sergeant Detective, on what date did you become
10 involved in this case?

11 A. The evening of the 16th of June in 2006.

12 Q. How did you become involved?

13 A. They were asked to collaborate with the Easley Police
14 on -- to, to find and to search for the suspect.

15 Q. Okay. At some point did you take someone into
16 custody?

17 A. The 17th of June is when they arrested him at twelve
18 oh five.

19 Q. All right. Who was with you?

20 A. He was with his partner, Mario Lombar.

21 Q. Okay. How did you take this person into custody?

22 A. It was too long for me to remember everything that he
23 said. So they got him at this hotel. They received
24 information that Mr. Shephard had the wind chart? Oh, he
25 had a reservation, he reserved a room at the hotel. What

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1 was the name of the hotel? Royale Versar was the name of
2 the hotel. And the street -- what's the name of the
3 street? Sherber Street 7002.

4 Q. Okay. Where was Shephard when you took him into
5 custody?

6 A. There was a team that was, what do you call it,
7 checking out the hotel, you know. Yes. When the
8 individual Shephard left the room and then the team
9 followed him and he was in a Chevy Cobalt vehicle. And
10 three miles to the east intercepted Mr. Shephard.

11 Q. Were you there when Shephard was intercepted?

12 A. Yes. He was there.

13 Q. Who approached him?

14 A. His partner, Mario Lombar, proceeded for the arrest
15 of Mr. Shephard. And he was right next to him.

16 Q. Okay. Sergeant Detective Roy was right next to
17 Sergeant Detective Lombar?

18 A. Yes.

19 Q. Now, what did you -- what was said to Shephard when
20 he was taken into custody?

21 A. His partner read him the rights.

22 Q. In what language?

23 A. In English. They read him his right.

24 Q. Do you understand any English?

25 A. He says about, about eighty percent.

1 Q. Well, can you state for the Court what the rights are
2 that were read to Shephard?

3 A. He has the card with him that he read to the ...

4 Q. Okay.

5 A. Yes. He's going to read it in English.

6 Q. Okay.

7 A. Okay. You have right to counsel. You are under
8 arrest for murder and that you have the right to retain
9 and instruct counsel of your choice without delay. If you
10 are eligible you may also apply for legal assistance
11 through the Provincial Legal Aid Program. Finally you may
12 call free of charge immediately a duty counsel and obtain
13 preliminary legal advice without charge. And right to
14 remain silent. You are not bound to say anything. You
15 have nothing to hope for any rights of favor and nothing
16 to fear from any trip whether or not you say anything.
17 Anything you will say will be taken down in writing and
18 may be used as evidence.

19 Q. Did he appear to understand his rights?

20 A. Yes. He did.

21 Q. Was he threatened in any way?

22 A. No. In no way.

23 Q. -Now, there were a lot of officers with weapons, were
24 there not?

25 A. Yes. There were.

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1 Q. All right. Once he was arrested, did you ask him if
2 he wanted to talk to you right then?

3 A. Did you ask him what?

4 Q. Did you ask Shephard if he wanted to talk to you?

5 A. No. They didn't. They didn't ask him if he wanted
6 to talk.

7 Q. And did you question him at that time?

8 A. No.

9 Q. Did he say anything to you?

10 A. He says he has to verify in his notes, he doesn't
11 remember.

12 Q. Okay. Do you have your notes with you?

13 A. Yes. He does.

14 Q. You can look at them if that would refresh your
15 memory. After looking at your report, do you now remember
16 if the Defendant said anything?

17 A. Yes.

18 Q. Now, was that report done at or near the time of this
19 incident?

20 A. Yes.

21 Q. And do you now remember whether or not the --
22 Shephard said anything to you?

23 A. Yes.

24 Q. What did he say?

25 A. You guys checked the car. That's how you knew where

1 to find me.

2 Q. Okay. Now, after that, after he was taken into
3 custody, did you speak to him again?

4 A. No. They simply just transported him to the
5 detention center.

6 Q. After he was -- sometime later did you interview him,
7 interrogate him?

8 A. Yes.

9 Q. On what day?

10 A. 29th of June. Two days later? Two days later.

11 Q. Two days?

12 A. Twelve days.

13 Q. Okay. Now, where was he when you interviewed him?

14 A. He was right there at the detention center of the
15 Prairie. That's the name of it?

16 Q. Okay. Who was with you when he was interviewed?

17 A. Mario Lombar.

18 Q. At any point were you and Mario Lombar -- I'm sorry.

19 At any point was Mario Lombar alone with the Defendant?

20 A. No. He was always present. The two of them were
21 always present.

22 Q. Okay. Now, what did you say to Shephard before you
23 interviewed him?

24 A. No. He didn't say anything. At the moment he
25 entered the video was in motion, was working.

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- 1 Q. Okay.
- 2 A. He didn't know that the -- he didn't know if the
3 video was working. Oh, oh, I'm sorry. That he didn't
4 know that they were coming to see him but then -- what
5 happened? Oh, and then when he went to the room the video
6 was working already.
- 7 Q. Okay. Before you put him in the room with the video
8 camera, did you have any conversation with him?
- 9 A. None.
- 10 Q. Did you threaten him in anyway?
- 11 A. No, no way.
- 12 Q. Once he got into the room where the video was, what
13 was the first thing that you did with him?
- 14 A. His partner, Lombar, restated his rights. And he
15 read the same card that he just read right now. The same
16 -- right.
- 17 Q. Okay. Did he appear to understand his rights?
- 18 A. Yes.
- 19 Q. And did he agree to talk with you?
- 20 A. Yes. He was.
- 21 Q. I'm showing you State's Exhibit Number 49. Can you
22 take a look at that?
- 23 A. That is the cassette of the interrogation.
- 24 Q. Okay. When was the last time you looked at this,
25 Sergeant?

1 A. Just before arriving here he saw if for the last
2 time.

3 Q. Okay.

4 MS. MUNSON: Your Honor, I propose that what we
5 do at this time is just play it for the Court. Because
6 it's my position it pretty much speaks for itself as to
7 whether or not it's voluntary.

8 THE COURT: All right. Be glad for you to play
9 it.

10 Q. While that's rewinding, whose voice is doing the
11 interview?

12 A. Mario Lombar is the one that's doing the interview.

13 Q. And where were you the entire time this tape is
14 played?

15 A. Just behind the camera right there.

16 Q. Sergeant Detective, it's still rewinding. Let me ask
17 you one more question. Do you recognize -- would you
18 recognize again the person that you arrested that day?

19 A. Yes.

20 Q. Do you see him today?

21 A. Yes. He does.

22 Q. Where is he?

23 A. He says the man with the white shirt and the red tie.

24 Q. Without the jacket or with the jacket?

25 A. He's in the white shirt. Oh, without jacket.

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1 Q. Thank you, sir.

2 MS. MUNSON: I apologize, Your Honor, it's
3 taking so long to rewind.

4 THE COURT: How long is the tape?

5 Q. Sergeant Detective, approximate how long is this
6 tape, if you know?

7 A. Approximately an hour and eighteen minutes.

8 THE COURT: Can I see the attorneys just for a
9 moment?

10 (WHEREUPON, Ms. Munson and Mr. DeJong approached
11 the bar.)

12 THE COURT: All right. I tell you what, let's
13 just put everything on hold. If we can have the witness
14 step down. Sir, if you would step down and -- just for a
15 moment. Just have a seat for a moment. If you could
16 slide that just back in the corner so I can see the jury.
17 All right. Let's have our jury come in if you would,
18 please.

19 (WHEREUPON, the jury entered the open court at
20 approximately 10:25 a.m.)

21 THE COURT: Madame forelady, ladies and
22 gentlemen, I didn't want to keep you back there waiting.
23 We've got some legal matters. I told you yesterday
24 sometimes there's legal matters that come up that I have
25 to address and doesn't involve you. I anticipate it's

1 probably going to be another hour for me to do that. So
2 rather than you having to sit back there, I'm going to let
3 you just take an hour break. You can go shopping,
4 whatever you might want to do. But let me remind you
5 again not to discuss the case with anyone. Don't let
6 anyone discuss the case with you. Rather than just
7 leaving you sequestered back there in your jury room, I'll
8 let you at least get some fresh air. So if you'd be back
9 in your jury room at eleven thirty, we'll be ready to
10 start again at that time. Thank you very much for your
11 patience with us.

12 THE COURT: All right. If you could get your
13 equipment ready.

14 MS. MUNSON: We're ready, Your Honor.

15 MS. MUNSON: Can you see, Your Honor?

16 THE COURT: I can see fine. Thank you.

17 MS. MUNSON: Mr. DeJong?

18 MR. DEJONG: Thank you, Madam Prosecutor. I can
19 see.

20 MS. MUNSON: All right.

21 (WHEREUPON, State Exhibit Number 49 was played in
22 open court.)

23 THE COURT: All right. Officer Roy, if you'd
24 come back around, please. Let me remind you, sir, you are
25 still under oath. Any other questions of the witness?

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1 MS. MUNSON: Not as to Jackson v. Denno, Your
2 Honor.

3 THE COURT: You may cross examine the witness.

4 MR. DEJONG: Thank you, Your Honor. May it
5 please the Court.

6 **IN-CAMERA CROSS EXAMINATION**

7 **BY MR. DEJONG:**

8 Q. Mr. Roy, the rights that you read, were those rights
9 read from a card or a piece of paper?

10 A. Yes. It's from the card.

11 Q. And that card, is it used by Canadian Police?

12 A. Yes. It is.

13 Q. The rights you read, are those rights that are given
14 Canadian citizens?

15 A. Yes. It is.

16 Q. And those rights would be read to any Canadian put
17 under arrest?

18 A. Yes. They do.

19 Q. When a prisoner is placed in your jail are they
20 issued a uniform?

21 A. No. They don't.

22 Q. They wear their own personal clothing?

23 A. Yes.

24 Q. Regardless of the length of stay, they would wear
25 their own clothing?

1 A. Yes. It's true.

2 Q. The jail that Mr. Shephard was put in, is that the
3 Montreal City Jail?

4 A. Yes.

5 Q. Describe for me briefly how the cells are set up in
6 that jail, please, sir.

7 A. It's a temporary detention center. The suspect, when
8 he's arrested, he's sent -- that's where he's sent. And
9 then after that he goes to a provincial center where the
10 Province is.

11 Q. When Mr. Shephard was put in the Montreal jail was he
12 with other prisoners or by himself?

13 A. He doesn't know.

14 Q. How did Mr. Shephard come to the interview room?

15 A. He's going to explain that phase, that part. He was
16 arrested on the 17th of June. Then he was sent to the
17 detention center in Montreal. Yes. Then he went to the
18 Provincial prison in Montreal. And it is two days after
19 that that's where they saw him. Twelve days, sorry,
20 twelve days after that they saw him.

21 Q. So this interview was held at the Provincial jail?

22 A. Yes.

23 Q. Not the jail where Mr. Shephard was first put?

24 A. Yeah. That's right.

25 Q. The Montreal jail, the Montreal jail, is that the

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- 1 jail where you work?
- 2 A. There are four detention centers for Montreal.
- 3 That's where they are sent. But they are never there for
- 4 more than twenty-four hours at the detention centers.
- 5 Q. For more than what?
- 6 A. For more than twenty-four hours at the detention
- 7 center, that's what he said. Then he goes to the
- 8 Provincial.
- 9 Q. So Mr. Shephard was at the Montreal jail for twenty-
- 10 four hours and then went to the Provincial jail?
- 11 A. Yes, sir.
- 12 Q. The Provincial Jail, is that where you work?
- 13 A. That Provincial Center is also in the city of
- 14 Montreal. But it's not the Montreal police that work
- 15 there. There are more prison guards of the Province.
- 16 Q. The video that we have seen was done at the
- 17 Provincial jail?
- 18 A. Yes.
- 19 Q. When did Mr. Shephard go to the Provincial jail?
- 20 A. The 18th of June is when he was probably transferred
- 21 there.
- 22 Q. So he was held in a Montreal jail until the 18th of
- 23 June and then to the Provincial jail?
- 24 A. Yes.
- 25 Q. Now, can you -- well, when Mr. Shephard went to the

1 Provincial jail was he put in a cell with other prisoners?

2 A. He doesn't know.

3 Q. Who got Mr. Shephard out of the cell to bring him to
4 the interview room that we saw on the video?

5 A. The guardians, the prisoner guards of the Provincial
6 prison.

7 Q. Was Mr. Shephard -- strike that. The rights that you
8 gave Mr. Shephard stated that what was written could be
9 used against him; correct?

10 A. Yes, sir.

11 Q. Was Mr. Shephard ever advised that he was being
12 videoed?

13 A. Yes. He saw the video. It was in front of him.
14 Yes, he knew that he's been videoed.

15 Q. But was he ever told he was being videoed?

16 A. He doesn't remember.

17 Q. Was Mr. Shephard ever told that he could quit asking
18 questions or stop asking -- answering questions at any
19 time?

20 A. At the beginning when they gave him his rights they
21 told him he could keep silent.

22 Q. That right was a right to remain silent from the
23 beginning; correct?

24 A. During the entire interview.

25 Q. The rights that you read, are they on a form?

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1 A. Yes. It is.

2 Q. That form, is it designed or have a place for the
3 suspect to sign?

4 A. No. There isn't any place for him to sign.

5 Q. So there was no written waiver of rights?

6 A. No. Nothing written was on the video -- just on the
7 video.

8 Q. To your knowledge did Mr. Shephard have access to
9 media?

10 A. Okay. He knows that they have access to the
11 television, but he doesn't know if they had access to the
12 internet.

13 Q. So that I'm clear. A prisoner in Canada in the
14 Provincial jail would be able to watch television?

15 A. Yes.

16 Q. You and Mr. Lombar were present when Mr. Shephard was
17 arrested?

18 A. Yes.

19 Q. But you did not interrogate him until twelve days
20 later?

21 A. And he's going to explain it. Yes. That's true and
22 he's going to explain it. The only thing they did is to
23 arrest the suspect that was a suspect that was -- that
24 committed a crime in South Carolina. And then they
25 notified the police. And these people had to come and get

1 him. And then they asked us to get him and interrogate

2 him. And that's why it took twelve days. At their

3 request that -- that's why.

4 Q. United States authorities, police officers, asked you
5 to interrogate Mr. Shephard?

6 A. Yes, sir.

7 Q. Thank you, sir.

8 THE COURT: Any redirect?

9 MS. MUNSON: No, sir.

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

11 Any other testimony from the State?

12 MS. MUNSON: No, sir.

13 MR. DEJONG: You've rested on the Jackson v.

14 Denno?

15 MS. MUNSON: Yes, sir.

16 MR. DEJONG: Defense would call Mr. Roger

17 Shephard to the stand for the purposes of Jackson v. Denno

18 only. If you'd go around and be sworn.

19 MISTER CLERK: Place your left hand on the bible and

20 raise your right hand. Do you solemnly swear or affirm

21 the testimony you're about to give in this case to be the

22 truth, the whole truth and nothing but the truth, so help

23 you God?

24 DEFENDANT: Yes, I do.

25 MISTER CLERK: If you would have a seat and

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1 state your name for the record.

2 DEFENDANT: Roger Eugene Shephard.

3 ROGER EUGENE SHEPHARD,

4 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

5 IN-CAMERA DIRECT EXAMINATION

6 BY MR. DEJONG:

7 Q. Mr. Shephard, do you understand the purpose of this
8 hearing that we're in right now?

9 A. Yes. I do.

10 Q. Okay. Get a little closer to the microphone so we
11 all can hear you. Okay? We're here to talk about the
12 statement; correct?

13 A. Yes.

14 Q. All right. You were arrested by Canadian authorities
15 on June the 17th of 2006?

16 A. June 17th, yes.

17 Q. Where were you taken once you were arrested?

18 A. As Sergeant Detective Marco Roy said, I was taken to
19 the Provincial for a little less than twenty-four -- I was
20 taken to the Montreal police ---

21 Q. Where were you first taken?

22 A. To the Montreal -- it's the holding cells and then
23 later I was taken to the Provincial jail.

24 Q. Describe the holding cell?

25 A. The holding cell, much like the one here, a bench and

1 a toilet.

2 Q. By yourself or other prisoners?

3 A. Yes. By myself.

4 Q. Pardon me?

5 A. Yes.. By myself.

6 Q. All right. Then they moved you to the Provincial
7 jail?

8 A. Correct.

9 Q. Describe the Provincial jail for me?

10 A. Well, at first I didn't see the rest of the
11 Provincial jail. They took me in -- well, in French
12 Canadian prison, the reason you don't wear uniforms is
13 because they don't quite have enough money to give the
14 inmates uniforms. And based on what South Carolina has
15 been saying, they thought I might have been very
16 dangerous. So when you're placed in a hole you have no
17 sink, no toilet. You have a little drain that you use the
18 bathroom on the top of that. And they take your clothes
19 as well.

20 Q. How long were you in that cell?

21 A. I lost track of time. There's not even any light or
22 anything in there. I'm not even sure.

23 Q. Well, let me ask the question somewhat differently.

24 From the time you got to the Provincial jail to the time
25 you talked to Detective Sergeant Lombar and Detective

1 Sergeant Roy, did you ever change cells?

2 A. No. I did not.

3 Q. And that cell you have just described for us, how big
4 was it?

5 A. I would say maybe eight by eight.

6 Q. All right, sir. Did it have a commode in it?

7 A. No. It did not. It had a drain in the floor and
8 that's what you would use for a bathroom.

9 Q. Now, do you recall talking to Detective Sergeant
10 Lombard and Detective Sergeant Roy on July the -- excuse
11 me, June the 29th of 2006?

12 A. I don't recall the date, no. I had no idea what the
13 date was. You lose track of time in a place like that.

14 Q. Well, do you know how many days you had been in
15 Provincial jail before you went to that interview room?

16 A. No idea, not the exact numbers.

17 Q. How or who took you from that cell you described to
18 the interview room?

19 A. It was the prison guards. The names I'm not exactly
20 sure. At that time I spoke maybe two or three words of
21 French, so I couldn't even pronounce their names. But I
22 told them I didn't want to go anywhere. And I asked who I
23 was seeing. And they said, you are going to see a lawyer.
24 And then as they took me into the room, I looked in there
25 and I said, that's not my lawyer. The guard pushed me in

1 the room and said, lawyer. He just said lawyer and closed

2 the door. He didn't speak English very well.

3 Q. How big was the interview room?

4 A. Not very big. Maybe six by eight, I would think.

5 Q. Was it bigger or smaller than the cell you were in?

6 A. It was very, very close to the same size.

7 Q. All right, sir. Now, do you recall either Detective

8 Sergeant Lombar or Detective Sergeant Roy reading or

9 giving you certain rights?

10 A. When I was first arrested I didn't receive any

11 rights. Actually in the paperwork there was a card that

12 was supposed to be signed that those rights were read to

13 you. And nowhere will you find my signature because these

14 rights were not read to me.

15 Q. But do you recall being given some sort of rights?

16 A. When I was first arrested?

17 Q. No. On the interview. When you went into the

18 interview room?

19 A. Yes. They gave -- they did.

20 Q. Do you recall ever having been advised that you could

21 stop answering questions at any time?

22 A. I don't remember, I don't remember that,

23 particularly.

24 Q. Were you told that you could remain silent?

25 A. Yes. I was told that I could remain silent.

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- 1 Q. Did you have a lawyer in Canada?
- 2 A. Yes. I did. His name was Clemente Montoroso.
- 3 Q. I'm sorry?
- 4 A. Yeah. His name was Clemente Montoroso.
- 5 Q. All right, sir. And when were you appointed that
- 6 lawyer?
- 7 A. Well, actually he appointed himself to my case.
- 8 Q. That's fine.
- 9 A. Several days after I was arrested.
- 10 Q. Well, was he your lawyer before Detective Sergeant
- 11 Lombar and Detective Sergeant Roy had this interview with
- 12 you that we just saw?
- 13 A. Yes. He was.
- 14 Q. And as a matter of fact, they talked to you about
- 15 this lawyer in the video, did they not?
- 16 A. Yes. They did.
- 17 Q. Before you went on the video that we saw, the camera,
- 18 did you ever talk to Detective Sergeant Lombar or
- 19 Detective Sergeant Roy?
- 20 A. Regarding the case, I never spoke to them. But
- 21 before that time I did speak to them, yes.
- 22 Q. And when did you speak to them?
- 23 A. The exact date I'm not sure. I spoke to them the day
- 24 I was arrested, which was maybe two or three words. I'm
- 25 not sure when after that, but it was perhaps a week or two

1 before the interview.

2 Q. All right. How was Detective Sergeant Lombar or --
3 and/or Detective Sergeant Roy dressed when they were doing
4 this video thing?

5 A. It's been three and a half years ago.

6 Q. I understand.

7 A. I believe they were wearing a suit and a tie.

8 Q. Did they have a gun?

9 A. Not that I saw.

10 Q. All right. How long did this interrogation last, to
11 your recollection? You've seen it on video. But to your
12 recollection how long did it last?

13 A. I would say around an hour.

14 Q. Were you ever offered a break?

15 A. No. I was not.

16 Q. Never offered anything to drink?

17 A. No.

18 Q. Just rolled right on through; right?

19 A. Yes, sir.

20 Q. And this was about three o'clock in the afternoon, I
21 gather?

22 A. From my cell I had no idea to know what time it was,
23 so ...

24 Q. What were your sleep patterns like when you were in
25 the jail?

1 A. I didn't sleep very well because we -- like I said,
2 they take your clothes and it's very cold. And you don't
3 have any sheets or any blankets. You lay on a metal
4 pallet. So I didn't sleep very much.

5 Q. Thank you, sir. The witness is with you, Ms. Munson.

6 MS. MUNSON: Thank you.

7 **IN-CAMERA CROSS EXAMINATION**

8 **BY MS. MUNSON:**

9 Q. That's you on that video; isn't it?

10 A. Yes. That's me.

11 Q. Okay. Do you deny that you were wearing a watch in
12 that video?

13 A. No. I don't deny that.

14 Q. But you don't know what time it was?

15 A. No. I don't know what time it was.

16 Q. Okay.

17 A. They gave me the watch back. They actually gave me
18 clothes to wear on the way there.

19 Q. Before they put you in the interview room, that's
20 when they sort of dressed you up?

21 A. Because I started asking them for my property because
22 I was in the cell, in the hole, so they thought I was
23 dangerous. There's no clothes and -- nothing.

24 Q. Okay. When you were first arrested you say you were
25 not read any rights?

1 A. No. I was not.

2 Q. Okay. Do you deny making a statement to Detective
3 Roy and Detective Lombar that -- words to the effect of,
4 you guys got me by tracing the car. Do you deny saying
5 that?

6 A. Yes. I do deny saying that.

7 Q. Okay.

8 A. I didn't say anything at all to that effect.

9 Q. But they did not interrogate you on that scene when
10 you were first arrested; correct?

11 A. No. They did not.

12 Q. All right. They -- did you ask them for a break?

13 A. No. I didn't. I was in jail in another country.
14 The first time I've really been in jail more than about
15 twelve hours. I had no idea what was happening.

16 Q. Okay. Did they treat you badly?

17 A. When I first arrived there, I would say yes.

18 Q. No. I'm talking about on the video. When Detective
19 Lombar and Detective Roy questioned you?

20 A. On the video, no.

21 Q. Did they abuse you before the video?

22 A. I would -- physically, no. But I had no choice to
23 talk to them because they said that I would never get out
24 of the solitary confinement in the hole, which if you can
25 -- if you've ever been that cold you'll do anything to get

- 1 out of a place like that.
- 2 Q. All right. It was the people in the jail that you
- 3 say were mistreating you?
- 4 A. Yes. They told me that if I refused to talk to them
- 5 I would go back there.
- 6 Q. Okay.
- 7 A. But if I -- this was before the video camera, and if
- 8 I chose to talk to them then I would be allowed to go to
- 9 population.
- 10 Q. And did they do that for you?
- 11 A. Eventually, yes. I went to population.
- 12 Q. And you think because you talked?
- 13 A. I don't know.
- 14 Q. Did you understand what Sergeant Detective Lombar was
- 15 saying to you?
- 16 A. For the most part.
- 17 Q. That you didn't have to talk?
- 18 A. Yes. I understood that.
- 19 Q. Did you understand that you had a right to call your
- 20 lawyer if you wanted to?
- 21 A. Yeah. I understand that now.
- 22 Q. All right. Well, when you told him that on the
- 23 video, you didn't understand it when you told him that?
- 24 A. His accent is somewhat hard to understand.
- 25 Q. All right. The entire time that you're on the video,

1 Detective Lombar and Detective Roy were together; correct?

2 A. I think Detective Marco Roy left for a short break,
3 but I'm not sure.

4 Q. During the video?

5 A. Yes. Sometime during the interrogation, I believe he
6 did. This has been three and a half years. I really
7 don't even recognize this man, so I can't say if that is
8 ...

9 Q. Okay. But you think Detective Roy may have walked
10 out some time while the video was running?

11 A. Well, yes. His partner, if it was Detective Roy, can
12 identify him. I don't remember what he looks like. At
13 some point he did leave.

14 Q. I have nothing further. Thank you, Mr. Shephard.

15 THE COURT: Any redirect?

16 MR. DEJONG: Nothing on redirect. Step down.

17 THE COURT: Thank you, sir. You may return to
18 your seat.

19 THE COURT: Any other witnesses?

20 MR. DEJONG: No other witnesses, Your Honor.

21 THE COURT: Anything in reply?

22 MS. MUNSON: No, sir.

23 THE COURT: All right. Be glad to hear you on
24 argument as to the admissibility of the statement.

25 MR. DEJONG: Thank you, Your Honor. From the

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1 State or from the defense, I'm sorry.

2 THE COURT: I presume you're opposing it?

3 MR. DEJONG: You presumed accurately, Your
4 Honor. I do oppose it. I would move that it not be
5 admitted into evidence. Your Honor, the undisputed
6 testimony at this point in time is that my client was held
7 in a cell for some at least eleven days that was basically
8 eight by eight and had no latrine. He had no clothes
9 until he came to the interview room as shown by the -- as
10 Your Honor has seen or at least seen parts of it. It was
11 cold. He was told he would be moved if he would
12 cooperate, if he would talk. And based on that, in large
13 part, Your Honor, is the reason he said he talked.

14 Two other issues that I would bring up, Your Honor.
15 And that is, it's very clear and I don't think there is
16 any question about it based upon evidence presented by the
17 State during this Jackson v. Denno hearing that the
18 Canadian authorities were obtaining this statement at the
19 request of the United States government. More
20 specifically, I gather, Easley, South Carolina. I would
21 submit, Your Honor, that at the time they started taking
22 this statement they became agents of the United States.
23 And as agents of the United States they were bound by the
24 same laws that any law enforcement agent in the United
25 States would be bound to in doing an interrogation or

1 questioning. The first problem that I would bring to the
2 Court's attention is, and I cannot give the Court a cite,
3 but within the last ten years to eleven years, I believe,
4 Your Honor, it may be more recently than that, but the
5 United States Supreme Court issued a decision with regard
6 to Miranda that not only must a suspect be advised of his
7 right to remain silent, but as I recall that case, Your
8 Honor, he must further be specifically advised that during
9 the course of the interrogation he has the right to stop
10 asking -- or answering questions at anytime and to
11 terminate that interrogation. The second issue I would
12 bring to the Court's attention is this, Your Honor.
13 Again, I would submit to you that the Canadian Authorities
14 were acting as agents of the United States Government,
15 more specifically Easley Police Department on June the
16 29th of 2006 when they took that statement. Again, as
17 such they were bound, I submit, through agency by the same
18 laws that any law enforcement agent would be subject to in
19 the United States.

20 Now, the point I make there, Your Honor, is that
21 these police officers obviously knew that Mr. Shephard had
22 an attorney. There was no doubt about it. Matter of fact
23 he's the one that said he didn't remember talking to a
24 lawyer and they brought it up. They gave him the phone
25 number and the name of the guy he called and he said, yes,

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1 I talked with him. I submit, Your Honor, he was
2 represented by counsel on June the 29th of 2006, according
3 to this tape, the time being some three something in the
4 afternoon, that he was represented by counsel. There was
5 no question he was represented by counsel by the
6 statements that were made by the detectives on the tape.
7 And therefore they could not have taken interrogation
8 under the laws of this country. Once law enforcement
9 knows you have a right -- you have counsel, they can no
10 further question you. Not at least without the consent of
11 the counsel. So for all of those reasons, Your Honor, I
12 submit that the statement, video, should not be admissible
13 into evidence nor shown to the jury.

14 THE COURT: Is there also an issue as to the
15 initial statement at the arrest?

16 MR. DEJONG: I will address that, Your Honor.
17 My client clearly said he was not advised of his rights.
18 Detective Sergeant Roy said that he was. But my client
19 said he was not advised of his rights. Excuse me.
20 There's no question that he was in custody at that point
21 in time. That there was no question that he was in
22 custody. There's nothing in writing that he ever waived
23 his rights, which I certainly think had there been a
24 signed waiver that would have certainly given credence to
25 the Canadian authority argument that he was given his

1 rights. Either Canadian or American. But as a American
2 citizen, I would submit, Your Honor, he was entitled to
3 his rights under the laws of this -- the Miranda warning
4 under the laws of this country. I beg your pardon. I
5 would have nothing further to add as to the statement at
6 the time of arrest.

7 THE COURT: All right. Solicitor?

8 MS. MUNSON: May it please the Court, Your
9 Honor. As to the ill treatment that is not on video, it's
10 my position that the video speaks for itself. The
11 Defendant, he admitted it was him. Several times in that
12 video he was asked, has anybody mistreated you? Has
13 anybody promised you anything? Specifically, promised you
14 anything? Every single time he said no. He is not sick
15 appearing. He even laughs and jokes with the detectives
16 about paint ball and some other things. So I think that
17 the video speaks for itself as to whether or not he was
18 promised anything or threatened in anyway. Certainly he
19 can testify to that. But I think that there's not --
20 certainly there's enough evidence to show that his
21 statement was voluntary.

22 As to whether or not the United -- the detectives
23 were acting as agents of the United States, I'm not quite
24 sure how to address that. I don't think that's
25 necessarily the case. But the issue is -- I think the

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1 only issue is the Fifth Amendment issue of whether or not
2 he knew what his rights were and gave them up voluntarily,
3 and then the right to counsel issue. I think it's much
4 better to have it on video than in writing for him to be
5 asked the question directly, do you understand your rights
6 and for him to begin to speak. Again, the State's
7 position is that the video speaks for itself.

8 As to the right to counsel, the right to counsel is
9 the Defendant's right. He had a lawyer representing him
10 on an immigration issue which is a civil issue. There's
11 no testimony and I don't think it's possible that this
12 immigration lawyer in Canada was representing this
13 defendant on these criminal charges from South Carolina.
14 He actually hadn't even been arrested on them yet, Your
15 Honor. He was detained for immigration and the charges in
16 South Carolina and that was made clear to him in the
17 video. And I'm looking at Supreme Court of South Carolina
18 -- I'm sorry, Supreme Court of the United States, Jesse J.
19 Montejo, M-o-n-t-e-j-o, versus Louisiana. And it says in
20 part, Sixth Amendment right to counsel may be waived by
21 the Defendant so long as relinquishment of that right is
22 voluntary, knowing and intelligently. The Defendant may
23 waive his Sixth Amendment right to counsel whether or not
24 he's already represented by counsel. The decision to
25 waive need not itself be counseled.

1 It's the State's position that he was given all the
2 proper rights that he is required to get as a United
3 States citizen. He knew what they were, he understood
4 them and he waived them. And we would ask you to find
5 that it is voluntary and allow it into evidence.

6 THE COURT: All right. Let me see the attorneys
7 just a moment for scheduling purposes. We've got a jury
8 out.

9 (WHEREUPON, Ms. Munson and Mr. DeJong approached
10 the bar.)

11 THE COURT: All right. We'll take a five minute
12 break.

13 (WHEREUPON, Court stood at recess for a short break.)

14 THE COURT: Ready to call your next witness,
15 Solicitor?

16 MS. MUNSON: Yes, Your Honor.

17 THE COURT: Let's have our jury come in, please.

18 MR. DEJONG: Your Honor, would you -- before the
19 jury comes back in, did you rule on the record on ...

20 THE COURT: I have not.

21 MR. DEJONG: You have not.

22 THE COURT: That's under advisement.

23 MR. DEJONG: Very good. Thank you.

24 (WHEREUPON, the jury entered the open court at
25 approximately 12:18 p.m.)

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1 THE COURT: Thank you very much, ladies and
2 gentlemen. I'm trying to estimate time as best I can but
3 sometimes I fail. I apologize. Solicitor, you may call
4 your next witness.

5 MS. MUNSON: State calls Francis J. Neeley.

6 MISTER CLERK: Place your left hand on the bible
7 and raise your right hand. Do you solemnly swear or
8 affirm the testimony you're about to give in this case to
9 be the truth, the whole truth and nothing but the truth,
10 so help you God?

11 FRANCIS NEELEY: I do.

12 MISTER CLERK: Thank you, sir. If you would
13 have a seat and state your name for the record.

14 FRANCIS NEELEY: My name is Francis Neeley,
15 F-r-a-n-c-i-s N-e-e-l-e-y.

16 FRANCIS J. NEELEY,

17 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MS. MUNSON:

20 Q. Who do you work for, sir?

21 A. For the United States Department of Justice, Bureau
22 of Alcohol, Tobacco, Firearms and Explosives.

23 Q. How long have you been with them?

24 A. I've been a law enforcement officer approximately
25 thirty years. I've been with the Federal Government

1 approximately twenty-four and a half years. And I started
2 with ATF in 1990.

3 Q. Okay. Where are you currently assigned?

4 A. I'm the resident agent for Plattsburg, New York and
5 that falls under Albany, New York field office, the New
6 York Field Division.

7 Q. Was that your position back in 2006?

8 A. I covered the same territory, but we didn't actually
9 have an office in Plattsburg. It was commutable out of
10 Albany, which is about three hours from Plattsburg.

11 Q. Okay. So what is it -- you said you're the resident
12 agent. What are your duties?

13 A. I work for ATF as a special agent. We enforce the
14 federal firearms laws, the federal arson and explosive
15 laws and some federal narcotics laws.

16 Q. All right. Now, when did you become involved in this
17 case?

18 A. It would have been the week of June 18th to the 24th.
19 I believe the first contact we had was I received a phone
20 call from the New York State Police and that would have
21 been on June 20th, 2006.

22 Q. Okay. And in your response to the call that you got
23 from the New York State Police, what did you do?

24 A. I immediately followed up a phone call to ATF in
25 South Carolina here and also assisted the New York State

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1 Police in a joint investigation.

2 Q. Okay. As part of your investigation did you go out
3 and look anywhere for anything involving this case?

4 A. I did. After I received the basic information -- we
5 had very general information. Both the state police and
6 myself tried to cover an area from the Canadian border
7 south to -- towards the city of Plattsburg which is about
8 an hour south of the U.S./Canadian border.

9 Q. What were you looking for?

10 A. We were informed to try to locate and recover a black
11 bag containing ten firearms.

12 Q. Okay. How long did you look?

13 A. Probably a week or two, initially. Well, from the
14 20th up until probably around the 25th, 26th, something
15 like that. At that point we realized that -- we had not
16 recovered them at that point I should say.

17 Q. Okay. Now, at some point did you get additional
18 information?

19 A. We did. On the evening of the 29th of June, I
20 received a phone call from an investigator with the New
21 York State Police Gun Unit, out of Troop B, which is who I
22 work with regularly, and said that they had received some
23 additional ---

24 MR. DEJONG: Objection to what he said, Your
25 Honor.

1 THE COURT: Sustained.

2 Q. When you got this additional information that evening
3 what did you do the next day? Or what did you do that
4 night after you got the information?

5 A. I had offered actually to drive from my residence up
6 to the Canadian border and meet the State Police Gun Unit.
7 It's about a three -- two to three hour drive. And we
8 determined that because there was almost no light left,
9 only an hour or two of light, that the state police would
10 commence a cursory search and that we would start a full
11 blown search with the additional information the following
12 morning on scene at eight a.m.

13 Q. Okay. When you say on scene, what area had you
14 narrowed your search down to?

15 A. On Interstate 87, which travels from New York City to
16 the Canadian border, the mile markers start, in this
17 particular case start in Albany and go north. And it was
18 approximately mile marker one seventy-two and one seventy-
19 three.

20 Q. Okay. Who all was involved in this search?

21 A. I led the search along with Investigator Brent
22 Davidson of the New York State Police Gun Unit. The
23 search consisted of both uniform and plain clothes state
24 troopers from the New York State Police. That would be
25 the Troop B Unit -- or Troop B, those would be the

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1 uniformed officers and in New York state what we call the
2 BCI or Bureau of Criminal Investigation which falls under
3 the State Police. It would be made up of those two groups
4 of people, as well as myself and another ATF agent and an
5 ATF canine.

6 Q. Okay. Now, prior to doing this search -- and what
7 was the date?

8 A. The search was scheduled for June 30th to commence at
9 eight a.m.

10 Q. Okay. Now, prior to actually going out and
11 searching, what instructions were the individuals involved
12 in the search given?

13 A. We all met at a U-turn at the interstate at a given
14 mile marker. I don't recall the exact mile marker.
15 Anyone involved in the search was told to be there at
16 eight o'clock, at which time I gave directions as well as
17 Investigator Davidson of the State Police gave directions
18 which is, we are to look, if you -- and a description was
19 given of what we're looking for, a black bag and/or any
20 firearms or ammunition anywhere that we would find in that
21 designated area. And that under no circumstances was
22 anyone to touch anything when it was found. They were to
23 contact myself or Investigator Davidson immediately and at
24 which point we would then come in. And we laid out a
25 procedure, which is very standard for us. You don't

1 touch. We would take initial photographs, measurements or
2 approximate distances. We would do a photo log in our
3 standard police procedure and make sure everything was
4 documented prior to anyone touching the firearms. And
5 then a designated person would be the sole person that
6 would actually recover the items of evidence and then take
7 the chain of custody.

8 Q. And who was that person in this case?

9 A. Myself.

10 Q. Okay. When you started this search were you in
11 vehicles or on foot? Explain to the jury what you were
12 doing.

13 A. It was quite a large area and there was a good
14 handful of us, so we started out following vehicles and
15 then we broke it down by approximate distances, landmarks.
16 Obviously the State Troopers are very familiar with the
17 interstate there so they refer to particular landmarks.
18 And we separated out to cover the designated area. And I
19 -- I'm sorry.

20 Q. Oh, that's okay. Go ahead.

21 A. I -- basically we all -- I went from the U-turn area
22 at that particular point and we commenced our search and
23 the search then was actually conducted on foot in what you
24 refer to as the median area of the state -- interstate.
25 And in this area that's quite a diverse parcel of land.

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1 There's some moat areas. There's some swamp. There's
2 some heavily wooded area. And it's quite a distance.
3 Q. Okay. At some point did your search turn up
4 anything?
5 A. Initially it did not. Not in our first designated
6 area. And then Investigator Davidson and myself and maybe
7 some other people I don't recall, but he and I kind of
8 regrouped and decided that -- we discussed several things,
9 bringing in additional ATF dogs out of Buffalo and New
10 Jersey, as well as state police and Vermont State Police
11 dogs. And we were trying to determine at what point we
12 would bring them in and how much further we would continue
13 conducting the search. And we also determined that it --
14 the area we had searched, we searched it quite thoroughly
15 and we felt that for whatever reason what we were looking
16 for was not in that area. So we then opted to expand the
17 search. And I suggested that the scenario which I was
18 briefly familiar with, both from Investigator Davidson and
19 the information he had received, as well as my personal
20 direct conversation with ATF down here in South Carolina,
21 that the subject had fled to Canada. And therefore to me
22 it seemed logical that you would pick the landmark which
23 was a sign that said, getting close to the border, Canada.
24 So we expanded our search from the sign that stated such,
25 which I believe it was the five mile an hour sign, and we

1 made a determination that we would search the entire five
2 miles until we found the bag with the firearms.

3 Q. And is that what you did?

4 A. We did.

5 Q. Now, on what date did you find these items?

6 A. I believe that was on June 30th.

7 Q. Where were you -- first of all, how did you know that
8 something had been found?

9 A. Well, I actually, I guess because I'm the one who
10 suggested we start at the key landmark, Investigator
11 Davidson broke up the rest of our searchers and everyone,
12 same thing, was designated a particular area from landmark
13 to landmark or from mile marker to mile marker. And
14 myself and a uniformed trooper by the name of Scott
15 Santor, we took the first segment which was from the New
16 York State Department of Transportation road sign that
17 said, United States Canadian border five miles. We took
18 from that point up to the first, I forget if it was
19 intended to be the first U-turn or wherever or until we
20 met the next search group, which in this case would have
21 been headed southbound on the interstate. We were going
22 northbound.

23 Q. Okay. And you and Santor -- was anybody with you and
24 Santor?

25 A. No. Strictly the two of us.

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1 Q. All right. And what happened while you and Santor
2 were searching northbound on 87?
3 A. We pretty much looked at the area we had to cover and
4 kind of shook our heads and we both decided logically --
5 you know, normally if someone were to dispose of something
6 they'd put it on the right side or the slow traveling lane
7 of the highway. But the area we had searched before, we
8 decided only to search the median area. So what we were
9 going to do is search all the median all the way to the
10 border before we decided to go beyond that and search the
11 outside area. So from the sign forward, and it was a very
12 brief distance between the sign and an overpass. I
13 believe it's called LaValley Road which is in Clinton
14 County, New York, in northern New York, approximately five
15 miles south of the Canadian border. We searched up to the
16 overpass and then continued under the overpass. From the
17 overpass we continued on in the median area northbound on
18 the interstate. And in this area was high grass anywhere
19 from four to six feet high and then woods. And in the
20 wooded area it was water from your -- depending on where
21 you were, from your ankles up to your knees. I started in
22 the wooded area and proceeded north with officer Santor to
23 my right. We probably went a -- I don't know, a hundred
24 feet, and for some reason at that point and we ended up
25 swapping out and he ended up closer to the wooded area and

1 I ended up closer to the high grass or closer to the
2 actual interstate northbound fast lane. At one point we
3 were probably, I'd say several arm lengths at most, away
4 from each other, and which he yelled and said, I've got
5 it.

6 Q. Okay. When he said that, where were you?

7 A. Probably within one to two arms length of him.

8 Q. Okay. And what did you do when he said, I've got it?

9 A. He pushed back some of the grass and then I pushed
10 back some more. And there was a black bag laying on the
11 ground. At that point I immediately contacted, I don't
12 recall if it was by radio, my state police radio, or
13 whether it was in fact by phone. But I told Investigator
14 Davidson, who was running the other end of the detail,
15 that it appeared as though we had found it and could he
16 please come down. And we did absolutely nothing until he
17 arrived.

18 Q. Okay. While you were waiting -- well, you just
19 answered that question. Once he got there, what happened?

20 A. He and I had already predetermined that I would
21 basically direct and he would in fact take the photos.
22 And at that point we had Officer Santor assist him taking
23 photos with a photo log. And we got some initial shots of
24 the bag. And at that point we unzipped the bag and the
25 bag was full of firearms.

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1 Q. Okay.

2 A. At that point we took a brief break. He contacted
3 the other investigators and uniformed personnel and they
4 all came back down to our area. Actually, a fair amount
5 of them actually at that point were cut loose. But
6 several came down to our area.

7 Q. Now, once you unzipped the bag what did you do then?

8 A. Well, initially like I said, we took photos.

9 Q. And after photographing the bag where it was, what
10 did you do?

11 A. We brought it up to the -- out of the high grass up
12 to -- there was a very small area, a moat area, we brought
13 it up to there which was almost on the shoulder of the
14 road, of the interstate. And at that point -- you know,
15 actually prior to touching the bag I had -- one of my
16 collateral duties, I'm a medic. I went to the back of my
17 vehicle and got rubber gloves and myself and whoever else
18 put on rubber gloves. But I took the bag up, brought it
19 up to -- out of the high grass area, unzipped it. And at
20 that point Investigator Davidson and myself, he took the
21 firearm out I believe and handed to me. I cleared every
22 firearm.

23 Q. What do you mean by that?

24 A. For safety purposes whenever you handle a firearm,
25 whether it be for hunting purposes or whether it be in law

1 enforcement, there's no difference. You assume --
2 probably the first time you actually should make an
3 assumption is that firearm is loaded and dangerous. So
4 you wouldn't ever touch a firearm or point it at anyone.
5 You should never point it at anyone regardless, but in
6 particular you want to make sure it's unloaded. And one
7 by one I unloaded each firearm determining all but one of
8 the firearms in the bag were loaded. And at that point
9 each firearm was -- we laid them down on the edge of the
10 highway. Photos were taken after each firearm was cleared
11 and the magazines or the what's commonly referred to as
12 clip, which is what's officially called a magazine, was
13 placed with each gun that it was removed from.

14 Q. Okay. Did you -- how many guns were in that black
15 bag?

16 A. There were nine firearms, to my recollection, in that
17 bag.

18 Q. Okay. Did you find anything else that day?

19 A. We did. The figure that Investigator Davidson was
20 given and also I was given from ATF down here in South
21 Carolina was there was ten firearms that we were in search
22 of. So at that point, once we identified these firearms,
23 the remainder of the search group went back and we
24 conducted a circular pattern from the point of where these
25 firearms were and expanded our search until Investigator

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- 1 Moverhill, who's an investigator with the New York State
- 2 Police Troop B Gun Unit, indicated he had found something.
- 3 Q. Okay. Where were you when he indicated that?
- 4 A. Probably three feet away. Also searching.
- 5 Q. Okay. When he said that, what did you do?
- 6 A. Stepped a little closer to him and looked down. And
- 7 initially it was hard to see, but we moved some more grass
- 8 and I saw a loaded magazine in the mud.
- 9 Q. How far away was the magazine from the bag?
- 10 A. Probably twenty, twenty feet, fifteen feet at the
- 11 most. I mean, it was not that far, but it was in a
- 12 diagonal position.
- 13 Q. Diagonal?
- 14 A. As in further from the highway.
- 15 Q. Okay. Other than ---
- 16 A. Going from memory here, it seems to me the
- 17 measurement we took, the bag -- black bag was
- 18 approximately twenty-five feet from hard surface, highway,
- 19 down the embankment in the high grass. And then the
- 20 magazine would have been an additional distance anywhere
- 21 from, you know, five, ten more feet, something like that.
- 22 I mean, it was not that far. It was less than twenty
- 23 feet, I don't recall the exact measurement of that, from
- 24 where the black bag is but almost in a straight line. So
- 25 it was as though the person who would have deposited the

1 bag would have then deposited the magazine. And obviously
2 when we found the magazine, we then looked further to see
3 if there was a firearm that it went to.

4 Q. And did you find one?

5 A. We did. Just a little bit distance from the
6 magazine, we found another firearm. And to my surprise it
7 was not without the magazine. It was in fact loaded with
8 another magazine.

9 Q. Okay. I'm showing you State's Exhibits 51, 52, 53
10 and 54. If you could just take a look at those.

11 A. Yes, ma'am.

12 Q. Do you recognize those?

13 A. Yes, ma'am.

14 Q. Do they truly and accurately depict the area of your
15 search?

16 A. They do.

17 Q. Okay.

18 MS. MUNSON: Your Honor, I offer State's 51, 52,
19 53 and 54 into evidence.

20 THE COURT: Any objection?

21 MR. DEJONG: Without objection, Your Honor.

22 THE COURT: Without objection Exhibit's 51
23 through 54 are into evidence.

24 (WHEREUPON, State Exhibit Numbers 51 through 54
25 were admitted into evidence.)

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1 Q. All right. Agent Neeley, this is State's Exhibit
2 Number 51. Now, using that laser pointer can you show the
3 jury the area of the search on the 30th when you found the
4 weapons?

5 A. Yes, ma'am. Just to give you a point of reference.
6 This is an interstate -- New York State Interstate 87.
7 These are northbound lanes. These are the southbound
8 lanes. This is the LaValley overpass. Here is a sign
9 that states U.S./Canadian customs five miles. Up here is
10 the US Canadian border. And we're -- basically towards
11 us, I don't know, another thirty to forty minutes would be
12 Plattsburg, New York, all within the county of Clinton in
13 the State of New York. And just -- this was -- we
14 actually were searching this entire area up towards here
15 initially. And then when we expanded our search, it was
16 from this side that I referred to, going to be all the way
17 to the Canadian border. And then in the end -- there's
18 another photo that would probably show up better, one of
19 the other photos, but that gives you a general overview.

20 Q. State's Exhibit Number 52 here, does this better show
21 the sign?

22 A. It does. The sign's right there. These are all
23 photos that were taken from the New York State Police
24 helicopter. And the only thing I would point out to the
25 jury is that this is a different season so the vegetation

1 is a little bit different, but it's very similar to the
2 way it was.

3 Q. This is State's Exhibit Number 53. What does this
4 show?

5 A. This is an overview where the car is when we tried to
6 take it with a view to get a good point of reference or
7 size. The LaValley Bridge would be back here. This is
8 the northbound lane. That's the southbound lane. And
9 basically almost from the bridge for a fair distance these
10 cattails, I don't know what you -- that's what we call
11 them. I don't know what the official term is. They're
12 right along the wooded area which is very dense in this
13 area. And that was the primary area and then the
14 cattails, high grass area and there was a lot more high
15 grass at the time.

16 Q. Okay. Let me also show you State's Exhibit's 55, 56,
17 57, 58, 59, 60, 61, 62, 63 and 64. Take a look at those.

18 A. These are all the photos taken by Investigator
19 Davidson in my presence. Actually at my direction or at
20 my request, these are the photos that he had taken.

21 Q. Okay. Do they truly and accurately depict what you
22 found on June the 30th when you found these weapons?

23 A. Yes, ma'am.

24 Q. Okay.

25 MS. MUNSON: Your Honor at this time I move

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1 State's 55 through 64 into evidence.

2 MR. DEJONG: Without objection, Your Honor.

3 THE COURT: Without objection Exhibits 55
4 through 64 are admitted into evidence.

5 MS. MUNSON: Thank you, Your Honor.

6 (WHEREUPON, State Exhibit Numbers 55 through 64 were
7 admitted into evidence.)

8 Q. All right. Agent Neeley, this is State's Exhibit
9 Number 55. Can you get those lights, Jack? What does
10 this show, Agent Neeley?

11 A. That would be high grass with the cattails
12 intermingled and further in and the black bag that we were
13 in search of.

14 Q. Okay. If you could use the laser pointer and point
15 exactly where the bag is. Right there. Okay. Now,
16 State's Exhibit Number 56, what does that show?

17 A. Ma'am, that would show a closer photo or observation
18 of the same bag.

19 Q. All right. Now, this is State's Exhibit Number 58.

20 A. Yes, ma'am.

21 Q. With the pointer can you explain to the jury what
22 this is?

23 A. That is the firearm that was found -- it's a little
24 hard to see due to the lack of contrast and color here.
25 But you see the butt end of the firearm and this is --

1 square is the magazine, loaded magazine that was in the
2 firearm. And the gun is actually upside down, if you're
3 actually looking at it from the bottom, buried in the mud,
4 in the ground in the same area.

5 Q. This is State's Exhibit Number 60. Can you explain
6 what this is?

7 A. Yes, ma'am. These -- as we brought up the firearms
8 we -- as I said, I cleared them or made them safe and then
9 laid them out on the highway when we recorded the actual
10 serial numbers and made sure they were safe and then
11 photographed the evidence as it laid here.

12 Q. All right.

13 A. And may I just point out, my recollection is each of
14 these firearms -- as I said we laid the magazines separate
15 from it so you could tell which magazine went with which
16 firearm. And each firearm was loaded, with the exception
17 of, my recollection is, of the actual revolver down here
18 on the end. All the other firearms were loaded at the
19 time.

20 Q. Okay. And State's Exhibit Number 64.

21 A. This would be the leader find which was the firearm
22 that you just saw from the underside. I don't know if
23 anyone noticed, but the little plate here we could see
24 when we looked at the underside. And the magazine, we are
25 now looking at the side verses the bottom and with

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1 magazine and fired a -- the round that was in the chamber,
2 in addition to the loaded magazine.

3 Q. All right. Agent Neeley, I'm handing you State's
4 Exhibit Number 65. Take a look at that.

5 A. Yes, ma'am. Can I take this out of the bag, ma'am?

6 Q. Absolutely.

7 A. Yes, ma'am.

8 Q. What is that, Agent Neeley?

9 A. This is a bag in which you did see depicted in
10 photos. And it's the bag that we found on the interstate
11 that was full of the nine firearms.

12 Q. How can you assure the jury that that's the same bag
13 that's in those photographs?

14 A. This is the bag that I affixed an evidence tag to and
15 we entered into ATF evidence at the time.

16 Q. Okay. Who else's names are on there besides yours?

17 A. Even though I basically collected all evidence, what
18 I had done basically by our ATF procedure is, I had the
19 person that technically found the item or saw it first, I
20 made sure that they signed the evidence tag, so there was
21 no question or for years later I could remember
22 specifically who saw it prior to me actually putting eyes
23 or hands on it. And on this tag it was Trooper Scott
24 Santor.

25 Q. Okay. You can just put that back in the bag. Now,

1 I'm handing you State's Exhibit Number 66. Can you take a
2 look at that?

3 A. Yes, ma'am.

4 Q. Do you recognize that?

5 A. I do.

6 Q. How do you recognize it?

7 A. Being one of the firearms recovered.

8 Q. And how do you know that's one of the firearms
9 recovered?

10 A. It was taken and itemized through our normal
11 procedure. An evidence tag was attached. And various
12 people signed it. In this case, Trooper Santor and myself
13 both signed the tag that this was in fact the firearm.
14 And at the time the serial number would have been read and
15 then entered into evidence.

16 Q. Now, what else is in State's Exhibit Number 66 other
17 than that firearm?

18 A. It would be what I refer to it as being Exhibit 3
19 when I took it as evidence, which being the ammunition
20 that came from this firearm.

21 Q. So State's Exhibit Number 66 is the firearm, magazine
22 and the ammunition?

23 A. And associated ammunition, yes, ma'am.

24 Q. I'm going to make this easier on both of us. I'm
25 handing you State's Exhibit Number 67. Take a look at

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1 that.

2 A. Yes, ma'am. Likewise based on the evidence tag and
3 the fact that I had Trooper Santor and myself sign it.
4 And that was cross referenced with the serial number on
5 the firearm. Again, recovered from the same scene.

6 Q. And it's State's Exhibit Number 66 also?

7 A. I apologize. Also there is ammunition associated
8 with that firearm and a magazine as well.

9 Q. Okay. Is there anything in these exhibits that
10 matches the serial number on the weapon to the evidence
11 tag?

12 A. Yes. According to ATF procedure policy we actually
13 -- the evidence tag is the most important. It goes on the
14 firearm and stays on the firearm until such time the
15 firearm is either returned or destroyed by the government.
16 In association with that we also do a sticker which gives
17 a computer generated description of the firearm. And in
18 fact it does have the case number and serial number of the
19 firearm as well. So it's a means of cross checking and
20 making sure that, you know, there's not a misread of the
21 serial number or something like that.

22 Q. Okay. What I'm going to ask you to do ---

23 A. You want me to hop down then?

24 Q. If you don't mind.

25 WITNESS: Your Honor, is that okay?

1 THE COURT: Yes, ma'am.

2 Q. He will be looking at State's Exhibits Number 68, 69,
3 70, 71, 72, 73, 74, 75 and 76. If you could just review
4 those.

5 A. Yes, ma'am. Yes, ma'am.

6 Q. Have you reviewed those exhibits?

7 A. I have. And they're all the exhibits, I believe it's
8 up to item 74 which would have been recovered in the black
9 bag. And items 75 and 76, I believe, are in fact the
10 items that were found separate in the proximity of the
11 black bag but outside the black bag. Both the magazine
12 and the firearm, loaded firearm, with the additional
13 magazine.

14 Q. Okay.

15 MS. MUNSON: Your Honor, at this time I offer
16 into evidence State's Exhibit Number 66, I'm sorry, 65,
17 66, 67, 68, 69, 70, 71, 72, 73, 74, 75 and 76.

18 THE COURT: Any objection?

19 MR. DEJONG: These things are still cleared;
20 aren't they?

21 WITNESS: Yes, sir.

22 MR. DEJONG: All right. Thank you.

23 WITNESS: Safe to go.

24 MR. DEJONG: Your Honor, I know it's -- if I
25 could just ask one question. Which exhibit was it that

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1 was found by itself outside of the ---

2 WITNESS: Yes, sir. I believe I stated that by
3 -- don't quote me on the number, but I believe it's 75 and
4 76 were the ones not found in the black bag.

5 MR. DEJONG: Thank you, sir.

6 WITNESS: I believe in the order they're in, it
7 should be the last two items.

8 MR. DEJONG: No objection, Your Honor.

9 THE COURT: Let me make an inquiry. All those
10 include the weapon, the ammunition and the magazine, each
11 bag?

12 WITNESS: I'm sorry, sir.

13 THE COURT: Does each bag contain the weapon,
14 the ammunition and the magazine?

15 WITNESS: Yes, sir. With the exception of the
16 revolver, which there's no ammunition.

17 THE COURT: I'm going to allow the Exhibits into
18 evidence. I am going to have the Court reporter remark
19 all of them as 65A through 76A and during lunch or
20 whenever we'll remove the ammunition. The ammunition is
21 not going to be with the gun. Ammunition is going to be
22 treated separately.

23 We have rules, ladies and gentlemen, I want you to be
24 aware of this too, of handling of firearms for everyone's
25 safety. And the Exhibits are now into evidence. You

1 won't have the ammunition and the guns back in your room
2 at the same time. We'll make sure you get one or the
3 other but not both. And so I'll have these separated as
4 far as the ammunition. They'll be sequential with the
5 same weapon if you do need that later. But I want you to
6 be assured that during the course of testimony that the
7 weapons are disengaged. They're locked. And there won't
8 be any availability -- before these are offered into
9 evidence the officers check and make sure they are
10 disabled in all ways. So subject to that requirement
11 under the rule I will allow Exhibit's 65 through 76 into
12 evidence along with Exhibit 66A through 76A.

13 MS. MUNSON: Thank you, Your Honor.

14 (WHEREUPON, State Exhibit Numbers 65 through 76 and
15 66A through 76A were admitted into evidence.)

16 Q. Now, Agent Neeley, I'm showing you what's been
17 already moved into evidence as State's Exhibit Number 77,
18 which is the -- well, what does that appear to be to you?

19 A. Yes, ma'am. It's an ATF form 3310., I guess, 11.

20 Q. Okay. Have you ever seen that before?

21 A. I've seen similar. This particular one, no, I have
22 not.

23 Q. All right.

24 A. It's, and I apologize, governmentese. It's basically
25 a federal firearm licensee form for inventory and theft

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- 1 report.
- 2 Q. Okay. Agent Neeley, did you record the serial
3 numbers, models and makes of the State's exhibits here?
- 4 A. I did.
- 5 Q. On the evidence tags?
- 6 A. Yes, ma'am. As well as a computerized sticker.
- 7 Q. All right. I'm handing you just -- it's not really
8 an exhibit I guess. Those -- what does that appear to be?
- 9 A. Well, these are actually -- this is actually a copy
10 of what is part of an exhibit. These are a duplication of
11 the evidence sticker which is affixed to every piece of
12 evidence, in addition to the evidence tag.
- 13 Q. Okay. What I need you to do, Agent Neeley, is
14 compare your evidence stickers to the theft loss report
15 ---
- 16 A. Okay.
- 17 Q. -- as far as the serial numbers of the handguns.
- 18 A. And I apologize, it may take me a minute.
- 19 Q. That's okay.
- 20 A. Yes, ma'am.
- 21 Q. Okay. Agent Neeley, how many, if any, of the guns
22 that were in the black bag are on State's Exhibit Number
23 78, the theft loss report? Or is it 77?
- 24 A. 76 would be the -- 75, 76, I think, are the last two
25 items, I thought. And I apologize, but going through this

1 quickly it appears that all of the firearms in the black
2 bag are on the theft and loss report.

3 Q. Okay.

4 A. The firearm, and I may be wrong on this, but based on
5 a quick glance, the firearm that was found separate,
6 being, I believe that's 75 and 76, is not on the loss and
7 theft report.

8 Q. And the one that is not on the theft loss report,
9 what model and make and caliber is that gun?

10 A. Yes, ma'am. That is a Glock pistol, being a non-
11 revolver, semi-automatic, model 23, .40 caliber, serial --
12 bearing serial number B-boy Y-young N-nancy 858 U-union S-
13 sam. That would be the only one that was not on this
14 report.

15 Q. Okay. Thank you.

16 MS. MUNSON: I have nothing further at this
17 time, Your Honor.

18 THE COURT: You may cross examine the witness,
19 Mr. DeJong.

20 MR. DEJONG: Thank you, Your Honor. May it
21 please the Court.

22 **CROSS EXAMINATION**

23 **BY MR. DEJONG:**

24 Q. Do you know how far it is from Easley, South Carolina
25 to Montreal, Canada?

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- 1 A. A long plane trip, I can tell you.
- 2 Q. As we'd say in the south, a fer piece; right?
- 3 A. I believe that to be true. Yes, sir. I don't know
- 4 the exact mileage.
- 5 Q. All right, sir. Highway or Interstate 87?
- 6 A. Yes, sir.
- 7 Q. Okay. Interstate 87 that is, I gather, two lanes
- 8 going north, two lanes coming south?
- 9 A. Some places toward city -- I mean, it could be three
- 10 or four lanes north and south. But in this area, correct,
- 11 two north, two south.
- 12 Q. Well, highly traveled road?
- 13 A. It's a relative question.
- 14 Q. Okay. A good bit of traffic?
- 15 A. Depending on what time of day you could probably
- 16 stand there for a long period of time and see no one.
- 17 Other times of the day there's -- it's the main
- 18 thoroughfare to Canada.
- 19 Q. You'd get hit every five seconds; correct?
- 20 A. (No verbal response.)
- 21 Q. All right, sir. Now, initially you started this
- 22 search on June -- well, I guess way back in June, around
- 23 the 18th, 19th?
- 24 A. The week of the 18th. I believe the actual day, I
- 25 think I testified to, was the 20th, I think was the first

1 day we were notified.

2 Q. Okay.

3 A. Which could have been in the evening. So no actual
4 searches would have started until the following day,
5 possibly.

6 Q. Which would have been the 21st?

7 A. 20th or the evening or 21st.

8 Q. Well, what areas were you searching on the 21st?

9 A. The -- in the areas in proximity to the interstate.
10 The information we had received gave various landmarks
11 where in fact the guns may have been left. So those were
12 areas we would then check.

13 Q. Well, how far were they from the Canadian border?

14 A. Everything would have been within that five mile
15 span.

16 Q. Beg your pardon?

17 A. Everything would have been in that five mile span.

18 Q. Okay. So on the 21st through the 30th, when you say
19 the weapons were recovered, all the search was within five
20 miles of the Canadian border?

21 A. I believe so.

22 Q. Okay. And nothing was found?

23 A. Correct, sir.

24 Q. All right. So that I'm clear, until June the 30th of
25 2006 did you search the wood lines?

1 A. I'm not sure I'm following the question, but if --
2 maybe I could help clear this up for you a little bit.
3 The areas that would have been searched initially, we had
4 very general information. And to my understanding the
5 median area had never been searched. The area that was
6 searched was from the highway outward, in fact beyond.
7 For example, you know, reference at some point was made to
8 possibly near a motel. So literally from the city of
9 Plattsburg to the Canadian border, any hotel or motel that
10 was visible from the highway, that area from the
11 interstate outward was checked.

12 Q. So nobody bothered to search the median until the
13 30th?

14 A. To my knowledge, no. I did not.

15 Q. I beg your pardon?

16 A. I said, I did not.

17 Q. Okay. So then on the 30th -- to say you really
18 started within five miles of the border on the 30th was
19 not accurate. You had already been searching within five
20 miles of the border?

21 A. You're wrong. I'm not -- either that or I'm not
22 understanding your question. What I said was accurate.

23 Q. Well, a few moments ago you said every -- your search
24 that you started on June the 21st was within five miles of
25 the Canadian border.

1 A. In certain other areas. Because like I said; we did
2 hit hotels, motels from the city of Plattsburg which is
3 south of that five mile area.

4 Q. But all -- again, with all -- within five miles of
5 the Canadian border?

6 A. No. Because those hotels and stuff, like I said,
7 would be further south towards the city of Plattsburg.

8 Q. All right.

9 A. Up in -- including the five mile area.

10 Q. Okay. Now, how wide is that median between the
11 northbound and the southbound lane?

12 A. There are areas where it's -- could be as narrow as
13 between the width of this room and there is other areas
14 where it is wider.

15 Q. Where you say the guns were found, how wide was the
16 median in that area?

17 A. I'd let yourself and the jury decide, I mean, to the
18 photo. I mean, I didn't pace off the actual distance from
19 northbound lanes to southbound lanes. But the one with --
20 that's why we took the photo and historically tried to do
21 that, take the photo with the car to give you a point of
22 reference.

23 Q. Well, the photos that were introduced into evidence,
24 you said they were not taken in the same season. When
25 were those photos actually taken?

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- 1 A. Those photos were taken this fall.
- 2 Q. Fall of 2009?
- 3 A. Yes, sir.
- 4 Q. And you say the weapons were recovered in ...
- 5 A. Well, let me rephrase that. The aerial photos I took
- 6 from a New York State Police helicopter the fall of 2009.
- 7 The photos on -- of the scene and recovery referencing
- 8 point of reference where the guns were found were
- 9 obviously taken on the day of recovery. If I misspoke I
- 10 apologize.
- 11 Q. Exhibit Number 65.
- 12 A. Yes, sir.
- 13 Q. You say that is the black bag that you found?
- 14 A. May I take it out again?
- 15 Q. Please.
- 16 A. Yes.
- 17 Q. Now, that is, according to you, in the same condition
- 18 as when it was recovered?
- 19 A. I don't believe I ever stated that. No. It's not
- 20 wet now and it's not full of firearms.
- 21 Q. Correct. Is there any dirt on it?
- 22 A. Yeah. It appears like there was some staining and
- 23 dirt.
- 24 Q. All right. The same now as there was on the day you
- 25 recovered it?

1 A. As I stated sir, no. It was wet, kind of buried in
2 the mud and it was full of firearms. So but the ...

3 Q. Somebody cleaned the dirt and mud off of it; didn't
4 they?

5 A. You have to ask somebody. I didn't.

6 Q. You were the chief; weren't you? You were the chief
7 investigator; weren't you?

8 A. I'm a Special Agent with the ATF. Did I oversee the
9 recovery? Yes.

10 Q. Right.

11 A. But if you're asking if someone cleaned the mud off,
12 not when it was in my possession, not when it was in the
13 ATF Albany office.

14 Q. The point is, what you're telling me now, it's not in
15 the same condition as when you recovered it?

16 A. As I stated, it's not full of firearms and it's not
17 wet.

18 Q. Yes, sir. All right. Any forensics ever done on the
19 bag?

20 A. You'd have to ask ATF South Carolina.

21 Q. Okay. In other word you're saying that wasn't your
22 responsibility?

23 A. No. That's not what I said.

24 Q. Okay. Well, how many people handled the bag before
25 it got to ATF South Carolina?

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1 A. Myself.

2 Q. Pardon?

3 A. Myself.

4 Q. Okay. Did you bring it down to South Carolina?

5 A. It was placed by me in a FedEx envelope and shipped
6 directly to ATF South Carolina.

7 Q. When was it shipped?

8 A. Shortly thereafter the incident. I don't recall the
9 exact date.

10 Q. Well, did it lay in a property and evidence room up
11 in New York for a while?

12 A. No. It was there several days and that was it. And
13 the only delay was determining, in all honestly,
14 determining who was going to pay for the actual shipment.
15 Whether it was ATF Albany or ATF South Carolina.

16 Q. For the black bag?

17 A. No, sir. For all the firearms, all the evidence that
18 was recovered, it all shipped in one package in its
19 entirety together. So they were not in Albany very long,
20 no.

21 Q. All right. Some few days is what I heard you say?

22 A. Yes, sir.

23 Q. Okay. All right. Now, the weapons themselves in
24 these pictures, which I believe are Exhibits 60 -- well,
25 let me go the other way here. Well, they've gotten out of

1 order now, but it looks like something like 55 to 64,
2 something like that. You took the guns out of the bag?
3 I'm sorry. I'll let you see these if you need to see
4 them.

5 A. Yes. I took the guns out of the bag.

6 Q. All right. What time frame was it between the time
7 they were taken out of the bag until the time they were
8 photographed?

9 A. Very shortly. I believe they came out of the bag at
10 something like twelve oh five and shortly thereafter would
11 have been photographed. And obviously some of those
12 photos were prior to them being taken from the bag.

13 Q. All right. Well ---

14 A. But they were brought up, cleared, the serial number
15 read, placed on the ground, photos taken.

16 Q. And that was the nine that you said that were in the
17 bag?

18 A. Yes, sir.

19 Q. Okay. And they had magazines in them with the
20 exception of the revolver that were loaded?

21 A. Yes, sir. It's my recollection.

22 Q. Not a chambered round but -- not a round in the
23 chamber but loaded magazines?

24 A. Correct.

25 Q. All right, sir. Now, the bag ---

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- 1 A. If I may for one moment?
- 2 Q. Sure.
- 3 A. However I believe the one firearm that was found
- 4 separate with the additional magazine in the mud, I
- 5 believe that firearm had a round in the chamber.
- 6 Q. Okay. We'll come back to that momentarily. The --
- 7 what's the speed limit on Interstate 87, by the way? Do
- 8 you know?
- 9 A. Sixty-five miles an hour.
- 10 Q. Sixty-five. Is there a minimum?
- 11 A. Minimum is forty-five miles an hour.
- 12 Q. Is there a shoulder on each side of each lane?
- 13 A. Major shoulder on the slow speed lane. A relatively
- 14 narrow shoulder on the high speed lane.
- 15 Q. Is the road bed itself elevated or is it fairly level
- 16 with the terrain beyond the shoulder?
- 17 A. Give and take, depending upon where you are. Here
- 18 there was a -- there was probably enough space -- let's
- 19 just say there was several feet where you could get a
- 20 vehicle off without going down the embankment and then
- 21 there was a bit of a grade down.
- 22 Q. And the bag was -- did you measure how far the bag
- 23 was from the side of the road?
- 24 A. Approximately twenty-five feet.
- 25 Q. That's an approximation, not a measurement; right?

1 A. That was a measurement based on approximations. I
2 don't recall whether I paced or whether we actually
3 measured it with a tape measurer.

4 Q. All right. We're playing semantic games here. Okay.
5 You didn't take a tape measurer and measure it?

6 A. I don't recall. That's why I said, I don't recall if
7 it was measured by a tape measurer, which I usually have
8 in my vehicle, or whether it was paced off.

9 Q. And this bag was -- well, the bag itself, was it in
10 the muck and mire?

11 A. As you can tell from the photo, the whole area was
12 wet. But it was laying in the -- on top. It was not
13 buried.

14 Q. Do you recall what the weather had been like for the
15 previous two weeks?

16 A. Best I recall, based on traipsing through, there was
17 standing water in some areas that we searched. So there
18 was rain at some point in the time we commenced searching
19 up until the time they were recovered. I couldn't tell
20 you the exact forecast or how much.

21 Q. Yes, sir. And I understand that. But certainly
22 there had been enough rain over that -- over the past,
23 shall we say two weeks, where there was standing water?

24 A. In certain areas, yes. Not where we found the actual
25 gun. But yes, close in proximity to where that was, there

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1 was standing water.

2 Q. Well, I haven't gotten to the gun yet. I'm talking
3 about the bag, was it in water?

4 A. Same thing.

5 Q. Okay. All right. In high grass?

6 A. Correct.

7 Q. Was the grass laying down over this stuff at all?

8 A. Excuse me?

9 Q. Was the grass laying down or crushed down or
10 anything?

11 A. No. It was as though it was thrown.

12 Q. Pardon?

13 A. It was as though it was thrown from the roadside.

14 Q. Now, the weapon that you say was found by itself --
15 not the only photo but I guess the close up one was
16 State's Exhibit Number 64. That's the weapon you found by
17 itself; right?

18 A. It appears to be, yes.

19 Q. All right. And that weapon, according to you, had a
20 fully loaded magazine and a round in the chamber?

21 A. That's my recollection.

22 MR. DEJONG: One moment, please, Your Honor.

23 THE COURT: Yes, sir.

24 Q. So that I'm clear, the black bag and Number 64, which
25 was found by itself, would have been to the left or in the

1 center median; is that correct? To the left of the left
2 hand lane, I guess is what I'm saying?

3 A. Yes. As a point of reference if it helps, you would
4 have your right hand shoulder, the slow lane, passing or
5 fast lane, a small shoulder, small section of grass and a
6 decline, high grass and then high grass and additional
7 vegetation.

8 Q. Trees and all that good stuff?

9 A. No. Trees were just beyond that.

10 Q. Thank you, sir.

11 THE COURT: Any redirect?

12 MS. MUNSON: No, sir.

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

14 THE COURT: Madame forelady, ladies and
15 gentlemen, it's past lunch time for all of us. And I'm
16 grateful we could finish this witness before lunch. So if
17 you'll be excused now for lunch. If you'll be back at two
18 thirty, we'll be ready to start the case back then.

19 Remember not to discuss the case with anyone or let anyone
20 discuss it with you.

21 (WHEREUPON, the jury exited the open court at
22 approximately 1:19 p.m.)

23 THE COURT: All right. I'm going to go check
24 the law on the other motion. I'll be ready to rule when
25 we come back. If y'all could make sure that -- I want to

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1 make sure we comply with the rules as far as the
2 ammunition and the weapons. And I have arbitrarily,
3 Solicitor, designated different exhibits for you, but I
4 hope that y'all can get that taken care of during lunch
5 break so that we've got separate -- I don't know if you
6 can find baggies or whatever you need to show the
7 ammunition. You understand what I was saying. The
8 ammunition is with the weapon in one bag. The ammunition
9 needs to be marked with an A, if it's item 66 or whatever,
10 you can put it in another little baggie. Maybe you can
11 buy some baggies and have those marked. I just want the
12 ammunition separated from the weapons.

13 MS. MUNSON: Okay.

14 THE COURT: Pursuant to the rule from our
15 Supreme Court.

16 MR. DEJONG: When I get back from lunch, Your
17 Honor, I will be happy to make sure that Ms. Munson did it
18 right.

19 THE COURT: All right. All right. We'll take a
20 lunch break. Be back at two-thirty. Mr. DeJong, could I
21 see you just a minute before we leave? Okay? And Ms.
22 Munson.

23 (WHEREUPON, Ms. Munson and Mr. DeJong approached
24 the bar.)

25 (WHEREUPON, Court stood at recess for a lunch break.)

1 THE COURT: All right. I've spent some time
2 over lunch reviewing the law of the motion under Jackson
3 v. Denno. I wanted to -- obviously everyone knows that
4 any confession must be voluntary and must be admissible
5 under Miranda, of course, if it's a custodial
6 interrogation. We've got two statements involved here as
7 I see it. I've tried to reflect my notes from watching
8 the tape.

9 I don't believe, really, I need to address the
10 Miranda warning on the first statement. Whether it was
11 defective or not as the defense counsel has articulately
12 raised, I think really is not an issue because, as I
13 recall from the testimony, that was a -- of course,
14 there's conflict as to whether or not it was said at all,
15 but by the preponderance of the evidence I find that the
16 statement was made but that it wasn't made subject to any
17 interrogation. There was no questions asked. He made the
18 statement. This is the one relating to the trail of the
19 automobile or something to that effect. So I find that
20 statement would be admissible and not in violation of any
21 Miranda and voluntarily made by the Defendant. Obviously
22 the statements will certainly be subject to the view of
23 the jury as to whether or not they were voluntarily made
24 by the Defendant beyond any reasonable doubt. But for
25 this stage of the hearing then I believe that statement is

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1 admissible.

2 As far as the second statement, the one on the video,
3 again I've tried to review my notes. And I tried to
4 listen carefully as the testimony was given. The warning
5 by the Officer Roy of the Canadian -- or the Montreal
6 Police Agency obviously does not follow the same format
7 that is customarily seen in courts here in South Carolina.
8 However, I believe that all of the pertinent points
9 required under Miranda ruling that's binding upon our
10 court were complied with by Officer Roy. I believe I
11 heard the testimony right. Perhaps he even gave more
12 rights than we would expect here, particularly as to the
13 charges pending and so forth. From my notes I thought I
14 heard Officer Lombar say that you can call your attorney
15 at any time, it's up to you if you feel, you just let me
16 know. I believe that certainly meets the requirement of
17 -- which might be stated here in our jurisdiction of you
18 can stop the questioning at any time. I think that is
19 substantially the same advice that we would expect to have
20 here in the States.

21 I've further reviewed the U.S. Supreme Court cases,
22 not just Jackson v. Denno, but the case of Michigan verses
23 Jackson that was recently overruled back in May of this
24 year by our Supreme Court and Montejo v. Louisiana. I
25 looked at the Edwards case, Arizona and Edwards, Michigan

1 and Harvey. And all of these cases have little nuances
2 that are different factually. But I believe that,
3 particularly under those cases that I've read, that not
4 only was the right to counsel -- we got an interplay of
5 the Fifth Amendment and the Sixth Amendment of course
6 also. But the waiver of right to counsel I think it's not
7 only been established to be voluntary by Mr. Shephard, but
8 also knowingly and intelligently made as a relinquishment
9 or abandonment of a known right or privilege that he
10 enjoyed based upon, again, the video and the testimony
11 that I've heard from both witnesses. The facts in Edwards
12 are still good law. While Jackson might have been
13 overruled, the facts in the Edwards are much different
14 from the facts here for the invoking of attorney
15 privileges there. The Montejo case, I think the language
16 is fairly substantial that the Supreme Court of the United
17 States have made findings consistent with my ruling today.
18 I certainly want to protect the record for the
19 appellant courts that may look at this. And I'm primarily
20 focusing on pages twenty eighty-five and twenty eighty-
21 six, go all the way through twenty eighty-nine. I think
22 the language that the Court sets forth there in analyzing
23 where it's been and where it intends the law to be now
24 clearly provides that, based upon what I've heard, that
25 there was a voluntary waiver and that it was not a coerced

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1 statement in anyway and it was knowingly and intelligently
2 made by Mr. Shephard. And based upon that analysis that
3 our United States Supreme Court recently made, I will
4 allow the statement into evidence based upon the State's
5 request.

6 Anything else we need to take care of before the jury
7 comes back in?

8 MR. DEJONG: Your Honor, with regards to your
9 ruling, I'm not arguing with it, but out of an abundance
10 of caution, for the record, I will again object to that
11 one as proffered by the State as far as the video is
12 concerned. Obviously that objection will be made on all
13 previous arguments, etcetera.

14 THE COURT: All right, sir.

15 MR. DEJONG: I really don't think that's a
16 suppression motion, but as I said out of an abundance of
17 caution I will do that. The other thing -- one other
18 thing, Your Honor, is Ms. Munson has just handed me a
19 proposed stipulation that was talked about between her and
20 myself.

21 MS. MUNSON: John, I'm so sorry for interrupting
22 you. But, Your Honor, may I show that to Sergeant
23 Detective Roy to make sure it's accurate?

24 MR. DEJONG: I wasn't going to get into it. I'm
25 still reading it myself. Okay?

1 MS. MUNSON: Okay.

2 MR. DEJONG: I guess we need to finish that up
3 at this point in time.

4 THE COURT: All right. I've been handed the
5 stipulation that -- do y'all desire the Court to read that
6 or did one of you want to read it?

7 MR. DEJONG: I would prefer the Court read it,
8 Your Honor.

9 THE COURT: I'll be glad to read that ---

10 MS. MUNSON: Myself as well, Your Honor.

11 THE COURT: -- before the next witness comes.

12 MR. DEJONG: And just so we're clear. At this
13 point in time I don't know whether the State will offer --
14 excuse me, the defense will offer a defense or not, as a
15 stipulation not to be construed as any evidence on the
16 part of the Defendant.

17 THE COURT: It's not by this court.

18 MR. DEJONG: Thank you, Your Honor.

19 THE COURT: Anything else before the jury comes
20 in?

21 MR. DEJONG: Final matter, Your Honor. We had a
22 brief discussion yesterday morning, afternoon, I'm not
23 sure exactly when, when I brought to the Court's attention
24 that it was my client's desire that he be allowed to cross
25 examine one or two of the witnesses. Yesterday afternoon

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1 and again this morning my client has advised me that he
2 wishes to cross examine Detective Sergeant Roy. I told
3 him I would bring that issue before the Court for Your
4 Honor to make a decision on that. I offer him to the
5 Court for voir dire, Your Honor, if you wish to voir dire.

6 THE COURT: All right. Mr. Shephard, you're
7 already under oath. You can remain in your seat. That
8 will be fine. You don't need to stand up. Let me just
9 inquire of you. You have indicated through your attorney
10 that you wish to cross examine this witness. Do you
11 intend for your lawyer to also cross examine this witness?

12 DEFENDANT: That would be up to him, Your Honor.

13 MR. DEJONG: Your Honor, I don't mean to
14 interrupt, but I think maybe his answer was a little
15 ambivalent because of something I shared with him ---

16 THE COURT: Okay.

17 MR. DEJONG: -- when we initially discussed this
18 and I told him I did not believe that Your Honor would let
19 both of us cross examine.

20 THE COURT: I assumed you have given him that
21 advice. What you're seeking, Mr. Shephard, basically is a
22 hybrid representation where you get to represent yourself
23 and you also have a lawyer. I believe that in light of
24 the facts that we have in this case and having already had
25 an opportunity to hear this witness's testimony, some of

1 it, certainly not all of it that he may be offering,
2 again our United States Supreme Court has addressed this
3 issue of a defendant having a right to make special
4 appearances when he is represented by counsel. And they
5 said that he doesn't have any such right. Caskill verses
6 Wiggins decided that. While there's no Sixth Amendment
7 right, I find in this case that it would not be proper and
8 I believe that your rights are fully protected through the
9 efficient examination by your attorney. So based upon not
10 only the United States Supreme Court law but State v.
11 Sanders of South Carolina as well as State v. Stuckey, I
12 find that it would not be in the best interest of this
13 case for you to be allowed to do that, so I respectfully
14 deny your request, Mr. Shephard. Anything else?

15 MS. MUNSON: Nothing from the State, Your Honor.

16 MR. DEJONG: Nothing on behalf of Mr. Shephard,
17 Your Honor.

18 THE COURT: Ms. Munson, I assume that Officer
19 Roy is going to be your next witness.

20 MS. MUNSON: Yes, sir.

21 THE COURT: I don't know if you've already had a
22 chance to explain it, if not I'll give you an opportunity
23 now to explain to your client and to the interpreter, or
24 to your witness and the interpreter about the fact that
25 he'd be sworn again. Does he understand that?

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1 MS. MUNSON: I don't think I told him.

2 THE COURT: If you'd take a moment to let him
3 know the procedures when the jury is here we're going to
4 go through the same process again.

5 MS. MUNSON: He does know that.

6 THE COURT: Okay. So as long as he knows that
7 then perhaps she's able to whisper to him that now. I
8 just want it not to be an awkward moment when he says he's
9 already been sworn.

10 MS. MUNSON: Okay.

11 THE COURT: All right. Let's have our jury come
12 in.

13 (WHEREUPON, the jury entered the open court at
14 approximately 3:00 p.m.)

15 THE COURT: Madame forelady, ladies and
16 gentlemen, we have a stipulation of counsel. That's an
17 opportunity where the lawyers agree to a certain matter.
18 They've entered this into a record for me to read to you.
19 I need to do that at this time. Signed by both of the
20 attorneys. And it involves Sergeant Detective Mario
21 Lombar of the Montreal Police. And the stipulation
22 indicates that this officer is currently suspended with
23 pay pending an internal investigation in a matter that's
24 not related to this case. That stipulation is a part of
25 the record, a part of the evidence in this -- for

1 consideration by you.

2 I also understand from the solicitor that the next
3 witness will be testifying through an interpreter through
4 the French language. Now, this witness will be
5 testifying, the interpreter will be translating it. Some
6 of you may have some knowledge about the French language.
7 You cannot rely on your own knowledge of that language.
8 Even if you disagree with what the interpreter tells you
9 as far as the translation, you must accept that
10 translation of the witness's testimony by the interpreter.
11 All right. Ms. Munson, you may call your next witness.

12 MS. MUNSON: May it please the Court, Your
13 Honor. The State calls Sergeant Detective Marco Roy.

14 MISTER CLERK: Place your left hand on the bible
15 and raise your right hand. Do you solemnly swear or
16 affirm the translation you make will be a true and
17 accurate translation, that you will interpret and
18 translate from French to English the questions asked of
19 the witness and the answers received of the witness and
20 that you will omit no part of the testimony or add to any
21 testimony?

22 GLORIA BEYERLE: I do.

23 THE COURT: You'll need to translate this,
24 please, ma'am.

25 MISTER CLERK: Do you solemnly swear or affirm

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1 the testimony you're about to give in this case to be the
2 truth, the whole truth and nothing but the truth, so help
3 you God?

4 MARCO ROY: I do.

5 MISTER CLERK: If you would have a seat and
6 state your name for the record, please.

7 MARCO ROY: Sergeant Detective Marco Roy. I'm
8 from the Montreal police. Was that loud enough?

9 THE COURT: You need to make sure the jury hears
10 you, ma'am, as well the counsel. And he can move around
11 if he needs to. Primarily, the jury needs to hear what
12 you say.

13 MR. DEJONG: Your Honor, I'm not trying to keep
14 the jury from hearing the witness, but maybe if we could
15 get the microphone a little closer between the witness and
16 the interpreter, it might help, Your Honor.

17 GLORIA BEYERLE: Yes. This is Sergeant Marco
18 Roy from the Montreal police.

19 THE COURT: Thank you.

20 MS. MUNSON: If you want to come over here, Mr.

21 ---

22 THE COURT: If he needs to, he can.

23 MS. MUNSON: I'm worried about Ms. Beyerle
24 having to stand up the whole time.

25 MARCO ROY,

1 **BEING DULY SWORN, TESTIFIED AS FOLLOWS:**

2 **DIRECT EXAMINATION**

3 **BY MS. MUNSON:**

4 Q. All right. Sergeant Detective Roy, how long have you
5 been with the Montreal Police?

6 A. He's been twenty-five years.

7 Q. To what unit are you assigned?

8 A. Homicide Unit for the Montreal Police.

9 Q. How long have you been with the Homicide Unit for the
10 Montreal Police?

11 A. Since 2005.

12 Q. Okay. Do you speak any English?

13 A. Says he understands it about eighty percent and he
14 speaks a little.

15 Q. Do you write in the English language?

16 A. Yes.

17 Q. Okay. Now, how did your agency get involved in this
18 case?

19 A. The 6th of June in 2006, we received a request from
20 the Easley Police to help them to retrace and proceed with
21 their arrest of Mr. Shephard.

22 Q. Was it the 6th of June?

23 A. The 16th.

24 Q. Did you eventually take someone into custody?

25 A. Yes. We proceeded with the arrest of Mr. Shephard.

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1 Q. On what date?

2 A. The 17th of June of 2006.

3 Q. How much time did you personally spend around the
4 person you arrested?

5 A. He was arrested at noon by the SWAT team. And
6 following the arrest then he was sent to the Detention
7 Center of Montreal about fourteen hundred ten, which is
8 about two ten. He says he can give you the exact time if
9 he can verify his notes.

10 Q. I appreciate that. But what I'm asking is, would you
11 recognize the person you arrested if you saw him again?

12 A. Yes.

13 Q. Is he in the courtroom?

14 A. Yes. It's the person with the white shirt and the
15 red and blue tie.

16 MS. MUNSON: Your Honor, let the record show
17 that he has identified the Defendant.

18 THE COURT: Let the record reflect.

19 Q. Tell the jury about how Shephard was arrested?

20 A. He was arrested following information obtained
21 because of his credit card use that he used to make a
22 reservation at the hotel. The name of the hotel is Royale
23 Versar at Montreal. On Sherber Street in Montreal.

24 Sorry.

25 Q. Okay. Where was he arrested?

1 A. He was arrested at the -- right next to his car right
2 on the Sherber Street.

3 Q. How was he arrested? Describe that process.

4 A. First he had rented a room at the Hotel Sherber the
5 -- room 207. After having received a photo of the suspect
6 from the Easley police the receptionist at the hotel
7 recognized the suspect as a person that was renting the
8 room at -- 207 at the hotel. Then they had a surveillance
9 team took up a surveillance on that room. And the 17th of
10 June about noon, Mr. Shephard, Mr. Shephard left the room
11 and he was getting into his Cobalt, Chevy Cobalt. And
12 then he proceeded on Sherber Street where the SWAT team
13 intercepted his vehicle.

14 Q. Were you there when he was taken into custody?

15 A. Yes. He was there at his arrest.

16 Q. Okay. Did you question Mr. Shephard?

17 A. His partner, Mr. Lombar, is the one that arrested him
18 and read him his Miranda rights.

19 Q. Where were you when your partner was reading him his
20 rights?

21 A. Right next to him, alongside of him.

22 Q. Did you intend to question him right there?

23 A. No.

24 Q. Okay. Did he say anything to you?

25 MR. DEJONG: Your Honor, I object.

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1 THE COURT: All right. Your objection is noted.

2 MR. DEJONG: Thank you, Your Honor.

3 THE COURT: Excuse me, you may continue.

4 Q. Did he say anything to you?

5 A. He wants to verify his notes to see.

6 Q. Please.

7 A. Yes. He said something.

8 Q. What did he say?

9 A. You guys checked the car, that's how you knew where
10 to find me.

11 Q. How did -- how was he treated?

12 A. He was well treated after having been arrested. Mr.
13 Lombar and I, we took him in our vehicle to the detention
14 center, the police station.

15 Q. Okay. After you left him at the detention center,
16 did you ever speak to him again?

17 A. Yes. After we -- we met him again on the 29th of --
18 June, is it? Yes. The 29th of June.

19 Q. Okay.

20 A. At first all we had was a request for the arrest of
21 the suspect. And the what? And then to detain him for
22 immigration. That was the first request.

23 Q. Okay.

24 A. And then we communicated with Easley Police and it's
25 the 29th of June that they asked us to interrogate him, to

- 1 question him.
- 2 Q. Who went to interrogate him?
- 3 A. My partner and I went to the Provincial prison to
- 4 interrogate, to question him.
- 5 Q. When you -- from where in the prison did he come?
- 6 Where did he come out from in prison?
- 7 A. They didn't know exactly where he was located in the
- 8 detention center, but they interrogated him in a private
- 9 room.
- 10 Q. Who brought Shephard to Sergeant Detective Roy?
- 11 A. The prison guards are the ones that brought him.
- 12 Q. When the guards brought him to you, did you take him
- 13 right into the private room?
- 14 A. That's where they brought him. They were already
- 15 there in that private room. They brought him to them.
- 16 Q. Now, when he got in the room with you and your
- 17 partner, what did you first do?
- 18 A. Even before he entered they already had the video
- 19 machine set up so that it would already be filming when he
- 20 entered.
- 21 Q. Okay.
- 22 A. So it was from the very beginning.
- 23 Q. Okay. When he entered the room what was the first
- 24 thing you discussed with him?
- 25 A. We identified ourselves and then again we gave him

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1 his Miranda rights.

2 Q. How did you go about giving him his Miranda rights?

3 A. We have a special card for the lawyer and for the
4 right of silence. And my partner, Mr. Lombard, read him
5 his Miranda rights.

6 Q. In what language?

7 MR. DEJONG: Your Honor, I'm going to object to
8 these being called Miranda rights.

9 THE COURT: All right. I don't know if they --
10 well, he's stated the Miranda rights. What's your
11 objection?

12 MR. DEJONG: Because it's not Miranda, Your
13 Honor.

14 THE COURT: All right. If you'll just refer to
15 his rights.

16 Q. You read him his rights. Is that what you said?

17 A. Yes.

18 Q. Okay. Now, that card that you read the rights from,
19 do you have that with you?

20 A. Yes. He has it with him.

21 Q. In what language were his rights read to him?

22 A. It's a card that's bi-lingual in French and in
23 English and they read it to him in English. By his -- his
24 partner read it to him in English.

25 Q. Now, is this the same card that was read to him on

1 the 17th when he was arrested?

2 A. Yes.

3 Q. Okay. Please read that for the jury.

4 A. Okay. A right to counsel. You are under arrest for
5 murder. You have the right to retain counsel of your
6 choice without delay. If you are eligible you may also
7 apply for legal assistance through the provincial legal
8 aid program. Finally you may call free of charge and
9 immediately a duty counsel and obtain preliminary legal
10 advice without charge. Do you fully understand?

11 Q. Did he appear to understand?

12 A. Yes. Yes.

13 Q. Both on the 17th and the 29th?

14 A. Yes. Both times.

15 Q. Now, the other right. Yes.

16 A. Another part? Right to remain silent. You are not
17 bound to say anything. You have nothing to hope from any
18 promise or favor and nothing to fear from any trip whether
19 or not you say anything. Anything you say will be taken
20 down in writing and may be used as evidence. Do you fully
21 understand? And he say yes.

22 Q. Okay. The whole time that you talked to him, where
23 was Sergeant Detective Lombar?

24 A. Mr. Shephard was right next to Mr. Lombar. And I was
25 behind the video camera in the same room.

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1 Q. In what language was he questioned?

2 A. In English.

3 Q. When you saw him at the detention center before you
4 interrogated him, how did he appear physically?

5 A. He seemed like he was in good physical condition.

6 Q. I'm showing you what's been marked as State's Exhibit
7 -- I'm showing you State's Exhibit Number 49.

8 A. He said that is the exact video cassette that he saw,
9 yes.

10 MS. MUNSON: Your Honor, at this time I move
11 State's Number 49 into evidence.

12 THE COURT: Over objection. Actually I'll not
13 admit it just yet, but it's offered into evidence. Any
14 other questions of the witness.

15 MS. MUNSON: Yes, sir.

16 THE COURT: All right. You may ask questions.

17 Q. I'm showing you State's Exhibits 43, 44, 45, 46, 47.
18 Do you recognize those?

19 A. That's exactly the vehicle that he was found in
20 before his arrest.

21 Q. When were those photographs taken?

22 A. The afternoon of his arrest in the basement of our
23 office.

24 MS. MUNSON: Your Honor, I move State's 43, 45
25 -- I'm sorry. 43, 44, 45, 46, and 47 into evidence.

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1 THE COURT: Any objection?

2 MR. DEJONG: Without objection, Your Honor.

3 THE COURT: Without objection Exhibit's 43

4 through 47 are into evidence.

5 (WHEREUPON, State Exhibit Numbers 43 through 47 were

6 admitted into evidence.)

7 Q. I'm showing you State's Exhibit Number 48. Do you

8 recognize that?

9 A. Yes. He recognizes it. In the vehicle there was a

10 red stain on the front seat, passenger seat.

11 Q. Is this an accurate depiction of the inside of the

12 car?

13 A. Yes. It is.

14 MS. MUNSON: Your Honor, I move State's Number

15 48 into evidence.

16 MR. DEJONG: Without objection.

17 THE COURT: Without objection Exhibit 48 is into

18 evidence.

19 (WHEREUPON, State Exhibit Number 48 was admitted into

20 evidence.)

21 Q. All right. Sergeant Detective, ---

22 A. He says it's upside down.

23 Q. This is State's Exhibit 48. Other than the red

24 stain, what is this item right here?

25 A. He doesn't recall.

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- 1 Q. Okay. When you took the car did you take any notes
- 2 ---
- 3 A. Yes.
- 4 Q. -- of what you took out of the car?
- 5 A. Yes. He did.
- 6 Q. Did you take those notes at or near the time?
- 7 A. Yes. He did.
- 8 Q. Do you have those notes with you?
- 9 A. Yes. He does.
- 10 Q. Would reviewing those notes help you recall?
- 11 A. Yes.
- 12 Q. Okay.
- 13 A. It was the rental agreement of the vehicle.
- 14 Q. Now, I'm showing you State's Exhibit Number 12.
- 15 A. That's the agreement, the rental car agreement.
- 16 Q. Where did that come from?
- 17 A. This vehicle was rented on the 12th of June in
- 18 Alexandria by Mr. Roger Shephard.
- 19 Q. The State's Exhibit Number 12 that you have right
- 20 now, is that the document that was depicted?
- 21 A. Yes. It is.
- 22 MS. MUNSON: Your Honor, at this time I move
- 23 State's Number 12 into evidence.
- 24 MR. DEJONG: Just for purposes of verification,
- 25 Your Honor, it appears to be two separate and distinct

1 documents, but one appears to be a duplicate of the other,
2 my understanding.

3 THE COURT: You introducing both documents?

4 MS. MUNSON: Yes. Because that's what was taken
5 out of the car.

6 MR. DEJONG: Without objection.

7 THE COURT: Without objection. You may want to
8 staple them together.

9 (WHEREUPON, State Exhibit Number 12 was admitted into
10 evidence.)

11 Q. Sergeant Detective, I'm showing you now State's
12 Exhibit Number 88.

13 A. He recognizes it. He says he recognizes it.

14 Q. What is that?

15 A. It's a bill for -- a trip? To come to Montreal,
16 Quebec.

17 Q. A bill?

18 A. No. He says it -- it wasn't a bill. It was his
19 itinerary.

20 Q. All right. From where did you -- well, who took that
21 photograph?

22 A. Our police photographer.

23 Q. Okay. And from where did those documents come?

24 A. It came from the Chevy Cobalt.

25 Q. Okay. Is that an accurate depiction of those notes

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1 on that day?

2 A. Yes.

3 MS. MUNSON: Your Honor, I move State's Number
4 88 for the record. This is five photographs. One
5 exhibit.

6 MR. DEJONG: Your Honor, may we approach?

7 THE COURT: Yes, sir.

8 (WHEREUPON, Ms. Munson and Mr. DeJong approached
9 the bar.)

10 THE COURT: Ladies and gentlemen, there's a
11 brief legal matter we need to take care of. I'll ask you
12 to go back to your jury room. Don't discuss the case.
13 I'll call you back in just a few moments.

14 (WHEREUPON, the jury exited the open court at
15 approximately 3:40 p.m.)

16 THE COURT: All right. Mr. DeJong.

17 MR. DEJONG: Your Honor, at the bench conference
18 we just had, I raised the issue on the introduction. I
19 did not raise it on the rental agreement that's already
20 been introduced. However, after having let that come in
21 without an objection and the solicitor going down the road
22 of what appears to be more items that they say were taken
23 out -- from the car, I would move to suppress any further
24 evidence taken from the vehicle, Your Honor, as not being
25 a legal search. I have no idea at this point in time what

1 foundation the Canadian authorities said they had to
2 search the vehicle. There being none, I would move to
3 suppress any further evidence from the interior of that
4 vehicle, Your Honor.

5 THE COURT: All right. Solicitor, Madam
6 Solicitor, I will be glad to hear any proffer of evidence
7 that you have.

8 IN-CAMERA DIRECT EXAMINATION

9 BY MS. MUNSON:

10 Q. Yes, sir. Sergeant Detective, the vehicle that the
11 Defendant was arrested in, was it taken into custody?

12 A. Yes. It was seized.

13 Q. It was seized?

14 A. Put in custody, yes.

15 Q. And for what reason?

16 A. For the Easley police for their interior quest -- you
17 know, inquest, yeah.

18 Q. Okay. The Defendant was under arrest; correct?

19 A. Yes. He had already been arrested.

20 Q. Your agency's policy, when you seize a car, can you
21 explain that for the Court?

22 A. Yes. At the beginning of an intervention of a murder
23 suspect, it's our duty to check, to search the vehicle.

24 Because it was a murder suspect with firearms, that had
25 stolen firearms.

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1 Q. Okay. Do you generally search every car that you
2 take custody of?

3 A. Not all the vehicles. First, it's for finding
4 elements of truth. That's when they do the search of the
5 vehicle, the car.

6 Q. Do you do an inventory of vehicles that you seize?

7 A. Yes. They do.

8 Q. An inventory of what's inside the car?

9 A. Yes.

10 Q. Okay. And is that -- did that have anything to do
11 with the search of this car?

12 A. He didn't understand the question. Could you repeat
13 it?

14 Q. Okay. The search that was done on this car --
15 where's the car now, do you know?

16 A. Since it was a rental car we told the Easley police
17 that it was sent to our -- it was kept to be sent back to
18 the rental agency.

19 MS. MUNSON: I have nothing further at this
20 time, Your Honor.

21 THE COURT: Any voir dire on this particular
22 issue, Mr. DeJong?

23 MR. DEJONG: Yes, Your Honor, I do. Thank you.

24 **IN-CAMERA CROSS EXAMINATION**

25 **BY MR. DEJONG:**

1 Q. Mr. Roy, you arrested Mr. Shephard at the request of
2 the Easley Police Department. And you said once you took
3 the car it was your duty to look for evidence.

4 A. Yes.

5 Q. And your primary reason for looking in that car was
6 searching for evidence?

7 A. Yes, sir.

8 Q. Now, when you took the car, did you make it secure?
9 Did any person have access to that car?

10 A. No.

11 Q. Other than the police?

12 A. Yes, sir.

13 Q. And were you looking for evidence in that car at the
14 request of the Easley Police Department?

15 A. Yes.

16 Q. Did any officer from Easley ever send to you a search
17 warrant from the United States?

18 A. No. He hasn't.

19 Q. And perhaps -- well, let me just ask this. Do you
20 have a search warrant in Canada?

21 A. Yes.

22 Q. And are you familiar with United States search
23 warrants?

24 A. No. He's not.

25 Q. Did you ever attempt to obtain a Canadian search

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- 1 warrant?
- 2 A. No.
- 3 Q. Did the Easley Police ever suggest to you to attempt
- 4 to get a search warrant?
- 5 A. No.
- 6 Q. They simply asked you to obtain evidence?
- 7 A. Not simply for search evidence. Okay. That special
- 8 word in Canada it's call -- it's a paper that's accessory.
- 9 It's called -- oh. It's accessory to their arrest.
- 10 That's a special term that they have in Canada for that.
- 11 Q. For a search warrant?
- 12 A. For a search warrant, yes.
- 13 Q. Did you get that?
- 14 A. I didn't get the word. That's what I need to get.
- 15 It's not a mandate for a search. It's the right to
- 16 search, to search a vehicle after the arrest.
- 17 Q. Did anyone from Easley ever come to Canada?
- 18 A. Yes.
- 19 Q. That was to pick Mr. Shephard up; right?
- 20 A. No. It wasn't to bring him back but to look at all
- 21 -- to verify all the -- oh. To come back and get all the
- 22 things that were seized from the vehicle. They came back
- 23 to pick those up.
- 24 Q. When did they come to Canada?
- 25 A. He's going to verify. April the 26th of 2007.

1 MR. DEJONG: Thank you, no further questions.

2 IN-CAMERA REDIRECT EXAMINATION

3 BY MS. MUNSON:

4 Q. Who came to verify?

5 A. Mr. Christopher Wildt.

6 MS. MUNSON: Your Honor, he's on the -- Mr.
7 Wildt is on the witness list, he's with ATFE, not Easley
8 police.

9 THE COURT: Okay.

10 Q. I'm confused about one thing. A search warrant, is
11 that something different from the other document he was
12 talking about?

13 A. Yes. Okay. What he was saying, that word, it's not
14 a document. It's a permission according to the law to
15 search the vehicle after an arrest.

16 Q. Thank you.

17 MS. MUNSON: I have nothing further, Your Honor.

18 THE COURT: All right. I find that -- yes, sir,
19 Mr. DeJong, do you have a follow-up question?

20 MR. DEJONG: Well, Your Honor, he said that --
21 permission. But the problem I have, they were blatantly
22 looking for evidence of a crime for the Easley Police
23 Department. And the car was secure, by his own testimony.
24 There was no reason at that point in time, there was no
25 indication that anything could have been destroyed,

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1 removed, taken out or anything else. So I would submit
2 that there was ample opportunity -- now, I don't know the
3 international implications of how you get a search warrant
4 in the United States to get it served in Canada or vice
5 versa as far as that goes. But I certainly don't see --
6 they may have had -- Canada may have had a right to do an
7 inventory for their own protection. But even at that,
8 that's not really what I heard this witness say. They
9 were looking for evidence for the Easley Police Department
10 or ATF or whoever it was, Your Honor. And on the basis of
11 that I submit it was an illegal search.

12 THE COURT: I overrule your objection, Mr.
13 DeJong, as far as the suppression. I believe, based upon
14 the evidence that I've heard and the testimony that what
15 they did in Canada would be in full compliance with what
16 would take place in the United States. They call it an
17 accessory to an arrest. I think here would have arrest,
18 subject to an arrest. Certainly the automobile exception
19 that we have here with the search incident to the arrest
20 as well. I believe that they fully complied with the
21 constitutional mandates of the United States and based
22 upon the testimony apparently from the Canadian Government
23 as well. So I'll overrule your objection.

24 MR. DEJONG: Thank you, Your Honor.

25 THE COURT: Have our jury come back, Mr. Evans.

1 (WHEREUPON, the jury entered the open court at
2 approximately 3:53 p.m.)

3 THE COURT: You may proceed.

4 MS. MUNSON: Your Honor, once again I move
5 State's Number 88 into evidence.

6 THE COURT: Over objection, Exhibit 88 is into
7 evidence.

8 (WHEREUPON, State Exhibit Number 88 was admitted into
9 evidence.)

10 Q. Okay. Sergeant Detective, I'm showing you State's
11 Exhibit Number 89.

12 A. It's the same thing that's on the photos.

13 MS. MUNSON: Your Honor, at this time I move
14 State's Number 89 into evidence.

15 MR. DEJONG: Same objection, Your Honor.

16 THE COURT: Again, over objection, 89 is
17 admitted into evidence.

18 (WHEREUPON, State Exhibit Number 89 was admitted into
19 evidence.)

20 Q. All right. I'm showing you State's Exhibits 86 and
21 87. Do you recognize those?

22 A. Yes.

23 Q. Okay. What is shown in State's 86?

24 A. A pair of jeans.

25 Q. And what else?

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1 A. And his itinerary.

2 Q. Okay. And what's in State's Number 87?

3 A. T-shirt.

4 Q. From where did these items come?

5 A. It was part of the baggage found in the vehicle.

6 MS. MUNSON: Your Honor, I move State's 86 and
7 87 into evidence.

8 THE COURT: Over objection, Exhibits 86 and 87
9 are into evidence.

10 (WHEREUPON, State Exhibit Numbers 86 and 87 were
11 admitted into evidence.)

12 Q. I'm showing you State's Exhibit Number 90. Do you
13 recognize that?

14 A. Yes.

15 Q. What is this?

16 A. It was the memo, a hundred and twelve, that was found
17 -- what was that? One seventy-two that was found.

18 Q. One seventy-two?

19 A. One seventy-two, one seventy-three.

20 Q. Did you ask the Defendant about this exhibit?

21 A. Yes. He explained it to him in interrogation, what
22 it meant.

23 MS. MUNSON: Okay. Move State's Number 90 into
24 evidence.

25 THE COURT: Over objection, Number 90 is into

1 evidence.

2 (WHEREUPON, State Exhibit Number 90 was admitted into
3 evidence.)

4 Q. And finally, Sergeant Detective, State's Exhibit
5 Number 50.

6 A. Yes.

7 Q. Do you recognize that?

8 A. Yes.

9 Q. What is that?

10 A. It was during the video questioning, Mr. Shephard
11 traced us a design showing us the place where he hid the
12 arms, the firearms.

13 MS. MUNSON: Your Honor, I move State's 50 into
14 evidence.

15 THE COURT: Over objection, Exhibit 50 is into
16 evidence.

17 (WHEREUPON, State Exhibit Number 50 was admitted into
18 evidence.)

19 MS. MUNSON: I have nothing further, Your Honor.

20 THE COURT: You may cross examine the witness,
21 Mr. DeJong.

22 MR. DEJONG: Thank you, Your Honor.

23 **CROSS EXAMINATION**

24 **BY MR. DEJONG:**

25 Q. Let's go to the beginning, Mr. Roy. Mr. Shephard was

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- 1 arrested on June the 17th, 2006 at approximately twelve
- 2 o'clock noon?
- 3 A. Yes.
- 4 Q. You said there was a surveillance team ---
- 5 A. Yes.
- 6 Q. -- that was watching him?
- 7 A. Yes.
- 8 Q. What time did the surveillance team start their
- 9 surveillance?
- 10 A. About midnight of that preceding evening.
- 11 Q. So about midnight of June the 16th?
- 12 A. The 17th, midnight.
- 13 Q. Right there on the line. All right, sir. Now, what
- 14 time did Mr. Shephard check into the hotel?
- 15 A. He doesn't remember.
- 16 Q. Did you ever check it?
- 17 A. No. He's not the one that did it. He didn't do it.
- 18 Q. How many miles is it from Easley, South Carolina to
- 19 Montreal, Canada?
- 20 A. He doesn't know. I don't know.
- 21 Q. The room at the hotel, had it been reserved in
- 22 advance?
- 23 A. He doesn't have that information.
- 24 Q. So then you never checked the reservation at the
- 25 hotel?

- 1 A. It wasn't him that did the checking, no.
- 2 Q. You and Lombar were with the team that arrested Mr.
- 3 Shephard?
- 4 A. Yes.
- 5 Q. Who was in charge of that?
- 6 A. Mr. Lombar was in charge.
- 7 Q. Your involvement was at the request of the Easley
- 8 Police Department?
- 9 A. Yes. It was at their request.
- 10 Q. Now, when Mr. Shephard was arrested, where was he
- 11 taken?
- 12 A. To our detention center in the city of Montreal.
- 13 Q. That detention center, is that where he was
- 14 questioned on June the 29th.
- 15 A. No.
- 16 Q. How long was he at the first detention center?
- 17 A. He doesn't have the exact number of hours, but he
- 18 knows that that's where they, the prisoners, usually are
- 19 held for twenty-four hours before they're sent elsewhere,
- 20 a holding cell.
- 21 Q. Do you know the date that he was moved to the
- 22 Provincial jail?
- 23 A. He can check it right now.
- 24 Q. Please, sir.
- 25 A. The 17th of June at twenty-two -- what? Twenty-two

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- 1 twenty-six, which is about, what, eleven o'clock? No,
- 2 that's wrong. Twenty-two, ten p.m. Yes.
- 3 Q. When a prisoner is placed in jail in Canada, are they
- 4 issued a uniform?
- 5 A. No.
- 6 Q. What clothes do they wear?
- 7 A. Their own clothes.
- 8 Q. Now, let's go back to these rights that you were
- 9 talking about. The card you read from, those are rights
- 10 that you give Canadian citizens?
- 11 A. Yes.
- 12 Q. In those rights, is a suspect ever told that they may
- 13 quit answering questions at anytime?
- 14 A. No.
- 15 Q. All right. Now, the rights that were read to
- 16 Shephard were they the Canadian rights?
- 17 A. Yes.
- 18 Q. And as part of those rights, a suspect is advised
- 19 that what would be used against them would be in writing?
- 20 A. He has to verify it. Yes.
- 21 Q. When you were at the arrest scene, was anything taken
- 22 down in writing?
- 23 A. No.
- 24 Q. After Mr. Shephard was arrested, was anything ever
- 25 placed in writing?

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1 A. No.

2 Q. The rights that you gave, is that on a form?

3 A. Yes.

4 Q. And does that form have a place for the suspect's
5 signature?

6 A. No.

7 Q. So nothing is taken in writing as to the giving up of
8 rights?

9 A. No.

10 Q. So Mr. Shephard had been in the Provincial jail some
11 twelve days before he was questioned?

12 A. Yes.

13 Q. And he was questioned at the request of the Easley
14 Police Department?

15 A. At the beginning it was amended arrest by the Easley
16 police. It was with the collaboration, yeah, with the
17 Easley police. And after the arrest we thought the Easley
18 Police would come -- and what? Would come and meet with
19 Shephard. And finally they called us to meet with him.

20 Q. So when you spoke with Mr. Shephard you were
21 technically working for the Easley Police Department?

22 A. Collaborating with them, yeah. Because they asked
23 for collaboration.

24 Q. Now, when Mr. Shephard was in the Provincial jail, do
25 you know what kind of cell he was held in?

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- 1 A. No. He didn't, not at all.
- 2 Q. You never visited in a cell?
- 3 A. But he's already visited the prison, but not that
- 4 particular cell where he was in.
- 5 Q. Do you know if Mr. Shephard was in a cell with other
- 6 prisoners?
- 7 A. No. He doesn't.
- 8 Q. Do prisoners in a Canadian jail have access or can
- 9 watch television?
- 10 A. Yes.
- 11 Q. On June the 29th, Mr. Shephard was brought to you by
- 12 prison guards?
- 13 A. Yes.
- 14 Q. And what time was Mr. Shephard brought to you?
- 15 A. He's going to look at his notes. At four p.m.
- 16 Q. Four p.m.?
- 17 A. Yes.
- 18 Q. Is Montreal time and where you are right now the
- 19 same?
- 20 A. Yes.
- 21 Q. He was brought to you at four p.m. on June the 29th?
- 22 A. Yes.
- 23 Q. Well, when Mr. Shephard was brought to this room, the
- 24 video camera was already running?
- 25 A. Yes.

1 Q. And you or Detective Lombar again gave Mr. Shephard
2 his Canadian rights?

3 A. Yes.

4 Q. At anytime did you ever advise Mr. Shephard that he
5 was being video recorded?

6 A. He doesn't remember if it was -- he doesn't remember
7 or recall if it was said in the beginning, but the camera
8 was on the table in front of him.

9 Q. Because of the camera in front of him you assumed he
10 knew he was being video recorded?

11 A. I don't remember. He doesn't remember if they told
12 him that he would be filmed during interview.

13 Q. All right. The rights that were read to him on June
14 the 29th under the part the right to be silent, the --
15 again the warning was that anything he said would be taken
16 down in writing and could be used against him?

17 A. Yes. He doesn't remember because the card was not,
18 was not changed. Oh, because now they use video cameras
19 more and more. And yeah, it's usually taken again on
20 video. On video, yeah.

21 Q. Excuse me. But the warning did not include video
22 taping; did it?

23 A. He doesn't remember.

24 Q. After the interview on June the 29th of 2006 was ever
25 -- anything ever written and signed by Mr. Shephard?

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1 A. No.

2 Q. The right to counsel included some provision for an
3 unpaid lawyer?

4 A. Yes.

5 Q. Was the procedure of how to get a lawyer ever
6 explained to Mr. Shephard?

7 A. Yes. During the interrogation they explained it to
8 him, but Mr. Shephard said he had a lawyer. And he said
9 he didn't want to call him.

10 Q. Was his lawyer present when you talked with him?

11 A. No.

12 MR. DEJONG: One moment, please, Your Honor.

13 Q. The vehicle that Mr. Shephard was in, had you
14 received a tag number from Easley, South Carolina?

15 A. No.

16 Q. And the items that you found in the car, that search
17 was done at the request of the Easley Police Department?

18 A. It was. And also because of it's following the rest
19 of the armed suspect -- armed suspect? Of a suspect
20 that's possibly armed.

21 MR. DEJONG: One moment, please, Your Honor.

22 Q. Now, in addition to those items that Ms. Munson asked
23 you about, there were other items?

24 A. Yes.

25 MR. DEJONG: Your Honor, obviously I'm getting

1 into an area that I previously objected to. Your Honor
2 had ruled that I'm in no way abandoning that argument.

3 THE COURT: Yes, sir. Your objection is still
4 noted.

5 MR. DEJONG: Thank you, Your Honor.

6 Q. Either in the car or on Mr. Shephard did you find a
7 driver's license?

8 A. I don't remember.

9 Q. How about a military ID card?

10 A. Yes.

11 Q. And there was certain military or army gear in the
12 car?

13 A. Yes.

14 Q. Do you recall whether or not the military ID card was
15 a current military ID?

16 A. He doesn't remember.

17 Q. Were those items also sent to Easley?

18 A. Everything, all the articles on everything that was
19 seized was sent to Mr. Wildt.

20 Q. He works for Alcohol, Tobacco and Firearms; right?

21 A. Yeah.

22 Q. When someone is arrested in Canada, are their cars
23 always searched?

24 A. It all depends the reason for the arrest.

25 Q. Thank you, sir. No further questions.

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1 MS. MUNSON: No redirect, Your Honor.

2 THE COURT: All right. Thank you, sir. You may
3 step down.

4 MS. MUNSON: We'd ask that this witness be
5 excused.

6 THE COURT: Any objections?

7 MR. DEJONG: No objection, Your Honor. No
8 objection to his interpreter being excused either, Your
9 Honor.

10 THE COURT: Madame forelady, ladies and
11 gentlemen, we've got some other matters we need to take
12 care of this afternoon. I'm going to dismiss you again at
13 this time rather than calling another witness. Let me
14 remind you again not to discuss the case while you're out
15 and about. Don't let anyone discuss it with you. And
16 refrain from any kind of contact of any sort whatsoever.
17 We'll start back again at nine o'clock in the morning. If
18 you'll be here at that time we'll be ready to begin with
19 the next witness. Have a good evening, ladies and
20 gentlemen. You're dismissed at this time.

21 (WHEREUPON, the jury exited the open court at
22 approximately 4:24 p.m.)

23 THE COURT: All right. Let me amplify what I
24 said earlier on the ruling about the admissibility of the
25 evidence. I think I addressed two of the issues that Mr.

1 DeJong brought up, but I don't think I addressed the
2 coercion about the cold room and so forth. I find, based
3 upon the totality of the circumstances and hearing all the
4 evidence, that I did not find any coercion on the part of
5 the officers. Again, that will be up to the jury to
6 determine the weight of the statement if it -- any at all,
7 if they find that it's not been given properly then they
8 can certainly discount it. I'll instruct them of that.

9 Also, I think there's one other item, the videotape
10 was offered into evidence. I deferred ruling on it.
11 Frankly, I wanted to look at the tape again, but since the
12 other evidence has come in I'll reply upon my previous
13 ruling. As I stated earlier after lunch, I believe from
14 what I heard of the testimony that they went beyond what
15 was on the card and in spite of what the witness might
16 have said, I believe they covered all the rights under our
17 constitution as far as his right to counsel and his
18 voluntarily and intelligent waiver of it. While I know
19 even under Miranda there's no requirement that it be in
20 writing as customarily is done here, I think the fact that
21 we have a video would certainly counterbalance that. So I
22 do admit the videotape into evidence at this time.

23 (WHEREUPON, State Exhibit Number 49 was admitted into
24 evidence.)

25 (WHEREUPON, Court Exhibit Number 1 was marked for

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1 identification.)

2 THE COURT: All right. We'll be ready to start
3 back at nine o'clock in the morning. If there is anything
4 that we need to take care of before then, please let me
5 know, if you think about it. I'll be here earlier and we
6 can perhaps put that on the record so we'll be ready for
7 the jury at nine. We'll be at ease until nine o'clock
8 tomorrow.

9 (WHEREUPON, Court adjourned for the day at
10 approximately 4:30 p.m.)

11 11/18/09

12 (WHEREUPON, Court convened with all parties present
13 and the following proceedings were had.)

14 THE COURT: Thank you very much. Please be
15 seated, ladies and gentlemen.

16 Everybody ready to proceed?

17 MS. MUNSON: State's ready, Your Honor.

18 MR. DEJONG: Ready for the defense, Your Honor.

19 THE COURT: Have our jury come in, Mr. Evans.

20 (WHEREUPON, the jury entered the open court at
21 approximately 9:17 a.m.)

22 THE COURT: Good morning, ladies and gentlemen.
23 We're now ready to proceed with the trial of the case.

24 Solicitor, you may call your next witness.

25 MS. MUNSON: May it please the Court, Your

1 Honor. The State calls Dr. Michael Ward.

2 MISTER CLERK: Place your left hand on the bible
3 and raise your right hand. Do you solemnly swear or
4 affirm the testimony you're about to give in this case to
5 be the truth, the whole truth and nothing but the truth,
6 so help you God?

7 MICHAEL WARD: I do.

8 MISTER CLERK: Thank you, sir. If you would
9 have a seat and state your name for the record.

10 MICHAEL WARD: Michael Eugene Ward.

11 MICHAEL EUGENE WARD, M.D.,

12 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MS. MUNSON:

15 Q. Who do you work for, sir?

16 A. I'm employed by Pathology Associates of Greenville,
17 as well as Greenville County, as the chief medical
18 examiner.

19 Q. Okay. What are your duties as the chief medical
20 examiner?

21 A. My responsibilities are to investigate deaths that
22 occur in Greenville and Pickens counties to determine
23 cause and manner of death.

24 Q. How long have you held this position?

25 A. I've been here fourteen years.

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1 Q. Are you licensed to practice medicine in South
2 Carolina?

3 A. I am.

4 Q. Okay. What is your field of practice?

5 A. My area of expertise is pathology with subspecialty
6 in forensic pathology.

7 Q. What is forensic pathology?

8 A. Pathology is the study of disease and how those
9 disease processes affect man. Forensic pathology takes
10 that one step further in investigating and studying
11 diseases, trauma and other types of situations that result
12 in death of an individual and in the presentation of that
13 information in the judicial process.

14 Q. What is your educational background?

15 A. I have a bachelor's degree in biology from the
16 University of Alabama. I received my master's degree in
17 forensic science from the University of Alabama in
18 Birmingham. My medical degree is from the University of
19 South Alabama in Mobile. I did a four year anatomic
20 pathology residency at the Medical University of South
21 Carolina in Charleston and a forensic fellowship in
22 forensic pathology at the University of New Mexico in
23 Albuquerque. I'm certified by the American Board of
24 Pathology in both anatomic and forensic pathology.
25 Q. How many autopsies have you performed?

1 A. Well over five thousand.

2 Q. Okay. Have you ever been qualified in the field of
3 forensic pathology in the Courts of this state?

4 A. Yes, I have.

5 Q. Approximately how many times?

6 A. Approximately over a hundred times.

7 MR. DEJONG: Your Honor, I don't mean to
8 interrupt. I'll stipulate his expertise without the
9 foundation Ms. Munson is laying.

10 MS. MUNSON: We appreciate that, Your Honor.

11 THE COURT: Ladies and gentlemen, let me explain
12 to you. Normally in a trial people who testify are not
13 allowed to give an opinion. They can talk about what they
14 saw or felt or experienced in some way or heard. But we
15 have an exception to that rule in that a person who is
16 trained in a certain field by education, experience, can
17 give an opinion based upon that field.

18 This witness has been submitted to be qualified in
19 the field of forensic pathology, so that he will be
20 allowed to give his opinion in those areas of expertise.
21 This doesn't mean that you must accept that opinion. It's
22 evidence, as all the evidence that you've heard. It's for
23 you to use in anyway that you see fit.

24 All right. Solicitor, you may continue.

25 MS. MUNSON: Thank you, Your Honor.

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1 Q. Dr. Ward, did you perform an autopsy relating to this
2 case?

3 A. Yes, I did.

4 Q. And what is an autopsy?

5 A. An autopsy is a detailed physical examination
6 performed on an individual after they have died.

7 Q. On what date did you perform the autopsy in this
8 case?

9 A. This autopsy was performed on June 16th, 2006, and
10 was begun at eight thirty a.m.

11 Q. Where did you perform it?

12 A. At the autopsy facility at the Greenville County
13 Medical Examiner, which is on the campus of the Greenville
14 Memorial Hospital.

15 Q. Who was present at this autopsy?

16 A. Then Deputy Coroner Candy Kelley and Sergeant Cowan
17 of the Easley Police Department.

18 Q. How was the body identified that you did the autopsy
19 on?

20 A. The body was identified essentially by two ways. An
21 identification band was present on a wrist labeled with
22 Mr. Bruin's name and also by Deputy Coroner Candy Kelley.

23 Q. Okay. Describe for the jury your findings of note
24 during your autopsy?

25 A. At the autopsy of Mr. Bruin, there was a gunshot

1 wound to the chest, which entered his right upper chest.
2 It passed through the skin and musculature of the right
3 chest and entered the -- through the chest wall, through
4 the muscles between the third and fourth rib. It passed
5 from his right to his left, through the upper lobe of the
6 right lung. It passed the center of the chest, going
7 through and tearing the pulmonary artery, which is a large
8 vessel that comes from the heart, taking blood to the
9 lungs. It then passed through the upper lobe of the left
10 lung, through the soft tissue above the left underarm,
11 through the musculature of the left arm and came to rest
12 beneath the skin of the outer portion of the left upper
13 arm. It was from there that a missile was recovered.
14 There was eight hundred milliliters of blood around the
15 right lung in a space and one thousand milliliters of
16 blood around the left lung in what we call the pleural
17 space.

18 Q. Okay. The missile that you recovered, what did you
19 do with it?

20 A. It was examined, photographed and then receipted to
21 Sergeant Cowan of the Easley Police Department.

22 Q. Dr. Ward, as part of your autopsy, is a toxicology
23 exam done?

24 A. Yes, it is.

25 Q. And what was the result of the toxicology of Mr.

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- 1 Bruin?
- 2 A. At the time of autopsy, we withdrew femoral blood
- 3 from Mr. Bruin and had it analyzed. It was positive only
- 4 for caffeine.
- 5 Q. I'm showing you what's been marked as State's Exhibit
- 6 Number 83. If you could take a look at this, Dr. Ward?
- 7 A. Yes, ma'am.
- 8 Q. Do you recognize State's Exhibit Number 83?
- 9 A. I do.
- 10 Q. How do you recognize it?
- 11 A. State's Exhibit 83 is a specimen container which
- 12 contains a single medium caliber jacketed hollow point
- 13 lead missile, which has been sealed with white tape
- 14 labeled with Mr. Bruin's unique autopsy number, the date
- 15 of the autopsy and my initials.
- 16 Q. Okay. Thank you. Based on your training, experience
- 17 and your exam, do you have an opinion, Dr. Ward, as to the
- 18 cause of John Bruin's death?
- 19 A. Yes, I do.
- 20 Q. What is that opinion?
- 21 A. Mr. Bruin died as the result of a gunshot wound of
- 22 the chest.
- 23 Q. Do you have an opinion as to the manner of Mr.
- 24 Bruin's death?
- 25 A. Yes, I do.

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1 Q. What is that opinion?

2 A. The manner of death would be homicide.

3 MS. MUNSON: Nothing further, Your Honor.

4 THE COURT: You may cross examine the witness.

5 MR. DEJONG: No questions of this witness, Your
6 Honor.

7 THE COURT: Thank you, Dr. Ward, you may step
8 down.

9 MR. DEJONG: No objection to him being excused,
10 Your Honor.

11 MS. MUNSON: Thank you.

12 THE COURT: Without objection, he may be
13 excused.

14 MS. MUNSON: Your Honor, the State calls Joseph
15 Harley Kelley.

16 MISTER CLERK: Place your left hand on the bible
17 and raise your right. Do you solemnly swear or affirm the
18 testimony you're about to give in this case to be the
19 truth, the whole truth and nothing but the truth, so help
20 you God?

21 JOSEPH HARLEY KELLEY: I do.

22 MISTER CLERK: If you would have a seat and
23 state your name for the record.

24 JOSEPH HARLEY KELLEY: Joseph Harley Kelley.

25 JOSEPH HARLEY KELLEY,

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1 **BEING DULY SWORN, TESTIFIED AS FOLLOWS:**

2 **DIRECT EXAMINATION**

3 **BY MS. MUNSON:**

4 Q. What do you go by, Mr. Kelley?

5 A. I go by Harley.

6 Q. Do you mind if I call you that?

7 A. Yes, ma'am.

8 Q. Do you mind if I ---

9 A. Go ahead.

10 Q. Okay. How old are you, sir?

11 A. I'm twenty-four.

12 Q. Where do you live?

13 A. Seneca, South Carolina.

14 Q. Who do you live with?

15 A. My parents.

16 Q. Okay. How far did you go in school?

17 A. I got my GED. I dropped out in eighth grade, but I
18 went back to get my GED.

19 Q. Okay. Harley, do you have any military experience?

20 A. Yes, ma'am.

21 Q. What experience do you have with the military?

22 A. I was in the Air Defense for three years. I went
23 through my basic training, AIT, and all that.

24 Q. Okay. Where were you stationed in your time with the
25 military?

1 A. I done my basic in Fort Sill, Oklahoma. Done my AIT
2 in Fort Bliss, Texas. And then I was stationed in Clemson
3 with a National Guard Unit and I spent some time up in
4 Washington, D.C. for Homeland Security.

5 Q. Okay. How is the housing for you guys when you go to
6 different places?

7 A. Well, when we went to Washington, D.C., we had
8 anywhere from three to four roommates in one apartment.
9 It was a two bedroom apartment and we had four single beds
10 in there.

11 Q. Okay. And when you were stationed in Washington,
12 where was that apartment?

13 A. It was off of Duke Street. It was in Alexandria,
14 Virginia.

15 Q. Okay. Who were your roommates?

16 A. Mr. Shephard was one and I don't remember the other
17 one's name, it's been so long ago.

18 Q. Okay. When you refer to Mr. Shephard, who are you
19 talking about?

20 A. Roger Shephard.

21 Q. Do you see him in the Courtroom?

22 A. Yes, ma'am.

23 Q. Could you please identify him by what he's wearing?

24 A. The gentleman in the purple shirt.

25 MS. MUNSON: Your Honor, let the record reflect

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1 that he's identified the Defendant.

2 THE COURT: So reflects.

3 Q. How close were you to the Defendant while you were in
4 the National Guard?

5 A. We were pretty close.

6 Q. How much time did you spend with him?

7 A. All day every day.

8 Q. Okay. Was there anything unusual about his
9 appearance that you noticed?

10 A. No. He had a couple of tattoos. That was it.

11 Q. Okay. Tell the jury about his tattoos?

12 A. He had a tattoo, barbed wire, going around one of his
13 biceps. He had a tattoo of kind of like barbed wire going
14 around one of his wrists. And he had a cross on one of
15 his forearms. And there was a big cross that was outlined
16 in black and had BCM in initials in it that was white.

17 Q. Okay. Now, I want to ask you to think back to 2006
18 and the events that bring us here today. Do you remember
19 that time?

20 A. I remember some of it.

21 Q. Okay. Did you have some contact with law enforcement
22 relating to this case?

23 MR. DEJONG: Your Honor, may we approach?

24 THE COURT: Yes, sir.

25 (WHEREUPON, Ms. Munson and Mr. DeJong approached

1 the bar.)

2 Q. Harley, in June of 2006, did the ATF come to your
3 house?

4 A. Yes, ma'am.

5 Q. Okay. How did you know that the ATF was at your
6 house?

7 A. I think earlier that day I got a phone call from one
8 of my friends and they ---

9 Q. Don't say what anybody said.

10 A. Well, I was out riding around with one of my friends
11 and as I was pulling in my driveway, you can see down in
12 my driveway before you get there, and I noticed that there
13 was like ten cars there. And as I pulled in, I noticed
14 that they were uniforms and they had on the ATF jackets.
15 And I pulled in and that's how I knew that they were
16 there.

17 Q. Okay. How long were they at your house?

18 A. From my understanding, they had been there for about
19 an hour before I got there.

20 Q. Okay.

21 A. And we sat there till about seven, eight o'clock in
22 the afternoon, I think.

23 Q. Okay. After -- when they left your house, did you go
24 with them?

25 A. Yes, ma'am.

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- 1 Q. Where did you go?
- 2 A. I think it was Easley Police Department. It was
- 3 somewhere like that. It was far away from my house.
- 4 Q. Okay. What did they ask you to do? What did the ATF
- 5 ask you to do when you got to the Easley Police
- 6 Department?
- 7 A. They asked me if I would like to write a statement.
- 8 And before we had left my house, they had asked me about
- 9 making a voluntary phone call to Mr. Roger Shephard, which
- 10 I did.
- 11 Q. Okay.
- 12 A. And then we went down there and I signed my statement
- 13 and kind of just sat around till they took me home.
- 14 Q. Okay. Now, the phone call that you made to Mr.
- 15 Shephard, was that recorded in anyway, to your knowledge?
- 16 A. Yes, ma'am.
- 17 Q. Did they tell you they were going to do that?
- 18 A. Yes, ma'am.
- 19 Q. Okay. Did they force you in anyway to do that?
- 20 A. No, ma'am.
- 21 Q. Okay. Were you under arrest?
- 22 A. No, ma'am.
- 23 Q. All right. Did they -- other than your phone
- 24 conversation with Roger Shephard, did they record anything
- 25 else, to your knowledge, in your presence?

- 1 A. They recorded a voicemail.
- 2 Q. A voice ---
- 3 A. Off of my phone. And that was ---
- 4 Q. And who was that call from?
- 5 A. Roger Shephard.
- 6 Q. And what day did you receive the phone call from
- 7 Roger Shephard?
- 8 A. The day of the incident.
- 9 Q. Okay. And what day did you call him?
- 10 A. I called him, I think it was the 17th, the next day.
- 11 Q. Okay. Harley, I'm showing you State's Exhibit Number
- 12 11. Can you take a look at that?
- 13 A. Yes, ma'am. This is the tape where they recorded the
- 14 voicemail and the phone conversation.
- 15 Q. Did you listen to it?
- 16 A. Yes, ma'am.
- 17 Q. From beginning to end?
- 18 A. Yes, ma'am.
- 19 Q. And is it a true and accurate depiction of both the
- 20 voicemail and your conversation with the Defendant?
- 21 A. Yes, ma'am.
- 22 Q. Okay. Why did you call Roger Shephard?
- 23 A. Once I found everything that went on ---
- 24 MR. DEJONG: Your Honor, I'm going to object to
- 25 that about the finding out part.

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1 THE COURT: Okay.

* 2 Q. What did you ask him when you called him?

3 A. I asked him what had happened. And he told me what
4 had happened. And I sat there and I was telling him my
5 thoughts and opinions on it, that I ---

6 Q. Okay.

7 A. I didn't respect what had happened and I was trying
8 to find out where he was and what was going on.

9 Q. What did he tell you had happened?

10 A. He told me that ---

11 MR. DEJONG: This is getting a little tricky
12 here because I suspect that at some point in time Ms.
13 Munson is going to offer the tape. I object to the tape.
14 Don't believe I can object to the conversation he had with
15 it, but I am objecting to the tape. And I want that
16 objection on the record as soon as possible, Your Honor.

17 MS. MUNSON: I've not attempted to introduce it
18 into evidence yet, Your Honor. After I've laid a complete
19 foundation, I will.

20 THE COURT: All right. You may proceed.

21 Q. What did he tell you had happened?

22 A. He told me that he messed up. I asked him what he
23 was talking about. And he told me that he shot someone.
24 At the time I didn't know who it was. He told me that he
25 had shot him. And I was like, what did you do it for?

1 And he told me that the gentleman didn't cooperate. I
2 told him, you know, I thought that was messed up. I told
3 him that the police were everywhere looking for him. I
4 had asked him where he was. He didn't want to talk about
5 it, because he thought the phones were tapped. I asked
6 him if he was going where he thought that he was going to
7 go? And he said yes. And that was pretty much the end of
8 the conversation.

9 Q. You asked him if he was going where?

10 A. To where he was wanting to go if something had ever
11 happened.

12 Q. Do you know from your own knowledge from the
13 Defendant where he was wanting to go?

14 A. I know that he was wanting to go to Canada. I didn't
15 know what part.

16 Q. Okay.

17 MS. MUNSON: I have nothing further at this
18 time, Your Honor.

19 THE COURT: You may cross examine the witness.

20 MR. DEJONG: Thank you, Your Honor. May it
21 please the Court.

22 **CROSS EXAMINATION**

23 **BY MR. DEJONG:**

24 Q. So you and Mr. Shephard were in the military
25 together?

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- 1 A. Yes, sir.
- 2 Q. All right. And are you still in the military?
- 3 A. No, sir.
- 4 Q. How long were you in the military?
- 5 A. Three years -- well, three and a half. Almost four
- 6 years.
- 7 Q. Tattoos aren't particularly unusual in the military;
- 8 are they?
- 9 A. No, sir.
- 10 Q. Be it barbed wire or crosses or anything else?
- 11 A. No, sir.
- 12 Q. You see them on a lot of people; don't you?
- 13 A. Yes, sir.
- 14 Q. Do you have any?
- 15 A. Yes, sir.
- 16 Q. Do you have a cross?
- 17 A. No, sir.
- 18 Q. Barbed wire?
- 19 A. No, sir.
- 20 Q. Do you have tattoos on your arms?
- 21 A. I've got two on my shoulder, one on my stomach and
- 22 one on my back.
- 23 Q. All right, sir. So to say that that was unusual,
- 24 that's not particularly unusual; is it?
- 25 A. No, sir.

1 Q. All right. Now, when the ATF came to your house,
2 that was on June when?

3 A. I think it was June the 17th or the 16th, one.

4 Q. And they talked to you -- they asked you to make a
5 phone call; right?

6 A. Yes, sir.

7 Q. And did you have a conversation with those ATF agents
8 as to what you would talk about?

9 A. They wanted me to see if I could find out any
10 information.

11 Q. Yes, sir. So you made the call at their request and
12 because they wanted you to; right?

13 A. Yes, sir.

14 Q. And they recorded the call?

15 A. Yes, sir.

16 Q. Okay. But whose equipment was used to record the
17 call?

18 A. They had a tape player that they used.

19 Q. That hooked up to your telephone?

20 A. No, sir.

21 Q. They hold it up to your telephone?

22 A. Yes, sir.

23 Q. Did ATF talk about charging you?

24 A. No, sir.

25 Q. What time of the day was this?

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~~Joseph C. DeJong, Esq., Counsel for the Defendant, Mr. DeJong~~

1 A. I don't really recall. It was about three and a half
2 years ago, but I'd say it was around maybe two or three
3 o'clock in the afternoon. Maybe later than that.

4 Q. Well, after you say this phone call was made, where
5 did you go?

6 A. I went with them to the police department to fill out
7 a statement.

8 Q. I thought you were at the police department?

9 A. No. They were at my house when I made the phone
10 call.

11 Q. I see.

12 A. And they asked me if I would like to go with them to
13 fill out a statement, and I volunteered to go with them to
14 fill out a statement.

15 Q. Were you and Mr. Shephard what you would consider
16 close friends?

17 A. Yes, sir.

18 MR. DEJONG: One moment, please, Your Honor.

19 Q. What was the total length of time you served in the
20 National Guard, Mr. Kelley?

21 A. About three and a half, almost four years.

22 Q. Thank you, sir.

23 MS. MUNSON: Nothing further, Your Honor. We
24 ask that this witness be excused.

25 THE COURT: Any objection to this witness being

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1 excused?

2 MR. DEJONG: None, Your Honor.

3 THE COURT: Without objection, you may be
4 excused.

5 MS. MUNSON: Your Honor, the State calls
6 Sergeant Brian Cowan.

7 Your Honor, before you swear him in, I talked with
8 Mr. DeJong about this. I would like to ---

9 MR. DEJONG: May we approach, Your Honor?

10 THE COURT: Yes.

11 (WHEREUPON, Ms. Munson and Mr. DeJong approached
12 the bar.)

13 MISTER CLERK: Do you solemnly swear or affirm
14 the testimony you're about to give in this case to be the
15 truth, the whole truth and nothing but the truth, so help
16 you God?

17 BRIAN COWAN: I do.

18 MISTER CLERK: If you state your name for the
19 record, please.

20 BRIAN COWAN: Sergeant Robert Brian Cowan.

21 BRIAN COWAN,

22 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MS. MUNSON:

25 Q. Who do you work for, sir?

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- 1 A. The Easley Police Department.
- 2 Q. How long have you been with them?
- 3 A. Currently I've been with the Easley Police Department
- 4 for fifteen years.
- 5 Q. What is your job title?
- 6 A. My job title at this time is I'm the forensic service
- 7 officer with the Easley Police Department.
- 8 Q. And what are your duties?
- 9 A. My duties are I handle crime scene investigations,
- 10 evidence technician, detective work. That's the main
- 11 things.
- 12 Q. Okay. I want to show you State's Exhibit Number 83.
- 13 Can you take a look at that? Do you recognize that
- 14 exhibit?
- 15 A. Yes, I do.
- 16 Q. How do you recognize it?
- 17 A. This is the exhibit -- this is the item that I picked
- 18 up from Dr. Ward when I was at the autopsy.
- 19 Q. Okay. Now I'm showing you State's Exhibits 23, 24,
- 20 25, 26 and 27. Can you take a look at those? Do you
- 21 recognize them?
- 22 A. Yes, ma'am. I do.
- 23 Q. Are they a true and accurate depiction of where you
- 24 found what's in the photograph on that date?
- 25 A. Yes, ma'am. They are.

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1 MS. MUNSON: Your Honor, I move State's 23
2 through 27 into evidence.

3 THE COURT: Any objection?

4 MR. DEJONG: Without objection, Your Honor.

5 (WHEREUPON, State Exhibit Numbers 23 through 27
6 were admitted into evidence.)

7 Q. And finally, Sergeant Cowan, I'm showing you State's
8 Number 39 and 40. Do you recognize those?

9 A. Yes, ma'am. I do.

10 Q. And what are those?

11 A. Those are photographs that were taken where a
12 projectile was recovered out of the cinder block wall.

13 Q. Okay.

14 MS. MUNSON: Your Honor, I offer State's 39 and
15 40 into evidence.

16 MR. DEJONG: Without objection, Your Honor.

17 THE COURT: Without objection, Exhibits 39 and
18 40 are into evidence.

19 (WHEREUPON, State Exhibit Numbers 39 and 40 were
20 admitted into evidence.)

21 Q. Sergeant Cowan, this is State's Exhibit Number 23.
22 What does this show?

23 A. This shows an area of, this shows an area of Action
24 Pawn in which some shell casings were recovered.

25 Q. And where are they -- where is that in relation to

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- 1 where Mr. Bruin would have been standing?
- 2 A. Okay. Mr. Bruin -- this is a handgun case here. Mr.
- 3 Bruin would have been standing back over in this area just
- 4 out of the frame.
- 5 Q. Okay. And State's Exhibit Number 24. I'm so bad
- 6 with this. What is number 3?
- 7 A. Item number 3, which is located right here, is a
- 8 shell casing.
- 9 Q. Okay. And is that what items number 1 and 2 were,
- 10 those yellow placards?
- 11 A. Yes. They were shell casings also.
- 12 Q. All right. Now, I'm showing you State's Exhibits
- 13 Number 80, 79 and 81. Do you recognize those?
- 14 A. Yes, I do.
- 15 Q. How do you recognize those?
- 16 A. These are evidence bags that I used to collect the
- 17 shell casings in and they have my handwriting on them.
- 18 Q. The same shell casings that were shown in the
- 19 photographs?
- 20 A. Yes.
- 21 Q. Okay. Finally I'm showing you State's Exhibit Number
- 22 82. Do you recognize that?
- 23 A. Yes, I do.
- 24 Q. And what is that?
- 25 A. This is the projectile that was recovered from the

1 cinder block wall.

2 MS. MUNSON: I beg the Court's indulgence.

3 Q. Now, Sergeant Cowan, State's Exhibit Number 1, have
4 you seen this before? For identification?

5 A. Yes, I have.

6 Q. And what is that?

7 A. This is a copy of the Action Pawn video.

8 Q. Where is the original video?

9 A. The original video is in my hand.

10 Q. When did you collect that?

11 A. I collected this video on June the 15th of 2006 at
12 fourteen hundred.

13 Q. How do you know that?

14 A. It has my handwriting on it. I dated it and timed it
15 and wrote Action Pawn on the video so that I would know
16 that's where that video come from.

17 Q. Who made the copy that is listed as State's Exhibit
18 Number 1 right now?

19 A. I made that copy.

20 MS. MUNSON: Okay. Your Honor, at this time I
21 would ask that the video brought to court today be
22 introduced into evidence as State's Exhibit Number 1.

23 THE COURT: Any objection?

24 MR. DEJONG: Without objection, Your Honor.

25 THE COURT: Without objection, State's Exhibit

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1 Number 1 is admitted into evidence.

2 (WHEREUPON, State's Exhibit Number 1 was admitted
3 into evidence.)

4 MR. DEJONG: Your Honor, may we approach?

5 THE COURT: Yes, sir.

6 (WHEREUPON, Ms. Munson and Mr. DeJong approached
7 the bar.)

8 MS. MUNSON: Your Honor, I have nothing further
9 of Sergeant Cowan at this time. And I would respectfully
10 ask the Court to allow me to recall him later.

11 THE COURT: Any cross examination at this time?

12 MR. DEJONG: Your Honor, in view of the fact
13 that I have no objection to the solicitor recalling him at
14 a later time, I'm going to reserve my cross examination
15 for when he retakes the stand. However, I reserve my
16 right to cross examine on any issues or any testimony
17 given at this point in time.

18 THE COURT: That's so noted, and I think that
19 will help the flow of the case. Thank you, sir. You may
20 step down, Mr. Cowan.

21 MS. MUNSON: Your Honor, the State calls James
22 Armstrong.

23 MISTER CLERK: Place your left hand on the bible
24 and raise your right hand. Do you solemnly swear or
25 affirm the testimony you're about to give in this case to

1 be the truth, the whole truth and nothing but the truth,
2 so help you God?

3 JAMES ARMSTRONG: Yes, sir, I do.

4 MISTER CLERK: If you would have a seat and
5 state your name for the record.

6 JAMES ARMSTRONG: James William Armstrong.

7 MR. DEJONG: Your Honor, I would respectfully
8 request -- I have a matter to take up with the Court
9 outside of the presence of the jury.

10 THE COURT: All right. Ladies and gentlemen, we
11 have a legal matter we need to discuss. Please go back to
12 your jury room. Don't discuss the case at this time.
13 We'll call you back as soon as we're able to.

14 (WHEREUPON, the jury exited the open court at
15 approximately 9:50 a.m.)

16 THE COURT: As a housekeeping matter, what was
17 originally marked for identification as State Exhibit
18 Number 1, but not introduced, will be marked as Court
19 Exhibit Number 2. For the record, the original tape is
20 into evidence as State Exhibit Number 1.

21 (WHEREUPON, Court Exhibit Number 2 was marked for
22 identification.)

23 THE COURT: Yes, sir, Mr. DeJong.

24 MR. DEJONG: Thank you, Your Honor. And I
25 appreciate the opportunity to address the Court. It is my

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1 understanding with this witness, Your Honor, that the
2 solicitor intends to get into what we commonly refer to as
3 ballistics, which my understanding, we would properly more
4 accurately refer to as tool markings. Your Honor, there
5 has been a lot of controversy in this area. There has
6 been a lot of writings in this area. One of the largest
7 articles that I found and read was a March 28th, 2005
8 article in Columbia Science Technology Law Review.
9 Indeed in 2008, October of 2008, the federal judge for the
10 Southern District of New York, ruled, again what we refer
11 to as -- common refer to as ballistics, so I think that's
12 what it's been referred to over the years, but also as
13 tool markings, that due to the lack of the scientific
14 nature of the examination of projectiles, weapons, but
15 actually the New York -- the Southern District of New York
16 judge ruled that it was not admissible. Based on that the
17 article that I have - I'll be happy to hand up to the
18 Court if the Court wishes to see it and I'll be happy to
19 furnish Ms. Munson a copy - but the gist of all that is,
20 Your Honor, that the area of ballistics has been around
21 for a long time. There's no two ways about that. We
22 recognize that. And often time, it's been allowed to come
23 in just because it's been around so long.

24 There have been numerous Daubert hearings with regard
25 to ballistics and basically ballistics, as I understand

1 it, are tool markings that are very subjective. It is not
2 particularly or is not a scientific -- recognized as a
3 scientific area, in large part because there's no
4 empirical data to back up the ballistics and the
5 ballistics analysis. Most of the studies that have been
6 done have all been done by law enforcement, which I would
7 submit, Your Honor, is very self-serving. Indeed, I think
8 even the FBI recognized the problems with ballistics back
9 in 1998. They organized a group, I gather within the FBI,
10 known as the scientific working group for firearms and
11 tool markings. The point, and the bottom line of that,
12 Your Honor, is if we get into the area of proficiency
13 testing scientific data, analytical data, outside the
14 realm of law enforcement, that it is just not -- does not
15 meet the criteria of Daubert to come in as scientific
16 evidence.

17 I would therefore respectfully move the Court that
18 the ballistic or tool marking testimony not be allowed to
19 come in. As an alternative motion, Your Honor, or seeking
20 an alternative ruling, if Your Honor allows it in, I would
21 ask the Court not to allow the witness to testify to any
22 reasonable degree of scientific certainty. If anything,
23 that he be allowed to testify only to the fact more likely
24 than not, not to any reasonable degree of scientific
25 certainty.

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1 Obviously, Your Honor, you have already basically
2 charged this jury on expert testimony. Far be it for me
3 to say the jury does not listen to your charges. However,
4 I would submit, as a practical matter, that juries are
5 very prone to listen to expert witnesses and take what
6 those expert witnesses say as gospel in spite of your
7 charge.

8 So on the first hand I would request that you not
9 allow the ballistic testimony at all. On the second hand,
10 I would respectfully request that if you allow it to come
11 in that the witness not be allowed to testify as to any --
12 as to a reasonable degree of scientific certainty, only as
13 to more likely than not.

14 THE COURT: Ms. Munson.

15 MS. MUNSON: May it please the Court, Your
16 Honor. If he's qualified as an expert, I don't know how
17 the Court can limit him in his opinion. He's wide open to
18 cross examination and voir dire prior to his being
19 admitted as an expert. These articles that are written
20 here and there and some federal court ruling has nothing
21 to do with South Carolina, with the fourth circuit. I
22 would just simply submit are irrelevant.

23 If he can satisfy the Court that the science is good
24 and that he is an expert in this field, then I don't know
25 how the Court can say, you can only offer half of an

1 opinion. I'm trying to find the rule, Your Honor.

2 THE COURT: 702.

3 MS. MUNSON: Rule 702 says a witness qualified
4 as an expert by knowledge, skill, experience or training
5 or education may testify thereto in the form of an opinion
6 or otherwise. And if I ask him what's your opinion, I
7 anticipate he's going to say that, you know, these pieces
8 of evidence are a match to the Glock.

9 THE COURT: Well, I'll be glad to -- for you to
10 voir dire the witness as to -- obviously I've got to
11 determine first of all that whatever he has to say will
12 assist the fact finders. And that he is qualified and the
13 science is reliable. And then go to the prejudicial
14 effect of that. But I'll be glad to give you a chance to
15 voir dire the witness as to any of those elements, Mr.
16 DeJong, as to whether or not he is qualified as to the
17 science. Then I can make a determination as to whether or
18 not his testimony -- I don't know how I can -- tell me how
19 I can let him testify at a more likely than not. Does
20 that mean he is an expert or not an expert? You're saying
21 as an expert he would have to testify as to more likely
22 than not?

23 MR. DEJONG: That's what I'm requesting, yes,
24 sir.

25 THE COURT: But wouldn't that be within the

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1 realm of that particular expert as to whether or not he
2 could state an opinion more likely than not or within a
3 reasonable degree of scientific ---

4 MR. DEJONG: I'm not sure I'm following Your
5 Honor. I have no objection to him testifying to more --
6 well, I do, but that's the second prong of my argument.
7 But if Your Honor rules on that, then I would have no --
8 if Your Honor is going to let it in then I have no
9 objection to him testifying to more likely than not. My
10 objection is to a reasonable degree of scientific
11 certainty. That is my objection.

12 THE COURT: All right. Let's have the solicitor
13 lay the foundation for his expertise, then I'll allow Mr.
14 DeJong any cross examination he feels necessary.

15 **IN-CAMERA DIRECT EXAMINATION**

16 **BY MS. MUNSON:**

17 Q. Who do you work for, Mr. Armstrong?

18 A. For the Greenville County Department of Public
19 Safety, Forensics Division, Crime Laboratory.

20 Q. Okay. Tell the jury about your training in the field
21 of firearms identification?

22 A. First, I have a bachelor's degree in chemistry from
23 Erskine College. That's my base for scientific knowledge
24 basis. I began my training with the South Carolina Law
25 Enforcement Division going through different firearms

1 nomenclature, basic handling. I trained under an
2 apprenticeship training for about three years under a guy
3 that's a retired firearm examiner from Philadelphia Police
4 Department. I've attended numerous schools sponsored by
5 the Alcohol, Tobacco and Firearms in the area of firearm
6 identification. I've visited ten different firearm
7 manufacturing facilities where I've observed the
8 manufacturing process of firearms from raw material to the
9 finished product. I've attended four different ammunition
10 manufacturing facilities where I can examine the
11 manufacturing process of the ammunition from raw material
12 to the finished product, as well. I've been through four
13 different armorer school to learn how the -- to work on
14 the manufactured products, work on the guns, to basically
15 know how they work internal, external, and how everybody
16 will go together. I've testified in federal and state
17 courts no fewer than twenty times as an expert in the area
18 of firearm identification. And I continually go through
19 education training. I've also a member of the Association
20 of Firearm and Tool Mark Examiners, which is throughout
21 the United States and even throughout the world.

22 Q. Okay. Firearm identification and tool marking. Is
23 that the same thing?

24 A. Yes, ma'am. They are the same.

25 Q. Okay. What procedures do you go through when you try

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1 to examine -- let's just say how do you match a shell
2 casing to another shell casing?

3 A. Well, when you look at a shell casing to shell
4 casing, you use a forensic comparison microscope where
5 we're looking at the images side by side. We actually
6 look at the actual shell casing side by side under a
7 comparison microscope. We can overlap the two and look at
8 striations or impressions that are left behind from a
9 firearm or a tool that are transferred to that other piece
10 of metal.

11 Q. And this particular microscope, do you know how this
12 procedure was developed, the comparing them side by side?

13 A. What I understand from my reading and training, it
14 started back in 1926, Calvin Goddard used a comparison
15 microscope in comparing shell casings and projectiles to
16 each other.

17 Q. Okay. The procedures that you use now, are they the
18 same that you used in 2006?

19 A. Yes, ma'am. They are.

20 Q. How do you go about determining whether or not a
21 shell casing and/or projectile was fired from a particular
22 weapon?

23 A. When I receive the shell casing, I look at it and I
24 make my notes on it to identify with my markings the item
25 number and my initials. Then to compare it to a firearm,

1 I take the firearm, load it with similar type ammunition,
2 test fire that firearm and collect my test fires. From
3 there then go to the comparison microscope to do my
4 comparison side by side.

5 Q. Okay. And that particular procedure of test firing
6 and then comparing, is it the same as comparing a shell
7 casing to a shell casing?

8 A. When it comes down to that stage, yes, ma'am.

9 Q. Okay. And how long have you been doing that
10 procedure?

11 A. I've been doing this a little over nine years.

12 Q. From where do you get this equipment?

13 A. This equipment is sold through different
14 manufacturers throughout the world. There are two main
15 microscope manufacturers in the United States. There are
16 also a couple throughout the world as well. These scopes
17 are used in every lab that I've visited and they are
18 certified and calibrated on a periodic ...

19 Q. On a periodic basis?

20 A. Periodic basis, yes, ma'am.

21 Q. And you -- are you trained in how to properly operate
22 it?

23 A. Yes, ma'am.

24 Q. Okay. Is there any particular FBI or SLED
25 regulations that you have to follow when you do firearms

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1 examinations?

2 A. No, ma'am.

3 Q. How many firearms examinations would you say that
4 you've done?

5 A. Thousands.

6 Q. And you say you've been qualified, I'm sorry, as an
7 expert how many times?

8 A. Twenty times.

9 Q. Are you familiar with any of the documents or
10 articles that Mr. DeJong was talking about?

11 A. A little familiar, yes, ma'am.

12 Q. Have you read them?

13 A. I've read a couple of them, yes, ma'am.

14 MS. MUNSON: Nothing further at this time, Your
15 Honor.

16 THE COURT: Mr. DeJong, you may voir dire the
17 witness.

18 MR. DEJONG: Thank you, Your Honor. May it
19 please the Court.

20 **IN-CAMERA CROSS EXAMINATION**

21 **BY MR. DEJONG:**

22 Q. Are you familiar with the scientific working group
23 that was established by the FBI in 1998?

24 A. Yes, sir, I am.

25 Q. And some of those, they came out with certain

1 recommendations and I think certain requirements; did they
2 not?

3 A. They did in some fields, yes, sir.

4 Q. Do you know what brought about this scientific
5 working group that the FBI established?

6 A. I believe it was some case that had it overturned and
7 the FBI was dealing with the evidence.

8 Q. And in the area of ballistics tool marking, you've
9 been doing that for, what did you say, nine years?

10 A. Yes, sir, a little over nine years.

11 Q. And especially within recent years, have you been
12 reading about ballistics and tool marking?

13 A. Yes, sir.

14 Q. Certainly there has been a lot of legal issues in
15 there; have there not?

16 A. There are in every forensics field, yes, sir.

17 Q. Yes, sir. And the particular -- well, are you
18 familiar with the recommendations that were made by the
19 scientific working group put together by the FBI?

20 A. I am familiar with a few of them. Not all of them,
21 no, sir.

22 Q. You have a bachelor's degree; is that correct?

23 A. That's correct.

24 Q. And other than that, your training in ballistics,
25 tool markings, has been basically through a mental ---

- 1 A. That would have been part of it, yes, sir.
- 2 Q. Right. That would have been the initial step; right?
- 3 A. That was -- after my initial step -- the initial step
- 4 started with me actually doing research and studying on my
- 5 own.
- 6 Q. Right.
- 7 A. And then we hired a retired examiner.
- 8 Q. Is there, to your knowledge, any scientific studies
- 9 that have been done with regard to tool markings?
- 10 A. Yes, sir.
- 11 Q. And are there -- well, let me back up. We'll make it
- 12 a little more personal. Okay. What's your error rate?
- 13 A. Error rate depends on an area, because we don't
- 14 actually justify an error rate. Everything that I do in
- 15 the lab that requires an examination -- we actually have a
- 16 peer review. We have another examiner come in to look at
- 17 the evidence and agree or disagree with our findings.
- 18 Q. Okay. That peer review is just done by another
- 19 police officer; right?
- 20 A. No, sir.
- 21 Q. Who's it done by?
- 22 A. The person we have with us is a retired officer, but
- 23 he is now just a civilian. He works for another company
- 24 in Greenville as a full time basis. But he just comes in
- 25 to peer review for me.

1 Q. Well, let's talk a little bit about the comparison
2 microscope. That is purely a subjective determination on
3 the person looking through the comparison microscope; is
4 it not?

5 A. It's using your eyesight to do the comparison. Yes,
6 sir.

7 Q. Short of that subjective determination, there is no
8 other testing that can be done; is there?

9 A. Other than taking photographs and actually looking at
10 the images side by side, no, sir. That's about it.

11 Q. Do you periodically undergo either competency testing
12 or proficiency testing?

13 A. I go through proficiency testing three times a year.
14 Yes, sir.

15 Q. Excuse me. The proficiency testing, does that
16 develop an error rate?

17 A. That company does generate one. I am not familiar
18 with it, though.

19 Q. Is that the company that does your proficiency
20 testing?

21 A. It's Collaborative Testing, yes, sir.

22 Q. Pardon me?

23 A. Corroborative Testing.

24 Q. Okay. But again the bottom line is, other than your
25 eyesight and what you believe to be matching is a person

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1 that would look over your shoulder, so to speak, at a
2 purely subjective testing; is it not?

3 A. Yes, sir.

4 MR. DEJONG: Nothing further at this time, Your
5 Honor.

6 THE COURT: All right. I'm aware of recent
7 guidelines our Supreme Court has given us about being the
8 gatekeeper for evidence of a scientific or expert nature.
9 Having heard the testimony of this witness, I believe that
10 his testimony would meet the standards under counsel.
11 Certainly the evidence could be of assistance to the
12 triers of the fact. And based upon the testimony I've
13 heard, I believe the witness is qualified to testify.
14 There is peer review. He's been well trained. And I
15 think the consistency of the method used has been
16 recognized.

17 Certainly the jury can weigh the evidence as it sees
18 fit. But I will allow him to testify as an expert and
19 I'll allow him to give whatever opinion that he's under
20 oath and comfortable of giving. If he believe that he can
21 say more probably likely than not likely, he can -- I'll
22 allow his testimony to the degree that he feels
23 comfortable giving it as a witness under oath.

24 Anything else, Mr. DeJong?

25 MR. DEJONG: I believe your latter statement,

1 Your Honor, went to my -- the second prong of my motion.

2 THE COURT: Yes, sir.

3 MR. DEJONG: You're basically leaving it to the
4 witness as to how he would testify?

5 THE COURT: Right. I know some witnesses -- I
6 don't know what all he's going to testify to. For one
7 projectile he might say I can state to a reasonable degree
8 of scientific certainty to this. I think it's more
9 probably likely or not likely. That'll be up to -- he's
10 the expert. If he's comfortable -- I don't see how I can
11 limit him to -- I'm getting into his testimony if I tell
12 him that he can only say this, when he has expert opinion
13 to something else. It might be that he can only say that
14 it's more likely than not likely, or more probable than
15 not. I can't get into that realm. That'll be up to the
16 witness to testify to that.

17 MR. DEJONG: Very well. My exception is noted
18 for the record.

19 THE COURT: Yes, sir.

20 MR. DEJONG: Thank you.

21 THE COURT: I tell you what let's do. Let's
22 take a five minute break while the jury has got their
23 break. We'll take a five minute break and then we won't
24 have to break again. He's been sworn. Don't discuss your
25 testimony with anyone. You can step down, if you'd like,

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1 Mr. Armstrong. We'll take a five minute break and be
2 ready to start back.

3 (WHEREUPON, Court stood at recess for a short break.)

4 THE COURT: Ready to proceed?

5 MS. MUNSON: If Your Honor could just give me
6 one more minute, I'll try to get the flow going here.

7 THE COURT: All right.

8 MS. MUNSON: I'm ready, Your Honor. I
9 apologize.

10 THE COURT: Let's have our jury come in, Mr.
11 Evans.

12 (WHEREUPON, the jury entered the open court at
13 approximately 10:25 p.m.)

14 THE COURT: All right. Solicitor, you may
15 proceed with examination of the witness.

16 MS. MUNSON: Thank you, Your Honor. I'm not
17 quite sure where I left off, to tell you the truth.

18 JAMES WILLIAM ARMSTRONG,

19 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MS. MUNSON:

22 Q. Who do you work for, sir?

23 A. For the Greenville County Department of Public
24 Safety, Forensic Division, Crime Laboratory.

25 Q. How long have you been with the crime lab?

1 A. Been with the crime lab thirteen and a half years.

2 Q. What are your duties?

3 A. I have a dual function as a firearm examiner and a
4 forensic drug chemist.

5 Q. Okay. Tell the jury about your educational
6 background?

7 A. I have a bachelor of science degree in chemistry from
8 Erskine College. I have trained in the area of firearm
9 identification under the direction of a retired firearm
10 examiner for approximately four years as an apprenticeship
11 style training. I've attended four different armor
12 schools, four different manufacturers, to learn how the
13 firearms function, how they take it apart, the disassembly
14 and assembly, any problems that may come up and how to
15 repair those problems. I've attended four different
16 manufacturing plants for ammunition to watch the process
17 of manufacturing ammo from raw materials to a finished
18 product. I've attended twelve different firearm and
19 firearm -- part manufacturers to look at how the firearm
20 parts and firearms themselves are put together from raw
21 material to a finished product. I've trained with the
22 Bureau of Alcohol, Tobacco and Firearms. And numerous
23 classes in the area of firearm identification, how to
24 identify firearms by their serial number and import marks,
25 what not, from there. And I've testified as an expert in

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1 the area of firearm identification no fewer than twenty
2 times in federal and state courts.

3 Q. Okay. Are you a member of any professional
4 associations?

5 A. Yes, ma'am. I'm a member of the Association of
6 Firearm and Tool Mark Examiners.

7 Q. Okay. Are you required, as part of your duties, to
8 do any continuing education?

9 A. Yes, ma'am. I am.

10 Q. And do you undergo any proficiency testing?

11 A. We do proficiency testing every year. Yes, ma'am. I
12 do three tests a year for proficiency.

13 Q. Who conducts those tests?

14 A. It's an independent group called Collaborative
15 Testing. We actually order the tests from them. They
16 send them to us. I do the testing independent and send my
17 results and they send their response of my findings after
18 it's completed.

19 Q. What is peer review?

20 A. Peer review is when another examiner that has been
21 trained to do the same tests can come and look over or
22 look at the same evidence that's completed by myself and
23 to see if they agree with the same findings. If I look at
24 two fired cartridge casings side by side and say they were
25 fired from the same firearm, then he would come or she

1 would come and look at those as well to see if they could
2 find the same markings and agree with that finding. If
3 that finding is not agreed upon with two examiners, we
4 lean toward the lesser call and say -- instead of saying
5 fired from, we would go as similar but insufficient, or
6 inconclusive.

7 Q. Okay. Who does your peer review?

8 A. It's Mr. Mark Steffan. He's a retired firearm
9 examiner from Philadelphia P.D.

10 Q. Is he connected with the crime lab in anyway?

11 A. He only works there as a peer review status.

12 Q. Okay. How many examinations, firearms examinations,
13 would you say that you have done on your own over the
14 years?

15 A. Thousands.

16 MS. MUNSON: Your Honor, at this time I offer
17 him as an expert in the field of firearms identification.

18 THE COURT: All right. Over objection, this
19 witness will be allowed to testify as an expert in the
20 field of firearm identification.

21 MS. MUNSON: Thank you, Your Honor.

22 Q. Mr. Armstrong, did you do an exam in this case?

23 A. Yes, ma'am. I did.

24 Q. Tell the jury how you go about comparing, first let's
25 say, a shell casing to a shell casing?

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1 A. When I receive two items such as two fired cartridge
2 casings, I examine them, make sure they're the same
3 caliber so they can be compared to each other by looking
4 at the class characteristics by caliber size. Put them
5 under the comparison microscope to look at both cartridge
6 cases at the same time through the microscope at the time.
7 And then we can move what we call the center line and
8 overlap those two images to each other and we look at any
9 imperfections that were transferred from the firearm to
10 that fired cartridge case. Those are basically such as
11 what -- I call them as a fingerprint of the firearm is
12 transferred to that fired cartridge case. We then look at
13 those impressions or striations to look at those marks to
14 see if they were fired from the same firearm.

15 Q. That process of comparing the two shell casings, how
16 long have you been using, have you been using that
17 particular process?

18 A. Ever since I started in firearm identification over
19 nine years ago.

20 Q. And are you familiar with the history of that
21 process?

22 A. Yes, ma'am.

23 Q. Explain that to the jury?

24 A. The firearm identification started with like I think
25 it's Calvin Goddard and all. It started with -- around

1 1926 they started using a comparison microscope to look at
2 fired cartridge casings and all, especially what was known
3 as the St. Valentine's Day Massacre. They started -- that
4 was one of the biggest cases that started the firearm
5 identification where they were able to look at the fired
6 cartridge casings from that scene to say that there was
7 more than one gun fired and they were not police guns
8 fired. It was actually a gang involved shooting in that
9 scenario. But that was one of the first well known cases
10 that started with the forensic comparison microscope.

11 Q. The comparison microscope that you have, from where
12 did you get it?

13 A. I have two comparison microscopes in my office at
14 this time. One is called a Leeds and one is from Leica.
15 The one I use actually in this comparison is from Leica.

16 Q. And have you been properly trained in how to operate
17 it?

18 A. Yes, ma'am. By factory representatives.

19 Q. And how does the maintenance of those particular
20 items work?

21 A. Anytime that we have any issues with any instrument,
22 any kind of dust comes in, we actually call them in for
23 periodical review of the microscope. They will come and
24 check it, calibrate, make sure the magnification is
25 properly done, everything is greased and cleaned the way

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1 it needs to be. If there are any adjustments that need to
2 be made, they will do that on a periodical basis.

3 Q. Okay. And did you do an examination in this case?

4 A. Yes, ma'am. I did.

5 Q. I'm going to show you State's Exhibit Number 83. Or
6 actually 79, 80, 81, 82 and 83. If you could just first
7 take a look at these items.

8 A. Yes, ma'am.

9 Q. Do you recognize those items?

10 A. Yes, ma'am. I do.

11 Q. How do you recognize them?

12 A. At first glance, I have the case number, which my
13 office generated for it, 11/7/06, two forty-nine. I also
14 have my initials and date on the seal on the red evidence
15 tape on all the items, except for this one here where I
16 have a heat seal with my initials and a date where I've
17 sealed it, actually through a heat seal. I actually have
18 my initials and date where I also cut it open, along with
19 a case number written, as well.

20 Q. And do they appear to be in substantially the same
21 condition as when you examined them?

22 A. Yes, ma'am. They do.

23 MS. MUNSON: Your Honor, at this time I move
24 State's Exhibits 79, 80, 81, 82 and 83 into evidence.

25 MR. DEJONG: As to the admission of the

1 evidence, no objection.

2 THE COURT: Okay. Without objection, the
3 exhibits are admitted into evidence.

4 (WHEREUPON, State Exhibit Numbers 79 through 83 were
5 admitted into evidence.)

6 Q. All right. Now, Mr. Armstrong, I'm going to show you
7 -- let's talk about, first, State's Exhibits Number 80, 81
8 and 79. What did you do with those three items?

9 A. These three items, I actually opened them up from the
10 containers. Here in my notes, based on -- did a
11 manufacturer of the fired cartridge case. Stated type of
12 firearm and impression it had. Then I marked it with the
13 item number. Then I compared them side by side on the
14 comparison microscope. Then drew my conclusions and
15 generated a report of my findings.

16 Q. Okay. What caliber are those shell casings?

17 A. These are 40 Smith & Wesson.

18 Q. Okay. All three of them?

19 A. All three. Yes, ma'am.

20 Q. And how did -- what was the result of your comparison
21 of those three items, State's ---

22 A. 79, 80, 81.

23 Q. -- 79, 80 and 81?

24 A. I found these three fired cartridge casings to have
25 been fired in the same firearm.

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1 Q. Okay. Now, State's Exhibit Number 82, did you
2 examine that?

3 A. Yes, ma'am. I did.

4 Q. And what was the result of your examination of
5 State's Exhibit Number 82?

6 A. My first result of this one, I actually compared it
7 to another fired bullet specimen. I found that this
8 bullet specimen and another bullet specimen had been fired
9 from the same firearm.

10 Q. Okay. And can you say whether or not State's Exhibit
11 Number 82 was fired by the same weapon as State's 79, 80
12 and 81?

13 A. At this point in time, yes, ma'am. When I first
14 received them I could not because we did not have a
15 firearm at the time. I had fired cartridge casings and
16 projectiles. The projectile is consistent with the same
17 caliber as the fired cartridge casing, which is a 40 or
18 ten millimeter. The shell casings as 40 Smith & Wesson.
19 At that point in time when I first received these items, I
20 did not have the firearm to compare it to link the two
21 together.

22 Q. So you could not link 79, 80 and 81 to 82?

23 A. Not initially.

24 Q. Not at that time?

25 A. Yes, ma'am.

1 Q. And State's Exhibit Number 83, at the time that you
2 compared 79, 80 and 81 together, the shell casings, were
3 you able to compare 83 with any of the shell casings?

4 A. Not with the shell casings. No, ma'am.

5 Q. Okay. Were you able to compare State's 83 to State's
6 82?

7 A. Yes, ma'am. I was.

8 Q. And what was the result of that?

9 A. That these two fired bullet specimens were fired from
10 the same firearm.

11 Q. Okay. Now, at some point did you get a firearm to do
12 an examination on?

13 A. Yes, ma'am. I did.

14 Q. I'm showing you what's already in evidence as State's
15 Exhibit Number 75. Take a look at that.

16 A. Yes, ma'am.

17 Q. Do you recognize State's Exhibit Number 75?

18 A. Yes, ma'am. I do.

19 Q. How do you recognize it?

20 A. I recognize it by the serial number that was given to
21 it by the Glock manufacturing facility, which is required
22 by ATF. Any firearm that is brought into the United
23 States must have a unique serial number that's only unique
24 to that particular firearm.

25 Q. Okay. And what did you do when you got that firearm?

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1 A. When I first received this firearm, I noted the
2 condition of the firearm and then I generated some notes
3 based -- just basically identifying any condition that the
4 firearm was made from, such as the barrel actually had
5 corrosion with it. It was an aftermarket barrel inserted
6 in the firearm.

7 Q. What does that mean?

8 A. The firearm actually comes with a -- the firearm
9 comes with a factory barrel, which has polygonal rifling
10 if it comes from Glock. Polygonal rifling means it does
11 not have squared or cut edges. But this firearm has a
12 stainless steel style barrel, which is an aftermarket
13 piece that can be purchased from another manufacturer or
14 some gun store or what not may actually sell them, and you
15 can replace the original barrel with this barrel and use
16 it as well. It's just another component that can be
17 bought to put on, what we call aftermarket. It's kind of
18 like an accessory. If you have something, an accessory,
19 for yourself. Like if you buy a piece of jewelry, that's
20 basically what this functions as.

21 Q. Okay. Now, what was the result of your examination
22 once you test fired State's Exhibit Number 75?

23 A. Once I did a test fire, I then compared the test fire
24 from State's Exhibit 75, to the fired cartridge casings
25 and the fired bullet specimens and found that this firearm

1 did fire the fired cartridge casings and fired bullet
2 specimens in 79, 80, 81 and 82.

3 MS. MUNSON: I have nothing further at this
4 time, Your Honor.

5 THE COURT: Mr. DeJong.

6 MR. DEJONG: Thank you, Your Honor. May it
7 please the Court.

8 **CROSS EXAMINATION**

9 **BY MR. DEJONG:**

10 Q. You say you've been doing this for how long?

11 A. A little over nine years.

12 Q. All right. And you have a degree in chemistry?

13 A. Chemistry. Yes, sir.

14 Q. All right, sir. So basically your education and the
15 -- what we commonly refer to as ballistics. That's not
16 really a correct term; is it?

17 A. That's correct.

18 Q. Pardon me?

19 A. Correct. Yes, sir.

20 Q. Tool markings or firearm markings or something ---

21 A. Yes, sir.

22 Q. -- along those lines would be more accurate; correct?

23 A. Correct.

24 Q. All right. So your formal -- initial formal
25 education was you had a mentor; right?

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- 1 A. That's correct.
- 2 Q. Okay. No formal education as far as tool marking
- 3 identification or anything else?
- 4 A. Other than growing up in a machine shop with my dad,
- 5 working with him side by side for all my life.
- 6 Q. Yes, sir. And so when you start looking at these
- 7 things, shell casings, projectiles, whatever, you use a
- 8 comparison microscope; right?
- 9 A. Correct.
- 10 Q. And that comparison is done by your eye?
- 11 A. That's correct.
- 12 Q. So whether those comparisons are there or not there
- 13 is subjective in your eye and in your mind?
- 14 A. No, sir. I'm not the only one that's going to be
- 15 looking at them. Another person will come behind me and
- 16 verify my findings as well.
- 17 Q. When you look at them, not some person coming behind
- 18 you, when you look at them ---
- 19 A. Yes, sir.
- 20 Q. -- it is subjective in your eye and in your mind?
- 21 A. It is what I'm seeing, yes, sir.
- 22 Q. Right. No other way of testing that other than your
- 23 eye and your mind, other than what you say somebody else
- 24 may look at?
- 25 A. That's correct.

1 Q. All right. Now, in this case you say you had

2 somebody else look at it?

3 A. Yes, sir.

4 Q. That person is not here today?

5 A. No, sir.

6 Q. All right, sir. Now, you said this dates back, I
7 think, to about 1929; right?

8 A. It was 1926.

9 Q. 1926. When you get old three years doesn't mean
10 much, I guess. But at any rate. 1926. Would you agree
11 with me, Mr. Armstrong, that manufacturing techniques have
12 changed drastically over that however many years it is?

13 A. Oh, they do change, yes, sir.

14 Q. And indeed we have more mass productions?

15 A. That's true.

16 Q. And when we say that, we would have more mass
17 productions in weapons?

18 A. That's true.

19 Q. And actually over the years tolerances and machining
20 have become much more precise?

21 A. They have.

22 Q. Now, that mass production in making of guns and gun
23 barrels, would that not decrease any markings on shell
24 casings or shells?

25 A. No, sir. Everything that is made is made by a tool.

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1 Therefore, that tool is getting dull or picks up dirt and
2 grime when it's in the manufacturing process and when it
3 cuts the metal to make the firearm, it actually leaves
4 imperfections behind. Those imperfections are what are
5 transferred to the fired cartridge case and/or fired
6 bullet specimen that are able to be linked together to
7 that firearm.

8 Q. Well, what imperfections were there in these casings?

9 A. Well, there were some imperfections that were
10 obviously in the tool that manufactured the firearm, which
11 left striations on that firearm. Those striations for the
12 fired cartridge casings were actually impressed into that
13 fired cartridge case, which gave like an impressed image.
14 Much like if you got your finger and pressed it into a
15 thing of silly putty, you can still see the outline of
16 your ridges from your fingerprint. That's basically the
17 same idea. And when the projectiles, they're being pushed
18 down that barrel and the projectile is a slightly larger
19 diameter than the barrel. So any marks that are inside
20 that barrel are transferred to that fired bullet specimen
21 as it goes through.

22 Q. Well, you say -- you compare this to fingerprints.

23 That's really not a valid comparison; is it?

24 A. Well, it's looking at the images side by side in the
25 same manner.

1 Q. All right. But it's not a fingerprint. Not every
2 weapon that is manufactured is totally and purely unique?

3 A. Yes, sir, it is.

4 Q. You would disagree with me?

5 A. Yes, sir, I would.

6 Q. All right. And -- well, and part of your -- you say
7 that there was a square marking on the shell casing?

8 A. It was a Glock firing pin impression. Yes, sir.

9 Q. Is Glock the only one that has a square firing pin?

10 A. There are only two manufacturers that I'm aware of
11 with Glock type firing pin impressions. Glock and Smith &
12 Wesson.

13 Q. All right. And you say -- what kind of weapon did
14 you finally test?

15 A. I tested a Glock Model 23.

16 Q. All right. What kind of barrel did it have on it?

17 A. It had an aftermarket barrel.

18 Q. Who manufactured that?

19 A. That one, I'm not positive.

20 Q. All right. Now, again, to say fingerprints or DNA,
21 this does not -- tool marks do not fit into that realm;
22 does it?

23 A. That depends on how you're looking at it.

24 Q. Well, let me see if I can share with you how I might
25 look at it. With DNA, and certainly there are computer

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1 testing that is done ---

2 MS. MUNSON: Your Honor, I apologize. I'm going
3 to object to this. Without laying any foundation about
4 what this witness's knowledge is about DNA, fingerprints,
5 anything else like that, I don't think he should be
6 allowed to cross examine him on it.

7 THE COURT: Overrule your objection. I'll allow
8 him leeway in his cross examination.

9 Q. Certainly there is a great deal of scientific
10 material out there with regard to DNA; isn't that right?

11 A. Yes, sir.

12 Q. All right. That same degree of scientific material
13 is not out there as far as tool markings or ballistics go?

14 A. There are lots of materials out on firearms tool
15 markings. Yes, sir.

16 Q. Scientific material?

17 A. Yes, sir, scientific material.

18 Q. You're telling me this has been recognized by the
19 scientific community as a science?

20 A. Yes, sir, it has.

21 Q. I see. Well, are you familiar that in 1998 the FBI
22 started a particular working group of people with regard
23 to ballistics?

24 A. Yes, sir, I am.

25 Q. And do you know why they did that?

1 A. It was based on evidence handling. Yes, sir.

2 Q. Evidence handling and the subjective nature of
3 ballistic examination; right?

4 A. The only reason I'm familiar with it is just because
5 of the way the evidence was handled.

6 Q. When did you do your examination?

7 A. On this case here, it actually has different dates
8 where I completed my examinations. Received items on June
9 16th, 2006, completed that initial report on June 29th,
10 2006. Received other items on July 26th of 2006.
11 Completed that examination on August 9th, 2006.

12 Q. All right, sir. The initial examination was on shell
13 casings; right?

14 A. Shell casings and two fired bullet specimen. Yes,
15 sir.

16 Q. Right. And at that point in time you did not have a
17 weapon?

18 A. That's correct.

19 Q. Now, is it not true, Mr. Armstrong, that as time goes
20 by even those markings that you say are scientific, that
21 they can deteriorate over time?

22 A. It depends on the condition of the firearm. It
23 depends on the way it's cleaned, handled. There are all
24 kind of variables that are in there. Yes.

25 Q. Right. And even the evidentiary pieces themselves

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- 1 can deteriorate; can they not?
- 2 A. If they're stored in a room environment they should
- 3 not deteriorate. No, sir.
- 4 Q. Say again?
- 5 A. If they're stored properly they should not
- 6 deteriorate.
- 7 Q. Right. You don't know how these were stored; do you?
- 8 A. Well, after I received them, they were stored in a
- 9 dry, clean environment.
- 10 Q. Okay, sir. All right. And you got them when?
- 11 A. The -- I received them the day after the incident. I
- 12 received them on June 16th.
- 13 Q. All right, sir. Now, you don't do the fingerprinting
- 14 business; do you?
- 15 A. No, sir.
- 16 Q. Okay. So you wouldn't know whether the shell casings
- 17 or weapon or anything had ever been fingerprinted?
- 18 A. I have no idea.
- 19 MR. DEJONG: One moment, please, Your Honor.
- 20 Q. When you prepared your report -- do you have a copy
- 21 of that up there with you?
- 22 A. Yes, sir.
- 23 Q. I'm looking at the report now that was, I guess,
- 24 prepared and submitted on 6/29 of '06?
- 25 A. Yes, sir.

1 Q. Okay. Looking at that additional information.

2 A. Yes, sir.

3 Q. I guess that would be the third paragraph at the top.

4 Explain to me where you say picking up -- where it says
5 items 7 and 8, fired bullet specimens?

6 A. Okay.

7 Q. You with me? -- are consistent with firearms
8 marketed by Smith & Wesson, Colt, Walther and others?

9 A. Correct.

10 Q. So you can only say they were consistent?

11 A. At that point in time I did not have a firearm to
12 compare them to. And all I'm doing on that part of the
13 examination was measuring the land and groove with the
14 dimensions of that projectile. Firearm manufacturers have
15 unique manufacturing processes where they actually record
16 their dimensions of the firearm where they manufacture
17 that barrel. They send those to the FBI and ATF, and I
18 have a database of those measurements. When I took my
19 measurements of the land and grooves, I plugged it into my
20 database and came up with a short list of firearms which
21 possibly could have been used in firing that projectile.
22 And then I recorded my -- those in my report and notes.

23 Q. What database do you use?

24 A. It's called a general rifle and characteristics
25 database.

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1 Q. Who maintains that database?

2 A. The FBI.

3 Q. That database just tells you if it's consistent with
4 some other weapon?

5 A. It just gives you a list of possible firearms that
6 may have been used to fire a projectile.

7 Q. Thank you, Mr. Armstrong.

8 THE COURT: Any redirect?

9 MS. MUNSON: Brief redirect, Your Honor.

10 THE COURT: Yes, sir. Yes, ma'am.

11 **REDIRECT EXAMINATION**

12 **BY MS. MUNSON:**

13 Q. Mr. Armstrong, the list that Mr. DeJong just read to
14 you about possible firearms that fired with two bullet
15 samples ---

16 A. Yes, ma'am.

17 Q. -- did not contain Glock; did it?

18 A. No, ma'am. It did not.

19 Q. And what, if anything, would that have to do with the
20 aftermarket barrel?

21 A. Well, the aftermarket barrel has a different rifling
22 than a Glock. And that's the reason for the report.

23 MS. MUNSON: Nothing further, Your Honor.

24 THE COURT: All right. Thank you, sir. You may
25 step down.

1 MS. MUNSON: Your Honor, we ask that this
2 witness be excused.

3 MR. DEJONG: No objection.

4 THE COURT: Without objection, he may be
5 excused.

6 MS. MUNSON: May we approach, Your Honor?

7 THE COURT: Yes, ma'am.

8 (WHEREUPON, Ms. Munson and Mr. DeJong approached
9 the bar.)

10 MS. MUNSON: State calls Brian Cowan.

11 THE COURT: Mr. Cowan, let me remind you, you're
12 still under oath. If you'll just have a seat, please,
13 sir.

14 BRIAN COWAN,

15 HAVING BEEN PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MS. MUNSON:

18 Q. All right, Sergeant Cowan. I'm going to show you a
19 few items here. First of all, I'm going to show you
20 State's Exhibits Number 15, 16, 17, 18, 19 and 20. Do you
21 recognize those?

22 A. I recognize what they are.

23 Q. Okay. Are you familiar with them?

24 A. I am familiar with them.

25 Q. Okay. And did you, did you handle those at all in

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- 1 this case?
- 2 A. No, I did not.
- 3 Q. Okay. Then let me show you State's Exhibit 22. Take
- 4 a look at this. Do you recognize that?
- 5 A. Yes, I do.
- 6 Q. And what is that?
- 7 A. These are what they call major crime prints, which is
- 8 prints that I roll off of a person who is suspected of a
- 9 major crime.
- 10 Q. Okay. Now who rolled those prints?
- 11 A. I rolled these prints.
- 12 Q. And on what date?
- 13 A. June the 10th of 2008.
- 14 Q. Whose prints did you roll?
- 15 A. Roger Eugene Shephard.
- 16 Q. Do you see him in the Courtroom?
- 17 A. Yes, I do.
- 18 Q. Can you point him out?
- 19 A. He's the gentlemen sitting with the purple shirt on
- 20 and looks like a multi-colored tie.
- 21 Q. Okay. What identifying -- what marks were placed on
- 22 that exhibit?
- 23 A. On this exhibit I have -- I wrote the name of Mr.
- 24 Shephard, which is Roger Eugene Shephard. I put the date
- 25 which the -- these prints were rolled and also my

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1 initials.

2 Q. Okay. And are they in substantially the same
3 condition as when you rolled the prints?

4 A. Yes, they are.

5 Q. And you say there's a signature on there other than
6 yours?

7 A. Yes.

8 Q. Did you see who actually put that signature on there?

9 A. That signature -- if I remember correctly, that
10 signature is Roger Eugene Shephard's.

11 Q. Okay. Did you see him put that on there?

12 A. That would have been done in front of me.

13 Q. Okay. All right. I'm going to show you State's
14 Exhibit Number 21. Do you recognize that?

15 A. Yes, I do.

16 Q. And what is that?

17 A. This is the Federal Firearms transaction record.

18 Q. Okay. And from where did that come?

19 A. This come from the counter in Action Pawn.

20 Q. Okay.

21 MS. MUNSON: I have nothing further at this
22 time, Your Honor.

23 THE COURT: You may cross examine the witness.

24 MR. DEJONG: One moment, please, Your Honor.

25 It's my understanding this witness will take the

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1 stand again, Your Honor. I'll reserve my cross

2 examination for that time.

3 THE COURT: Is he coming up again?

4 MS. MUNSON: Yes, sir.

5 THE COURT: All right. We'll reserve your cross
6 examination again. You may step down, Officer Cowan.

7 MS. MUNSON: At this time we call Lieutenant
8 Tony Robinson.

9 MISTER CLERK: Place your left hand on the bible
10 and raise your right hand. Do you solemnly swear or
11 affirm the testimony you're about to give in this case to
12 be the truth, the whole truth and nothing but the truth,
13 so help you God?

14 TONY ROBINSON: I do.

15 MISTER CLERK: If you would have a seat and
16 state your name for the record.

17 TONY ROBINSON: Tony Dale Robinson.

18 TONY ROBINSON,

19 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MS. MUNSON:

22 Q. Who do you work for, sir?

23 A. I'm with the Pickens County Sheriff's Office.

24 Q. And what are your duties?

25 A. I am a lieutenant in the crime scene unit and

- 1 property and evidence.
- 2 Q. How long have you been with the sheriff's office?
- 3 A. Twenty years now.
- 4 Q. How long have you been in the forensics field?
- 5 A. Most of that twenty years.
- 6 Q. Okay. As part of your duties, are you required to
- 7 see if you can lift latent prints?
- 8 A. It is.
- 9 Q. I'm showing you State's Exhibit 15 and 16, if you'll
- 10 take a look at that. Do you recognize those?
- 11 A. I do.
- 12 Q. How do you recognize those?
- 13 A. They have my initials, my case number and the date.
- 14 Q. The date of what?
- 15 A. The incident at Action Pawn Shop.
- 16 Q. Okay. And who is it that developed those latents?
- 17 A. I did.
- 18 Q. Okay. And I'm showing you State's Exhibit 17, 18, 19
- 19 and 20.
- 20 A. Yes.
- 21 Q. Do you recognize those?
- 22 A. I do.
- 23 Q. And how do you recognize them?
- 24 A. They also bear my initials, the date and my case
- 25 number.

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1 Q. Okay. On the front of the form -- explain to the
2 jury what's on the front and back of State's -- these
3 state's exhibits?

4 A. The front is the actual tape lift. When we process
5 for fingerprints we apply dust to a surface. When we
6 develop prints we lift it with tape. On the back of the
7 card is where I put the information about where I found
8 the fingerprint and the information where I put my
9 initials and my case number.

10 Q. Okay. And how -- on the back of the cards how did
11 you indicate from where the print came?

12 A. Most of them I drew a small sketch.

13 Q. Okay. And on the sketch where did you indicate --
14 how did you indicate where the print was?

15 A. With an X.

16 Q. Okay. And now I'm showing you State's Exhibit Number
17 21. Do you recognize that?

18 A. I do.

19 Q. How do you recognize that?

20 A. I remember it from the scene. I didn't collect it,
21 but I do remember it.

22 Q. Okay.

23 MS. MUNSON: I have nothing further of this
24 witness at this time, Your Honor.

25 THE COURT: Any cross examination?

1 MR. DEJONG: I understand we're going to get the
2 pleasure of seeing Lieutenant Robinson again, so I'll just
3 reserve my cross examination until that point in time,
4 Your Honor.

5 THE COURT: All right, sir. Officer Robinson,
6 you may step down.

7 MS. MUNSON: Oh, I'm sorry, Your Honor. State
8 calls Renee Sherbert.

9 MISTER CLERK: Place your left hand on the bible
10 and raise your right hand. Do you solemnly swear or
11 affirm the testimony you're about to give in this case to
12 be the truth, the whole truth and nothing but the truth,
13 so help you God?

14 RENEE SHERBERT: Yes, sir, I do.

15 MISTER CLERK: Thank you, ma'am. If you would
16 have a seat and state your name for the record.

17 RENEE SHERBERT: My name is Renee Foster
18 Sherbert.

19 RENEE SHERBERT,

20 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MS. MUNSON:

23 Q. Who do you work for, ma'am?

24 A. I work for the latent print section of the Greenville
25 County Department of Public Safety, Forensic Division.

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1 Q. And what is your title?

2 A. I am a sergeant and certified latent print examiner.

3 Q. How long have you been a latent print examiner?

4 A. I've been a latent print examiner for over eight
5 years.

6 Q. Have you had any other duties with Greenville County
7 prior to that?

8 A. Yes, ma'am. I've been with Greenville County for
9 over twenty-four years. Initially started as a deputy in
10 the Uniform Patrol Division for the sheriff's office and
11 was promoted to master deputy where I continued my duties
12 in uniform patrol as a training officer. And in 1997 I
13 transferred to the Greenville County Forensic Division
14 where I worked in the crime scene section as a crime scene
15 investigator for over five years. And then in 2001 I
16 transferred to the latent print section where I currently
17 work.

18 Q. Okay. Tell the jury about your educational
19 background?

20 A. I currently have an associates degree in criminal
21 justice and am working towards my bachelor's degree in
22 criminal justice.

23 Q. Okay. Tell the jury about your training in the field
24 of fingerprint examination and identification?

25 A. My training began in forensics with a minimum of a

1 hundred and sixty hours of introduction to crime scene
2 investigation. And from there I went to fingerprint
3 comparison class at the Criminal Justice Academy where I
4 successfully completed that, as well as an ID technician
5 training school at the South Carolina Criminal Justice
6 Academy. I've also attended and successfully completed
7 the administrative advanced latent fingerprint school at
8 the FBI academy in Quantico, Virginia, as well as their
9 footwear and tire track training program. I've completed
10 the CARDPACT school, which is the Combined Advanced
11 Ridgeology Demystifying Palmprints and Comparisons
12 Technique course. And also successfully completed the
13 advanced palm print comparison class. And I've also went
14 through the certification requirements by the
15 International Association for Identification and am
16 certified by them as a latent fingerprint examiner, as
17 well as a footwear examiner.

18 Q. Okay. Do you have any teaching experience, Sergeant
19 Sherbert?

20 A. Yes, ma'am. I'm a former adjunct faculty member at
21 Greenville Technical College where I taught fingerprint
22 science in the Criminal Justice Department. I've also
23 been a training officer since 1989. And in my department,
24 not just for my department, but on a local, state and
25 regional level I provide training in crime scene

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1 investigation, processing and fingerprint comparison,
2 fingerprint classification, as well, throughout our
3 region.

4 Q. Okay. Are you required to undergo any continuing
5 education?

6 A. Absolutely.

7 Q. Okay.

8 A. We have as a law -- I'm a certified law enforcement
9 officer as well and I go through yearly -- quarterly
10 training for that for weapons, proficiency, court and
11 legal updates on a quarterly basis as well. And as far as
12 forensics and my certifications, I am required by the
13 International Association for Identification to maintain
14 my certification to go to certified trainings on a regular
15 basis, to read and continue with the updates and
16 periodicals that come out in the forensic field as they
17 apply to my specialties of footwear and fingerprints. And
18 to keep record documentation of all this training that I
19 do, I also go through proficiency testing by an outside
20 source that we submit to several times a year.

21 Q. Okay. How much experience have you had collecting
22 latent fingerprints?

23 A. Like I said before, I worked in the crime scene
24 section for over five years, and where my full time job
25 was to respond to and process various types of crime scene

1 from, you know, malicious damage to a mailbox to death
2 investigations of all types where most of your job is
3 involved in not only documenting the evidence, but trying
4 to collect the evidence, preserve it and try to find where
5 fingerprints, footwear and tire tracks and other types of
6 trace evidence might be.

7 Q. Okay. How much experience have you had in comparing
8 latent prints to known prints?

9 A. A minimum of eight plus years that I've been in the
10 latent fingerprint section of the Forensic Division. I
11 did some comparisons prior to that when I was in crime
12 scenes. But full time comparisons for over eight years
13 now.

14 Q. When you make a comparison are you, like Mr.
15 Armstrong, subject to peer review?

16 A. Absolutely. That is part of the scientific process,
17 is a peer review on everything we do.

18 Q. Have you ever been qualified as an expert in the
19 field of fingerprint identification?

20 A. I have been qualified numerous times in General
21 Sessions, which is what this is, General Sessions Court,
22 as well as Federal Court, for fingerprint comparison
23 identification.

24 MS. MUNSON: Your Honor, at this time I offer
25 Sergeant Sherbert as an expert in the field of fingerprint

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1 identification.

2 THE COURT: Any voir dire or any objection?

3 MR. DEJONG: No voir dire, Your Honor. No

4 objection.

5 THE COURT: Without objection, again, this will

6 be considered an expert in the field of fingerprint

7 identification.

8 Q. Sergeant Sherbert, first of all, what is a latent

9 fingerprint?

10 A. Okay. Basically if you look at your hands, the lines

11 that you see on your hands, those raised portions of skin

12 are called friction ridge skin. And in between there are

13 what we call furrows. They're valleys, little dip areas.

14 And on top of the raised portions of skin, the friction

15 ridge skin, are sweat pores. And we exude water and salt

16 from those. We also oftentimes pick up other contaminants

17 like makeup or oils from other parts of our body, so

18 different things like that. When we come in contact with

19 a surface, the raised portions, the lines are what

20 actually come in contact with the surface, and you

21 transfer whatever is on your skin to that particular

22 surface. A latent print is referred to in the fingerprint

23 community as an unknown print. Okay. That -- it's just a

24 terminology. Latent means unknown. It is unidentified.

25 Q. Okay. What determines whether or not a person will

1 leave a fingerprint?

2 A. The first thing that will determine that is whether
3 or not they've touch objects. Whether or not that
4 friction ridge skin comes in contact with various types of
5 surfaces and whether or not they touched surfaces that may
6 or may not be conducive to latent processing and holding a
7 print.

8 Q. What sort of surfaces are good for leaving
9 fingerprints?

10 A. My favorite are smooth, flat, shiny surfaces that are
11 clean. Those are -- you can basically leave a print on
12 any type of surface, but it's just a matter of whether or
13 not you can recover it using the correct techniques to
14 recover that particular print or being able to get say a
15 legible print or enough of detail.

16 Q. What's your experience as to recovering fingerprints
17 from firearms?

18 A. Fingerprints from firearms can kind of go either way.
19 It depends on the condition of the firearm itself. If it
20 has too much oil on it, if it's dirty, corroded, different
21 things like that, can have an effect on it. And also the
22 different ways that you hold a firearm. You know, you
23 don't touch it with your fingertips typically. Your
24 hand's wrapped around it. You know, your hands are all
25 over it moving and pushing. And as you can tell, you

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1 know, your skin is very flexible and it moves. And that
2 can have an effect on how the fingerprints might be left
3 on that particular surface, because there are so many
4 indentations, curved areas, flat areas, rough areas,
5 smooth areas, things like that. So sometimes it's kind of
6 like a fifty/fifty. Sometimes I've gotten prints, decent
7 prints off of weapons, and on a handgun and long guns and
8 other kinds, I've been unable to get anything.

9 Q. Okay. Is it possible for two people to touch an item
10 and one of them not leave prints on it?

11 A. That is possible. Given the situation of a person's
12 skin. If they have extremely dry skin or rough skin or
13 worn because, you know, they do brick work or concrete or,
14 you know, don't use lotion at all or anything like that
15 and their skin is in poor shape, that can affect whether
16 or not they're able to leave a print on different types of
17 surfaces. On a cleaner, smoother surface, they would have
18 a better chance. On a rough surface, they would have less
19 of a chance of leaving a print if their skin is in poor
20 shape. But if their skin is in good shape, then it's
21 easier for them to leave a print on a surface. If two
22 people touch the same item, if they touch right on top of
23 each other, you know, it's nine times out of ten not going
24 to be exactly on top of each other, so it might be like
25 some overlapping areas, but other areas might be free and

1 clear from the other print. So you can, you can get a
2 little bit of both. Sometimes one might obliterate the
3 other. One might have a little bit of detail that's good,
4 the other one might not. You know, it just depends on the
5 situation and the type of surface as well.

6 Q. What process do you go through in order -- when you
7 see something that may be a latent print, what process do
8 you go through to preserve it and collect it?

9 A. Like on a scene?

10 Q. Yes, ma'am.

11 A. Okay. In the lab we bring items back to process or
12 out on the scene, you basically kind of have to figure
13 out, or try to figure out, what actions a person may or
14 may not have taken while they were there on that
15 particular scene. And you try to figure out, well, they
16 may have touched this, this looks out of place, this has
17 been opened. Or you know, the victim may give you
18 information as well, oh, I didn't move this, I didn't
19 leave this here. I didn't have this opened. This was
20 closed. And those kinds of areas are where we look for to
21 process for fingerprints and other trace evidence that
22 might be there. And oftentimes on a lot of surfaces, like
23 smooth, flat, shiny surfaces, we will use a black
24 fingerprint powder to try to get those prints to become
25 visible. Because a latent print is invisible to the naked

1 eye. You have to process it in order to see it. And once
2 that black powder adheres toward those lines I mentioned
3 to you that come in contact with the surface, once that
4 black powder attached to it, then you can actually see
5 something tangible and that's when we take fingerprint
6 lift tape, which is very similar to scotch tape, but not
7 the same, and apply it to that surface, rub it down really
8 well, to adhere to the black powder that has attached
9 itself to those fingerprint ridges, remove that from the
10 surface and then place it on a white card. And the reason
11 for that, black powder, white background, it gives you the
12 maximum amount of contrast between the ridges and the
13 furrows, the valley area that I mentioned, and then that's
14 how we would lift that particular surface. We also use
15 things like magnetic powder on Styrofoam, things like
16 that, or cardboard and other chemicals like ninhydrin,
17 things like that, to develop prints on paper.

18 Q. Okay. Well, let's talk about the ninhydrin thing.
19 And you use that only on paper?

20 A. Basically ninhydrin is used on a porous surface such
21 as paper, cardboard, things like that.

22 Q. And how does ninhydrin work?

23 A. Ninhydrin attaches itself to the amino acids that you
24 leave when you make contact with a surface from the skin,
25 the transfer, and what it does is it turns purple where

1 the ridges made contact. Because again, the valley areas
2 do not make contact with the surface when you touch. And
3 the ninhydran adheres itself to where contact was made,
4 those fiction ridge skin lines that I mentioned.

5 Q. Okay. Now, Sergeant Sherbert, I'm going to show you
6 State's Exhibits 15 and 16.

7 A. Yes, ma'am.

8 Q. Do you recognize those?

9 A. I do.

10 Q. How do you recognize them?

11 A. I first recognize them because they have my
12 handwriting and my initials on them. And they're latent
13 lifts, what we call latent lifts, where there's tape and
14 prints and other detail on one side and then detailed
15 information as far as where the item came from and case
16 numbers and things like that.

17 Q. Okay. Now State's Exhibits 17, 18, 19 and 20.

18 A. Okay. Yes, ma'am. I recognize these as well. They
19 all have my handwriting and my initials on the tape side
20 of the cards.

21 Q. I'm going to show you State's Number 21. Take a look
22 at that.

23 A. Yes, ma'am. I do recognize this.

24 Q. How do you recognize it?

25 A. State's Exhibit 21 is labeled U.S. Department of

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1 Justice, Firearms Transaction Record. And I recognize it
2 because it has my handwriting on it and my initials on the
3 actual papers.

4 Q. Okay. Now Sergeant Shephard, these items ---

5 A. Sherbert.

6 Q. I'm sorry.

7 A. That's all right.

8 Q. State's Exhibits 15, 16, 17, 18, 19, 20 and 21, where
9 did -- how did these get here today?

10 A. I brought these, all of these items that Ms. Munson
11 has to the Courtroom today.

12 Q. Okay. Have they been in your custody since you took
13 custody of them?

14 A. Yes, ma'am. They have.

15 Q. And are they in substantially the same condition?

16 A. They are in the same condition.

17 MS. MUNSON: Your Honor, at this time I move
18 State's 15, 16, 17, 18, 19, 20 and 21 into evidence.

19 MR. DEJONG: One moment, please, Your Honor.

20 THE COURT: Yes, sir.

21 MR. DEJONG: Your Honor, the notations on the
22 back, were they made by Ms. Sherbert? I'm speaking. I'm
23 sorry.

24 THE COURT: You may ask her that question.

25

VOIR DIRE EXAMINATION

1 BY MR. DEJONG:

2 Q. 15, 16, 17, 18, 19 and 20, the notations on the back,

3 Ms. Sherbert, were they made by you?

4 A. Can you bring them around so I can see it?

5 Q. I'm sorry. Yes, ma'am.

6 A. Can't see that far with my glasses on. Let's see.

7 Okay. When you say back, you're talking about where the
8 drawing is?

9 Q. Yes, ma'am.

10 A. My notations are on the tape side on all ---

11 Q. Okay.

12 A. -- of these, on the tape side.

13 Q. All right.

14 MR. DEJONG: Your Honor, at this point in time I
15 would object to them coming in because there's no
16 foundation laid as to any of the markings on the back of
17 them at this point in time.

18 MS. MUNSON: Your Honor, I respectfully
19 disagree. I believe Lieutenant Tony Robinson testified
20 that he drew those sketches and put the marks on them.

21 MR. DEJONG: I could be wrong. I don't know how
22 he testified. If I'm wrong, then it's without objection.

23 THE COURT: Without objection, Exhibits 15
24 through 21 are admitted into evidence.

25 MR. DEJONG: And 21 without objection, Your

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1 Honor.

2 (WHEREUPON, State Exhibit Numbers 15 through 21 were
3 admitted into evidence.)

4 DIRECT EXAMINATION CONTINUED

5 BY MS. MUNSON:

6 Q. Now, Ms. Sherbert, I'm showing you State's Exhibit
7 Number 22. Can you take a look at that?

8 A. Yes, ma'am. I recognize State's Exhibit 22.

9 Q. How do you recognize it?

10 A. I recognize them because they bear my initials on the
11 front of each of the pages and also a date that I
12 inscribed.

13 Q. Okay. And how did that exhibit get here today?

14 A. This exhibit got here because I carried it here. I
15 brought it here and handed it to you.

16 Q. And since you received it, has it been in your
17 custody?

18 A. Yes, ma'am.

19 Q. Is it in substantially the same condition?

20 A. Yes, ma'am.

21 Q. Okay.

22 MS. MUNSON: Your Honor, at this time I offer
23 State's 22 into evidence.

24 MR. DEJONG: Without objection, Your Honor.

25 THE COURT: Exhibit 22 is into evidence without

1 objection.

2 (WHEREUPON, State Exhibit Number 22 was admitted into
3 evidence.)

4 Q. Sergeant Sherbert, were you asked to compare State's
5 22 to the other exhibits?

6 A. Yes, ma'am. I was asked to perform a comparison
7 between these exhibits, as well as what we call major case
8 prints, State's Exhibit 22.

9 Q. Okay. And on what date did you compare State's
10 Exhibits 15, 16, 17, 18, 19 and 20 to -- and 21, to
11 State's Exhibit Number 22?

12 A. There's a couple of different dates. Initially
13 State's Exhibit 15 and 16, I compared and completed my
14 examination on June the 16th of 2006. And that was to a
15 fingerprint card other than the major case prints. So at
16 that particular date, that was June the 16th of 2006.
17 That was before I received what we call the major case
18 prints.

19 Q. Did you ever compare 15 and 16 to the major case
20 prints?

21 A. I did following the receipt of these.

22 Q. Okay. That's what I'm asking you. On what date did
23 you compare 15 through 20 to the major case prints?

24 A. That would have been on June the 12th of 2008.

25 Q. Okay. And on what date did you compare State's

1 Exhibit Number 21 to State's Exhibit Number 22?

2 A. Initially on June the 16th of 2006, and then again,
3 upon receipt of the major case prints that I received on
4 June the 12th of 2008.

5 Q. Okay. Sergeant Sherbert, in the field of forensics,
6 how valuable is a fingerprint?

7 A. It's oftentimes in a criminal investigation the most
8 important piece of evidence from a crime scene.

9 Q. Why is that?

10 MR. DEJONG: Your Honor, I'm going to object to
11 this line of questioning.

12 THE COURT: What was the relevance of that
13 testimony?

14 MS. MUNSON: The relevance is she's been
15 qualified as an expert in the field of fingerprint
16 identification and comparison. What I'm trying to ask her
17 is why they collect fingerprints and what's the value.

18 THE COURT: All right. I'll allow the limited
19 questioning.

20 Q. How often do you in your training and experience find
21 fingerprints from two individuals that are the same?

22 A. Repeat that, please.

23 Q. I'm sorry. How often when comparing fingerprints do
24 you find fingerprints from two separate individuals that
25 are the same or one print that can come exactly from two

1 individuals?

2 A. No two prints on any individual are the same.

3 Q. Okay.

4 A. So that doesn't happen.

5 Q. How do you go about making your comparison of the
6 known print, the rolled print, State's Exhibit Number 22
7 to be unknowns to the latents?

8 A. In a comparison process, the first thing I do is take
9 the unknown print or the latent from the crime scene, the
10 unknown print, and examine it. And then when I'm looking
11 at it, I'm looking for the size and the shape and the
12 position of that particular print. And then I look at a
13 known print from an individual. And I look for the size,
14 shape and position of that. Once I determine that the
15 size, shape and position of the unknown print are the same
16 and the known print, then I effect an identification. I
17 can say that these two came from the same -- that this
18 one, the unknown, came from that source, the known.

19 Q. How much information from the latent print do you
20 have to have before you can say you have a match?

21 A. It's like a totality of circumstances. There's an
22 enormous amount of detail in our skin, especially in the
23 friction ridge skin that I mentioned. There are ending
24 ridges and dividing ridges in these lines that have an
25 enormous amount of detail. And a lot depends on the, you

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1 know, the size of the print or how much of a print you
2 have. In addition to that, the ridges themselves, the
3 friction ridges themselves that make contact with the
4 surface and then, you know, again are lifted and placed on
5 the cards, those ridges are unique themselves, each ridge.
6 And as you go along the ridge you may find indentations in
7 the ridge. You may find like a pointed area or a bulge
8 there. So the ridges themselves are unique, the
9 ridgeology. The way the pores, your sweat pores, are
10 situated on top of those ridges are unique as well. They
11 are individualized and they're not repeated. And you may
12 go along one particular ridge and have, you know, two
13 pores that are clearly visible. You may skip an area and
14 have five together, one hanging off the edge of a ridge,
15 and all that detail. So when I am performing an
16 examination, I am looking at the entire print, whatever is
17 there, and looking at the detail, the minute detail, that
18 might be there. And once I determine, like I mentioned,
19 the size, shape and position of the unknown are determined
20 to be the same and the known, that's when I effect an
21 identification and issue a report.

22 Q. Okay. Let me ask you one more thing, Sergeant
23 Sherbert. State's Exhibit that's in evidence, Number 21,
24 there appear to be photographs on this exhibit. Can you
25 explain to the jury what that is?

1 A. Okay. One thing about ninhydrin processing, it is
2 oftentimes used on paper to lift a print, make it become
3 visible from latent, invisible to what we can then see and
4 actually do something with. I can't take this and lift it
5 and put it on a card because I'll tear the paper, I'll
6 destroy the print, that kind of thing. So what we have to
7 do is capture this, because over a period of time, and
8 there's no set time, the ninhydrin will dissipate. And so
9 when we oftentimes come to court, it's not next week or
10 next month, it can be years, like in this particular case,
11 so if I did not preserve the fingerprints that were on
12 here, then we could come in here and I would be showing
13 you things, you know, like, well, there used to be
14 something here. So what I do is I scan the document in
15 all the areas where ridge detail was visible, I scan that,
16 and you know, put an area, a box around it, and then gave
17 it a file number and saved that in our database, in our
18 image database, in my office. And then once I save them
19 and assigned them a number, I printed all them -- all the
20 thumbnails out, instead of printing full size and wasting
21 paper, we print what we call thumbnails. And then I
22 attach the thumbnails right to the area where that print
23 existed. And I mark, you know, the case numbers on my
24 piece of paper and it's in my handwriting in pencil is
25 marked on the document itself beside where those prints

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1 are.

2 Q. Okay. And these numbers that are on State's Exhibit
3 Number 22, are they significant in someway?

4 A. These here, the finger ...

5 Q. Yes, ma'am.

6 A. Universally throughout the fingerprint community in
7 the world, the fingers are numbered. We start with the
8 right hand, the thumb, the right thumb. That is finger
9 number one and it goes through to five on the right hand.
10 And then beginning with the left hand, the left thumb is
11 finger number six and it goes through to the left little
12 finger, which is number ten. And so if I talk to another
13 fingerprint examiner anywhere in the world and I say a
14 number eight finger, they all know I'm talking about the
15 left middle finger, because that's the terminology we use.
16 Q. Okay. Now, based on your training and experience, do
17 you have an opinion as to whether or not State's Exhibits
18 Number 15 through 20, can you identify those prints as
19 belonging to anyone in particular? Well, I guess to the
20 card?

21 A. Okay. I'm going to start with 15. State's Exhibit
22 15, I identified as coming from the number 9, which is the
23 left ring finger, of fingerprint cards identified as
24 belonging to Roger Shephard. That's 15. State's Exhibit
25 16, I identified as belonging to -- or being made by the

1 number nine, again left ring finger, of the fingerprint
2 cards labeled as Roger Shephard. State's Exhibit 17, I
3 identified as coming from the left palm, that would be the
4 area here, the left palm, specifically the hypothenar and
5 thenar areas of fingerprint cards labeled as Roger
6 Shephard. State's Exhibit 18, I identified as coming from
7 the left palm hypothenar area of the fingerprint cards
8 labeled as Roger Shephard. State's Exhibit 19, I
9 identified as being made by the right palm hypothenar area
10 of -- from the fingerprint cards of Roger Shephard.
11 State's Exhibit 20, I identified as coming from the -- or
12 being made by the left palm hypothenar area from
13 fingerprint cards labeled and palm print cards labeled as
14 Roger Shephard.

15 Q. Were you able to identify any of the prints that were
16 developed on State's Exhibit 21?

17 A. May I open this?

18 Q. Yes, ma'am.

19 A. It might be easier said than done.

20 Q. You want some scissors?

21 A. I don't know.

22 MISTER CLERK: I've got some scissors if you
23 need them.

24 WITNESS: I did a good job of taping them.

25 MISTER CLERK: You want some scissors?

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1 WITNESS: Please. That would be great.

2 A. Do you have any gloves? I didn't want to miss
3 anything on this because it folds. All right. On -- you
4 ready?

5 Q. I'm sorry. Yes, ma'am.

6 A. On the main document, as you can see, it's all one
7 piece and consists of three pages front and back. I have
8 one image marked as A1 and A1 is identified as coming from
9 the number one, which is the right thumb, the finger from
10 the print cards listed as Roger Shephard. Let's see.
11 Image listed as A2 was identified as coming from the
12 number six, which is the left thumb, from the print cards
13 marked as Roger Shephard. Image A3 is identified as
14 coming from the number six, again the left thumb, of the
15 print card identified as being from Roger Shephard. A4,
16 image A4 is identified as coming from the number two,
17 which is the right index finger of the print cards labeled
18 as Roger Shephard. Image A5 was identified as coming from
19 or belonging to the number three, right middle finger, of
20 the fingerprint cards labeled as Roger Shephard. And then
21 this little tab piece also is part of the permanent and
22 the image on it is listed as image A6 and it was not
23 identified.

24 Q. Thank you.

25 MS. MUNSON: I have nothing further, Your Honor.

1 THE COURT: You may cross examine the witness,
2 Mr. DeJong.

3 MR. DEJONG: Thank you, Your Honor. May it
4 please the Court.

5 CROSS EXAMINATION

6 BY MR. DEJONG:

7 Q. Ms. Sherbert, you never lifted any latent print in
8 this particular case; did you?

9 A. No. I did not lift any fingerprints.

10 Q. Now, the fingerprints that you compared, how were
11 they brought to you?

12 A. Are you speaking about the prints from the scene or
13 known prints?

14 Q. Prints from the scene, initially?

15 A. They were physically brought to my office in
16 Greenville.

17 Q. Now, when those are brought to you, are those brought
18 to you as the latent print lifts or photographs or how
19 were they brought to you?

20 A. The lifts that were brought to me, the exhibit items
21 that I just showed in court, those are actual fingerprint
22 lifts that were brought to me and then the piece of paper,
23 the permit, gun permit thing, I think Exhibits 21 ...

24 Q. I'll let you look at them if you need to.

25 A. Okay.

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- 1 Q. Okay. I'm not sure that's all of them.
- 2 A. 15 through 20 are all actual fingerprint lifts, tape
- 3 lifts, from the incident location. Can I see that,
- 4 please?
- 5 Q. Yes, ma'am.
- 6 A. This particular item, Exhibit 21, the paper, that was
- 7 processed and brought to me and I scanned, as I mentioned,
- 8 I scanned each of the visible images, fingerprint images
- 9 that I could see so I can store those and then print out
- 10 the thumbnails and attach them to the paper.
- 11 Q. Well, what you compared, and I guess you compared to
- 12 what's been described as Exhibit -- is this a collective
- 13 exhibit?
- 14 A. Yes, sir.
- 15 Q. Must be. Collectively as Exhibit Number 22, that's a
- 16 comparison that you made; right?
- 17 A. These are -- Exhibit 22 are the known prints
- 18 identified as belonging to Roger Shephard.
- 19 Q. All right. Now, actually what you're showing there,
- 20 Exhibit 22, is that what you compare against?
- 21 A. I did compare these prints to here.
- 22 Q. Yes, ma'am. But what I'm saying is, you have to have
- 23 something to compare -- to look at to compare to; right?
- 24 A. Yes, sir.
- 25 Q. Is that what you looked at?

1 A. I did look at these. Yes, sir.

2 Q. All right. You did not look at the original rolled
3 prints?

4 A. What are you referring to as original rolled?

5 Q. That's a copy of some sort; is it not?

6 A. These are actually inked fingerprints where a person
7 has ink applied to their finger and then rolled onto this
8 card. These are not copied.

9 Q. And you're saying those are inked prints on there?

10 A. Yes, sir.

11 Q. All right. Now, the fingerprints that you have
12 testified, which have been introduced, those are all of
13 the prints you did?

14 A. Are they all the prints that I looked at in this
15 case?

16 Q. Yes, ma'am.

17 A. No, sir. I looked at other prints as well.

18 Q. And where did those prints come from? Do you know?

19 A. I have prints that are submitted to me from the
20 incident location.

21 Q. Beg your pardon?

22 A. I have other prints, other fingerprint lifts, like
23 this, that were submitted to me from the incident
24 location.

25 Q. And do you know where those latents were lifted from?

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- 1 A. I have to look on each one of the cards to see where
2 they're lifted from.
- 3 Q. Well, do you know if any of them were lifted from the
4 same locations that are on what has been introduced as
5 exhibits?
- 6 A. Like the glass counter top, ---
- 7 Q. Yes, ma'am.
- 8 A. -- things like that?
- 9 Q Yes, ma'am.
- 10 A. I believe that some of the latent lifts that were
11 submitted to me were from areas in and around where the
12 lifts that were identified as being Mr. Shephard's were,
13 as well.
- 14 Q. And they did not match Mr. Shephard's; did they?
- 15 A. No, sir, they did not.
- 16 Q. All right. Now, fingerprints -- well, let me ask you
17 this. Are you familiar with Action Pawn Shop?
- 18 A. Am I familiar with Action Pawn Shop?
- 19 Q. Yes, ma'am.
- 20 A. No, sir. I've never been to Action Pawn Shop.
- 21 Q. All right. But it certainly -- in a business, many
22 people could leave many fingerprints; correct?
- 23 A. I don't know what kind of business they have, but I'm
24 sure if it's something that's open to the public that
25 people have access to, yes.

1 Q. Yes, ma'am. Now, do you -- well, more specifically
2 in this case, did you only compare what you say are
3 originals to original lifts?

4 A. Repeat that, please.

5 Q. It probably wasn't very clear. Did you only compare
6 original latent lifts to original prints?

7 A. I compared some of the fingerprint lifts from the
8 crime scene to a fingerprint card on file labeled as Roger
9 Shephard's.

10 Q. All right, ma'am. Well, when you do this -- when you
11 start doing your comparisons, the knowns are there;
12 correct? You have the knowns?

13 A. Sometimes, yes.

14 Q. Well, in this case you had the knowns; did you not?

15 A. Yes. I did have the knowns.

16 Q. Okay. So it is not that you are necessarily -- you
17 know who you're trying to compare to, is what I'm saying?

18 A. Sometimes.

19 Q. Well, Ms. ---

20 A. Sometimes we search.

21 Q. Yes, ma'am. But in this case you were given knowns?

22 A. Not originally.

23 Q. Okay. Well, now basically as I understand it, you
24 did your comparisons by and large on June the 12th of
25 2008; correct? I think with a minor exception of two or

1 one.

2 A. Many of my comparisons were conducted on June 16th of
3 2006.

4 Q. All right.

5 A. Prior to receiving the known inked prints.

6 Q. Yes, ma'am. Now, when you look at a fingerprint, as
7 you said there is a lot of detail on that fingerprint;
8 correct?

9 A. Yes, sir, depending on size, shape.

10 Q. Isn't it true, Ms. Sherbert, that you only actually
11 do like a ten or sixteen point comparison on fingerprints?

12 A. No, sir.

13 Q. Well, tell me this. How many details are in a
14 fingerprint?

15 A. There's no set number, but it goes into the hundreds.

16 Q. Okay. Even greater than that possibly?

17 A. Sure.

18 Q. And you're sitting here saying you compare every
19 detail of every ridge on every fingerprint that you
20 analyze?

21 A. I look for the totality of the print. I'm looking at
22 whatever print I have. Sometimes I have small pieces,
23 sometimes I have larger pieces. And I'm looking at all
24 the detail there, taking all of that in, and taking the
25 size and position and shape of that unknown and comparing

1 it to that of knowns. And once you determine that you
2 have the size and shape and position that are congruent,
3 the same in both, then you can effect an identification,
4 if there's no unexplained dissimilarities or anything like
5 that, and in this case there were not.

6 Q. You do all this with your eye?

7 A. My eyes and my brain.

8 Q. Yes, ma'am.

9 A. Yes, sir.

10 Q. And is there any review of that work?

11 A. Yes. Part of the process, the scientific process, is
12 to have peer review of the exact same steps that you took.
13 And I performed an analysis, comparison, evaluation and
14 then there is a verification process that a more seasoned
15 latent print examiner than myself will conduct, you know,
16 the same examination and have all the information and
17 everything to look at, whether there is one person to look
18 at or ten people to look at. And they'll go through the
19 same process, analysis comparison and evaluation, and then
20 they'll perform a verification process to determine if I
21 am correct in my findings or not. And then I generate a
22 report as to my findings and that particular person or
23 supervisor will sign off on that as well.

24 Q. That peer review, do they have a copy of your report
25 when they do their review?

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1 A. Sometimes.

2 Q. All right. And that peer review, is that people from
3 within your office?

4 A. Yes, sir.

5 Q. All right. Superiors or inferiors to you, those two
6 words, who would be doing the review?

7 A. It would be generally a person that has more
8 experience than I do and years in latent print
9 examination. And the two people in our office that have
10 more years than myself are my supervisors.

11 Q. All right. None of those folks are here today?

12 A. No, sir.

13 Q. Now, on -- if you know, did you get any latent prints
14 from any guns in this case?

15 A. I do not recall receiving any latent prints from
16 guns.

17 Q. Did you get any latent prints from any shell casings
18 in this case?

19 A. Not that I recall.

20 MR. DEJONG: One moment, please, Your Honor.

21 THE COURT: Yes, sir.

22 Q. What date did you receive the known fingerprints, Ms.
23 Sherbert?

24 A. Are you referring to State's Exhibit 22? These?

25 Q. Yes, ma'am.

1 A. I receive State's Exhibit 22 on June the 12th of

2 2008.

3 Q. You received -- did you receive all the latents on

4 June the 16th?

5 A. Ms. Munson, can I see the envelope? Thank you. And

6 your question was, did I receive all of them?

7 Q. All the latents on June the 16th?

8 A. I received some latents on June the 15th, others on

9 June the 16th. And that would be it. June the 15th and

10 June the 16th.

11 Q. All right, ma'am. And your comparisons were done --

12 realizing you did one or two, I think, on June the 16th,

13 but the bulk of your comparisons, again, were done on June

14 the 12th of 2008?

15 A. I issued my findings on some July 2nd, 2008, but I

16 had received the known prints on July the 12th of 2008.

17 Q. The question I have for you, Ms. Sherbert, will

18 latents deteriorate over time?

19 A. May I answer the other?

20 Q. I'm sorry.

21 A. I did conduct many examinations on June the 16th,

22 2006.

23 Q. The question I have -- I'm sorry. I did not mean to

24 interrupt you. Are you through with that?

25 A. Yes, sir. I'm sorry.

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1 Q. Okay. Will latents deteriorate over time?

2 A. They can, but they don't always. It depends on
3 environmental conditions, types of surfaces and things
4 like that.

5 Q. Thank you, ma'am.

6 MS. MUNSON: I have some brief redirect, Your
7 Honor.

8 **REDIRECT EXAMINATION**

9 **BY MS. MUNSON:**

10 Q. The match to a Roger Eugene Shephard that you did in
11 June of '06, after getting the State's Exhibit Number 22,
12 was there any difference that you noticed? Anything that
13 would cause you to ---

14 A. No, ma'am. Once I received the known ink prints that
15 are the what we call major case prints that include the
16 palmar surfaces of the hands as well as the fingers and
17 digit -- the joints, excuse me, of the fingers, I just
18 basically reviewed what I had, because the ink prints are
19 usually of superior quality than like a scan card or a
20 computer generated card.

21 Q. Okay.

22 A. But there were no differences in my findings and the
23 identifications.

24 Q. And the prints on the cards with the tape, do the
25 ones that have -- that are taped like this, do they

1 usually deteriorate and change?

2 A. Once a print is lifted from a crime scene and taped
3 like that and put on a lift card, a light backing card, it
4 does not deteriorate. That cannot -- it cannot dissipate.
5 It's there, it's preserved.

6 Q. Thank you.

7 MS. MUNSON: I have nothing further, Your Honor.
8 We ask that this witness be excused.

9 MR. DEJONG: No objection.

10 THE COURT: Without objection. Thank you, Ms.
11 Sherbert. You may be excused.

12 MS. MUNSON: I apologize, Your Honor.

13 THE COURT: All right.

14 MS. MUNSON: Thank you, Your Honor.

15 THE COURT: Yes, ma'am.

16 Madam Forelady, ladies and gentlemen, I think this
17 would be a good time to give you a break. You may go back
18 to your jury room. Don't discuss the case. We'll call
19 you back in about fifteen minutes.

20 (WHEREUPON, the jury exited the open court at
21 approximately 11:52 a.m.)

22 THE COURT: All right. We'll be at ease for a
23 short break.

24 (WHEREUPON, Court stood at recess for a short break.)

25 THE COURT: Anything we need to take care of

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1 before the jury comes in?

2 MS. MUNSON: Nothing from the State, Your Honor.

3 MR. DEJONG: Nothing from the defense, Your
4 Honor.

5 THE COURT: All right. Let's have our jury come
6 back.

7 (WHEREUPON, the jury entered the open court at
8 approximately 12:16 p.m.)

9 THE COURT: You may call your next witness.

10 MS. MUNSON: May it please the Court, Your
11 Honor. State calls Donald Thompson.

12 MISTER CLERK: Place your left hand on the bible
13 and raise your right hand. Do you solemnly swear or
14 affirm the testimony you're about to give in this case to
15 be the truth, the whole truth and nothing but the truth,
16 so help you God?

17 DONALD THOMPSON: Yes, sir.

18 MISTER CLERK: If you would have a seat and
19 state your name for the record.

20 DONALD THOMPSON: Donald Lee Thompson.

21 DONALD LEE THOMPSON,

22 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MS. MUNSON:

25 Q. What do you do for a living, sir?

1 A. I work for Laurens Electric Coop. I build overhead
2 distribution power lines. And for the last six months
3 I've been back on active duty service with the National
4 Guard. We're getting ready to mobilize for our second
5 time.

6 Q. How long have you been with the National Guard?

7 A. June will be twenty-four years.

8 Q. What is your rank?

9 A. I'm a first sergeant.

10 Q. What are your duties?

11 A. As a first sergeant, it's mostly personnel with
12 soldier issues, soldier care. Pretty much beans and
13 bullets, making sure their pay is correct, that they're
14 where they're supposed to be when they're supposed to be
15 there and supporting the commanders in the tent as far as
16 training the soldiers.

17 Q. Okay. Were you with the National Guard in 2005?

18 A. Yes, ma'am.

19 Q. Okay. And what was your rank and duties at that
20 time?

21 A. 2005, I was E7, which is platoon sergeant and at this
22 time we were also on mobilization and I was a platoon
23 sergeant. Pretty much the same duties except I interacted
24 and actually did the training, conducted most of the
25 training with the soldiers.

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1 Q. And where were you stationed or deployed in 2005?

2 A. 2005, we did a little bit of a spin-up back at our
3 home battery. Then we went to Texas for three months and
4 -- before we actually went to Washington, D.C.

5 Q. Okay. Was Roger Shephard one of the soldiers under
6 your command?

7 A. Yes, ma'am.

8 Q. How well did you know him?

9 A. I had known, I had known Roger ever since he came
10 back from basic and AIT. AIT is Advanced Individual
11 Training where they actually learn their military
12 occupational specialties. He came to Charlie Battery
13 located in Clemson, South Carolina as a young private E2.
14 He was put in that battery and at that point in time I
15 knew Roger from that time all the way through our
16 deployment.

17 Q. Okay. After you came back from Texas did you have
18 any contact with Roger Shephard?

19 A. After we came back from -- okay, from Texas we had a
20 couple of days off, a break in service. They let us go
21 home for about four or five days prior to reporting to
22 Washington, D.C. to our mission. And yes, ma'am, I did.

23 Q. Okay. And why did you have contact with him?

24 A. During our deployment in Texas, Shephard and myself,
25 we spent a lot of time together because we have one common

1 interest, such as firearms. With me being with the
2 highway patrol for fourteen and a half years, I do a lot
3 of competition shooting, thousand yard competitions, long
4 range stuff, reloading, things of that nature. And we
5 spent a lot of time in Texas in the evenings on our down
6 time, you didn't -- you couldn't go anywhere or anything
7 like that, so we actually went to an NCO outside the area
8 that had Wi-Fi, and we sat down and we looked at firearms
9 and different things like that. Pretty much probably four
10 or five days out of a seven day rotation.

11 Q. Okay. I'm showing you what's marked as State's
12 Exhibit Number 78. Can you just take a look at this
13 document?

14 A. I'm not speaking for the cover sheet. The latter
15 pages is actually a firearm transaction record that you
16 fill out before you purchase a firearm.

17 Q. Okay. And is your name on that anywhere?

18 A. Yes, it is.

19 Q. Okay.

20 MS. MUNSON: Your Honor, at this time I offer
21 State's Exhibit 78 into evidence. Prior objection was
22 relevance.

23 THE COURT: Any objection?

24 MR. DEJONG: Without objection, Your Honor.

25 THE COURT: Without objection, Exhibit 78 is

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- 1 into evidence.
- 2 (WHEREUPON, State Exhibit Number 78 was admitted into
- 3 evidence.)
- 4 Q. From where did you buy this firearm?
- 5 A. It is a business located off of -- was located off of
- 6 28 Bypass in Anderson, South Carolina, that was Bucks &
- 7 Bass.
- 8 Q. Okay. Is that business still operating?
- 9 A. No, ma'am. It is not.
- 10 Q. On what date did you purchase that firearm?
- 11 A. 11/4/05.
- 12 Q. Okay. What is the make, model and caliber of that
- 13 firearm?
- 14 A. It was a Glock .40 caliber, model 23.
- 15 Q. Okay. I'm showing you what's in evidence as State's
- 16 Exhibit Number 75. Just take a look at this. You can
- 17 take it out of the bag if you need to.
- 18 A. Okay.
- 19 Q. Do you know what make, model and caliber that handgun
- 20 is?
- 21 A. Yes, ma'am.
- 22 Q. What is it?
- 23 A. It is a Glock .40 caliber, model 23.
- 24 Q. Thank you. Now, the firearm -- well, I'll let you do
- 25 that first. Can you say whether or not this is the

1 firearm you bought?

2 A. With that other piece of paper, if I could match up a
3 serial number or something, I could. The slide in the
4 lower receiver is from the firearm that I purchased.

5 Q. The slide in the lower receiver?

6 A. Yes, ma'am.

7 Q. What do you mean by that?

8 A. The barrel is not. That is not the way the weapon
9 was purchased.

10 Q. Okay. The barrel is different?

11 A. Yes.

12 Q. All right. What did you do with this firearm that
13 you bought?

14 A. I purchased the firearm because the evenings that we
15 spent together, Roger was saving up his money to purchase
16 the firearm. We talked about it and so forth in Texas.
17 And Bucks & Bass was a business that I purchased, probably
18 in 2004/2005, probably eighteen thousand dollars worth of
19 firearms. I collect a lot of firearms. I have
20 approximately sixty-six myself. And I could get a better
21 deal on a firearm and so forth. And I told the soldier
22 that if he decided what he wanted, we would go look. I
23 would make the purchase. I could save him probably a
24 couple hundred dollars. And then I would sell him the
25 firearm.

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1 Q. And is that what you did with State's Exhibit Number

2 75?

3 A. Yes, ma'am.

4 Q. Did you sell it to Roger Shephard?

5 A. Yes, ma'am.

6 Q. Do you see him in the Courtroom?

7 A. Yes, ma'am.

8 Q. Can you point him out to the jury?

9 A. He is to my left in the purple shirt.

10 Q. Thank you.

11 MS. MUNSON: I have nothing further, Your Honor.

12 THE COURT: Any cross examination?

13 MR. DEJONG: Thank you, Your Honor. May it
14 please the Court.

15 **CROSS EXAMINATION**

16 **BY MR. DEJONG:**

17 Q. When did you first meet Mr. Shephard?

18 A. When he came to Charlie Battery in Clemson as a young
19 private.

20 Q. Do you remember what year that was?

21 A. I would say Roger was probably in a year to a year
22 and a half before we actually started training up, so I
23 would probably say somewhere middle of 2003, somewhere in
24 that range.

25 Q. So in '05 when you say you purchased this weapon, you

1 would have known him for a year and a half or two years?

2 A. At least, yes, sir.

3 Q. All right. Now, when you say this weapon was

4 purchased in '05, how old -- well, strike that. When you

5 purchased this weapon in '05, were you a platoon sergeant

6 at that point in time?

7 A. Yes, sir.

8 Q. Certainly a position of leadership, is that not?

9 A. Yes, sir.

10 Q. All right. And when you purchased this weapon in

11 '05, which you say is this Glock 40, model 23 or whatever,

12 how old was Roger Eugene Shephard?

13 A. At that time, me not knowing, I think Roger was

14 probably twenty years old. About to turn twenty-one. But

15 I was under the impression that he was twenty-one years

16 old.

17 Q. Well, you had known him for a year and a half to two

18 years; hadn't you?

19 A. Yes, sir. And the reason I say that is because on

20 several occasions I had went out to Roger's car and so

21 forth and he had pulled other firearms from his vehicle

22 showing them to me. He had already owned several other

23 firearms, one being a AR 15 and so forth, which you have

24 to be twenty-one years old to purchase those as well.

25 Q. But you didn't check it out?

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1 A. No, sir.

2 Q. All right. Were you his platoon sergeant?

3 A. I was, sir.

4 Q. How long had you been his platoon sergeant in '05?

5 A. At that point in time I didn't get him until we
6 actually went to Texas and that was a ninety day spin-up
7 period right there. But I -- in the line battery you're
8 around the soldiers a good bit.

9 Q. When you bought this weapon that you have described,
10 how long did you hold on to the weapon before you say you
11 sold it to Roger Shephard?

12 A. I sold it to him immediately afterwards. After the
13 transaction we even went down to the Elberton Gun Club, we
14 shot, he came back to my residence for dinner and then he
15 left.

16 Q. Well, was he with you when you purchased this gun?

17 A. Yes, sir.

18 Q. Okay. How much did he pay for the gun, according to
19 you?

20 A. Whatever the paper was as far as the price. That's
21 exactly what he paid me.

22 Q. All right. Did you ever see the gun again?

23 A. Yes, sir.

24 Q. Today?

25 A. Today.

1 Q. All right, sir. Now, you say that the slide in the
2 lower receiver has the serial number that you purchased?

3 A. Yes, sir.

4 Q. Did you change the barrel?

5 A. No, sir.

6 Q. Okay. Now, after you sold that weapon, that's been
7 -- well, now it's been about four years, I guess; hasn't
8 it?

9 A. Yes, sir.

10 Q. Okay.

11 A. November the 4th to -- yes, sir.

12 Q. And after that you don't know what Mr. Shephard did
13 with the gun; do you?

14 A. No, sir.

15 Q. All right. Do you know what the age was to own a
16 handgun in 2005?

17 A. Twenty-one, sir.

18 Q. Was it the same for a long gun?

19 A. I'm not sure, sir.

20 Q. Could it have been eighteen?

21 A. Possibly.

22 Q. Thank you, sir.

23 MS. MUNSON: Nothing further, Your Honor. We
24 ask that this witness be excused.

25 THE COURT: Without objection this witness may

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1 be excused. Thank you, sir. You may step down.

2 Can I see the attorneys just for a moment, please?

3 (WHEREUPON, Ms. Munson and Mr. DeJong approached
4 the bar.)

5 THE COURT: You may call your next witness.

6 MS. MUNSON: Your Honor, the State calls Brian
7 Cowan.

8 THE COURT: Again, sir, let me remind you,
9 you're under oath.

10 BRIAN COWAN: Yes, sir.

11 BRIAN COWAN,

12 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MS. MUNSON:

15 Q. Sergeant Cowan, you're with the Easley City Police
16 Department?

17 A. Yes, ma'am.

18 Q. And what is your duty?

19 A. I am the evidence technician, crime scene officer,
20 with Easley Police Department.

21 Q. And did you get a call in reference to this case in
22 2006?

23 A. Yes, I did.

24 Q. Do you remember the date?

25 A. June the 15th of 2006.

1 Q. Okay. Were you on duty when you got that call?

2 A. Yes, I was.

3 Q. And where were you?

4 A. I was at the Easley Police Department in my office
5 working on other cases that I had -- other duties that I
6 have to do dealing with my job.

7 Q. And were you by yourself when you heard the call?

8 A. Yes, I was. I actually received the phone call.

9 Q. All right. Where did you go in response?

10 A. I responded to Action Pawn.

11 Q. How long did it take you to get there?

12 A. Not long at all.

13 Q. When you got there were there any other law
14 enforcement personnel there?

15 A. Yes, there was.

16 Q. All right. And was there any emergency personnel
17 there?

18 A. No, there was not. It was only Easley police
19 officers.

20 Q. So what did you do when you first went into the shop?

21 A. When I first went into the business, I went in with
22 the intention of starting to document the scene, which is
23 with photographs I started to document the scene, at which
24 time I was advised that there was video -- there was
25 actual running video. That's when I observed them viewing

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1 the video on a TV. At that time I took the video into my
2 possession, marked the date and time on it and then went
3 back to the Easley Police Department where I began to make
4 still images of it to be -- to aid in the investigation to
5 try to identify the person in the video.

6 Q. Okay. Now, did you ask for some help from any other
7 agencies?

8 A. Yes. Due to it being a death investigation, I asked
9 for assistance from the Pickens County Sheriff's Office.

10 Q. Okay. And who responded?

11 A. Tony Robinson and his -- and there was -- he has two
12 other people that work with him. It's my understanding
13 they all three responded to that scene.

14 Q. Were you there when they got there?

15 A. No, I was not.

16 Q. Okay. And what -- to your knowledge -- let me ask
17 you this. When you went back to the pawn shop, did you go
18 back that same day?

19 A. Yes, I did.

20 Q. And what did you observe when you got there?

21 A. When I responded back to the scene, I met with Tony
22 -- or with Lieutenant Robinson of the Pickens County
23 Sheriff's Office, and he advised me that they had ---

24 MR. DEJONG: Objection as to what he advised,
25 Your Honor.

1 THE COURT: Sustain the objection.

2 Q. What did you see?

3 A. I could see where latent prints had been lifted from
4 the glass counter due to the fingerprint dust that was
5 left behind. There was -- we call them -- they're little
6 tent shaped numbers and you put them out to take pictures
7 to help document the scene. Those were still out in
8 place. And I began taking items into my custody at that
9 time.

10 Q. Okay. And the items that you took into custody,
11 you've already talked about the shell casings and the
12 projectile out of the wall?

13 A. Yes.

14 Q. How did you get that projectile out of the wall?

15 A. We used a saw to cut the actual hole in the wall.
16 And then you -- we took a small chisel and a hammer and
17 began to slowly work away the concrete making sure -- you
18 just don't want to rear back and hit as hard as you can
19 with a sledge hammer because you could damage something
20 inside it. So what you do is you gently remove concrete
21 or in this case cinder block, you gently remove that
22 cement from it until you can gain access to the interior
23 and that's when we recovered the projectile inside.

24 Q. Okay. Sergeant Cowan, I'm showing you State's
25 Exhibits 31, 32 and 38. Can you take a look at those?

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1 A. Yes, ma'am.

2 Q. Do you recognize those?

3 A. Yes, ma'am.

4 Q. Are they accurate depictions of what you found when
5 you went into the pawn shop on the 15th of June, 2006?

6 A. Yes, ma'am.

7 Q. Okay. Let me ask you something else, Sergeant Cowan.
8 Will these aid you in your explanation to the jury of what
9 you did?

10 A. Yes, ma'am.

11 MS. MUNSON: Your Honor, I move State's 31, 32,
12 38 into evidence.

13 MR. DEJONG: Without objection, Your Honor.

14 THE COURT: Without objection, Exhibits 31, 32
15 and 38 are into evidence.

16 (WHEREUPON, State Exhibit Numbers 31, 32 and 38 were
17 admitted into evidence.)

18 Q. All right, Sergeant Cowan, State's Exhibit Number 31,
19 if you can take a look at this. Now, can you show the
20 jury, when you're talking about a bullet hole, can you
21 show the jury what you're talking about?

22 A. Yes, ma'am. This area right here is a small hole
23 that's right below this sign. That hole was in the wall.
24 And it was determined that that hole was made by a
25 projectile.

1 Q. Okay. And State's Exhibit Number 32, what is this a
2 photograph of?

3 A. This is a photograph taken of a -- a close-up
4 photograph taken of the hole and this is a ruler that was
5 place against it. You use a ruler so that you can, at a
6 later time, you can recreate the actual size of the hole
7 if need be.

8 Q. Okay. Now State's Exhibit Number 38. What is this?

9 A. As I stated before, we used a saw and opened this
10 area up, which was just paneling in front of the cinder
11 block wall. And then you can again see where the
12 projectile had struck the cinder block wall and made a
13 hole in it.

14 Q. Okay. Now, did you go into that hole?

15 A. No, we did not go into that hole.

16 Q. Okay. Let me show you what's already in evidence as
17 State's Exhibit Number 39. And I'm sure I have it upside
18 down or wrong. Is that the proper perspective?

19 A. Let me -- can I see the photograph?

20 Q. Yes, sir. I'm sorry.

21 A. It's hard for me ... This is the top. That's the
22 top of it.

23 Q. Okay. State's Exhibit Number 39?

24 A. This is -- as I said, this is the hole that we made
25 slowly chiseling away the cinder block so that we could

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1 gain access. Once we removed this area of the end of the
2 cinder block wall, you could visibly see the projectile
3 laying inside of the cinder block wall.

4 Q. Okay. And this photograph, State's Exhibit Number
5 39, is that in the same location as State's Exhibit Number
6 38?

7 A. 39 is taken -- we went through the wall -- this is
8 what's considered the corner. You could see how this is
9 the corner of the wall here. We went through this section
10 right here to gain access to that.

11 Q. Okay. And State's Exhibit Number 40, now what does
12 this depict?

13 A. This again, is the ruler that we use any time you're
14 taking something another and you want to later be able to
15 take it and put it back to scale. This is actually
16 showing me retrieving it from the inside of the cinder
17 block wall. It's in my hand.

18 Q. And that's your hand?

19 A. Yes, ma'am.

20 Q. Okay. All right. When you went -- after you went
21 back to the scene this was still on the 15th?

22 A. Yes, it was.

23 Q. And did you ever go back to the scene after that?

24 A. Not -- yes, I did. I'm sorry. Let me refer to my
25 notes to get the exact date. On November the 16th, 2006 I

1 went back.

2 MS. MUNSON: I have nothing further at this
3 time, Your Honor.

4 THE COURT: You may cross examine the witness.
5 Is this the last time this witness will be called?

6 MS. MUNSON: Yes, sir, Your Honor.

7 THE COURT: All right. You can do your
8 examination -- cross examination.

9 MR. DEJONG: I don't know who's happier over
10 that, Sergeant Cowan, me or you actually. All right.

11 May I have just a moment here ---

12 THE COURT: Yes, sir.

13 MR. DEJONG: -- to see what I need to do or try
14 to do here.

15 **CROSS EXAMINATION**

16 **BY MR. DEJONG:**

17 Q. So you said you went out there again when?

18 A. In November.

19 Q. Of this year?

20 A. No. Of -- November 16th, 2006 in relation to this
21 case.

22 Q. Okay. All right. Now the projectile that was taken
23 out of the cinder block wall, which I think has been
24 introduced as State's Exhibit Number 82 -- I'm not a
25 hundred percent ... Well, it's not. Number 40 is what I

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- 1 was looking at. I think that was one, I don't remember
- 2 what time it was introduced in -- what the time frame was.
- 3 Was that projectile taken to James Armstrong?
- 4 A. Hold on just one second and let me refer to my notes.
- 5 Q. Surely.
- 6 A. Yes, it was.
- 7 Q. Okay. Now, you got the call on June the 15th. What
- 8 time?
- 9 A. It would have been before two p.m.
- 10 Q. All right, sir. And you were in your office?
- 11 A. Yes, sir.
- 12 Q. Then you say you got a call?
- 13 A. That's when I received the phone call from a superior
- 14 officer.
- 15 Q. So you didn't respond as a result of the -- any kind
- 16 of radio dispatch or anything else?
- 17 A. No, I did not.
- 18 Q. So you're in the same office with Officer Brock?
- 19 A. I'm in the same building.
- 20 Q. Right.
- 21 A. Yes, sir.
- 22 Q. You're in the police department?
- 23 A. Yes, I'm in the police department.
- 24 Q. In Easley?
- 25 A. Yes.

1 Q. And so are they?

2 A. Yes.

3 Q. They being Brock, Guy, I forget who the other
4 gentleman was right now. But you didn't do anything until
5 you got a phone call?

6 A. I did not hear the radio call go out.

7 Q. All right. So you get a phone call sometime before
8 two o'clock?

9 A. Yes.

10 Q. And then you go out to the scene?

11 A. Yes. That's correct.

12 Q. When you get to the scene, how many people are in
13 Action Pawn Shop?

14 A. If you'll bear with me I'll try to remember. I'm
15 wanting to say between six and seven police officers
16 already.

17 Q. All right. How big is that location where Action
18 Pawn Shop is? I'm speaking of the interior?

19 A. Are you including the back storage area?

20 Q. No, sir. Basically what we've seen, I believe, in
21 pictures that have been introduced, perhaps they don't
22 show the whole store, but here's a couple, 23, 24. The
23 main business area, if you would?

24 A. The main business area, if you put it in relative
25 size, probably would say one-half the back section of that

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1 section right there, that would be about the size of the
2 interior without any items inside the business.

3 Q. One-half of the ---

4 A. No. From where you're standing over to the wall and
5 back.

6 Q. And back. Okay.

7 A. That would be about the size of the interior of the
8 business.

9 Q. And a lot of merchandise in that store?

10 A. You have the counters, stuff like that.

11 Q. All right. Now, when you get there, there is six or
12 seven people there?

13 A. That's correct.

14 Q. Did that - beg your pardon - did that include EMS
15 personnel?

16 A. When I arrived there was no EMS personnel.

17 Q. Now, the first thing you did when you got there, you
18 noticed that there was a videotape?

19 A. No. The first thing I did when I got there was I
20 come in and began to photo document the scene. Began to
21 take pictures.

22 Q. How many pictures did you take at that point in time?

23 A. To be honest with you, I don't know. I began taking
24 pictures and then that's when I knew that there was a
25 videotape of the -- or they had a video surveillance

1 system.

2 Q. All right. Well, let's approach it this way. Do you
3 remember what you took pictures of at that point in time?

4 A. When I -- I want to say I took pictures of when I --
5 just as soon as I come in the business, I took a few
6 photographs of Mr. Bruin laying on the ground and that was
7 it.

8 Q. That was it?

9 A. Yes, sir.

10 Q. All right, sir. Now, you realize there's a VCR, so
11 you go get the videotape; right?

12 A. I actually did not go where the VCR was located.
13 Whenever I, whenever I received -- whenever I got the VCR
14 tape, it was after Ms. Bruin had placed it into a TV VCR
15 combo sitting on the counter.

16 Q. All right. Now, who did you retrieve that tape from?

17 A. I retrieved it from the TV VCR combo which Ms. Bruin
18 put it in.

19 Q. All right. And you immediately went to the Easley
20 Police Department; correct?

21 A. That's correct.

22 Q. And -- well, from the time you first got there till
23 you left to go to the Easley Police Department again, how
24 much time went by?

25 A. Maybe five minutes.

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- 1 Q. All right. When you left was EMS there then?
- 2 A. No, sir, they were not there then.
- 3 Q. And when you left were that same six or seven people
- 4 still there?
- 5 A. I believe so. I'm not sure. I wasn't taking a head
- 6 count as they were coming in and out of the door.
- 7 Q. All right. Well, in that few minutes that you were
- 8 there the first time ---
- 9 A. Yes.
- 10 Q. -- did more people come into the store?
- 11 A. I want to say I think maybe one more person did. But
- 12 I'm not for sure on that.
- 13 Q. Was that a police officer?
- 14 A. Yes.
- 15 Q. Do you -- strike that. So the pictures of the shell
- 16 casings were not taken until you came back a second time?
- 17 A. The pictures of the shell casings were taken by the
- 18 sheriff's office.
- 19 Q. Okay. You didn't ---
- 20 A. I did not take those photographs.
- 21 Q. Okay. Well, did you take any pictures after you came
- 22 back the second time?
- 23 A. I do not believe so.
- 24 Q. All right, sir. Do you know how many people -- well,
- 25 that would not be a fair question, so I won't ask it. So

1 the only document -- photo documentation you did were
2 pictures of Mr. Bruin?

3 A. That's correct.

4 Q. All right. Now, was it your decision to request
5 assistance from Pickens County?

6 A. It was a joint decision.

7 Q. Well, before you left the scene the first time, had
8 Pickens County arrived?

9 A. No, they had not.

10 Q. Do you know what time Pickens County did arrive?

11 A. No, I do not.

12 Q. But they weren't there when you left?

13 A. They were not there when I left, that's correct.

14 Q. When you went back a second time, you said, if I
15 remember correctly, you said you viewed where some latent
16 prints had been taken?

17 A. Yes, I did.

18 Q. Do you recall where those latent prints had been
19 taken from?

20 A. From the -- what they -- it's a glass counter.
21 There's several -- well, I don't know if you would call it
22 a counter. I guess you would call it a counter. A glass
23 counter, it's made so that you can view items inside the
24 case.

25 Q. Did you notice how many latents had been taken at

- 1 that point in time?
- 2 A. No, sir, I did not. I didn't take a count.
- 3 Q. Did you notice their location in reference to the
- 4 counter?
- 5 A. I can't say at this time. No, sir.
- 6 Q. When you got this projectile out of the cinder block
- 7 wall ---
- 8 A. Yes, sir.
- 9 Q. Well, first, the projectile was lodged in the cinder
- 10 block wall; right?
- 11 A. Yes, sir, it was inside the cinder block wall.
- 12 Q. How far into the cinder block had that projectile
- 13 gone?
- 14 A. The cinder block is -- basically has a hollow section
- 15 on the inside. It had went through the first part and was
- 16 laying on the inside of it.
- 17 Q. I don't know, but I'll ask. Do you know what the
- 18 diameter -- or the thickness of that cinder block wall
- 19 was?
- 20 A. Inch and a half, maybe a little thinner than that.
- 21 Q. I'm sure we all know what I'm talking about. But
- 22 that's like an inch and a half, two inches of concrete?
- 23 A. Yes.
- 24 Q. Right?
- 25 A. Yes.

1 Q. That that projectile went through? Now, did it
2 appear that there had been any holes there prior to that
3 projectile going through there?

4 A. No, it did not.

5 Q. Okay. So to retrieve the projectile, what did you
6 do? Make the hole bigger?

7 A. We did not make that hole bigger. What we did was we
8 moved around to the side so as not to disturb the original
9 hole and we began slowly chiseling away to get inside of
10 the hole.

11 Q. Okay. And the actual retrieval hole is not one of
12 these pictures here that we've got, I gather?

13 A. Yes, it is.

14 Q. It is?

15 A. It's the one that has my gloved hand in it pulling
16 the ---

17 Q. Oh, okay.

18 A. -- projectile out.

19 Q. That would be State's Exhibit Number 40; is that
20 correct?

21 A. That is correct.

22 Q. Okay. That hole you made, was that in the middle of
23 the concrete block or the top, bottom? Do you recall?

24 A. It would have been, relative to me, about chest high,
25 maybe a little higher than that. And like I said, it was

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1 on the end of the, on the end of the wall.

2 Q. The rolls that you did of you say Roger Eugene
3 Shephard, which I believe is entered collectively as
4 State's Exhibit Number 2 -- 22, excuse me, you did those
5 when?

6 A. June the 10th of 2008.

7 Q. And one of the earlier times that you were
8 testifying, you said you couldn't remember exactly, but if
9 you remember correctly that was Roger Eugene Shephard's
10 signature?

11 A. Yes, sir.

12 Q. Right? But you really have no independent
13 recollection other than what you're looking at there?

14 A. As a standard practice, each person signs fingerprint
15 cards. This is an X mark that I put for that person to
16 sign. I cannot make out the writing that's on it, so
17 therefore I can't say that that's Roger Eugene Shephard's
18 signature. But that is where the person I fingerprinted
19 would have signed the card.

20 Q. Did you make any notations as to name on those cards?

21 A. The name right here that's written, that is my
22 handwriting, Roger Eugene Shephard.

23 Q. All right. When was that done?

24 A. That was done the same date that the fingerprints
25 were rolled.

1 MR. DEJONG: One moment, please, Your Honor.

2 Q. You don't recall exactly what time you got to the
3 pawn shop, I guess, the first time?

4 A. Like I stated, it was prior to two p.m.

5 Q. Do you know fifteen ...

6 A. It wouldn't have been long before two p.m. And the
7 reason being because of when I recovered the videotape.

8 Q. All right. Now, Mr. Bruin was still there when you
9 got there?

10 A. Yes, he was.

11 Q. Did you ever see EMS there?

12 A. No. I never saw EMS.

13 Q. The second time you were there, how long did you stay
14 at the scene?

15 A. I'm wanting to say well over an hour.. May have even
16 been two hours..

17 Q. While you were there that over an hour or two hours,
18 were there other law enforcement officers coming in and
19 out?

20 A. There was only, if I remember correctly, there was
21 only myself and Lieutenant Robinson with the Sheriff's
22 Office and there was another officer who was doing what we
23 call security. He was basically outside of the business
24 making sure nobody come in and interrupted while we were
25 doing the -- continuing the crime scene work.

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1 Q. When you left and before you came back, how long were
2 you gone? Okay. You got there the first time. You left
3 with the video. Then you came back a second time. How
4 long were you gone?

5 A. I couldn't even -- I don't know how long I was gone.
6 When you get busy working on something another you don't
7 have any idea of time.

8 Q. Well, the video you took with you from the scene, did
9 you watch that video in totality? Did you watch it from
10 start to finish?

11 A. Yes, sir, I did.

12 Q. When you went back the second time, was Mr. Bruin
13 still there?

14 A. No, he was not.

15 Q. Thank you, sir.

16 MS. MUNSON: Brief redirect, Your Honor.

17 THE COURT: Yes, ma'am.

18 **REDIRECT EXAMINATION**

19 **BY MS. MUNSON:**

20 Q. The place that you say State's Exhibit 22, which is a
21 line for someone to sign, did you see whose signature is
22 below yours?

23 A. Yes, I did.

24 Q. Did you see who put it on there?

25 A. Yes, I did.

1 Q. You can't read it?

2 A. No, I cannot read it.

3 Q. But you know who put that on there?

4 A. Yes, ma'am, I do.

5 Q. Who?

6 A. It was the gentleman sitting over beside Mr. DeJong
7 in the purple shirt.

8 Q. Okay. Thank you. I have nothing further.

9 THE COURT: All right. Thank you, Officer
10 Cowan. You may step down.

11 Madam Forelady, ladies and gentlemen, I think this
12 would be a good time for you to take a lunch break, let
13 you go to lunch. If you'll be back at two fifteen, we'll
14 be ready to start back. Don't discuss the case. Don't
15 let anyone discuss the case with you. You're excused at
16 this time until two fifteen.

17 (WHEREUPON, the jury exited the open court at
18 approximately 12:58 p.m.)

19 (WHEREUPON, Court stood at recess for a lunch break.)

20 THE COURT: State ready to proceed?

21 MS. MUNSON: Yes, sir, Your Honor.

22 MR. DEJONG: Ready for the defense, Your Honor.

23 THE COURT: All right. Let's have our jury come
24 in.

25 (WHEREUPON, the jury entered the open court at

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1 approximately 2:21 p.m.)

2 THE COURT: Ms. Munson, you may call your next
3 witness.

4 MS. MUNSON: May it please the Court, Your
5 Honor. State calls Chris Wildt.

6 MISTER CLERK: Place your left hand on the bible
7 and raise your right hand. Do you solemnly swear or
8 affirm the testimony you're about to give in this case to
9 be the truth, the whole truth and nothing but the truth,
10 so help you God?

11 CHRIS WILDT: Yes, I do.

12 MISTER CLERK: If you would have a seat and
13 state your name for the record, please.

14 CHRIS WILDT: My name is Christopher John Wildt.

15 CHRIS WILDT,

16 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MS. MUNSON:

19 Q. Who do you work for, sir?

20 A. The Bureau of Alcohol, Tobacco, Firearms and
21 Explosives, commonly known as ATF.

22 Q. Okay. What is your job title?

23 A. Special agent.

24 Q. What are your duties?

25 A. Typically investigating federal firearms laws.

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- 1 Q. How long have you been with ATF?
- 2 A. A little over seven years.
- 3 Q. Where are you assigned?
- 4 A. The Greenville, South Carolina field office.
- 5 Q. Okay. And in 2006 you were with ATF?
- 6 A. That's correct.
- 7 Q. Okay. Explain to the jury why ATF became involved in
- 8 this case? Or how?
- 9 A. We were basically contacted due to the fact that
- 10 there was an armed robbery and murder at a pawn shop,
- 11 which is -- which sold firearms. And the owner of the,
- 12 the owner of the pawn shop basically held a federal
- 13 firearms license to sell firearms.
- 14 Q. And that made it ATF's business, for lack of a better
- 15 term?
- 16 A. Correct.
- 17 Q. Okay. All right. Now, did you ever go to the scene?
- 18 A. Yes, I did.
- 19 Q. On what date?
- 20 A. That probably would have been that day of the murder.
- 21 Q. Okay. Did you conduct any investigation in the shop?
- 22 A. No. We basically went to go look at the scene. From
- 23 there went on our way and started running down leads.
- 24 Q. Okay. I want to show you State's Exhibit Number 11.
- 25 Do you recognize this?

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- 1 A. Yes, I do.
- 2 Q. How do you recognize that?
- 3 A. This is a tape that myself and other agents made of
- 4 Joseph Harley Kelley making a phone call to Roger
- 5 Shephard.
- 6 Q. Okay. Did you listen to the recording on the date
- 7 that you made it?
- 8 A. Yes, I did.
- 9 Q. Do you know the date that you made it?
- 10 A. I can refer to my notes.
- 11 Q. Certainly.
- 12 A. It would have been June 16th.
- 13 Q. Okay. Where was this tape made?
- 14 A. In Joseph Harley Kelley's yard.
- 15 Q. Okay. And you went to his house, obviously?
- 16 A. That's correct. We were investigating a lead that
- 17 Mr. Kelley knew Mr. Shephard.
- 18 Q. Okay. And how was Mr. Kelley treated in order to get
- 19 him to make this call?
- 20 A. Very politely.
- 21 Q. Okay. Was he a suspect?
- 22 A. No, not at that time.
- 23 Q. Was he under arrest?
- 24 A. No, he was not.
- 25 Q. Was he ever a suspect?

1 A. No.

2 Q. Okay. Now, at the time that you made this tape, did
3 you listen to it?

4 A. At that exact second, no. We went back to the Easley
5 Police Department and listened to it there.

6 Q. Okay. And was it an accurate recording of what had
7 gone on?

8 A. Yes.

9 Q. While the recording was going on, where were you in
10 relation to Mr. Kelley?

11 A. Standing right beside him.

12 Q. Okay. Was anybody else right there with him?

13 A. Yes. It was -- I believe it was myself and another
14 agent, Jeff Gaines, from our office.

15 Q. All right. Whose voices are on this tape?

16 A. From what I could tell, Joseph Harley Kelley's voice,
17 my voice, special agent Jeff Gaines voice and Roger
18 Shephard's voice.

19 Q. Okay. Now, have you listened to this tape since
20 2006?

21 A. Yes. I listened to it today.

22 Q. Okay. And was it -- is it still a true and accurate
23 recording of what happened?

24 A. Yes, it is.

25 MS. MUNSON: Your Honor, at this time I move

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1 State's 11 into evidence.

2 THE COURT: Any objection?

3 MR. DEJONG: May we approach, Your Honor?

4 THE COURT: Yes, sir.

5 (WHEREUPON, Ms. Munson and Mr. DeJong approached
6 the bar.)

7 Q. All right. Special Agent Wildt, on the face of
8 State's Exhibit Number 11 it says, voicemail and
9 conversation phone call.

10 A. Correct.

11 Q. What voicemail is recorded on here?

12 A. When we spoke to Mr. Kelley if he had had any contact
13 with Mr. Shephard, he had stated that he received a
14 voicemail from him, which we had him play for us and
15 record that at the beginning of the tape.

16 MS. MUNSON: Okay. Your Honor, at this time,
17 again, I move State's 11 into evidence.

18 THE COURT: Any objection?

19 MR. DEJONG: Without objection, Your Honor.

20 THE COURT: Without objection, Exhibit 11 is
21 into evidence.

22 (WHEREUPON, State Exhibit Number 11 was admitted into
23 evidence.)

24 Q. Special Agent Wildt, did you have any contact with
25 the Canadian authorities in this case?

1 A. Yes, I did.

2 Q. How much?

3 A. Well, I answered a few phone calls. I actually went
4 to Montreal, Canada and met with some of them.

5 Q. Okay. Do you know when you went to -- can you
6 remember when you went to Montreal?

7 A. That would have been April 25th of 2007.

8 Q. All right. And how long did you stay in Canada?

9 A. A couple of days.

10 Q. Okay. Prior to April the 25th of 2007, did you have
11 any contact with Canadian authorities?

12 A. Yes. I was in contact with Mario Lombar. He's with
13 the Montreal Police Department.

14 Q. Okay. And did you discuss with him anything in
15 particular about firearms?

16 A. Yes. Well, I explained to him the basis of our
17 investigation was the fact that there was some stolen
18 firearms and we -- he had information from someone he
19 interviewed in Canada that Mr. Shephard, for lack of a
20 better word, dumped the firearms somewhere along Highway
21 ---

22 MR. DEJONG: Your Honor, I'm going to object to
23 this hearsay at this point in time.

24 THE COURT: I sustain the objection.

25 MS. MUNSON: Please the Court, Your Honor, --

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- 1 well, you've made your ruling.
- 2 Q. Without saying what anybody told you, after speaking
- 3 with Mario Lombar, did you come to a decision about what
- 4 to do about finding the firearms?
- 5 A. Yes. Basically we came to a -- basically an
- 6 understanding that it was a public safety issue, that the
- 7 firearms may possibly be on the road or on the highway
- 8 somewhere before the Canadian border on the U.S. side.
- 9 And being in -- the firearms basically, possibly, in an
- 10 open area where they could be found by anyone, we decided
- 11 that that was a public safety issue and Mr. Lombar --
- 12 Mario Lombar offered -- suggested that he reinterview Mr.
- 13 Shephard as to maybe locating the whereabouts of those
- 14 firearms.
- 15 Q. Okay. You say reinterviewed. To your knowledge had
- 16 he been interviewed before?
- 17 A. I'm sorry. No. To my knowledge he hadn't been
- 18 interviewed before that.
- 19 Q. All right. Eventually did you receive, by FedEx,
- 20 some firearms?
- 21 A. I did.
- 22 Q. From whom did you receive them?
- 23 A. From ATF Agent Francis Neeley.
- 24 Q. In what state?
- 25 A. In New York.

1 Q. All right. Now, Special Agent Wildt, from your
2 experience -- are you familiar with procedures and process
3 for recording serial numbers from guns?

4 A. Yes, I am.

5 Q. How often do you have to do something like that?

6 A. Every time I take a case and there's a firearm
7 involved, I record the serial number from a firearm
8 recovered or seized or under investigation.

9 Q. How many times would you say that you've done that?

10 A. I couldn't honestly tell you. Over a thousand.

11 Q. All right. Now, I'm showing you State's Exhibit
12 Number 75. Will you take a look at this?

13 A. Okay.

14 Q. Okay. And I'm showing you State's Exhibit Number 78.

15 Do you recognize what State's Exhibit 78 is?

16 A. Yes, I do.

17 Q. Okay. Now, is there a serial number on State's
18 Exhibit 78?

19 A. There is.

20 Q. And is the serial number on State's Exhibit 78 the
21 same as on State's Exhibit 75?

22 A. No.

23 Q. Okay. What is the serial number on State's Exhibit
24 75, the handgun?

25 A. The serial number on this gun reads BYN858US.

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1 Q. Okay. And what is on the State's Exhibit 78, the
2 transaction record?

3 A. BYN858.

4 Q. Okay. Now, let me ask you about State's Exhibit 75.
5 Back with State's Exhibit Number 75, Special Agent. This
6 part of the firearm right here, what is this called?

7 A. The frame.

8 Q. The frame. Read out for the jury what number is on
9 the frame.

10 A. BYN858.

11 Q. Is there a U.S. on the frame?

12 A. There is not.

13 Q. And where do you see the U.S. part of the serial
14 number?

15 A. The U.S. part of the serial number is actually
16 underneath the frame on this, on this chrome plate here.

17 Q. Okay. So does the fact that on the frame there is no
18 letter U.S. and on the chrome plate there is a U.S., does
19 that make it a different weapon?

20 A. No, it does not.

21 Q. Okay. Have you seen that situation before with
22 Glock's?

23 A. Yes, I have.

24 Q. Okay.

25 MS. MUNSON: I have nothing further at this

1 time, Your Honor.

2 THE COURT: You may cross examine the witness,
3 Mr. DeJong.

4 MR. DEJONG: Thank you, Your Honor. May it
5 please the Court.

6 CROSS EXAMINATION

7 BY MR. DEJONG:

8 Q. Did you gather any evidence in this case at all, Mr.
9 Wildt?

10 A. Other than that tape, I don't believe I specifically
11 took evidence.

12 Q. You may have ---

13 A. Transferred it.

14 Q. -- transferred or whatever?

15 A. That's right.

16 Q. But no fingerprints or anything like that?

17 A. No.

18 Q. Now, this phone call to -- well, you approached
19 Joseph Kelley; right?

20 A. That's correct.

21 Q. Some ATF agent. Was it you personally?

22 A. It was me personally.

23 Q. All right. And you asked Kelley to make the phone
24 call?

25 A. At some point, yes, I did ask him if he could contact

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- 1 him.
- 2 Q. Well, do you recall what time of the day you -- I
- 3 believe you said you went to Mr. Kelley's house. Do you
- 4 recall what time of the day that was?
- 5 A. I'm not exactly sure, but I know it was in the
- 6 afternoon sometime.
- 7 Q. All right. Before the phone call was made, how much
- 8 time did you spend with Mr. Kelley?
- 9 A. I'm not exactly sure. But probably, probably about
- 10 ten, fifteen minutes.
- 11 Q. All right, sir. Now, you said, if I understood you
- 12 correctly, that at that point in time Mr. Kelley was not
- 13 in custody?
- 14 A. No, he was not.
- 15 Q. Did you later take him into custody?
- 16 A. No. I never took him into custody.
- 17 Q. Okay. Now, prior to June the 16th of 2009, had you
- 18 ever talked with a Roger Shephard?
- 19 A. No.
- 20 Q. Did you know a Roger Shephard?
- 21 A. Prior to this case, no.
- 22 Q. All right, sir. So to say that that was his voice on
- 23 the tape at that point in time, you didn't know that was
- 24 his voice; correct?
- 25 A. I had no proof that that was him.

1 Q. Right. You had no personal knowledge of that?

2 A. I had no personal knowledge that that was him on the
3 other end.

4 Q. Yes, sir. Now, who -- did you provide a number to
5 Kelley to call this Shephard?

6 A. No.

7 Q. Or who you say was Shephard?

8 A. No.

9 Q. Who provided the phone number?

10 A. Mr. Kelley.

11 Q. Now, what kind of equipment did you use to record
12 that phone conversation?

13 A. A cassette recorder, a small cassette recorder.

14 Q. Okay. Indeed portions of that tape only have one
15 voice on it. You cannot hear the responses; isn't that
16 correct?

17 A. I believe if you turn the volume up all the way, you
18 can probably make out the second voice on the receiving
19 end.

20 Q. All right, sir. Now, you went to Canada on April the
21 22nd of 2007? I couldn't really hear the date.

22 A. I don't believe that date is correct. I flew -- I
23 believe I flew up on the 25th of April.

24 Q. 25th, okay.

25 A. And met with them on the 26th.

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- 1 Q. Met with who?
- 2 A. The Montreal Police Department.
- 3 Q. Did you ever talk to Mr. Shephard while you were in
- 4 Montreal?
- 5 A. No, I did not.
- 6 Q. Okay. So you stayed there for two days?
- 7 A. It was about two days.
- 8 Q. Had the guns been recovered at that point in time?
- 9 A. Yes, they had.
- 10 Q. Okay. Did you participate in that at all?
- 11 A. No, I did not.
- 12 Q. Okay.
- 13 A. Other than making phone calls to the ATF agent in New
- 14 York and state police.
- 15 Q. And you say it was Mario Lombar that suggested the
- 16 Canadian authorities talk to Mr. Shephard?
- 17 A. That's correct.
- 18 Q. It wasn't at your request?
- 19 A. No, it was not.
- 20 Q. Have you ever talked to Mr. Shephard?
- 21 A. No, I have not.
- 22 Q. When you went to Action Pawn Shop on June the 15th of
- 23 2006, you just basically went to look; right?
- 24 A. That's correct.
- 25 Q. What time of the day did you go on June the 15th?

1 A. I couldn't tell you for sure.

2 Q. Morning, evening, afternoon?

3 A. I couldn't remember exactly. I think it was, I think
4 it was dark at that point.

5 Q. All right, sir. Were there any other police officers
6 there when you were there?

7 A. There were, but -- there were police officers and, I
8 believe, the ATF inspectors were there at that time.

9 Q. Who?

10 A. The ATF inspectors.

11 Q. All right.

12 MR. DEJONG: One moment, please, Your Honor.

13 THE COURT: Yes, sir.

14 Q. Other than information that the guns may be on a
15 roadway, you had information that they also could have
16 been around an abandoned warehouse or motel or something
17 like that?

18 A. Well, without going through previous information I
19 received, we knew that they had to be somewhere near the
20 Canadian border.

21 Q. But not necessarily on a roadway, at that point in
22 time?

23 A. Off -- somewhere off the highway leading to Canada,
24 in that area of New York. Yes.

25 Q. The U.S. that's on the serial number, is that part of

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- 1 the serial number?
- 2 A. Yes, it is.
- 3 Q. All right. Now, there have been no alterations on
- 4 what's been -- State's Exhibit number 75; have there, as
- 5 far as serial numbers were concerned?
- 6 A. No.
- 7 Q. All right. So actually what is on State's Exhibit
- 8 Number 78 and State's Exhibit Number 75, they do not
- 9 match; do they?
- 10 A. They do not match, no.
- 11 Q. So you could not say within a certainty that that is
- 12 even the same gun; could you?
- 13 A. Well, there's a possibility. I mean, there's always
- 14 a possibility. However, based on my experience, the
- 15 firearm serial number, that U.S. sometimes is left off
- 16 accidentally.
- 17 Q. All right. But this purportedly, what has been
- 18 marked as State's Exhibit Number 78, came from a licensed
- 19 -- a licensee, for want of a better term, of ATF; correct?
- 20 A. That's correct.
- 21 Q. And as far as getting that license, they are trained
- 22 on how to write down serial numbers; aren't they?
- 23 A. I don't believe they have any special training.
- 24 Q. Does ATF monitor that?
- 25 A. They do.

1 Q. Which number is the serial number on State's Exhibit

2 Number 75?

3 A. You're referring to the firearm?

4 Q. Yes.

5 A. It's BYN858US.

6 Q. And if you need to see it, I'll show it to you. I'm
7 not trying to keep it from you.

8 A. No, that's fine.

9 Q. All right, sir. And that would be a unique serial
10 number assigned to that particular weapon?

11 A. Correct.

12 Q. Thank you, sir.

13 MS. MUNSON: Nothing further, Your Honor. We
14 ask that this witness be excused.

15 MR. DEJONG: No objection, Your Honor.

16 THE COURT: Without objection, you may be
17 excused, Mr. Wildt.

18 CHRIS WILDT: Thank you.

19 MS. MUNSON: Your Honor, the State calls Tony
20 Robinson.

21 THE COURT: Mr. Robinson, you're still under
22 oath from your testimony earlier today.

23 MS. MUNSON: Your Honor, might the Court inquire
24 if this particular light is in their eyes?

25 THE COURT: I'm confident it is. Could you turn

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1 it just a little bit? It's a little bit in mine, so I'm
2 sure it's in theirs.

3 **TONY ROBINSON,**

4 **HAVING BEEN PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

5 **DIRECT EXAMINATION**

6 **BY MS. MUNSON:**

7 Q. All right. You've Detective Robinson with the
8 Sheriff's Office?

9 A. Yes, I am.

10 Q. And tell the jury again what your duties are?

11 A. I'm a lieutenant with the crime scene investigation
12 unit at the Pickens County Sheriff's Office.

13 Q. How long have you been doing crime scene
14 investigations?

15 A. Twenty years.

16 Q. And did you get a call in reference to this case from
17 the Easley police?

18 A. I did.

19 Q. And when did you get that call?

20 A. About five minutes after two on June 15th, 2006.

21 Q. Okay. Were you on duty?

22 A. I was.

23 Q. And where did you go in response?

24 A. The Action Pawn Shop.

25 Q. And what did you do -- what were you asked to do when

1 you got there?

2 A. I was asked to begin the process of documenting
3 evidence at that scene.

4 Q. Okay. And what was the first thing you did as far as
5 documenting evidence?

6 A. I took photographs.

7 Q. Okay. After that?

8 A. After I finished photographing, I marked some
9 evidence with those number placards that you saw in the
10 photographs and then I dusted for fingerprints.

11 Q. What do you mean when you say dusted for
12 fingerprints?

13 A. I applied fingerprint powder to areas where we
14 believed the suspect had been inside the store to --
15 mostly concentrated around the gun cabinet, a glass gun
16 display case near the front of the building.

17 Q. Okay. And once you dust with fingerprint powder,
18 what's the next thing you do?

19 A. Lift the fingerprints off the cabinet.

20 Q. How do you do that?

21 A. With clear tape and, as Sergeant Sherbert said, it's
22 kind of like Scotch tape, a little thicker. You apply it
23 to the fingerprint and lift it off and place it on a
24 backing card.

25 Q. Okay. And what do you do with the card?

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1 A. I label it where I got the print front, put my
2 initials, date on it and then just hold it until I'm ready
3 to compare the prints or give it to somebody else to
4 compare the prints.

5 Q. Okay. And you didn't compare prints in this case?

6 A. I did not compare prints in this case.

7 Q. Did you develop fingerprints anywhere other than the
8 one case?

9 A. I do not recall. I dusted, I think, the whole roll
10 of cases. The majority of the fingerprints came off the
11 gun display case where -- that was where the most activity
12 had been.

13 Q. Okay. Now I'm going to show you State's Exhibits 30
14 -- 28, 29, 30, 33, 34, 35, 36 and 37. Can you take a look
15 at those?

16 A. Okay.

17 Q. Do you recognize those?

18 A. I do.

19 Q. And how do you recognize them?

20 A. They're photographs that I took because they have my
21 initials on the back of the photograph.

22 Q. Okay. When did you take these photographs?

23 A. On June 15th.

24 Q. Are they accurate depictions of what you found in the
25 pawn shop on the 16th?

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1 A. They are.

2 Q. All right.

3 MS. MUNSON: Your Honor, at this time I move
4 State's Exhibits Number 28, 29, 30, 33, 34, 35, 36 and 37
5 into evidence.

6 THE COURT: Any objection?

7 MR. DEJONG: Without objection, Your Honor.

8 THE COURT: Exhibits 28 through 30 and 33
9 through 37 are admitted into evidence.

10 (WHEREUPON, State Exhibit Numbers 28 through 30 and
11 33 through 37 were admitted into evidence.)

12 Q. Lieutenant, what does this exhibit show?

13 A. That shows where I marked Exhibit Number -- or Item
14 Number 5, which was the firearms transaction record that
15 was laying on the counter.

16 Q. Had you moved it before you marked it?

17 A. No.

18 Q. Is that where you found it?

19 A. That's where I found it.

20 Q. All right. And State's Exhibit Number 29?

21 A. That's just a closer, closer taken photograph of the
22 same thing.

23 Q. Okay. Now, let's look at State's Exhibit Number 30.

24 Now, what is displayed in this exhibit?

25 A. You're looking toward the back of the store where the

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1 safe is, the large vault, and you can actually see where a
2 projectile struck the door of that vault.

3 Q. Can you show that with a laser pointer?

4 A. Right here.

5 Q. Okay. And is there another defect shown in that
6 exhibit?

7 A. You can barely see it, but that projectile actually
8 struck the corner of the wall right here and broke a piece
9 of wood on the paneling before it hit that door.

10 Q. All right. State's Exhibit Number 35, what does this
11 show?

12 A. That's the closer up shot of the corner.

13 Q. Can you use the pointer to show the jury what you're
14 talking about?

15 A. I think it's right in here.

16 Q. Okay. And State's Exhibit 37?

17 A. That's the back side of that corner where the
18 projectile came through. I guess it's like a piece of
19 corner molding right there on that piece of paneling and
20 that's where it came through before it hit the safe door.

21 Q. Okay. And State's Exhibit Number 33?

22 A. That's the safe door. You can see the indentation.

23 Q. Okay. And State's Exhibit 34?

24 A. Same thing.

25 Q. Okay. With ---

1 A. That's with the scale. I added the scale into it.

2 But that's the indentation where the projectile struck the
3 door.

4 Q. All right.

5 MS. MUNSON: Your Honor, I have nothing further
6 at this time.

7 THE COURT: Mr. DeJong.

8 MR. DEJONG: Thank you, Your Honor.

9 **CROSS EXAMINATION**

10 **BY MR. DEJONG:**

11 Q. Mr. Robinson, you don't know what kind of caliber
12 weapon that was; do you?

13 A. I do not.

14 Q. And indeed you have no personal knowledge how it got
15 there?

16 A. I wasn't there when it was fired, no, sir.

17 Q. Yes, sir. Now, you went in and made photographs.

18 You've -- well, let me back up. You got a call at what
19 time?

20 A. He called me about five minutes after two.

21 Q. Five after two. When you got there how many police
22 officers were in Action Pawn Shop?

23 A. I met Chief Trayber, Lieutenant Seaborn and Captain
24 Patterson outside the pawn shop.

25 Q. How about inside?

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1 A. I don't think anybody was inside the pawn shop at
2 that time.

3 Q. Okay. Prior to you getting there, do you know how
4 many police officers had been in the pawn shop?

5 A. I do not.

6 Q. Prior to getting there do you know -- do you know
7 whether anything had been moved at all?

8 A. I do know that a display case was moved.

9 Q. All right, sir. Where was that display case in
10 relationship to where you say the guns were kept?

11 A. About the third one down from that. They were in --
12 they were all together, but they were in like a -- making
13 kind of a barrier to separate the area where he kept the
14 long guns. Mr. Bruin was behind those cases and one of
15 those cases was moved to get to him.

16 Q. Well, in terms of feet or inches, how far would the
17 case that was moved have been from where actually the
18 handguns were?

19 A. Seven, maybe ten feet.

20 Q. Did you do a drawing?

21 A. I didn't do -- I assisted. But we do have a drawing.

22 Q. Okay. Now, the first thing you did, you took
23 photographs?

24 A. That's correct.

25 Q. While you were in there was anybody was anybody else

1 in there?

2 A. Possibly. I don't recall anybody in there. I
3 usually try to make sure there's no one else in the
4 photographs, so I usually ask that everybody leave while
5 I'm taking photographs.

6 Q. Did Officer Brian Cowan with the Easley Police
7 Department come by while you were there?

8 A. Yes, he did, later.

9 Q. Okay.

10 A. Much later.

11 Q. Do you recall when he got there?

12 A. I don't recall. I know I -- we cleared the scene at
13 two minutes until seven p.m. And he got there probably an
14 hour or two before that and started collecting the
15 evidence that I had marked.

16 Q. All right, sir. Now, you -- did you collect shell
17 casings?

18 A. I did not collect anything.

19 Q. To your knowledge were the shell casings ever dusted
20 for fingerprints?

21 A. I do not know.

22 Q. All right. How about any weapons that were in the
23 case, did you dust any of them?

24 A. I did dust the weapons in the case that were left
25 behind.

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- 1 Q. And did you lift any latents from any of those?
- 2 A. Not from the weapons.
- 3 Q. Okay. How many latents did you lift?
- 4 A. I think I saw them earlier. I think I -- at least
- 5 twenty.
- 6 Q. All right.
- 7 A. I think they're numbered on my latent lift cards, one
- 8 of twenty ---
- 9 Q. Do you need your latent lift cards?
- 10 A. If you'll hand me one I can tell you how many I
- 11 lifted, I believe. There's one right under your drawing.
- 12 Q. This?
- 13 A. It's right under it. Right there where the paper ---
- 14 Q. This?
- 15 A. Yeah.
- 16 Q. Okay. All right.
- 17 A. This says lift three of twenty, four of twenty. So I
- 18 lifted twenty latents.
- 19 Q. All right. Were all of those latents, to your
- 20 knowledge, submitted to Greenville County Crime Lab?
- 21 A. Yes, sir.
- 22 Q. All right. And on the back of them you made these
- 23 notations. Before we get into that. This was a place of
- 24 business; correct?
- 25 A. It was.

1 Q. Open to the public?

2 A. Yes, sir.

3 Q. So anybody could come in -- basically, anybody that
4 touched that counter, that case, would have left
5 fingerprints?

6 A. That's correct.

7 Q. And as to the time that those fingerprints actually
8 got there, you could not say; could you?

9 A. No, sir.

10 Q. Okay. Could they have been there forty-eight hours
11 before?

12 A. It is possible.

13 Q. Even longer?

14 A. It is possible. There's no way to know when we go in
15 and find latent prints, there's no way to know how long
16 they've been on the object.

17 Q. Okay. Now, looking at what's been marked State's
18 Exhibit Number 17, I know you -- I mean, you're familiar
19 with fingerprints; aren't you?

20 A. Somewhat, yes, sir.

21 Q. All right. Well, I'm not. But maybe you can tell by
22 looking at the back of the card. What supposedly is that
23 a fingerprint -- a print of?

24 A. I drew a sketch showing that I took this lift off the
25 top of the gun case, the glass gun case.

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1 Q. That be to the front of the gun case?

2 A. That would be the top of the gun case.

3 Q. Okay. Well, is there a location on -- I mean, the
4 gun case had some depth; did it not?

5 A. It did. It was on the front corner. I drew a small
6 X right here.

7 Q. All right. That one was on the front corner; right?

8 A. (No verbal response.)

9 Q. Let's look at Exhibit Number 19. Where -- is that
10 one of the fingerprints that you lifted?

11 A. Yes, it is.

12 Q. And where was that lifted from?

13 A. It was also on the front -- we said the corner, but
14 it's actually more on the lip where it rolls over to the
15 front of the case. That's where the X is.

16 Q. So if I was standing in front of the gun case - I
17 don't mean to intrude on your space here - but it would
18 ---

19 A. That's fine.

20 Q. -- it would be right in here somewhere; right?

21 A. Yes. The edge.

22 Q. All right. I'm not sure which one I just showed you.

23 Was that 18 that you were looking at? Well, we'll do 18
24 again if we have to. Where does that one come from?

25 A. Same area.

- 1 Q. Okay. 19?
- 2 A. Same area. All of these are on the edge, but they're
- 3 in different locations along the edge.
- 4 Q. Right. I understand. 15?
- 5 A. Same front edge.
- 6 Q. Okay. And while we're at it, 17?
- 7 A. Front edge.
- 8 Q. Okay. Now, those are all the fingerprints you lifted
- 9 off of the gun case?
- 10 A. I don't think so. That's the only ones that's been
- 11 entered into evidence. That's the ones that match Mr.
- 12 Shephard.
- 13 Q. All right. Well, okay, we'll go that way. You say
- 14 those are the ones that match Mr. Shephard. Those are the
- 15 only fingerprints that you took or lifted that matched Mr.
- 16 Shephard's?
- 17 A. To my knowledge, yes.
- 18 Q. All right. I believe you said you lifted some
- 19 latents from a weapon?
- 20 A. No, sir.
- 21 Q. You did not?
- 22 A. I dusted the weapons for latents, but I didn't find
- 23 any.
- 24 Q. Didn't find any. Okay. None at all?
- 25 A. No, sir.

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1 Q. What has been marked as Exhibit - beg your pardon -
2 what's been marked as State's Exhibit Number 21, did you
3 develop the latents on that particular form?

4 A. No, I did not.

5 Q. All right. Other than photographing them, you did
6 nothing else?

7 A. No, sir.

8 Q. Now you say you photographed that where you found
9 them?

10 A. That's correct.

11 Q. When you got there?

12 A. When I got there.

13 Q. But how many people had been in there up until that
14 time you don't know?

15 A. I do not know.

16 Q. Other than the gun case, did you attempt to - beg
17 your pardon - locate -- or attempt to lift latents from
18 any other place in the store?

19 A. I did all the, I did all the gun cases or cases,
20 display cases. The gun case was the one on the corner.
21 And we did the -- I did the whole line down through there
22 of those cases.

23 Q. So how about the front counter, did you try to ---

24 A. We dusted the front counter after we moved the
25 firearms transaction record.

1 Q. After what now?

2 A. After we moved the firearms transaction record off of
3 it. I didn't want to get dust on that.

4 Q. Did you lift any latents from that?

5 A. I don't recall lifting any, but I would have to see
6 every latent that I lifted to be sure.

7 Q. When you say you dusted the cases, I'll show you what
8 has been marked State's Exhibit Number 24. Is that what
9 you're talking about?

10 A. Those cases are -- I dusted those cases also. Yes.
11 But that's not the line of cases, I don't think, where the
12 firearms were.

13 Q. Well, where are they in relation ---

14 A. I think those are in the center of the store.

15 Q. Okay. So you dusted them as well?

16 A. Yes, sir.

17 Q. Okay. Now let me see. Let me show you what's been
18 marked as State's Exhibit Number 23, I believe. Oops, I'm
19 sorry. That was, that was the gun case and then you went
20 down, if you're looking at that picture, you would have
21 gone to the ---

22 A. To the right.

23 Q. To the right. Okay. Now, one of those gun cases had
24 been moved at that point; ---

25 A. Yes.

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1 Q. -- right?

2 A. I don't think -- I don't know that there were guns in
3 that one though. There was jewelry in some of those
4 display cases also, and other items.

5 Q. All right. Now, with regard to the shell casings,
6 you took pictures?

7 A. Yes.

8 Q. That's where you found them sometime after two
9 o'clock on June the 15th?

10 A. That's right.

11 Q. You cannot say within a degree of certainty, can you,
12 Mr. Robinson, that that's where they were immediately
13 after this alleged incident occurred?

14 A. I can only say that's where they were found after I
15 got there.

16 Q. Yes, sir.

17 MR. DEJONG: One moment, Your Honor.

18 Q. Did you ever view the video from the pawn shop?

19 A. I did after I left the scene.

20 Q. All right. Did you view it before you started trying
21 to lift prints?

22 A. No. Other people were informing me of what was
23 basically on it, but I did not get to see it until I left
24 the scene.

25 Q. So you were receiving information from somewhere else

1 where to basically dust for prints; right?

2 A. They were telling me the areas that needed to be
3 concentrated on. It's very rare that we have a crime on
4 video, so that certainly helped.

5 Q. So you were kind of targeting a particular area of
6 the store; right?

7 A. I did -- as I said, I did everything. But yes, I
8 targeted areas where other officers were telling me the
9 suspect was standing here at this display case.

10 Q. Let me show you what's been marked as State's Exhibit
11 Number 37, I believe. What is that?

12 A. That's the -- I talked about where the projectile hit
13 the paneling on the corner and then continued on and hit
14 the safe door. That's the back side of that.

15 Q. To your knowledge did you take all the pictures at
16 the scene?

17 A. To my knowledge I did.

18 Q. There was a picture or pictures - that's not it - of
19 a projectile that went into the wall. I can't lay my
20 hands on it right now. I'm not a hundred percent sure
21 where it is in the stack here. But do you recall that?

22 A. I do.

23 Q. All right. Thank you. It says -- these are
24 exhibits, I'm sure, out of order, 40, 32, 31, 38 and 39.
25 I think those basically show what we're talking about.

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1 Did you take those pictures?

2 A. Yes, sir.

3 Q. Did you help hammer and chisel the concrete wall?

4 A. Brian Cowan did most of that.

5 Q. Okay. Did anybody help him?

6 A. I don't recall if anybody helped him. I was there
7 with him, but I don't recall other than trying to help him
8 figure out where the projectile might be.

9 Q. Did you ever do any of the comparisons on the latent
10 prints in this case?

11 A. No, sir.

12 Q. Not at all?

13 A. Not at all.

14 Q. Thank you, sir.

15 MS. MUNSON: Brief redirect, Your Honor.

16 THE COURT: Yes, ma'am.

17 **REDIRECT EXAMINATION**

18 **BY MS. MUNSON:**

19 Q. In what condition was the glass on the cases when you
20 went to dust for prints?

21 A. Clean and -- it was a good surface for processing
22 prints. But it was clean.

23 Q. Okay. After watching the video did you feel like you
24 needed to go back to the scene?

25 A. No, I did not.

1 Q. What would you expect the condition of a fingerprint
2 to be on glass, based on your training and experience,
3 three years down the road in a place of business, open to
4 the public?

5 A. I wouldn't expect it to be there three years down the
6 road.

7 Q. Okay. Thank you.

8 MS. MUNSON: I have nothing further, Your Honor.

9 MS. MUNSON: Nothing on recross, Your Honor.

10 THE COURT: All right.

11 MS. MUNSON: We ask that this witness be
12 excused.

13 MR. DEJONG: No objection.

14 THE COURT: Without objection, Mr. Robinson may
15 be excused. Thank you, sir.

16 MS. MUNSON: Your Honor, at this time we request
17 permission to publish State's Exhibit Number 11, the audio
18 tape.

19 THE COURT: All right. You may do so.

20 (WHEREUPON, State Exhibit Number 11 was played in
21 open court.)

22 MS. MUNSON: Your Honor, I would also at this
23 time like to publish State's Exhibit Number 49. It's
24 fairly lengthy. I didn't know if you wanted to take a
25 break first.

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1 THE COURT: All right. We better take a break
2 first. Ladies and gentlemen, I'll ask you to go back to
3 your jury room. Again, let me remind you not to discuss
4 the case. We'll call you back after a short break to hear
5 the video.

6 (WHEREUPON, the jury exited the open court at
7 approximately 3:22 p.m.)

8 THE COURT: All right. Let's take about a ten
9 minute break.

10 (WHEREUPON, Court stood at recess for a short break.)

11 THE COURT: Can I see y'all just a minute?

12 (WHEREUPON, Ms. Munson and Mr. DeJong approached
13 the bar.)

14 THE COURT: All right. Let's have our jury come
15 back, please.

16 (WHEREUPON, the jury entered the open court at
17 approximately 3:43 p.m.)

18 THE COURT: All right, Solicitor.

19 (WHEREUPON, State Exhibit Number 49 was played in
20 open court.)

21 THE COURT: Madam Forelady, ladies and
22 gentlemen, I believe you've worked long enough today. I'm
23 going to dismiss you for the evening. If you would be
24 back at nine thirty in the morning, we'll have an errand
25 to do in the morning first thing. I need to take care of

1 that. We'll be ready to start at nine thirty. Don't
2 discuss the case, as I've told you before. And don't let
3 anyone discuss it with you. Refrain from any contact with
4 anyone or by any source. Have a good evening. See you
5 back tomorrow at nine thirty.

6 (WHEREUPON, the jury exited the open court at
7 approximately 5:15 p.m.)

8 THE COURT: All right. We'll be at ease till
9 nine thirty in the morning.

10 (WHEREUPON, court was adjourned for the day at
11 approximately 5:17 p.m.)

12 11/19/10

13 (WHEREUPON, court convened with all parties present
14 and the following proceedings were had.)

15 THE COURT: Is there anything we need to take
16 care of before the jury comes in?

17 MS. MUNSON: Nothing from the State, Your Honor.

18 MR. DEJONG: Nothing on behalf of the Defendant,
19 Your Honor.

20 THE COURT: All right. Let's have our jury come
21 in, if they're ready.

22 (WHEREUPON, the jury entered the open court at
23 approximately 9:49 a.m.)

24 THE COURT: Good morning, ladies and gentlemen.
25 We are now ready to proceed with the trial of the case.

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1 Solicitor, you may call your next witness.

2 MS. MUNSON: May it please the Court, Your
3 Honor. The State calls Captain Gene Patterson.

4 THE COURT: Come around and be sworn, please,
5 sir.

6 MISTER CLERK: Place your left hand on the bible
7 and raise your right hand. Do you solemnly swear or
8 affirm the testimony you're about to give in this case to
9 be the truth, the whole truth and nothing but the truth,
10 so help you God?

11 GENE PATTERSON: I do.

12 MISTER CLERK: If you would have a seat and
13 state your name for the record.

14 GENE PATTERSON: Gene Patterson.

15 GENE PATTERSON,

16 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MS. MUNSON:

19 Q. Who do you work for, sir?

20 A. The City of Easley.

21 Q. In what department?

22 A. The police department.

23 Q. How long have you been with the Easley Police
24 Department?

25 A. A little over twenty years.

1 Q. What is your current title?

2 A. I am the captain assigned to the Criminal
3 Investigations Division.

4 Q. Would you scoot a little closer to the microphone?

5 Thank you. All right. What are your duties as captain
6 with the Criminal Investigations Unit?

7 A. To manage and oversee the investigations of criminal
8 offenses that are investigated through our division.

9 Q. Okay. Were you with the Easley Police Department in
10 June of 2006?

11 A. Yes, ma'am.

12 Q. And did you get a call in reference to this case?

13 A. Yes, ma'am.

14 Q. On what date?

15 A. It was June the 15th, 2006.

16 Q. At what time did you get this call?

17 A. The original call came through our dispatch center at
18 1343.

19 Q. And --

20 A. I'm sorry.

21 Q. -- help me out. What's 1343?

22 A. One forty-three p.m.

23 Q. Okay. Where were you when you got this call?

24 A. I was actually en route to another investigation. I
25 was on Highway 86 near Highway 8.

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- 1 Q. Okay. What did you do when this call came out?
- 2 A. I immediately turned around and proceeded to West
- 3 Main Street.
- 4 Q. To the Action Pawn?
- 5 A. To the Action Pawn.
- 6 Q. All right. How long did it take you to get there?
- 7 A. Approximately seven minutes.
- 8 Q. Who all was there when you got there?
- 9 A. Pickens County EMS was on the scene. Ms. Bruin was
- 10 on the scene. Several members of my division had already
- 11 arrived and a couple of uniformed patrol officers.
- 12 Q. How did this call come out? What type of call was
- 13 it?
- 14 A. It was originally given out over the police radio as
- 15 a shots fired.
- 16 Q. Okay. Whenever a call like that comes out, how many
- 17 people usually respond?
- 18 A. As many that are available.
- 19 Q. All right. How long did you stay on the scene?
- 20 A. I was at the scene for approximately an hour and a
- 21 half, hour and forty-five minutes.
- 22 Q. All right. What was your role in this investigation?
- 23 A. Lead investigator.
- 24 Q. Okay. After you left the scene -- let me ask you
- 25 this first. During the time of this investigation, do you

- 1 know whether or not Action Pawn was secured?
- 2 A. Yes, ma'am. It was.
- 3 Q. How do you know that?
- 4 A. I directed it to be secured.
- 5 Q. Okay. And who secured it?
- 6 A. A gentleman by the name of Keith Vinson.
- 7 Q. And why him?
- 8 A. Keith Vinson is a retired police officer who was on
- 9 the alarm call-out list for Action Pawn. He possessed the
- 10 key. He was known to the police department and to the
- 11 Bruins and, and we made those arrangements with Ms. Bruin,
- 12 that he would secure the, the business.
- 13 Q. Okay. Other than him, who else -- other than him and
- 14 Mr. Bruin, who else had access to Action Pawn? Who else
- 15 could come and go as they pleased?
- 16 A. No one that I'm aware of.
- 17 Q. Okay. Now, when you left the scene how did you begin
- 18 conducting an investigation like this?
- 19 A. We went back to the police department and established
- 20 a command center in the administrative conference room.
- 21 And from there, we assigned investigative teams and began
- 22 setting up the process of taking in leads and distributing
- 23 them out to the investigative teams.
- 24 Q. Okay. How would these leads come in?
- 25 A. Usually through the telephone.

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1 Q. All right. And when you got a lead, what was the
2 person's instruction who took a lead over the telephone?

3 A. They were to fill out a tip sheet, a lead sheet, with
4 certain pertinent information from whomever called. That
5 was to be transferred to me personally. I would review it
6 and then get with the other members of the administrative
7 investigative team and we would distribute those out to
8 the investigative team.

9 Q. Okay. How many agencies were involved in this
10 investigation?

11 A. Number-wise, I'm not sure. But it included the
12 Easley Police Department, obviously, the Pickens County
13 Sheriff's Office, the Greenville City Police Department,
14 Greenville County Sheriff's Office, the ATFE, the Anderson
15 County Sheriff's Office, SLED, the U.S. Marshall Service.
16 I believe that's, I believe that's all the agencies that
17 were involved.

18 Q. Okay. And at some point did you develop someone as a
19 suspect?

20 A. We did.

21 Q. And what -- and who was that?

22 A. Roger Eugene Shephard.

23 Q. What did you do once you developed him as a suspect?

24 A. We went through a process of obtaining background
25 information on Mr. Shephard. After obtaining background

1 information we secured court orders for different entities
2 that were assigned or located -- assigned to Mr. Shephard,
3 including a credit card and cell phones and different
4 personal information sources.

5 Q. Okay. Can you say how many leads came in?

6 A. Just as a guess, a couple hundred.

7 Q. Okay. Now, at some point was Roger Eugene Shephard
8 taken into custody?

9 A. Yes, he was.

10 Q. Do you know when that was?

11 A. It was on the 17th of June, 2006.

12 Q. Where?

13 A. In Montreal, Canada.

14 Q. At what point -- was he ever -- when was he brought
15 back to South Carolina?

16 A. He was actually brought back to South Carolina on
17 June the 6th of 2008.

18 Q. And how was he brought back to South Carolina?

19 A. Members of our police department went to Atlanta,
20 Georgia, and picked him up and he was transported back to
21 Easley, South Carolina.

22 Q. How did he get to Atlanta from Canada?

23 A. U.S. Marshall Service flew him from Montreal, or that
24 area, to Atlanta, Georgia.

25 Q. And when he got back to South Carolina, is that when

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1 he was served with the warrants?

2 A. Yes, ma'am.

3 MS. MUNSON: I have nothing further at this
4 time, Your Honor.

5 THE COURT: You may cross examine, Mr. DeJong.

6 MR. DEJONG: Your Honor, may it please the
7 Court.

8 **CROSS EXAMINATION**

9 **BY MR. DEJONG:**

10 Q. The call you got, Mr. Patterson, did that come in on
11 a radio or was that a personal call to you, or how did
12 that come about?

13 A. It came across the police radio.

14 Q. Okay. How many calls came over the police radio with
15 regard to this particular situation? Do you know?

16 A. It would be easiest to describe one call. There was
17 supplemental information given along the way as officers
18 progressed and up until the point that, that we were
19 notified that the location was secured.

20 Q. Okay. So there was radio traffic after the initial
21 call?

22 A. Correct.

23 Q. But there was one message put out on the radio;
24 right? In terms of shots fired?

25 A. Correct.

- 1 Q. Okay. That's fine. So it took you -- you say the
2 call came in at one forty-three in the afternoon?
- 3 A. Yes, sir.
- 4 Q. So it took you seven minutes to get there?
- 5 A. Approximately.
- 6 Q. Now, you've been a police officer for twenty years?
- 7 A. Yes, sir.
- 8 Q. Okay. Well, when you got to the scene at 604 West
9 Main Street ...
- 10 A. 604 West Main Street.
- 11 Q. All right. When you got there were you advised that
12 the scene had been cleared as far as any possible suspects
13 or ---
- 14 A. Secured.
- 15 Q. Secured?
- 16 A. Yes, sir.
- 17 Q. Okay. Now, a crime scene, keeping its integrity is
18 very important; isn't it?
- 19 A. Yes, sir.
- 20 Q. And the fewer people you can get through there until
21 evidence is collected the better off you are; right?
- 22 A. Correct.
- 23 Q. Yet in this case there were numerous police officers
24 that responded there and went through the scene before
25 evidence was ever collected; weren't there?

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1 A. There were numerous people that were, that were in
2 the -- within the boundaries of the crime scene. Correct.
3 But each had a, each had a responsibility and the first
4 responsibility was tending to the needs of Mr. Bruin.

5 Q. Well, in the hour and a half that you were there, how
6 many people came in and out of Action Pawn Shop.

7 A. The original -- the only ones that I can testify to
8 are the -- maybe two police officers, uniformed police
9 officers, two investigators, myself included, two persons
10 from the administrative staff of the police department,
11 and the EMTs.

12 Q. How about Pickens County?

13 A. I never saw a Pickens County Deputy within the
14 boundaries of the ---

15 Q. All right.

16 A. -- at that point.

17 Q. Well, you said that the business was secured. Who
18 secured that business?

19 A. The business was secured by Lieutenant Lovell,
20 Investigator Brock and Officer Guy.

21 Q. Okay. Well, I think that's where maybe you and I are
22 getting confused. Okay? In terms of arrival of law
23 enforcement, they went through the building; right?

24 A. Those three.

25 Q. Yes, sir.

1 A. Correct.

2 Q. And that's when I'm using the word cleared. You're
3 using the word secured. They did that to check the area
4 for possible suspects or whatever?

5 A. Correct.

6 Q. Okay. Now, when Ms. Munson was asking you questions,
7 she asked you about I guess the business being secured on
8 the 15th?

9 A. Locked up.

10 Q. I think that's now -- how we're getting to the same,
11 same sheet of music here. Okay? So who do you say locked
12 up the business?

13 A. Keith Vinson.

14 Q. Who?

15 A. Keith Vinson.

16 Q. Keith Vinson?

17 A. Yes.

18 Q. And he is not a member of the Easley Police
19 Department?

20 A. He's retired.

21 Q. All right. And other than him, did anybody else stay
22 there?

23 A. During the whole time -- when I arrived at the scene
24 I directed Sergeant Cowan to retrieve the videotape. I
25 then directed him to the police department to view the

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1 videotape and secure an accurate description of the
2 suspect. At that point in time, I remained at the scene
3 until members of the forensics division of the Pickens
4 County Sheriff's Office came to the scene.

5 Q. Well, when everybody left, what did Easley Police
6 Department do in this ongoing investigation? When
7 everybody left on June the 15th?

8 A. At different times members of different agencies --
9 the different agencies went to the police department and
10 began going through the preliminary information that had
11 been made available to us.

12 Q. All right. I apologize. I didn't make my question
13 clear. After everybody left Action Pawn Shop on June the
14 15th, which I believe has been established to be about
15 seven -- sometime after seven in the evening.

16 A. I'm not sure exactly what time.

17 Q. We're not playing with that number but whatever it
18 is, what was done with Action Pawn Shop by the Easley
19 Police Department?

20 A. Mr. Vinson was called to secure the pawn shop.

21 Q. All right. Did he have a key to the building?

22 A. He did.

23 Q. When the Easley Police Department left - and I'm not
24 counting Mr. Vinson, because I don't consider him part of
25 the Easley Police Department - were there still guns in

1 the gun case at Action Pawn Shop?

2 A. Yes.

3 Q. Now, these leads that you get -- well, let's back up.

4 How soon after this alleged offense was information given
5 to media?

6 A. The still shots taken from the surveillance video at
7 Action Pawn were put out as quickly as possible to the
8 media.

9 Q. Well, I realize as quickly as possible, but was that
10 three o'clock on the 15th, three o'clock on the 16th?

11 A. I'm not exactly sure. We, we made every effort that
12 we could to make that information available before the
13 five o'clock edition of the news comes on.

14 Q. All right.

15 A. So it would have been some time before five.

16 Q. Well, how long did you follow up on these leads?

17 A. I'm sorry?

18 Q. How long did you follow up on all these leads that
19 were coming in?

20 A. We followed up on leads -- you and I may have -- not
21 the same definition of leads.

22 Q. Well, let's make sure we're on the same sheet of
23 music. You tell me and then I'll tell you if that's what
24 sheet of music I'm on.

25 A. We followed up on information related to this case as

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1 late as June the 6th of 2008.

2 Q. All right. At what point in time did you develop Mr.
3 Shephard as a suspect?

4 A. Information came in in the early morning hours of the
5 16th.

6 Q. Was Joseph Kelley ever considered a suspect in this
7 case?

8 A. No, sir.

9 Q. Do you recall approving a return of a .40 caliber
10 Springfield to a Joseph Kelley?

11 A. I do.

12 Q. How did the Easley Police Department come into
13 possession of Mr. Kelley's weapon?

14 A. There were several weapons that were sent to a
15 federal firearms licensee from both Mr. Shephard and Mr.
16 Kelley and we took possession of those from that person.

17 Q. At some point in time you approved the return of Mr.
18 Kelley's .40 caliber Springfield?

19 A. I did.

20 Q. Are you familiar with weapons?

21 A. Somewhat.

22 Q. Do you know what kind of mark a Springfield makes on
23 a, a round when it is fired? Is it square? Is it round?
24 Or do you know?

25 A. I do not know.

- 1 Q. Now, as lead investigator on this case, Mr.
2 Patterson, did you ever go to Montreal, Canada?
3 A. I did not.
4 Q. Did you ever talk to Mario Lombar or --
5 A. Marco Roy?
6 Q. Marco Roy. Thank you, sir. Did you ever talk to
7 either one of them?
8 A. I did.
9 Q. Pardon me?
10 A. I did.
11 Q. All right. And did you request at some point in time
12 that they take a statement from Mr. Shephard?
13 A. No, sir. I did not.
14 Q. After Mr. Shephard returned from Canada, I gather
15 you, if I understood you correctly -- do you need some
16 water?
17 A. No, sir. I'm fine. Thank you.
18 Q. If I understood you correctly, you went to Atlanta to
19 pick him up?
20 A. No, sir. I did not.
21 Q. Okay. You were not personally ---
22 A. Members of our department did.
23 Q. Okay. You didn't?
24 A. I did not.
25 Q. All right. After Mr. Shephard returned from Canada,

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1 did you have any contact with him?

2 A. I did.

3 Q. All right. Was that to serve the warrants?

4 A. It was during that process. Yes, sir.

5 Q. Other than that, did you have any other contact with
6 him?

7 A. No, sir.

8 MR. DEJONG: One moment, please, Your Honor.

9 Thank you, Mr. Patterson.

10 MS. MUNSON: No further questions, Your Honor.

11 THE COURT: Thank you, Officer Patterson. You
12 may step down.

13 MS. MUNSON: Your Honor, at this time the State
14 requests permission to publish State's Exhibit Number 1.

15 THE COURT: You may do so.

16 (WHEREUPON, State Exhibit Number 1 was played in the
17 open court.)

18 MS. MUNSON: May it please the Court, Your
19 Honor, that is the State's case.

20 THE COURT: All right. Ladies and gentlemen,
21 I'll let you go back and take a short break. We'll call
22 you back in just a few moments. We've got some matters of
23 law we need to take care of. Don't discuss the case at
24 this time.

25 (WHEREUPON, the jury exited the open court at

1 approximately 11:40 a.m.)

2 MR. DEJONG: That was a long video. Could I run
3 down the hallway just a moment?

4 THE COURT: Let's take about a five minute
5 break, then we'll be ready to start back.

6 (WHEREUPON, court stood at recess for a short break.)

7 THE COURT: Yes, sir, Mr. DeJong?

8 MR. DEJONG: Your Honor, I have no motion at
9 this point in time. I would ask that I be allowed to take
10 my client out of the Courtroom for a few minutes and
11 discuss whether or not he wants to testify. We have
12 discussed that a bit, but I never, I never make and I
13 never allow my clients to make that decision until the
14 State has rested.

15 And I know a lot of times Your Honor likes to voir
16 dire my client before we have that conversation also. So
17 I ---

18 THE COURT: I'd rather do that before you have
19 the conversation. I'll give you a time to talk with him
20 then.

21 MR. DEJONG: Yes. And that's one reason I
22 didn't try to leave during the last break, because I know
23 oft times you like to do that. Stand up, please.

24 THE COURT: Yes, sir. If you would please
25 stand. Let me remind you, Mr. Shephard, you're still

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1 under oath. You testified earlier this week. We've
2 reached the stage of the trial now where you have a right
3 to put up a defense.

4 I'm going to explain the rights that you enjoy under
5 our Constitution, the laws of this state and of the United
6 States. If you don't understand anything I'm talking to
7 you about, please let me know and I'll try to explain it
8 differently. Do you understand?

9 DEFENDANT: Yes, sir. I do.

10 THE COURT: The Constitution of the United
11 States and the Fifth Amendment says that no person should
12 be compelled in any case, criminal case, to be a witness
13 against himself. This means you can't be required to
14 testify in this case. You have a right to testify on your
15 own behalf but nobody can make you testify. Whether to
16 testify or not is a personal right that you enjoy and
17 nobody can waive this right except you.

18 If you decide to testify you'll be subject to
19 the same rules that govern other witnesses. You can be
20 examined and cross examined on any relevant issue in the
21 case.

22 Solicitor, are there any convictions involving
23 dishonesty or false imprisonment for impeachment purposes?

24 MS. MUNSON: No, sir.

25 THE COURT: All right. The State will have an

1 opportunity to examine you on any relevant matter involved
2 in the case. If you decide to testify, Mr. Shephard, this
3 decision on your part must be freely and voluntarily and
4 intelligently made with the knowledge of the protections
5 that you enjoy under the Constitution of this state and of
6 the United States and the consequences of your decision to
7 testify.

8 You may decide not to testify and if you make that
9 decision, I'll instruct the jury they cannot give the fact
10 that you did not testify any consideration whatsoever.
11 There is to be absolutely no prejudice brought to you
12 because you did not testify. I'll tell the jury they
13 can't even talk about that in the jury room.

14 It's left entirely up to you whether to testify or
15 not to testify. You can talk with family, friends, with
16 your attorney, anyone else, but ultimately that decision
17 is going to need to be made by you and you alone because
18 you're the one that has that privilege. Do you understand
19 what I've explained to you, sir?

20 DEFENDANT: Yes, Your Honor, I do.

21 THE COURT: Do you have any questions about what
22 I've explained?

23 DEFENDANT: No, Your Honor.

24 THE COURT: All right. At your attorney's
25 request we'll take a short break and let you talk with him

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1 and after which we'll be ready to proceed with the trial.

2 (WHEREUPON, court stood at recess for a short break.)

3 THE COURT: All right. Mr. DeJong, have you had
4 an opportunity to talk with your client?

5 MR. DEJONG: I have, Your Honor.

6 THE COURT: Does he intend to testify or put up
7 any evidence whatsoever?

8 MR. DEJONG: He has indicated to me, Your Honor,
9 he wishes to exercise his rights under the Fifth Amendment
10 to remain silent and not testify.

11 THE COURT: Is that correct, Mr. Shephard?

12 DEFENDANT: Yes, Your Honor, it is.

13 THE COURT: Any other evidence intended to be
14 offered by the defense?

15 MR. DEJONG: No, Your Honor, I would do it in
16 front of the jury at some appropriate time, but the
17 defense rests, Your Honor.

18 THE COURT: All right. When we bring the jury
19 back before the closing statements, I need you to rest on
20 the record in front of the jury.

21 MR. DEJONG: Yes, sir.

22 THE COURT: All right. I've had an opportunity
23 to show the proposed verdict forms to both counsel at a
24 bench conference up here. Any objections to the verdict
25 forms as they're printed?

1 MS. MUNSON: Nothing from the State, Your Honor.

2 MR. DEJONG: Nothing from Mr. Shephard, Your
3 Honor.

4 THE COURT: All right. Let's take a lunch break
5 and be back at twenty until two and be ready to start
6 back.

7 MR. DEJONG: Your Honor, if I may, I hate to
8 have to ask this of law enforcement, but I need to talk to
9 my client a little bit during that time.

10 THE COURT: They'll accommodate you for part of
11 that, part of that time.

12 MR. DEJONG: I'll need some time to myself, but
13 I want to spend some time with Mr. Shephard.

14 THE COURT: All right. We'll be at ease until
15 one twenty. I might have said two twenty. I said --
16 twenty minutes of two we'll be back. One forty.

17 (WHEREUPON, court stood at recess for a lunch break.)

18 THE COURT: All right. Everybody ready to
19 proceed?

20 MS. MUNSON: The State is ready, Your Honor.

21 MR. DEJONG: Ready for the defense when my
22 client gets here, Your Honor.

23 THE COURT: All right. Ready to proceed?

24 MS. MUNSON: State's ready, Your Honor.

25 MR. DEJONG: Ready for the defense, Your Honor.

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1 THE COURT: Okay. Let's have our jury come in.

2 BAILIFF: They're not quite ready.

3 THE COURT: Okay. Whenever they're ready.

4 (WHEREUPON, the jury entered the open court at
5 approximately 1:53 p.m.)

6 THE COURT: Ladies and gentlemen, we're now
7 ready to proceed. Mr. DeJong, you may ---

8 MR. DEJONG: Your Honor, may it please the
9 Court. The defense rests.

10 THE COURT: All right. Ladies and gentlemen,
11 you've heard all the evidence that's to be presented in
12 this case. As I told you when we began, there's several
13 stages that take place. Now, we're at the stage where the
14 attorneys have a chance to address you in their closing
15 statements. As I told you earlier, this is not evidence.
16 You've heard all the evidence.

17 However, I urge you to listen carefully as these
18 attorneys address you. They can perhaps give you some
19 insights to help you in your deliberations, to help you as
20 you discuss the case thoroughly and ultimately find the
21 true facts in the case. Solicitor.

22 MS. MUNSON: May it please the Court, Your
23 Honor, Mr. DeJong.

24 CLOSING STATEMENT

25 BY MS. MUNSON:

1 Murder, armed robbery, assault with intent to kill.

2 What you see is what you get. In my opening statement I

3 showed you how things in this case disprove that saying

4 because what you see at this point is an innocent man.

5 What this evidence has given you is a man guilty.

6 A reasonable conclusion you can draw from the facts

7 that you've heard is that that Defendant went into Action

8 Pawn with this bag and this Glock behind his back, wearing

9 these clothes that were taken from him in Canada. He got

10 there by renting this white Chevy Cobalt from Avis and you

11 can see the Avis rental agreement in the car.

12 You will remember the testimony of Sheila Thomas

13 saying that she noticed the little white car was running

14 but also that it had a tag on the front. He went to

15 Canada. He planned that. He'd written it out. We know

16 that.

17 He aimed at Ms. Bruin. You will have this evidence

18 with you back there, but as you can see Ms. Bruin was

19 moving up and he fired one shot and then another at her.

20 He did that with malice.

21 When he got to Canada he was taken into custody and

22 questioned by the Canadian authorities. One of the things

23 you ladies and gentlemen have to determine is whether or

24 not the Statement that he made to them was voluntary. Was

25 he threatened? Was he promised anything? I submit to you

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1 respectfully that it was as voluntary as it can be. There
2 was quite a bit of banter back and forth between the
3 detectives and the Defendant. They talked about paint
4 ball. They talked about the Defendant's childhood. They
5 talked about a lot of things. Never once was he beaten.
6 He didn't appear physically unable or physically ill or
7 anything else like that.

8 Obviously one thing that we have to do is prove that
9 the person in that video is that Defendant right there.
10 You will see in the video the Defendant touching this gun
11 form, this gun form that you'll have back there in
12 evidence with you. It was photographed where it was and
13 collected and then Brian Cowan with the sheriff's office
14 went to that Defendant and got his fingerprints, had him
15 sign it, and Rene Sherbert matched that Defendant's prints
16 to the gun case and to the gun form.

17 Something else you may notice in the video is the
18 similarities between the people. In the video you will
19 see a young man that has a tattoo on his arm. You see
20 that in the Canadian video as well. Harley Kelley who
21 knows that Defendant and has been friends with him says,
22 yes, Roger Shephard has a tattooed cross on his arm with
23 the letters BCM.

24 Now, I don't know whether or not you can see BCM on
25 either of the videos, but if you listen at the end of the

1 confession video in Canada, one of the detectives asked
2 the Defendant, what is the tattoo. He said it's a cross
3 with BCM. It was Roger Shephard that did these things,
4 ladies and gentlemen.

5 There are few things we can know in this world to an
6 absolute certainty. The law does not require that. What
7 it requires is that you have proof that firmly convinces
8 you of the Defendant's guilt. Once the Defendant got to
9 Canada, he took these firearms that he had stolen from the
10 pawn shop, dumped them on the side of the road or in the
11 woods where they were recovered by the New York State
12 Police, and you will have these photos back there as well.

13 Not only did they find the bag with the firearms,
14 they looked further, found a Glock, laid everything up on
15 the road. There's obviously some question as to whether
16 or not it's the murder weapon and we know that it is,
17 because this was taken out of Mr. Bruin's body. This is
18 what killed him. It came out of that Glock Model 23 that
19 Donald Thompson bought and gave to the Defendant.

20 Now, unfortunately, ladies and gentlemen, we have
21 human beings involved in this and whoever filled out this
22 form when Mr. Thompson bought the gun left off the US on
23 the serial number. You'll have the gun back there.
24 You'll be able to look at it and you'll be able to see
25 that that is in fact the gun.

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1 Ladies and gentlemen, it's impossible to go through
2 all of this and to not have feelings. You may have
3 feelings of rage towards the Defendant. You may have
4 feelings of pity, sympathy, even empathy for him, for how
5 he grew up. Don't know where his mom is. Dad was an
6 alcoholic, according to him. You may have feelings of
7 anger towards him for him shooting at Ms. Bruin while
8 she's trying to get away.

9 One thing -- well, another thing that Mr. DeJong and
10 I agree on, you, ladies and gentlemen, are the best people
11 to try this case and we know that whatever feelings you
12 have will not be part of your decision. Whatever you
13 feel, whatever bias or prejudice or inclinations you may
14 have, we know that you will not make that part of your
15 decision and your decision will be based on the facts, the
16 evidence and the law as His Honor gives it to you.

17 I am clearly an advocate. Mr. DeJong is clearly an
18 advocate and a pretty good one. You, ladies and
19 gentlemen, not only are judges of the facts, you're
20 advocates as well, advocates for the truth. And in this
21 unusual situation with this and the other video, you are
22 actual witnesses to this crime.

23 When you were selected for this jury you were given
24 more, much more, than a K-Mart badge and a place to be for
25 a couple of days. Ladies and gentlemen, you were handed

1 the sword of justice and it's a two-edged sword. When you
2 bring it down one way, you cut away the ties that bind
3 innocent people to this Court. When you bring it down
4 another way, you strike down the guilty. Strike him down,
5 find him guilty, because what you see is what you get.
6 Thank you.

7 THE COURT: Mr. DeJong, you may address the
8 jury.

9 MR. DEJONG: Thank you, Your Honor. May it
10 please the Court, Ms. Munson.

11 **CLOSING STATEMENT**

12 **BY MR. DEJONG:**

13 The flip side of if you are firmly convinced you must
14 find him guilty, the other side of that is if you think
15 there is a real possibility he is not guilty you must give
16 Mr. Shephard the benefit of that doubt and find him not
17 guilty.

18 And neither Ms. Munson nor I are here either to give
19 you facts or the law. The law will come from the Judge.
20 I would like to discuss a little of the law and discuss a
21 little bit about the facts. In the grand scheme of things
22 this has been a bit of a long trial.

23 At the outset I would like to thank you for not only
24 being here but your attentiveness through the trial. I
25 don't get to look at the jury a great deal, but certainly

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1 what I have seen of you and observed of you in this
2 courtroom, you have been extremely attentive and I
3 appreciate that on behalf of Mr. Shephard and on behalf of
4 our entire judicial system.

5 Usually I like to try to start in some chronological
6 order, but I don't believe I can do that in this case.
7 I'm going to have to start a bit in the middle and fan
8 out. What I would like to talk to you about first is the
9 Statement that the Canadian authorities took of Mr.
10 Shephard.

11 One of the things I think His Honor will charge you
12 on is voluntariness of statements. And that is an issue
13 and a factual issue for you, ladies and gentlemen of the
14 jury, to determine if that statement was given freely and
15 voluntarily. Now, the State of South Carolina comes here
16 before you -- came before you on Monday and we have now
17 been here for over three and a half days on a case of
18 great magnitude and I do not take away from it. It is
19 certainly, a tragic, tragic event. My heart goes out to
20 Ms. Bruin and the Bruin family. But what I find
21 fascinating about this statement is this. The State
22 brings all of these agencies to bear in this case, the
23 Easley Police Department, the Pickens County Sheriff's
24 Office, the Greenville County Sheriff's Office, Alcohol,
25 Tobacco, Firearms and Explosives.

1 And the question I pose to you, ladies and gentlemen
2 of the jury, is this. The State says this is a case of
3 such great magnitude. We have a United States citizen
4 being detained by Canadian authorities and who from the
5 United States goes to question Mr. Shephard?

6 No one from this country. Why? I pose the question,
7 why. Now, the question came out in the course of this
8 trial, who requested that the Statement be taken.
9 Interestingly enough, I have a hard time with the title,
10 but I think that Sergeant Detective Roy said South
11 Carolina requested that they take the Statement.

12 Initially Sergeant Detective Roy said it was the
13 Easley Police Department. I think that was finally
14 clarified. It wasn't the Easley Police Department. It
15 was Alcohol, Tobacco, Firearms and Explosives that was
16 heavily involved in this case, an agency of the United
17 States government, had agents in New York obviously. Why
18 did they ask the Canadian government, a government with
19 prisoners in their jail that they don't even furnish
20 clothes to, why would they ask the Canadian government to
21 go and to take this statement? Why? Obviously, there's a
22 question. I don't know the answer. Law is different,
23 practice is different, procedure is different.

24 And of course, now they say, well, we've got it on
25 video. And obviously it is, because you've seen the

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1 video. But again, what transpired between roughly noon on
2 June the 17th of 2006 and I believe June the 29th of 2006
3 when the Statement was finally taken? Now, sure, we've
4 got on the video cameras starting at thirteen something,
5 thirteen hundred hours. What transpired in those twelve
6 days? Nobody talked to this young man? Nobody talked to
7 this young man charged with murder, armed robbery, assault
8 with intent to kill and possession of a weapon during the
9 commission of a felony? You don't leave your common sense
10 out here with me, ladies and gentlemen. You take it back
11 to that side of the bar with you.

12 Why, oh why, oh why, did the United States not send
13 somebody - not one person - from Easley Police Department,
14 ATF, Greenville, Anderson, Pickens, not one person went to
15 Canada.

16 Also the actual person, the voice you hear on that
17 recorded statement, was not Sergeant Detective Roy. It
18 was Sergeant Detective Mario Lombar. Where is Mr. Lombar?
19 You've heard the stipulation entered into by the parties.
20 Mr. Lombar could not be here because he is under
21 suspension with pay pending an internal investigation, not
22 related to this case. Why did the United States of
23 America not send somebody to question their own citizen in
24 Canada?

25 Now, with regard to the other video, that is purely

1 up to you, ladies and gentlemen of the jury, as fact-
2 finders. You have viewed the video. It is for you to
3 determine whether that person is Roger Eugene Shephard.
4 It is not my determination. That is solely your
5 determination. There were certainly some inconsistencies
6 initially about height and size and weight and all those
7 things.

8 I'm not going to stand here and rehash three days of
9 testimony with you. You're an intelligent jury. You can
10 remember those inconsistencies as well as I can. There
11 are a few things I would like to discuss with you and I'm
12 going to try to be as brief as I can, but this is my
13 client's only day in Court.

14 If you look at the pawn shop video -- what I'm going
15 to call the pawn shop video that I think is the last video
16 you looked at. Number one, I would ask you -- I think
17 when was it, this morning -- Captain Patterson testified
18 that certainly it is a good thing to keep a crime scene --
19 maintain the integrity of a crime scene.

20 You all saw the video. Initially we were told there
21 were three officers in there. I think before Brian Cowan
22 got there with his camera there were five or six officers
23 in there. You can count them. You'll have the video back
24 there. EMS then came in. Certainly understandably EMS
25 had to come in. But again that's somebody else tampering

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1 with the crime scene. We're not sure why -- why he's not
2 here today but Lieutenant Robinson I guess according to
3 his testimony, he did most of the forensic gathering, for
4 want of a better term, but by that time, by that time
5 things had been moved around. We know at least one case
6 had been moved around. Again, We don't know how many
7 people had tromped through that crime scene, messing with
8 the integrity of the crime scene. And talking about it,
9 interestingly enough, Ms. Rene Sherbert said she liked --
10 what did she say -- flat, shiny surfaces from which to
11 attempt to obtain fingerprints.

12 To my knowledge no one ever tested or dusted or did
13 anything with the shell casings in this case to attempt to
14 see whose fingerprints may be on the shell casings.
15 Wouldn't it make sense, ladies and gentlemen, whoever the
16 person was that pulled the trigger probably put the shells
17 in the gun, and look for fingerprints on that? To me it
18 would be.

19 On the forms -- well, let me back up a little bit.
20 Lieutenant Robinson, I questioned him. As memory serves
21 me he said he dusted the gun case for fingerprints. Other
22 cases, I believe he said he dusted the front counter for
23 those fingerprints. Again, you can watch the video. I
24 don't recall precisely how many fingerprints Ms. Sherbert
25 said came off this form that was laying on the counter.

1 Again whoever the person was in the pawn shop, they
2 handled it. You'll have that gun form and I believe --
3 yes, it's in evidence. You'll have it back in the jury
4 room with you. But it appears that they -- it appears
5 that they said there were fingerprints on more than the
6 front and back. I would ask you to look at that because
7 certainly I don't see any rifling of that form on the
8 video if indeed that was Mr. Shephard. So I would ask you
9 to look at that as well.

10 Now, there were no fingerprints on any weapons there
11 when New York State Police or ATFE, whoever it was, said
12 they recovered these weapons. No fingerprinting was done.
13 The State has attempted to make a lot of hay about this
14 Glock 40 Model 23, which even by their own admission now,
15 the good platoon sergeant for my client bought and sold
16 that gun to my client, according to him. But those serial
17 numbers, model numbers, kind of match. They don't really
18 match. We're not here for kind of, ladies and gentlemen.
19 We're not here for probably. We're dealing with a man's
20 life. So I ask you to take that into consideration as
21 well.

22 Additionally I ask you to take into consideration the
23 fact that back in '05 -- I forget the platoon sergeant's
24 name at this point in time. His name is not particularly
25 important. But he said after he sold the gun to Mr.

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1 Shephard, he doesn't know what happened to the gun. No
2 way at all he knows what happened to the gun, whether Mr.
3 Shephard kept it, disposed of it or whatever he did with
4 it.

5 I want to talk just briefly more about fingerprints.
6 The only fingerprints that were lifted by Lieutenant
7 Robinson, as memory serves me, came from the front side of
8 the counter. There were no fingerprints that were
9 collected on the back side of the gun case or any other
10 part of the counter. There were no fingerprints taken
11 from any of the guns that were -- that remained in the gun
12 case at that point in time.

13 Interestingly enough, I think also that one of the
14 witnesses here that came before you and took the oath and
15 testified had a .40 caliber Springfield taken from him,
16 taken by the police, with Captain Patterson's approval,
17 that .40 caliber Springfield was later returned to Mr.
18 Kelley.

19 And while speaking of Mr. Kelley, let's talk a little
20 bit about the tape recording that was played for you. I
21 don't know when that Springfield was taken from Mr.
22 Kelley. I don't believe that is in evidence. But
23 certainly I would say to you, ladies and gentlemen, that
24 Mr. Kelley knew he was being looked at by the ATF.

25 Now, on this recording supposedly was the voice of my

1 client Mr. Shephard, but Mr. Kelley was the only person
2 that could identify that voice. And when we come to that
3 phone call, I find something else very, very interesting.
4 Captain Patterson testified this morning that they got
5 orders, orders as memory serves me, for phone records and
6 credit card records and all that. Did you see any of
7 those? All I saw was a bunch of guns come in. I didn't
8 see any phone records. If they had phone records of Mr.
9 Shephard, they would have shown an incoming call coming
10 from Mr. Kelley. I find that fascinating. They had the
11 orders and they got them. Why didn't they bring them to
12 you, ladies and gentlemen of the jury, and show you that?
13 And now all we have is Mr. Kelley who, his Springfield .40
14 was taken from him at some point in time, saying that he
15 called Roger Shephard and that's Roger Shephard on the
16 tape recording.

17 There was testimony about the white car. Ms. Munson
18 was showing you a rental agreement. Sure, he rented a
19 car. Look at the date on the rental agreement. She talks
20 about preplanning, how he had directions written down to
21 Canada. He said in the video -- whether it was voluntary
22 or not, but he said in the video he had called the guy
23 before he went to Canada and the guy gave him directions.
24 He got lost in Queens when he got off the bridge. I'm not
25 familiar with that area. You might be. But I don't quite

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1 understand all that. But his directions were, were
2 received while he was headed for Canada. And he was
3 headed for Canada, ladies and gentlemen, he had a friend
4 there. He had met a friend on a video game. He was going
5 to Canada to see a friend that he had up there that he had
6 told him he wanted to see. So yes, it was a white car
7 that my client had rented. It was a white Chevy Cobalt,
8 as I recall. There was no indication of any tag number on
9 the vehicle that was in front of or around Action Pawn
10 Shop.

11 Now, the burden of proof in this case as we've
12 indicated - and I'm about to hush - is beyond a reasonable
13 doubt. I don't know if any of you have ever served on a
14 jury before. If you've ever served on a civil jury, you
15 may have heard something about the preponderance of the
16 evidence.

17 Preponderance of evidence, ladies and gentlemen, is
18 the littlest burden of proof that we have in our judicial
19 system. Sometimes a preponderance of the evidence, you
20 say you put it on a scale and if the evidence tips ever so
21 slightly that is a preponderance of the evidence. And
22 then if your burden of proof is a preponderance of
23 evidence the burden has been met.

24 In a criminal case such as the one you are sitting
25 on, the burden of proof is much greater than that. The

1 burden of proof is beyond a reasonable doubt. Now, His
2 Honor is going to charge you what beyond a reasonable
3 doubt is. Take the law from him. But basically -- and I
4 would agree with Ms. Munson, it's not beyond any doubt.
5 But as I said in my opening remarks to you, if you believe
6 there is a real possibility that Mr. Shephard is not
7 guilty, then under our system you must give him the
8 benefit of the doubt and find him not guilty.

9 His Honor will charge you on the elements, what we
10 call the elements of murder. And one of those elements
11 that the State must prove beyond a reasonable doubt is
12 malice aforethought. And His Honor will give you
13 additional instructions on malice aforethought. Somewhat
14 in terms of legalese I guess. But basically malice is an
15 evil heart. Aforethought is premeditation. Malice is
16 hatred or hostility or ill will towards another person.
17 And there will be other instructions that go along with
18 that.

19 The question I leave with you is this, ladies and
20 gentlemen. If you believe that is Mr. Shephard in the
21 last video that you saw, was it malice aforethought or
22 stupid, ignorant, foolish youthfulness, tragic
23 consequences?

24 Thank you so much for your time.

25

CHARGE

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1 BY THE COURT:

2 Madame Forelady, ladies and gentlemen, it is now my
3 responsibility to instruct you on the law of the case. As
4 I told you at the beginning of the case, there are four
5 different indictments here. There's a charge of murder on
6 Mr. Shephard. There's a charge of armed robbery. There's
7 assault with intent to kill and a possession of a weapon
8 during the commission of a violent crime.

9 Now, let me remind you, the fact that he's been
10 indicted, that he's been arrested and he's been charged
11 with these offenses is not evidence. That cannot be
12 considered by you as evidence of guilt. Doesn't create
13 any presumption or inference of guilt. The indictments
14 are merely the papers by which the cases are brought to
15 this Court for disposition by a jury such as you.

16 I've stated there are several different indictments
17 and each of these indictments charge a separate and
18 distinct offense. You must decide each indictment
19 separately on the evidence and the law that's applicable
20 to that particular charge unaffected in anyway by your
21 decision on the other indictments. In other words, the
22 Defendant can be convicted or acquitted on any or all of
23 the offenses charged. And you'll be asked to write a
24 separate verdict form for each of those charges in the
25 indictments.

1 Now, the Defendant has entered a plea to each of
2 these charges of not guilty. And that plea places the
3 burden on the State to prove the Defendant's guilt. A
4 person charged with committing a crime in South Carolina
5 is never required to prove himself innocent. That's an
6 important rule of law, that a Defendant in any criminal
7 trial, no matter how serious the charge may be, will
8 always be presumed innocent of the crime for which the
9 indictment was issued unless guilt has been proven by
10 evidence satisfying you of that guilt beyond a reasonable
11 doubt.

12 Presumption of innocence doesn't end when you begin
13 your deliberations. It accompanies the Defendant
14 throughout the trial until you reach a verdict of guilt
15 based upon evidence satisfying you of that guilt beyond a
16 reasonable doubt. Presumption of innocence has often been
17 described as a robe of righteousness placed about the
18 shoulders of an individual and it remains with that
19 Defendant until it's been stripped from him by evidence
20 satisfying you of that Defendant's guilt beyond a
21 reasonable doubt. Presumption of innocence isn't a mere
22 legal theory. It's not a legal phrase that's used. It is
23 a substantial right to which every Defendant is entitled
24 unless you the jury are satisfied from the evidence of the
25 Defendant's guilt beyond a reasonable doubt.

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1 Now, you may ask what is a reasonable doubt in
2 the law. A reasonable doubt is the kind of doubt that
3 would cause a reasonable person to hesitate to act. The
4 State has the burden of proving guilt beyond a reasonable
5 doubt. Some of you in the past may have had an
6 opportunity to serve as jurors in the Court of Common
7 Pleas and you were instructed that it was only necessary
8 to prove a fact was more likely true than not true by what
9 was called the greater weight of the evidence.

10 In criminal cases the State's proof is more powerful
11 than that. It must be proof beyond a reasonable doubt.
12 Proof beyond a reasonable doubt is proof that leaves you
13 firmly convinced of the Defendant's guilt. In this world
14 there are very few things that we know with absolute
15 certainty and in criminal cases, the law doesn't require
16 proof that overcomes every possible doubt.

17 If based upon your consideration of the evidence
18 you're firmly convinced of the Defendant's guilt of the
19 crimes charged, then you must find the Defendant guilty.
20 If on the other hand you think there's a real possibility
21 that the Defendant is not guilty, then you must give the
22 Defendant the benefit of the doubt and find him not
23 guilty.

24 Now, I remind you that during the course of the trial
25 you and I have had certain duties to perform. As the

1 trial Judge, it's been my responsibility to preside over
2 the trial of the case, my duty to rule on the
3 admissibility of evidence that's been offered during the
4 trial. You're to consider only the competent evidence
5 before you. If any testimony to which an objection was
6 made and sustained or stricken from the record in this
7 case, you must disregard that testimony.

8 You're to consider only the testimony which has been
9 presented from this witness stand, the exhibits that have
10 been made a part of the record and stipulation of counsel.
11 I have the additional duty to instruct you on the law
12 applicable to the case. As the presiding Judge, I'm the
13 sole judge of the law in the case. It's your duty as
14 jurors to accept that law and apply the law exactly as I
15 state it to you now.

16 You may already have an idea of what the law is
17 or what the law ought to be in cases such as this. If it
18 does not agree with what I now tell you the law is, then
19 you must abandon those ideas for the very reason that
20 you're sworn to accept the law and apply the law as I
21 state it to you. Every case that's tried in this
22 courtroom before a jury, the jury becomes the sole
23 exclusive judge of the facts in the case.

24 A trial judge cannot intimate or state or comment on
25 or make any statement whatsoever to a trial jury about the

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1 facts in the case. Since you the jury are the sole judges
2 of the facts, you're not to infer from what I've said
3 during the progress of the trial, any rulings I've made on
4 the admissibility of evidence or otherwise, anything I say
5 to you now during the course of this instruction to you
6 that I have an opinion about the facts of the case. I
7 don't have an opinion about the facts. Our Constitution
8 in South Carolina prohibits me from having an opinion
9 about the facts. That's a matter solely up to you, the
10 jury, to make that determination. And as jurors it's your
11 duty to determine the effect and the value, the weight and
12 the truth of the evidence that's been presented during
13 this trial.

14 Normally in a trial there's two types of evidence
15 that are presented. There's direct evidence and there's
16 circumstantial evidence. Direct evidence is the testimony
17 of a person who claims to have actual knowledge of a fact,
18 such as an eyewitness. It's evidence which immediately
19 establishes the main fact to be proved.

20 Circumstantial evidence is proof of a chain of facts
21 and circumstances that indicate the existence of a fact.
22 It's evidence which immediately establishes collateral
23 facts from which the main fact can be inferred.

24 Circumstantial evidence thus is based upon inference and
25 not on personal knowledge or observation.

1 The law makes absolutely no distinction between the
2 weight or value to be given either direct evidence or
3 circumstantial evidence. Nor is a greater degree of
4 certainty required of circumstantial evidence than of
5 direct evidence. You should weigh all of the evidence in
6 the case, ladies and gentlemen, and after weighing that
7 evidence if you're not convinced of the guilt of the
8 Defendant beyond a reasonable doubt then you must find the
9 Defendant not guilty.

10 Necessarily in making the determination of the facts
11 in the case, you must determine the credibility of
12 witnesses who've testified. Credibility simply means
13 believability. It's your duty as jurors to analyze and
14 evaluate the evidence and determine which evidence
15 convinces you of its truth. In determining the
16 believability of witnesses who've testified you can
17 believe one witness over several witnesses, you can
18 believe several witnesses over one. In your discretion
19 you can believe part of the testimony of a witness and
20 reject the remaining part of the testimony of that very
21 same witness. You can believe the testimony of a witness
22 in its entirety. In your discretion you can reject the
23 testimony of a witness in its entirety. You can consider
24 whether any witness had an interest or a bias or a
25 prejudice or other motive in the case. You can consider

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1 the appearance of the witness while on the witness stand,
2 the demeanor of the witness. It's totally your
3 prerogative and yours alone, ladies and gentlemen, to
4 determine the credibility of witnesses who've testified.

5 As I briefly stated to you during the course of the
6 trial, ordinarily rules of evidence would not permit a
7 witness to testify as to opinions or conclusions. But
8 there is an exception to that rule for witnesses that we
9 call expert witnesses. And a witness who by education and
10 experience becomes an expert in some art or science or
11 profession or a calling may state an opinion as to
12 relevant and material matters in which that witness claims
13 to be an expert and may also state the reasons for that
14 opinion.

15 You should consider any expert opinion received into
16 evidence in this case and like all other evidence, give it
17 the weight that you think it deserves. If you decide the
18 opinion of an expert witness is not based upon sufficient
19 education and experience, or if you conclude that the
20 reasons given in support of that opinion are not sound or
21 that the opinion is outweighed by other evidence, you can
22 disregard that opinion entirely. An expert witness
23 testimony is to be given no greater weight than that of
24 other witnesses simply because the witness is an expert.
25 Furthermore you're not required to accept an expert's

1 opinion even though it may be uncontradicted.

2 Now, in order to establish criminal liability,
3 criminal intent is required and it must be proven by the
4 State beyond a reasonable doubt. Criminal intent is
5 always a matter to be determined by the jury from the
6 circumstances surrounding the situation. There's no way
7 to prove intent to a mathematical certainty. There's
8 obviously no way that medical science can dissect a
9 person's brain and determine what that person had in mind.
10 So the law says that criminal intent may be inferred from
11 the circumstances shown to have existed. It's not
12 necessary to establish intent by direct and positive
13 evidence, but it may be established by inference in the
14 same way as other facts, by taking into consideration the
15 acts of the parties and all the facts and circumstances of
16 the case. Criminal intent is a mental state. It's a
17 conscious wrongdoing. It's up to you to determine what
18 the Defendant intended to do based upon the circumstances
19 shown to have existed.

20 Now, I instruct you and I emphasize to you the fact
21 that the Defendant did not testify is not a factor to be
22 considered by you in anyway in your deliberations in this
23 case and in your consideration of the question of guilt or
24 innocence of the Defendant. That must not be considered
25 by you in any way whatsoever. The Defendant has the

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1 Constitutional right to remain silent and the assertion of
2 this right must not be considered by you in your
3 deliberations. I repeat, under your oath, you're to draw
4 no conclusions whatsoever from the fact that the Defendant
5 in this case did not testify. The fact that he chose not
6 to testify should not even be discussed by you in the jury
7 room. The burden of proof as I've stated to you is on the
8 State. The Defendant is not required to prove his
9 innocence. The burden of proof remains on the State to
10 prove guilt beyond a reasonable doubt.

11 Now, a statement alleged to have been made by the
12 Defendant has been admitted into evidence in this case.
13 And while the Court has determined the Statement is
14 admissible, I instruct you that you make that ultimate
15 decision of whether or not the Defendant made the
16 Statement. If the Defendant did make the Statement you
17 must determine whether the Statement was made by the
18 Defendant voluntarily and of his own free will. This
19 means the Statement was not caused by pressure or force,
20 fear, threats, coercion or intimidation or by the hope or
21 promise of leniency or reward of any kind. In determining
22 whether the Statement was voluntary, you should consider
23 both the characteristics of the Defendant, the details of
24 the questioning. Some of the factors that you may
25 consider are the age of the Defendant and his education or

1 lack of education, his mental abilities and capacities,
2 his background and environment, the place and the length
3 of the detention, the nature of the questioning, the
4 advice or lack thereof of the Defendant of his
5 Constitutional rights, including but not limited to the
6 right to remain silent and that any statement could be
7 used against him in a Court of law, the right to have a
8 lawyer present, that if he could not afford a lawyer, a
9 lawyer would be appointed to represent him without any
10 cost. That he could stop making the Statement at any
11 time. You must carefully consider all the evidence or all
12 the surrounding circumstances before you give any weight
13 at all to the alleged statement. The State has the burden
14 of proving beyond a reasonable doubt that the alleged
15 statement was voluntary. If you determine it was, you may
16 give the Statement any further consideration that you deem
17 proper. You must decide what weight if any should be
18 given to the alleged statement. If you determine the
19 alleged statement was not the free and voluntary statement
20 of the Defendant, then you should not consider the
21 Statement at all.

22 In this case, Madame Forelady and ladies and
23 gentlemen, the Defendant is charged with murder. The
24 State must prove beyond a reasonable doubt that the
25 Defendant killed another person with malice aforethought.

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1 Malice is hatred or ill will or hostility toward another
2 person. It's the intentional doing of a wrongful act
3 without just cause or excuse and with the intent to
4 inflict an injury or under circumstances that the law will
5 infer an evil intent.

6 Malice aforethought does not require that malice
7 exist for any particular time before the act is committed,
8 but malice must exist in the mind of the Defendant just
9 before and at the time of the act being committed.
10 Therefore, there must be a combination of previous evil
11 intent and the act. Malice aforethought may be expressed
12 or inferred. These terms, expressed and inferred, do not
13 mean different kinds of malice but merely the manner in
14 which malice may be shown to exist. That is either by
15 direct evidence or by inference from the facts and
16 circumstances which are proved. Expressed malice is shown
17 when a person speaks words which express hatred or ill
18 will for another or when the person prepared beforehand to
19 do the act which is later accomplished.

20 For example, lying in wait for a person or any other
21 act of preparation going to show that the deed was within
22 the Defendant's mind would be expressed malice. Malice
23 may be inferred from conduct showing a total disregard for
24 human life. Inferred malice may also arise when the deed
25 is done with a deadly weapon. A deadly weapon is any

1 article or instrument or substance which is likely to
2 cause death or great bodily harm. Whether an instrument
3 has been used as a deadly weapon depends upon the facts
4 and the circumstances of each case. An example of a
5 deadly weapon of course would be a pistol, a shotgun, a
6 rifle, a knife, other examples of deadly weapons. A gun
7 may be a deadly weapon even if it is not operating.

8 In this case the Defendant is charged with assault
9 with intent to kill. In order to prove assault with
10 intent to kill, the State must prove beyond a reasonable
11 doubt that the Defendant with malice aforethought
12 unlawfully attempted or offered to commit a violent injury
13 upon another person and had the present ability to
14 complete that attempted injury.

15 An assault, ladies and gentlemen, is the intentional
16 creation of reasonable fear of immediate bodily harm.
17 It's not necessary that the attempted injury or harm
18 actually take place. For example, if I walk up to you and
19 when I'm within an arm's reach, I draw back to hit you,
20 that would be an assault.

21 Malice, as I've explained, is the hatred or ill will
22 or hostility towards another person. It's the intentional
23 doing of a wrongful act without just cause or excuse and
24 with the intent to inflict an injury or under
25 circumstances the law will infer an evil intent.