

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

RECEIVED

JAN 25 2011

S C Supreme Court

ORIGINAL

DEMETRIO SEARS,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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1 likely to find blood evidence?

2 A Yes, ma'am

3 Q And why is that?

4 A Just being there longer A lot of times also with a
5 projectile striking somebody, my experience has
6 proven that you may be bleeding but the person may be
7 bleeding internally, what we call bleeding out You
8 know, inside of them is bleeding profusely, however,
9 the blood doesn't exit the body

10 Q Beg the Court's indulgence One last question You
11 collected the suspect's gun or a gun found outside
12 the door that day?

13 A Right

14 Q And did you have an opportunity to process that gun
15 for fingerprints?

16 A Yes, ma'am

17 Q And what was the result when you -- did you do that
18 there at the scene that day?

19 A I believe I did it back in -- yeah I did it in the
20 laboratory

21 Q In the laboratory?

22 A Yeah Yes, ma'am

23 Q And why did you take it back to the laboratory to
24 process?

25 A Just availability I had a lot of stuff on the scene

502

1 to do And a lot of times that's what I -- I just
2 take it back Got it more readily available, the
3 stuff is right there

4 Q And on this gun which is State's Exhibit 32, were you
5 able to get any fingerprint evidence?

6 A No, ma'am

7 Q Not any?

8 A No, ma'am

9 Q Why is that?

10 A There just weren't any fingerprints left on the
11 weapon Or, I mean, they could have had on a pair of
12 gloves There is numerous reasons I didn't locate
13 anything identifiable

14 Q Anything identifiable?

15 A Right

16 Q And, again, on a gun with surfaces that are rough
17 such as this one --

18 A Right There wouldn't be anything left there

19 Q -- there wouldn't be anything left there?

20 A Right

21 Q And, again, the trigger, the size of the surface,
22 does that play into whether or not you're able to get
23 enough --

24 A Right. Plus the motion In my experience with a
25 weapon, a lot of times the motion of pulling the

1 trigger smears or smudges the print

2 Q And, again, even when this thing is cocked, it's done
3 generally with a palm action?

4 A Right

5 Q The gunshot residue kits that you collected that day,
6 did you take those into your custody?

7 A Yes, ma'am

8 Q And did you then later forward them to SLED?

9 A Yes, ma'am

10 Q During the time period you had, when did you forward
11 them to SLED? Later that month?

12 A Right. I took all my SLED evidence at one time

13 Q And during the time period that you had the gunshot
14 residue kits in your custody, the ones you collected
15 there at the scene and then Mr Alexander's later
16 that day, did you alter them or tamper with them in
17 any way?

18 A No, I never did

19 THE COURT. Mr Burr

20 MR BURR. May it please the Court Thank you,
21 Your Honor

22 CROSS-EXAMINATION

23 BY MR BURR

24 Q Investigator Russell, you are employed by the county,
25 correct?

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1 A Right That's correct

2 Q But when you complete your investigations you tend to
3 be somewhat unbiased You're looking for facts
4 regardless of what may come of that Is that
5 accurate?

6 A That's correct Yes, ma'am Or yes, sir

7 Q Prior to starting this particular crime scene
8 investigation, who did you talk to to get a
9 background on what had happened?

10 A The what we call the investigator or responding
11 officer

12 Q Sergeant McDonald in this case?

13 A No The responding officer, the first one, the
14 deputy

15 Q What did he share with you? Stories he had gotten
16 from people on the scene?

17 A I assume, just when I asked him what took place, kind
18 of give me a run-down of what happened, he starts
19 telling me what happened He wasn't there So I
20 figure he's gathering his information for his report
21 from who was there

22 Q But as far as you know at that point, he had not
23 talked to Mr Alexander or Mr Sears, had he?

24 A No No

25 Q So he was giving you information he'd gotten from

565

1 Mr Stokes and Mr Patterson?

2 A Correct

3 Q Human nature, you try to follow up to prove whatever
4 they may have told you Is that accurate?

5 A Not necessarily -- I wasn't trying to prove what they
6 had told me I'm there to collect evidence, process
7 the scene And, you know, sometimes it --

8 Q That was a starting point at least?

9 A Right Right I need to know what happened, some
10 idea of what happened there

11 Q You just testified that a gun was found on the scene
12 that was not Mr Patterson's according to his
13 statement?

14 A That's correct

15 Q Did you test that firearm to see whether it had been
16 fired recently?

17 A That's outside of my expertise I'm not a firearms
18 examiner

19 Q Did you inspect the ammunition that was still in the
20 magazine?

21 A I did look at the ammunition I am not a firearms
22 examiner That's why I was forwarding it SLED

23 Q Well, let me back up The casings that you did find
24 at the crime scene, --

25 A Right

506

- 1 Q -- was there any way to identify what type ammunition
2 that was?
- 3 A Yes, sir
- 4 Q It was consistent that all that ammunition was the
5 same?
- 6 A Yes, sir
- 7 Q And you found nine casings?
- 8 A Yes, sir
- 9 Q You found a live round in the Honda that had been
10 used by Mr Patterson?
- 11 A That's correct
- 12 Q There was a round in the gun that Mr Patterson was
13 using?
- 14 A Right
- 15 Q And there was a clip, and the second clip had been
16 entered into it, and it had six rounds?
- 17 A That's right
- 18 Q A total of 17 rounds?
- 19 A Yes, sir
- 20 Q So Mr Patterson testified earlier he had one in the
21 chamber originally and two clips of ten So
22 obviously you missed four casings somewhere. Is that
23 accurate?
- 24 A Yeah
- 25 Q And if you would, come back and look at your diagram

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1 Your Honor, may the witness step down?

2 THE COURT. Certainly

3 Q Investigator, I may be the dumbest person in the
4 courtroom, but I still don't have a good visual of
5 the inside of this office

6 A Okay

7 Q It is a building equally divided between two
8 businesses?

9 A That's correct

10 Q As you look out across the road, what's over here?

11 A Percival Road and Fort Jackson, the woods

12 Q The woods. On this side, open field and woods?

13 A I believe it's a vacant lot I don't know right off
14 the top of my head It looks like a vacant lot
15 From what I can see here, there may be another
16 business over there or something or another
17 structure

18 Q Somewhat isolated and remote I mean, there is no
19 active business in this?

20 A Not that I know of, no, sir

21 Q So it's a very isolated, remote area?

22 A Right.

23 Q Windows in the building?

24 A No Not on that side The only window was, you
25 know, the glass door I didn't see any other window

508

1 in the building

2 Q No bars on the door? No alarm systems?

3 A I don't know I wasn't checking for alarm systems

4 Q Explain to me if you would, please, as you come in
5 the front door -- and you can use these pictures if
6 it will help So many I got confused But as you
7 come in the front door, this is what they referred to
8 as a waiting area or a customer area?

9 A Right.

10 Q This is a half wall?

11 A Right

12 Q And a door that goes into the --

13 A A doorway

14 Q -- into the same display area?

15 A Right

16 Q How do you get out to the bay area?

17 A Right here, between the doorway here

18 Q Okay In the back area in the diagram here, is this
19 what you're referring to as the back office?

20 A This right here is the office

21 Q What openings do you have from this office into the
22 bay area?

23 A There's a large window back here and a doorway
24 There's not actually a door there. It's just a
25 doorway, archway

1 Q And a second door to the back side?

2 A Correction Nothing to the bay area You can look
3 out the window and see the bay area But to the
4 actual bay area, no, there's nothing You've got to
5 come all the way down here by this door

6 Q And the nine spent casings, is that the ones you have
7 numbers 1P, 2P? That's the projectile?

8 A Yeah Projectile S C is shell casing

9 Q Did you take a picture -- would you find the picture
10 that you took of the back area in here pointing out
11 through the bay door?

12 A Yes, sir

13 (Pause)

14 A I don't see the one for that

15 Q Well, maybe you could just do it from memory

16 A Okay

17 Q Did you, in fact, take a picture from the display
18 area pointing your camera out toward the bay door?

19 A I'm sure I did I take rolls and rolls of film I
20 can't remember each and every picture What I did is
21 try to do a 360 of the outside, the inside of the
22 bay So I'm sure there's a shot somewhere going back
23 that way

24 Q And this is the half wall here?

25 A Yeah

510

1 Q So a person mine or your size standing back here this
2 direction, it would be very consistent with shooting
3 over the wall and out of this door, the casings land
4 in this general area? It's ejecting to the right, up
5 and to the right Is that correct?

6 A More likely, you'd be standing right in this area,
7 you'd be mighty likely to get shot No Just my
8 experience in law enforcement and crime scene
9 investigation, you could stand over here and shoot
10 that way, getting out that door and back out that bay
11 door --

12 Q But it is possible?

13 A It could happen

14 Q Also the car that you have listed as the victim's
15 vehicle, to your knowledge, that was placed there
16 after the shooting took place Did they explain that
17 to you?

18 A Right

19 Q They left and came back?

20 A Yeah I was told they came back in that vehicle

21 Q Did anybody share any information with you as to
22 where it was originally parked?

23 A No

24 Q And you have no personal knowledge where the van that
25 was allegedly used was parked during the shooting

511

1 here?

2 A No, no. Not prior to what I was told

3 Q You've had no occasion to interview the Quattlebaums
4 as to what they saw?

5 A No That's not my job

6 Q Take your seat, please When you were searching the
7 crime scene, what were you searching for?

8 A Blood, shell casings, projectiles, anything that I
9 feel like may be related to this crime, to what I've
10 been told happened there

11 Q Did you find anything at all that connected it to a
12 robbery?

13 A Bullets. I mean, --

14 Q There was a shooting?

15 A -- obviously, yeah, there was a shooting

16 Q But not necessarily a robbery?

17 A No, not specifically a robbery. No

18 Q Did you question Mr Patterson as to where he
19 normally kept his handgun?

20 A No That's irrelevant to what I do I'm a crime
21 scene investigator I'm not there to question
22 suspects That's a C I D investigator's job Where
23 he had his handgun has nothing to do with me
24 processing the scene

25 Q Did you go back in the office area and look around at

512

1 all?

2 A Yeah

3 Q Did you see the black bag with K G B on it that he
4 normally -- that he's testified he kept his gun in?
5 Did you see that?

6 A I could have I don't remember seeing that Like I
7 said, I wasn't looking for that bag That bag had no
8 relevance to my crime scene investigation Where he
9 kept his gun was not really a concern to me He
10 could have kept it in his pocket for all it mattered.

11 Q As a result of your investigation, all the pictures
12 you took, all the stuff you collected, did you find
13 any evidence at all that would lead you to believe
14 that either Mr Sears or Mr Alexander was ever
15 inside the business? Did you find any hair
16 particles?

17 A No

18 Q Did you find --

19 A At that time I didn't know who they were And I
20 wasn't looking for hairs, fibers and whatnot like
21 that, no

22 Q Any blood anywhere inside the business?

23 A No, sir

24 Q Any spent casings that would have come from any gun
25 other than Mr Patterson's gun?

513

1 A No, sir

2 Q Any fingerprints?

3 A No, sir

4 Q Any evidence that might give you any conclusion or
5 suggestion as to what might have really happened
6 there other than the fact that this gun was shot
7 numerous times in an outward direction?

8 A I don't quite follow what you're saying

9 Q Was there any evidence of anything, after all this
10 you have, anything contrary --

11 A Yeah There was a broken front door The chairs
12 were in disarray I found a weapon outside I found
13 a projectile outside. I found a gray piece of cloth
14 outside. I found a black bag and a blue hat outside
15 So I -- that had --

16 Q Was there any way of identifying the bag?

17 A Yeah That's the bag that was in the parking lot
18 that day.

19 Q No I'm sorry. I know you identified it as the one
20 that was there.

21 A Right

22 Q Any way of identifying it? Was there any paperwork
23 in it?

24 A No, sir

25 Q Any names on it?

514

- 1 A No, sir
- 2 Q So it was just a bag that was in the lot that was
- 3 unaccounted for?
- 4 A Right
- 5 Q And there are any number of things in the lot that
- 6 were unaccounted for, things of no value?
- 7 A What do you mean?
- 8 Q Ball caps?
- 9 A There could have been
- 10 Q Any kind of debris?
- 11 A Right
- 12 Q That's the one thing that stood out to you, that, and
- 13 obviously the handgun?
- 14 A Right
- 15 Q You did test the handgun, this handgun for prints
- 16 Were there any prints on it at all?
- 17 A No, sir
- 18 Q What I mean by prints, were there any smudges and
- 19 stuff on it?
- 20 A No The gun was just -- I mean, the only surface I
- 21 had that I could do is right around that trigger
- 22 guard, the piece facing me right now, and up on that
- 23 slide No, there were --
- 24 Q It no prints at all?
- 25 A That's not uncommon You know, weapons, I could pick

515

1 up that gun right now and handle it for the next 30
2 minutes and you wouldn't find a print on it I mean,
3 it's not a -- just because you touch something --

4 Q I'm not asking identifiable print Was the gun wiped
5 clean?

6 A No I mean, I don't know I don't know if it was
7 wiped clean or not

8 Q You found nothing to indicate that anybody had
9 handled it?

10 A Right

11 MR BURR No further questions

12 THE COURT Mr Strickler

13 MR STRICKLER Thank you, sir. May it please
14 the Court.

15 THE COURT Yes, sir

16 CROSS-EXAMINATION

17 BY MR STRICKLER

18 Q Good morning, Mr. Russell

19 A Good morning, Mr. Strickler

20 Q Hopefully, I just have a few things at this point
21 Okay?

22 A Okay

23 Q And more by way of clarity You've gone through in
24 some detail where you found the various shell
25 casings, projectiles, et cetera, in the interior

~~516~~

1 You did not find -- I'm sure you would have noted and
2 you would have already told the jury, you didn't find
3 any shell casings or any projectile holes back toward
4 the rear of the building, correct?

5 A That's correct Yes, sir

6 Q Whatever projectiles or holes associated with
7 projectiles that you found were towards the front of
8 the building, correct?

9 A Yes, sir

10 Q And you testified that you did a walk-through of the
11 building Certainly, while you get some information
12 just a heads up on what is known at that point in
13 time, you try to approach a scene with an open mind
14 because your job is to go in there and collect
15 evidence, right?

16 A Right

17 Q So you certainly when you go through the building
18 don't go in and start focusing on one area You go
19 through the entire building, right?

20 A That's correct

21 Q And had you noticed any holes towards the rear of the
22 building that would have been consistent with a gun
23 being fired, for example, from the front of the
24 building toward the rear, okay, that could be
25 potentially significant, correct?

517

1 A Correct Yes, sir

2 Q And you would have noted the presence of that hole?

3 A Yes, sir, I would have

4 Q You certainly take a look for a projectile that might
5 be associated with it if you could, right?

6 A Yes, sir

7 Q I mean, at this point in time when you're doing this
8 it's not your job to decide whether it is significant
9 or isn't?

10 A That's correct

11 Q It's your job to identify and collect evidence And
12 where it goes from there is where it goes from there,
13 right?

14 A Yes, sir.

15 Q So it's fair to say that you conducted a complete
16 search of the building as far as projectiles, shell
17 casings, et cetera, and you found nothing that was
18 consistent with a firearm being fired from the front
19 of the building towards the rear?

20 A That's correct

21 Q Right?

22 A Yes, sir

23 Q As opposed to a number of pieces of evidence that
24 you've already testified about that are consistent
25 with the gun being fired from the rear portion of the

518

- 1 building towards the front, right?
- 2 A Yes, sir
- 3 Q Okay And you indicated in going through this
- 4 diagram that this bay door to the -- or the door to
- 5 the bay area, the one you drive a car through, was
- 6 opened at the time you arrived there, correct?
- 7 A Right. The roll-up door
- 8 Q Correct?
- 9 A Yes, sir It was
- 10 Q And that was when you arrived there. And of course
- 11 you have no idea of your own knowledge how it
- 12 appeared at 9 00, 9 30 that morning?
- 13 A That's correct
- 14 Q Prior to your arriving, right?
- 15 A Right
- 16 Q Now, you testified as to glass being found -- I'm not
- 17 going to dig through all these
- 18 A Yeah I think it's right there
- 19 Q Last being found on the exterior of the door, some
- 20 particles of glass on the outside of this glass door?
- 21 A Yes, sir
- 22 Q There is also I believe -- yeah Those are shown in
- 23 State's 7 right here, correct?
- 24 A Right Yes, sir
- 25 Q Okay Some pieces of glass there There it is

519

1 State's 26?

2 A Right.

3 Q Shows the same door on the inside with a substantial
4 amount of glass on the inside of the door, correct?

5 A That's correct

6 Q On the floor of the inside Now, just a couple of
7 things on firearms The firearms that you recovered,
8 both the one recovered outside the building and the
9 gun recovered on the shelf inside the building or the
10 table inside the building?

11 A The table Yes, sir

12 Q Those both are sometimes referred to as automatics or
13 more appropriately semi-automatic weapons, correct?

14 A Yes, sir

15 Q And you talk about shell casings being ejected from
16 these or propelled out the side when the bullet is
17 fired, correct?

18 A Yes, sir

19 Q That is a characteristic of a semi-automatic weapon,
20 right?

21 A Yes, sir

22 Q That's why you find shell casings when a gun is
23 fired?

24 A Scattered around

25 Q Scattered around, right?

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- 1 A (Nods head affirmatively)
- 2 Q There is another type of short arm handgun commonly
- 3 referred to as a pistol, correct?
- 4 A Yeah. Revolver
- 5 Q Revolver Right Okay That has shells that are
- 6 contained inside the revolving mechanism and those
- 7 shells are not rejected when the gun is fired,
- 8 correct?
- 9 A That's correct
- 10 Q Okay So if a revolver is fired, you're not going to
- 11 find -- unless the revolver is then emptied and the
- 12 shell casings are dumped out of it, you won't find
- 13 shell casings associated with a firearm or a
- 14 revolver, correct?
- 15 A That's correct
- 16 Q Okay And as far as where you find shell casings,
- 17 your testimony was the gun is fired and this area
- 18 right here, this mechanism --
- 19 A Ejection clip.
- 20 Q -- goes back and the bullet is ejected, correct?
- 21 A Yes, sir
- 22 Q And it's ejected for a couple of feet?
- 23 A Right.
- 24 Q And it's got -- some examples of them up there It
- 25 goes out, it hits something, it bounces around and it

521

1 ends up coming to a halt wherever it ends up coming
2 to a halt, right?

3 A Correct

4 Q I mean, it's kicked out a couple of feet, who knows
5 what happens to it after that?

6 A Yes, sir.

7 Q Now, your testimony is that -- well, just a couple
8 more things Referring now to what's been marked as
9 a diagram marked State's 81

10 A Yes, sir

11 Q Can you give us a rough estimate on the distance from
12 this front door to roughly where the vehicle was
13 present when you got there but where your
14 understanding of the vehicle was that the suspects
15 were in, rough estimate from the door to the vehicle,
16 distance?

17 A It's probably 75, 100 yards It's a good sized
18 parking lot

19 Q Good sized parking lot? I mean, there's a picture
20 over there, probably more than one picture over there
21 that probably shows it?

22 A Inside 75 yards maybe

23 Q About 75 yards?

24 A That's just a guesstimate

25 Q And near where your understanding where the vehicle

512

1 was is where you recovered this blue and white hat,
2 correct?

3 A Yes, sir

4 Q Okay And your testimony is that one of the things
5 you were looking for, because this is a shooting, one
6 of the things you were looking for is the presence of
7 blood?

8 A Yes, sir

9 Q Correct?

10 A Right

11 Q And certainly had you found any blood inside the
12 business or in the parking lot, you would have
13 collected samples of that blood, correct?

14 A Yes, sir

15 Q It is of potential evidentiary value, right?

16 A Right.

17 Q And there's DNA There's all sorts of stuff that can
18 be done not by you but down the block, right?

19 A Yes, sir.

20 Q And, again, your job is not to determine whether it
21 is of evidentiary value Your job is to identify
22 potential evidence in the case, preserve and collect
23 it, right?

24 A Yes, sir

25 Q And had you found any blood in this case, you would

523

1 have collected samples of that blood, correct?

2 A Yes, sir

3 Q And you've got items in your kit that you use to
4 collect that?

5 A Right Yes, sir

6 Q And store it in such a way that it can be tested
7 further down the line, right?

8 A Yes, sir

9 Q And you found no blood inside the store You found
10 no blood between the front door and where your
11 information had the vehicle that the folks got into
12 before they left No blood between those two places,
13 right?

14 A Right

15 Q And your testimony is that it's not unusual for
16 people to get shot and not bleed after they have been
17 shot, correct?

18 A Not bleed externally, yeah, blood coming out of them.

19 Q It's your testimony that it's not unusual for people
20 to be shot through the hand and run 75 yards to a
21 vehicle and not bleed along the way, correct?

22 A Yes, sir.

23 Q It's your testimony that it's not unusual for someone
24 to be shot six to eight times, run 75 yards to a
25 vehicle and not drop a drop of blood along the way,

524

1 correct?

2 A Yes, sir

3 Q Thank you very much, sir

4 THE COURT Redirect?

5 MS CAMPBELL Yes, sir

6 REDIRECT EXAMINATION

7 BY MS CAMPBELL

8 Q Just for clarification, in the victim's gun that you
9 collected that day, you collected two magazines Is
10 that correct?

11 A Yes, ma'am.

12 Q And one magazine had a number of unfired bullets in
13 it?

14 A Yes, ma'am

15 Q And how many was that?

16 A It had a -- I have to go back to my notes and look at
17 it

18 Q Yes

19 A One live round in the chamber and a magazine
20 containing six live rounds

21 Q Six rounds So there are seven rounds in that Now,
22 every time a magazine is put into a gun, is it
23 necessarily full?

24 A No

25 Q You can load a magazine into a gun, it may have half

525

1 the number it can hold, and it will still work Is
2 that correct?

3 A Yes, ma'am

4 Q And in this case, the gun that was turned over to you
5 had six and one in the chamber Is that correct?

6 A Yes, ma'am

7 Q And then you found an additional live round in the
8 floorboard of the car Is that correct?

9 A Yes, ma'am

10 Q And the magazine that you found, the empty magazine
11 that you found in the car, how many rounds can it
12 hold?

13 A I don't recall right off the top of my head

14 Q Okay You don't recall?

15 A No, ma'am

16 Q But you did find one live round in the car?

17 A Yes, ma'am

18 Q And the empty magazine Is that correct?

19 A Yes, ma'am

20 Q And then at the scene you found how many shell
21 casings?

22 A Nine I believe

23 Q Nine shell casings?

24 A Right

25 Q And those were all inside the business?

526

1 A Yes, ma'am

2 Q Without bringing up this diagram again and the
3 placement, and he asked you about who could shoot
4 from where and everything, would the shell casings
5 and the pattern you found, based on your experience
6 and your expertise as a crime scene investigator,
7 would that be consistent with anyone having shot from
8 outside the business?

9 A No, ma'am

10 Q And, in fact, in your experience, where would the
11 person have been standing when they were shooting
12 where the shell casings were found and using the
13 projectiles?

14 A Roughly inside that area there The office,
15 coming -- back up a little bit From that office
16 area back down through that doorway or archway just
17 into the display area

18 Q That's where that person would have been standing?

19 A Yeah Somewhere fairly close to where those shell
20 casings were

21 Q That's what the forensic evidence in this case shows?

22 A Right

23 Q And the projectiles that you found inside, I believe
24 you actually recovered three projectiles inside?

25 A Yes, ma'am

527

1 Q And one projectile outside?

2 A Yes, ma'am

3 Q There are actually I believe five holes denoted
4 inside, but three projectiles were recovered?

5 A Three or either four I can't remember

6 Q And then the one projectile recovered outside?

7 A Yes, ma'am

8 Q Those were all consistent with again, what your
9 forensic evidence shows is that the shooter was
10 standing here right, outside this office doorway or
11 right inside this office door to the outside?

12 A In that vicinity, yes, ma'am

13 Q He also asked you about any evidence of any robbery
14 When you go to a scene you find things that can be
15 used as a mask, what does that indicate to you?

16 A That there was a robbery; some type robbery occurred

17 Q And I show you State's Exhibit 29, a torn up t-shirt
18 Can that commonly be used as a mask?

19 A Yes, ma'am

20 Q And when you go to a scene, when you find things like
21 empty bags, what does that indicate to you?

22 A That there could have been a robbery taking place

23 Q Because it would not be uncommon for robbers and bank
24 robberies and armed robberies of businesses to come
25 wearing masks and carrying bags?

523

1 A That's correct

2 Q Finally, the front door And there is glass -- and
3 let's be clear, we're putting these in evidence
4 There's glass on the inside?

5 A There is

6 Q And glass on the outside?

7 A Yes, ma'am

8 Q And is that consistent with someone having fallen
9 through that door?

10 A Yes, ma'am

11 Q And consistent with someone having been shot since
12 the projectile was found directly outside that door?

13 A Yes, ma'am

14 MS CAMPBELL That's all I'd have, Your Honor

15 THE COURT. Mr Burr

16 MR. BURR. Thank you, Your Honor

17 RECROSS-EXAMINATION

18 BY MR BURR

19 Q The number of casings that you found were nine The
20 clip that you recovered holds ten Is that correct?

21 A I don't know right off the top of my head

22 Q If there's earlier testimony saying it held ten, you
23 wouldn't dispute that, would you?

24 A Right

25 Q And as an expert, you know that you can also

1 routinely chamber one when you put the clip in?

2 A That's correct

3 Q A loaded weapon holds 11?

4 A Yes, sir

5 Q The casings that you found were somewhat adjacent to
6 the full wall?

7 A Right

8 Q Firing a 9 millimeter such as this one with a right
9 enough projection, it is not unusual if I were firing
10 from here for a casing to go to where you're sitting?

11 A Right

12 Q That's fairly routine In fact, if I were much
13 closer than that, it would probably hit the wall and
14 bounce off, wouldn't it?

15 A That's correct

16 Q When you go to your closet or pull out your bureau
17 drawer and see a shirt, do you think there's been a
18 robbery?

19 A No But none of my shirts are torn like that

20 Q But you've seen torn shirts that don't necessarily
21 indicate it's a mask?

22 A Yeah Oh, yeah

23 Q This bag, would you tell he exactly what you saw
24 inside that establishment that if you were going in
25 to rob it you would need this bag for?

1 A To put money or display -- sold, big items, stereos
2 and whatnot

3 Q Right Stereos, wheels, whatever that you carry out
4 in boxes When you go to the gymnasium to work out
5 and you see an empty bag, does that mean there's been
6 a robbery?

7 A No, sir

8 Q This is nothing more than a gym bag?

9 A Well, the relation to the robbery is taking that bag
10 in to load the goods in to bring back out That's
11 what makes me say that in the parking lot, yeah, it
12 was obvious it could have been a robbery that had
13 taken place there There wasn't a gym there

14 Q Would a pound of marijuana fit in here pretty well?

15 A A pound?

16 Q A pound of marijuana

17 A More than a pound would fit in there

18 Q Oh More than a pound would fit in here?

19 A Yes, sir

20 Q Thank you No further questions

21 MR STRICKLER Yes, sir Just one

22 RE-CROSS-EXAMINATION

23 BY MR STRICKLER

24 Q As far as the glass inside and outside the door, --

25 A Yes, sir

1 Q -- you indicated to Ms Campbell that was consistent
2 with someone falling through the door, correct?

3 A Yes, sir

4 Q Okay When you say something is consistent with
5 that, what that means is that you could not rule that
6 out as a way that glass got on the inside and the
7 outside, correct?

8 A Right, sir

9 Q If you were to say it's inconsistent you'd say that
10 would mean no, that couldn't have happened that way,
11 right?

12 A Yes, sir

13 Q When you say something is consistent with one course
14 of events, that does not rule out it happening other
15 ways, correct?

16 A That's correct

17 Q Okay So while it's consistent with someone falling
18 through the door, it's also consistent with -- I
19 don't know We could sit here and think of a lot of
20 things that might be consistent, right?

21 A Yes, sir

22 Q You can't rule those out. You're just saying it's
23 consistent with this one possibility that
24 Ms Campbell has mentioned to you, correct?

25 A Yes, sir

1 Q All right Thank you very much

2 THE COURT Thank you very much, Investigator
3 Russell You may come down Thank you very much
4 Counsel All right, Ladies and Gentlemen Let's
5 take about a ten-minute break We'll reconvene close
6 to 12, see if we can run another hour or so before
7 lunch Thank you very much Just don't discuss the
8 case among yourselves while you're in the jury room
9 Thank you

10 (Jury out at 11 45 A.M)

11 (Whereupon, a break is taken)

12 THE COURT We'll stand at ease for about ten
13 minutes Counsel, let me just caution you, the court
14 reporter is having some difficulty keeping the
15 numbers straight from the previous trial to this
16 trial. And just be careful when you're offering
17 evidence that it's clear on the record Some things
18 are getting in, some things are not getting in

19 We're getting old numbers or being given old
20 numbers, and it's just not the same as if we just had
21 a -- if the court reporter had a list, a new
22 consecutive list at the first trial So I just
23 caution you

24 MS CAMPBELL: Yes, Your Honor And for
25 clarification, I think we had marked the bag, and I

1 indicated I thought it was No 33, and it was Just
2 for the record

3 THE COURT What was?

4 MS. CAMPBELL The black bag that we put in

5 THE COURT You need to check with the court
6 reporter

7 MS. CAMPBELL I understand that there's a
8 photograph, No. 10, not in, as well as the gun
9 itself, I don't think we can put it in until the
10 testing is done

11 THE COURT. Whatever I'm just asking you to be
12 cautious about the numbers That's all. All right
13 You ready for the jury? You ready for the jury,
14 State?

15 MR MEADORS Your Honor, yes, sir One thing
16 And it was actually a typo on my part If you look
17 at the witness list And he may well be a Prince
18 His name was put down as Prince It's Mr. Price
19 Either I wrote it down or it was written wrong That
20 was the name that was read off to the jury I've
21 informed Mr Burr of that and I've informed
22 Mr Strickler of that now

23 THE COURT Price?

24 MR MEADORS Yes, sir Prince was read off
25 I'm just saying --

1 THE COURT Yes, sir That's what it said
2 MR MEADORS. Right And that was incorrect
3 from my writing it down or somebody typing it down
4 wrong Anyway, we're now going to call Mr Price.
5 Your Honor might want to inquire if any jury member
6 is a close personal friend of the family That would
7 be the remedy Obviously it wasn't intentional
8 THE COURT. All right I'll do that Bring the
9 jury, please
10 (Jury in at 12 10 P.M.)
11 THE BAILIFF The jury is present, Your Honor
12 THE COURT All right Thank you All right,
13 Ladies and Gentlemen of the Jury When I read off
14 the list of potential witnesses, one of the names
15 that was listed that I read had a typographical
16 error I've read the name Fred Prince The witness'
17 name is actually Fred Price Mr Price, are you
18 present? This is Mr Price
19 I'm going to ask just for the record if any
20 member of the jury panel is related by blood or
21 marriage or a close personal acquaintance of Mr Fred
22 Price, the witness who is standing in the courtroom?
23 If so, please stand All right Thank you very
24 much. You may call your next witness
25 MR MEADORS With your permission, we would

1 call Mr Fred Price

2 FRED L PRICE, JR , after being duly sworn,
3 testifies as follows

4 THE CLERK. Please have a seat State your full
5 name

6 WITNESS My name is Fred L Price, Jr

7 DIRECT EXAMINATION

8 BY MR MEADORS

9 Q I'm sorry about the name confusion, but I'm sure
10 you're a good fellow. Where are you from?

11 A I am from Columbia, South Carolina.

12 Q Are you born and raised here?

13 A Born in Washington, D C , have been a resident of
14 Columbia since I was one year old

15 Q And you and your family live here now, all of you?

16 A Yes, we do

17 Q And, Mr Price, do you run a business here in town?

18 A Yes, I do I'm the president and operator of Ace
19 Glass Company.

20 Q And I know there may be one or two Aces in this area
21 What location is yours at?

22 A I own all three The office that I am out of is the
23 Two Notch Road location

24 Q That's your main office where you go in?

25 A That's my main office

Q Please tell the Ladies and Gentlemen of the Jury, how

1 long have you been in the glass business?

2 A My family has been selling glass in Columbia since
3 1939 I have grown up in the glass business Upon
4 graduation from the Citadel in 1975 I entered -- I
5 started working with the company then and have been
6 employed full time since, since May of 1975

7 Q Is it fair to say you love glass?

8 A It's a living

9 Q Okay. And since it's your whole life, are you
10 familiar with the different types of glasses that
11 have been out there, the types of glasses that are
12 used in windows and different types of glasses that
13 may now be used in particular windows and doors?

14 A Yes, sir, I am

15 Q Could you tell the jury what those different types of
16 glasses or panes are?

17 A Basically, in architectural and residential
18 applications there is two types of glass One is
19 annealed glass which is the regular window glass,
20 plate glass that you would probably think of that
21 when it breaks would break into large sheets or large
22 shards That was primarily -- all that was installed
23 back in the 30's, 40's, 50's and 60's and even into
24 the early 70's All the commercial storefronts, all
25 the malls, all strip shopping centers all had large

1 sheets of just regular plate glass

2 In June of 1975 a Federal law was passed that
3 required all glass that was installed and/or replaced
4 due to breakage, if it was in a door within 12 inches
5 of the side of the door or came below 18 inches with
6 a walk-in area on both sides, it required that it had
7 to be safety glass There is three types of safety
8 glass that are available One is tempered glass

9 Tempered glass is made by taking a piece of
10 annealed glass, cutting it the size that you need,
11 seaming the edges and then it goes through a
12 tempering furnace It's heated to about 550 degrees
13 Then as it comes out they blow cold air across it and
14 that's what tempers it then

15 What makes it safety is that it is about seven
16 times stronger than a piece of annealed glass When
17 it breaks it crumbles into small quarter inch
18 diamond-shaped pieces with an edge that is not --
19 it's not a sharp edge I can take a piece of it I
20 can take a handful of it and put it between my hands
21 and rub it together and it won't break the skin, it
22 won't cut me.

23 Q Now, some of the older windows or glass you're
24 talking about used to be on sliding glass doors?

25 A Exactly.

1 Q And did you -- or are you familiar with situations
2 where people would just walk through that glass door
3 not seeing it there?

4 A Actually they would just actually walk through it,
5 and I've seen a lot of cases where people have been
6 cut real bad from the plate glass or annealed glass

7 Q The annealed or plate glass?

8 A The annealed or plate glass

9 Q And in that was broken, the annealed or plate
10 glasses, what type of edges on the glasses would you
11 expect to find if --

12 A You could see long, knife-bladed type shards of glass
13 that would be, you know, obviously sharp on both
14 sides, could have a point It would be like a knife
15 blade, line a saber blade, that kind of --

16 Q That could cut you?

17 A And it obviously could cut you.

18 Q To your knowledge with your background, is that one
19 of the reasons they changed the law?

20 A That's exactly why they changed the law

21 MR MEADORS Your Honor, we would offer
22 Mr Price as an expert in the field of commercial and
23 residence glass and its installation

24 MR BURR. Mr Alexander has no objection

25 MR STRICKLER I have no voir dire for

1 Mr Price, Your Honor

2 THE COURT Thank you very much

3 Q Tempered glass, is there a certain way, if I took a
4 baseball or if I shot a bullet through tempered door
5 glass, is there a certain way you'd expect the glass
6 to fall?

7 A It's going to -- if you shot it with a pistol or a
8 rifle, if you hit it with a baseball bat, if you
9 threw a ball against it, it's all going to break
10 pretty much the same way It will break into a bunch
11 of real small pieces. Depending on the point of
12 impact, depending on how hard something is hitting
13 it, it's just going to pretty much fall straight
14 down

15 Q Either side?

16 A Either side It's going to fall a little bit both
17 ways

18 Q Can I show you what State's 35 -- and let me ask you
19 this Have you ever been to Ntense Kustoms and Audio
20 out on Percival Road? Are familiar with that
21 business?

22 A I'm not

23 Q Okay I want to show you State's 35 And based on
24 your experience and background, can you tell me what
25 type of glass that is?

1 A Yeah That's tempered safety glass.

2 Q Okay If you'd look at State's -- another picture of
3 that door, State's 6, does that appear to be the
4 same, just a distance, a little further back of that
5 same door?

6 A Yeah That's a -- what that appears to be is a
7 standard aluminum residential type storm door which
8 would carry eighth inch tempered glass because of the
9 weight It's just an eighth of an inch thick The
10 door is -- it does not look like a standard store
11 front door which would carry a little bit thicker
12 tempered glass

13 Q And let me ask you, would that picture, based on your
14 experience, would that break there, if you will, or
15 the tempered glass that's left there, be consistent
16 with a gun being fired through there, a bullet?

17 A Yeah I mean, there's really no way of telling what
18 exactly broke it _ But whatever, you know, it could
19 have been anything to break it But, yeah, it would
20 be consistent with that

21 Q Okay Would it also -- could it be consistent with
22 somebody falling through there?

23 A It could very well -- yeah, it could very well be
24 If somebody fell through it, there might be more
25 glass on one side or the other

1 Q Let me ask you this I ran into my sliding glass
2 door when I was little It didn't take that much to
3 break it Does it take much more -- does it take
4 more force to break the old plate glass, I call it
5 versus this tempered glass?

6 A The tempered glass is approximately seven times
7 stronger You know, there have been occasions I've
8 seen people walk into a plate glass and it not break
9 If a child was running or somebody was running or
10 moving at a fairly brisk pace they could break the
11 annealed glass Tempered glass takes a lot of force
12 to break it Somebody would have to be really
13 running and hit it to break the glass And more than
14 likely they might destroy the door first before they
15 would break the glass

16 Q You mentioned earlier I think that you can take some
17 of this tempered glass and put it in your hand and
18 rub and it wouldn't cut you?

19 A Right

20 Q Did you bring some with you?

21 A Yes, sir. I did I brought some with me.

22 MR MEADORS. We have one "no objection" and one
23 "objection" -Could we approach?

24 (Whereupon, a bench conference is had)

25 Q Is this the tempered glass you brought?

1 A Yes, it is That actually is an eighth inch tempered
2 glass And it's from a tinted -- it's a tinted
3 glass, a dark tinted glass.

4 Q Would that be, based in your experience, consistent
5 tenants with the type tempered glass that you see in
6 State's 6?

7 A Yeah Exactly

8 Q And you testified -- I've been cautioned not to --
9 can you stand up here?

10 A Sure

11 Q With the Court's permission Would you hold your
12 hands out? Those are hands of a working man

13 A Yeah

14 Q Can you demonstrate to the jury here --

15 MR STRICKLER And I object, Your Honor

16 THE COURT Objection overruled

17 MR STRICKLER Yes, sir

18 A Just reach inside I don't want to get pieces all
19 over the courtroom But I can put my hands in here

20 Q I'll just hold it Don't worry about it

21 (Witness rubs glass in hands)

22 Q Hold your hands up Did you suffer any injuries?

23 A No

24 MR. MEADORS Your Honor, we'd offer this as
25 State's 110

~~543~~

1 MR STRICKLER Is that for I D only? My
2 understanding, this was for demonstrative purposes
3 when we approached the bench And I object to it
4 being introduced in evidence

5 MR MEADORS You have an objection to it being
6 moved into evidence?

7 MR. STRICKLER· Yes, sir

8 THE COURT I sustain the objection

9 MR. MEADORS. State's for demonstrative
10 purposes

11 (WHEREUPON, State's Exhibit No 110 was marked
12 for identification only.)

13 Q Let's assume for a second that a -- well, let me ask
14 you this way Based on your experience and your
15 training dealing with glass, could that -- the way
16 the door is, the way the glass broke on State's 6 be
17 consistent with being broken from a projectile from a
18 handgun?

19 MR STRICKLER Asked and answered I object.

20 THE COURT· Overruled. Go ahead.

21 A Yeah. That's consistent with it

22 Q And also I believe you've testified it could be
23 consistent with somebody going through the door?

24 A Exactly

25 Q New, let me ask you this If somebody went through

1 the door, would you expect injuries based on your
2 experience or training?

3 A No, not from going through this door The worst --
4 when this glass breaks, it kind of -- it's under
5 pressure and it kind of expands. The worst that
6 could possibly come out of something like this,
7 because I've had a piece -- I was holding a rather
8 large sheet and had it blow up in my hands and I had
9 on short sleeves And I had some pieces just barely
10 touch me And I had just -- it was just like a
11 pinprick But, no, I mean, there's no way they could
12 really be hurt by going through this glass

13 MR. MEADORS That's all we have Thank you

14 THE COURT Mr Burr

15 MR BURR: May it please the Court

16 CROSS-EXAMINATION

17 BY MR BURR

18 Q Could I refer to your exhibit 35? Mr Price, you
19 heard Mr Meadors offered you as an expert witness
20 That was a lot of pressure on you being an expert?

21 A Mm-hmm (affirmative)

22 Q If I understood your testimony correctly, you said
23 that this glass is at least seven times stronger than
24 regular plate glass?

25 A Exactly.

1 Q It takes a fair amount of pressure to break it?

2 A (Nods head affirmatively)

3 Q You also said it would probably damage the door also?

4 A If somebody were running through it, that is not --
5 that's a residential, appears to be a residential
6 aluminum storm door which is not as strong as a
7 commercial entrance door like downstairs in the
8 lobby.

9 Q I show you what's been marked as State's Exhibit 34.
10 That shows the frame of the door Do you see any
11 damage to the aluminum framing?

12 A No

13 Q And State's Exhibit 6 is from the exterior That's a
14 good picture of the framing Do you see any damage
15 there?

16 A No The only -- with this door, here is the lock and
17 there is the keeper that holds it to the jam. And
18 this door being, it's just like I say, a regular
19 storm door, if somebody hit this door hard enough,
20 you know, that keeper, the lock and the keeper would
21 just -- it should break that before the glass broke

22 Q So for the glass to break, it's your testimony the
23 chances are the door was obviously secured, locked or
24 the catch was on it?

25 A It had to be locked, yeah

1 Q And for a person, full body, if this is the glass, to
2 bounce up to it, wide area, it is extremely difficult
3 to break the glass, isn't it?

4 A Yeah I would think it would be

5 Q If I have an object like this in my hand, I'm in hot
6 pursuit of somebody and I hit it this way, is it very
7 possible, more possible the glass is going to break?

8 A It would be more possible for the glass to break
9 given an impact of a sharp object

10 Q Or a heavy object?

11 A Or a heavy object

12 Q Exactly And the person chasing or the person with
13 this gun, like you said, would have no cuts on their
14 arms, they would just knock the glass out and keep
15 going?

16 A Whoever went through it would probably have no cuts

17 Q Thank you No further questions.

18 THE COURT Mr Strickler

19 MR STRICKLER No, sir I have no questions
20 for Mr Price

21 THE COURT Redirect?

22 MR MEADORS No, sir Thank you very much

23 THE COURT Thank you very much, Mr Price. You
24 may come down

25 MR MEADORS May Mr Price be excused?

1 THE COURT Any objection?

2 MR STRICKLER Without objection, Your Honor

3 MR BURR No objection

4 THE COURT Call your next witness, please

5 Thank you, Mr Price

6 WITNESS Thank you

7 MS CAMPBELL The State calls Ila Simmons

8 ILA SIMMONS, after being duly sworn, testifies
as follows

9 THE CLERK Please have a seat State your full
10 name.

11 WITNESS My name is Ila Simmons

12 DIRECT EXAMINATION

13 BY MS CAMPBELL

14 Q Agent Simmons, where are you employed?

15 A At the South Carolina Law Enforcement Division,
16 commonly known as SLED

17 Q What do you do at SLED?

18 A I work in the trace evidence department

19 Q And tell this jury, working in the trace evidence
20 department, what you do?

21 A We analyze gunshot residue kits We analyze gun
22 powder residue as far as arson, explosives, fibers
23 and paints

24 Q And tell this jury a little bit about your education
25 and training in the realm of trace evidence?

1 A I received a Bachelor's of Science Degree in
2 chemistry from Columbia College in 1998 Since then
3 I've been employed at SLED I have been in the
4 in-house training program in the disciplines of
5 gunshot residue and the other disciplines of trace
6 where I have had to go through seminars and training
7 as well as take competency examinations on all the
8 instrumentation and all the testing that we do in the
9 trace department

10 Q And have you testified before as an expert in the
11 area of trace evidence?

12 A I have

13 Q Approximately how many times have you been qualified
14 as an expert in that area?

15 A Twenty times

16 MS CAMPBELL Your Honor, at this time we offer
17 her as an expert in trace evidence

18 THE COURT. Any objection or Voir Dire?

19 MR BURR No objection as to Mr. Alexander

20 MR STRICKLER And I have no Voir Dire of

21 Ms Simmons, Your Honor

22 THE COURT. Thank you You may proceed

23 MS CAMPBELL Thank you, Your Honor

24 Q Agent Simmons, turning your attention to the case
25 here at hand, did you receive certain pieces of

1 evidence in this case?

2 A Yes, I did

3 Q And, specifically, what evidence was forwarded to you
4 at SLED?

5 A I received gunshot residue kits in this case

6 Q And just so we can clarify for the jury, you work in
7 the trace department That's one area at SLED?

8 A Correct

9 Q And there are different areas such as ballistics and
10 other areas Is that correct?

11 A That's also correct

12 Q But in this case you received what was called a
13 gunshot residue kit?

14 A Yes, I did.

15 Q And can you tell the jury, what is a gunshot residue
16 kit, and that's the purpose of collecting it and
17 testing it?

18 A Gunshot residue is microscopic chemicals that are
19 expelled from the gun when it's fired It can get on
20 the hands of the person firing the weapon or anything
21 that would be near a weapon when it's fired A
22 gunshot residue kit is collected to see if there is
23 the presence of gunshot residue on the hands of a
24 shooter, on someone in the vicinity of the gun or
25 objects around the gun

1 Q And is there a time period in which time the gunshot
2 residue kit needs to be collected in order to make
3 any determinations from that significant?

4 A On a living person a gunshot residue kit would have
5 to be collected within six hours After six hours
6 there would not be any gunshot residue left on a
7 living person

8 Q And why is that?

9 A Because the body, naturally it sweats, it absorbs
10 And not to mention that the hands or other parts of
11 the body come in contact with other objects This is
12 going to cause the gunshot residue to be wiped away

13 Q Turning your attention to this case specifically, how
14 many gunshot residue kits did you receive?

15 A May I read through my notes?

16 Q Yes Please refer to your notes.

17 A I received three gunshot residue kits in this case

18 Q Specifically, who were those gunshot residue kits
19 collected from?

20 A I received a gunshot residue kit labeled Andre Devon
21 Stokes, Sterling Omar Patterson and Willie Lloyd
22 Alexander.

23 Q And you didn't ever receive one from a Demetrio Sears
24 in this case?

25 A No, I did not

1 Q Of course, collection of evidence, medical needs take
2 priority over collection of evidence in persons that
3 may have been injured?

4 A Yes I would assume so

5 Q Again, if it cannot be collected within the first six
6 hours, you don't do any testing?

7 A We would not Yes, ma'am

8 Q What were your findings on those three gunshot
9 residue kits?

10 A On the kit labeled Andre Devon Stokes I did not find
11 gunshot residue

12 Q So on Andre Devon Stokes, when his hands were -- and
13 it's a swabbing mechanism, right?

14 A Correct.

15 Q And you do the front and the back of the hands?

16 A Correct. There is swabs taken from the palms, the
17 right palm, the left palm, and the backs of both
18 hands as well

19 Q And in Andre Stokes, when his test was analyzed, what
20 was the result?

21 A I didn't find any gunshot residue on the samples

22 Q And you also received a test from Sterling Patterson
23 Is that correct?

24 A Yes, I did

25 Q What were the results of that test?

1 A I found metals consistent with gunshot residue on the
2 left palm and on the right palm

3 Q Was the result of your findings from Sterling
4 Patterson be consistent with him having fired a gun
5 within, say, six hours of the test being done?

6 A That is a possibility

7 Q And, finally, did you also receive a kit from Willie
8 Alexander?

9 A Yes, I did

10 Q What were the results of that test?

11 A I did not find gunshot residue on those gunshot
12 residue samples

13 Q So when you don't find gunshot residue, it would be
14 inconsistent with them having fired a gun within that
15 six-hour period prior?

16 A That is a possibility, that they did not fire a
17 weapon within six hours

18 Q Even if a person handled and fired a gun within that
19 six hours, if they later then go back and wash their
20 hands or do anything something like that, how does
21 that affect your test results?

22 A That would remove the gunshot residue from their
23 hands

24 Q Putting your hands in your pocket, wiping your hands
25 off on your clothing, does that also affect you?

1 A Yes. Gunshot residue is like flour So it's going
2 to be removed very easily

3 Q So the sooner a kit is collected the better or the
4 more significant your results may be?

5 A That's correct

6 Q And, again, if someone has been taken to the hospital
7 and is in an operating room and it can't be collected
8 within six hours, there is no purpose in collecting
9 it?

10 A No We would not analyze a kit after six hours

11 Q Thank you

12 THE COURT Mr Burr

13 MR BURR I have no questions, Your Honor

14 THE COURT Mr Strickler

15 MR STRICKLER Thank you, Your Honor May it
16 please the Court

17 CROSS-EXAMINATION

18 BY MR STRICKLER

19 Q Good afternoon, Ms Simmons

20 A Good afternoon

21 Q Agent Simmons Pardon me. In doing this testing,
22 just a couple of things before you leave In doing
23 this testing, you are testing for, as I understand
24 it, microscopic particles of, in particular, three
25 elements. Barium, lead, and antimony Is that

1 correct?

2 A That's correct

3 Q Those are the three elements that are known to be
4 associated with the burning of gunpowder I take it?

5 A Of the gunshot residue, yes The primer.

6 Q And you're actually testing to detect the presence of
7 microscopic particles of one or more of those
8 elements, right?

9 A That's correct

10 Q Okay. And firing the gun is not the only way that
11 we, anyone, could have traces of those elements on
12 their skin, correct?

13 A That's correct In fact, gunshot residue can be
14 obtained on the hands by firing a gun, being in the
15 vicinity of a gun, or handling an object that has
16 gunshot residue on it

17 Q Also these elements occur in the environment
18 independent of guns and guns being fired, correct?

19 A That is true

20 Q Some of them more commonly independent of that than
21 others?

22 A Correct

23 Q But, I mean, there's lead around places and there's
24 barium I assume in places. So that when you say as
25 to Mr Stokes the finding was the quantities of

1 metals detected did not indicate the presence of
2 gunshot residue, you are not saying that you didn't
3 detect barium, lead and antimony in the samples, you
4 tested, correct?

5 A That's correct We did not obtain a significant
6 level to say that gunshot residue was present.

7 Q In fact, I mean, that's implied from the statement,
8 because you say the quantities of metal detected?

9 A Correct

10 Q So you did detect some of that --

11 A Yes

12 Q -- in association with the samples you took from
13 Mr Stokes?

14 A Yes, we did

15 Q Correct? Okay And that's as opposed to the result
16 for Mr Patterson, the sample submitted, metals
17 consistent with gunshot residue were found on the
18 left palm, correct?

19 A Correct

20 Q The quantities of metal detected on the left palm may
21 be associated with gunshot residue, correct?

22 A That's correct.

23 Q Are those two different results? They're worded
24 differently

25 A They are The left palm, we found slightly higher

1 ratios of the three elements that you discussed And
2 on the right palm we found slightly less But it was
3 still elevated levels for us to say that something
4 significant was occurring there

5 Q Okay And you don't just make up the wording that
6 you use in these reports yourself, do you?

7 A No, sir. They are part of our protocols.

8 Q And you just mentioned the next word I was going to
9 ask you about, and that's "protocol" In your lab
10 and indeed in all the labs of SLED, you operate for a
11 particular test You operate using, employing a
12 protocol, right?

13 A We do

14 Q That's a technical term It means it's a set
15 procedure set forth that in great detail say what is
16 done to conduct the test?

17 A That's correct.

18 Q What is done to evaluate the results from the test?

19 A Yes

20 Q And what terms you can use in reporting the results
21 here to court, right?

22 A Yes

23 Q Okay I mean, that's why you say the result, the
24 quantities of metal detected on the right palm may be
25 associated with gunshot residue. That's an elevated

1 level of residue but less than the amount of residue
2 that you found when you said metals consistent with
3 gunshot residue were found on the left palm, correct?

4 A Correct

5 Q Okay And you indicated I believe in response to a
6 question from Ms Campbell that if you don't find
7 gunshot residue, such as the finding for Mr Stokes,
8 the quantities of metal detected did not indicate the
9 presence of gunshot residue, okay, you'd say you
10 didn't find gunshot residue at that point, correct?

11 A Correct We didn't find significant levels

12 Q If you make that report, then the conclusion you can
13 draw from that is that it's possible the person did
14 not fire a gun?

15 A That is a possibility

16 Q That's not the only possibility?

17 A No, it is not

18 Q Okay. Because contingent on when the sample was
19 collected in relation to when the weapon was fired,
20 whether or not the person had gloves on at the time,
21 whether or not the person sweated profusely after
22 that time or washed his or her hands after that time,
23 all those things could effect the level of gunshot
24 residue that you find on the hands, right?

25 A Yes, they can

1 Q Okay And could affect it to such an extent that it
2 would reduce those levels beneath the threshold that
3 you would need in order to report a finding of
4 gunshot residue, right?

5 A Correct.

6 Q That's as opposed to finding the results that you
7 reported out for Mr Patterson The results there
8 were higher than this base level that you have to get
9 over in order to find presence of gunshot residue,
10 right?

11 A Yes, they were

12 Q So the results that you report when you report a
13 result that is consistent with gunshot residue being
14 present, you can make a positive conclusion In
15 other words, you can find the presence of gunshot
16 residue, right?

17 A Right You can say the gunshot residue was there
18 when the kit was collected

19 Q The converse or obverse is not necessarily true Not
20 finding the presence of gunshot residue does not
21 necessarily mean the person didn't fire a handgun,
22 correct?

23 A That is true

24 Q It does not necessarily mean the person didn't fire a
25 handgun within six hours of having the gunshot

1 residue test done, correct?

2 A Correct.

3 Q Okay So you can make a positive conclusion from the
4 results that you come up with You cannot say the
5 opposite, a negative conclusion, that there is no way
6 the person could have fired the gun?

7 A That's correct I can say that the presence is
8 there I cannot say whether or not -- how it got on
9 the hands, and I can't say that if it was not present
10 on the hands that it was definitely no gun fired.

11 Q Okay And, lastly, you indicated to Ms Campbell
12 that the sooner the evidence was collected the more
13 significance the results are Again, that
14 presupposes that the evidence is collected prior to
15 anyone having sweated profusely, prior to anyone
16 having washed their hands or done any of other
17 actions that could result in the residue being
18 removed from their person, correct?

19 A That's correct

20 Q Okay Thank you very much, Agent

21 THE COURT Anything?

22 MS CAMPBELL. Just to clear up just so I can be
23 clear on this

24 REDIRECT EXAMINATION

25 BY MS. CAMPBELL

1 Q Everyone, including me, has some level of metals on
2 their hands we have referred to?

3 A Yes That's correct

4 Q And when you do your testing, you do testings as to
5 whether or not it indicates the presence of gunshot
6 residue?

7 A Right We have certain ratios that have been
8 established, that they have to meet a threshold
9 level It has to be there

10 Q And on the date in question two tests were done from
11 Andre Stokes and Sterling Patterson and forwarded to
12 you for your testing?

13 A Correct

14 Q And just so we can be clear, when Andre Stokes was
15 tested, it did not indicate the presence of gunshot
16 residue?

17 A That's correct

18 Q But when Sterling Patterson was tested, it did
19 indicate gunshot residue?

20 A Yes

21 Q And then when Willie Lloyd's was collected and
22 forwarded to you, it did not indicate gunshot
23 residue?

24 A Correct It did not indicate the presence of metals

25 Q And you didn't get an opportunity to get one from

1 Mr Sears?

2 A No, I did not

3 THE COURT Mr Burr

4 MR BURR No questions, Your Honor

5 MR STRICKLER No, sir Thank you

6 THE COURT Thank you very much Come down,

7 Ms Simmons Thank you very much

8 MS CAMPBELL May she be excused, Your Honor?

9 MR. STRICKLER. Without objection.

10 MR MEADORS Lieutenant Tom Collins

11 THOMAS COLLINS, after being duly sworn,
12 testifies as follows

13 THE CLERK Please have a seat. State your full
14 name

15 WITNESS Thomas Collins

16 DIRECT EXAMINATION

17 BY MR MEADORS

18 Q Did I have your rank right?

19 A Yes, sir

20 Q That is Lieutenant with the South Carolina Highway
21 Patrol?

22 A Yes, sir

23 Q How long have you been with the Patrol, Lieutenant?

24 A Just over 15 years

25 Q And have you worked in different parts of the state?

A Yes, sir

1 Q Can you tell us?

2 A Well, I started off with Columbia City police back in
3 '86 I had two years with them before I came over to
4 the Patrol When I was hired by the Highway Patrol,
5 routinely we transfer people out of their home area
6 I spent the first two years up in Spartanburg County
7 Then I transferred to Richland County for two years
8 I was on the drug interdiction team for a year We
9 basically traveled the whole state working the drug
10 interdiction. I spent two years on the Governor's
11 protection detail, four years in Lexington and two
12 years at Richland County And the last year I've
13 been over in Kershaw and Lee County

14 Q You've been over in Kershaw and Lee for a year?

15 A Yes, sir

16 Q And your rank as Lieutenant, does that mean you're
17 over an area?

18 A Yes My responsibilities are running Kershaw and Lee
19 County

20 Q Let me ask you and get right to the point here On
21 October the 8th, 2002, were you a Lieutenant then?

22 A I was a Sergeant in Richland County at that time

23 Q And did you have an occasion around 10 00 that
24 morning to be on I-77 heading toward Charleston, like
25 I call it?

1 A Yes. Southbound on 77

2 Q Southbound on 77 And did you have an occasion to
3 see any cars parked on the side of the road?

4 A Yes, sir Just as I came under Forest Drive
5 southbound on 77 I could see in the distance that on
6 the right shoulder there was a burgundy minivan
7 Part of our job responsibilities is to assist anybody
8 who might be broken down on the side of the
9 interstate

10 As I was approaching the vehicle, the first
11 thing you look for is for heads inside the car,
12 somebody standing outside the vehicle. And the
13 closer I got to the vehicle, I could see no heads
14 inside the vehicle, nobody standing around it But
15 looking off in the distance I could see two bodies or
16 two figures walking away from the vehicle continuing
17 southbound

18 Q So when you passed this vehicle, it appeared to you
19 that nobody was in there?

20 A No, sir Like I said, it seemed like somebody had
21 been broke down and were just walking away from the
22 vehicle to get off the interstate

23 Q Looking at what's been entered as State's 1, do you
24 recognize it, or does it relate to what you've just
25 testified to?

- 1 A Yes That looks like the van that was on the
2 shoulder of the road that day
- 3 Q I believe you testified you passed this van Did you
4 have an occasion to go up and inquire of the
5 individuals in front of the van?
- 6 A Well, I drove right past it and I drove up to the
7 people that were walking away
- 8 Q And just so I'm clear If you're heading southbound,
9 your first exit which somebody in here has referred
10 to as the Wal-Mart exit I think that's Forest Drive
11 exit?
- 12 A Forest Drive Yes, sir
- 13 Q The next exit is what?
- 14 A Fort Jackson Boulevard
- 15 Q So, is this vehicle between those two?
- 16 A Yeah, probably about midway between those two exits
- 17 Q And the individuals you saw walking I believe you
18 testified away from that car --
- 19 A Yes
- 20 Q -- how far were they from the car to Fort Jackson?
- 21 A I'd say about less than a quarter mile, 2 or
22 300 yards There's a huge green wall, steel wall
23 that they built up for sound proofing on the
24 interstate So that, I mean, the only way you could
25 get to where they were in the direction they were

1 going, the only logical explanation for them to be
2 there was coming from that vehicle

3 Q I understand And so, doing a quarter half, three
4 quarters, how far would you say these two people you
5 saw walking were from the Wal-Mart exit?

6 A Three quarters

7 Q To the next exit?

8 A Yes

9 Q And were you able to determine who owned that van
10 after you stopped and talked to these people?

11 A No

12 Q Did these folks deny any ownership or involvement
13 with that van?

14 A They did I asked them if they needed any help with
15 their vehicle, and they said that wasn't their car or
16 their van back there

17 Q And do you know who these people were?

18 A No I do not

19 Q Can you describe them for the jury?

20 A There were two of them, two gentlemen that were out
21 there One of them I actually interacted with had
22 cornrows in his hair for his hairstyle, a gold tooth,
23 white t-shirt and tanned pants It was a little
24 unusual when I pulled up, because usually when you
25 pull up and someone is broke down on the interstate

1 they look relieved to see you; they turn and come
2 right up to you One individual had stopped where he
3 was standing and faced me to communicate with me but
4 he did nothing to approach The second individual
5 stayed off at a distance and actually continued to
6 walk probably another 5 or 10 yards away but, you
7 know, kept a substantial distance between us

8 Q The demeanor then that you tell them would be what?
9 Describe it to these folks

10 A Well, they didn't seem happy to see me when I first
11 pulled up I started to inquire about the vehicle
12 They denied all knowledge of the vehicle I asked
13 them, "Well, how did you get out here on the
14 interstate?" They explained to me that their buddy
15 was going to the Sounds and had dropped them off at
16 the end of the parking lot and they were just going
17 to Barkoot Apartments which was just a quarter of a
18 mile up from where they were and that's where they
19 were heading to and they didn't want to wait on the
20 friend to drive them, so they decided to walk

21 Overall, they seemed pretty lighthearted They
22 didn't seem upset They didn't seem -- one thing
23 The fellow that I did communicate with, he had a
24 baggy t-shirt on and baggy pants or the baggy shorts,
25 he kept his hands up, balled up into his shirt, kind

1 of wrapped the shirt around his hands and kept it in
2 his waist which concerned me But there was, you
3 know, a big distance obviously between us, so I
4 didn't bring that up to their attention

5 They were close to the exit to where they were
6 going So basically, I left them out there I
7 started to drive off and then they flagged me down
8 again I rolled down my window to see what they
9 wanted, and the fellow said, "How about give us a
10 ride off the interstate?" And his partner started to
11 laugh And I said, "No, I'm not going to give you
12 all a ride off the Interstate You're right here
13 where you need to go anyhow, just a quarter of a
14 mile " They looked young and fit, more than enough
15 to make that quarter mile walk So I left them on
16 the interstate

17 I started then to drive southbound and probably
18 got maybe a mile away. And then they gave out a BOLO
19 which is a be-on-the-lookout-for And they started
20 describing a burgundy van had just been involved in
21 an armed robbery And as they continued to give out
22 the description, I realized, well, that's who I was
23 just with I then notified my dispatcher to notify
24 the Sheriff's Department where the van was and where
25 the individuals I believed that met that description

- 1 were And I notified all the additional troopers and
2 myself so we could respond back to that location
- 3 Q Let me ask you this much Did you see these
4 individuals walk off toward the exit, I think you
5 said?
- 6 A Yes They continued as I pulled off to walk
7 southbound towards Fort Jackson
- 8 Q In case anybody is not clear, is there a Barkoot
9 Apartments right off that exit which I call Fort
10 Jackson exit?
- 11 A Yes
- 12 Q And after they walked off from you, Lieutenant, how
13 far on up the highway did you go before you heard
14 someone on the radio?
- 15 A I believe I was right at 378 So a mile, a mile and
16 a half.
- 17 Q Do you call that Leesburg Road exit? I mean, could
18 that be called that?
- 19 A Yes And because of the cable bearings, I had to go
20 up to the next exit to be able to flip around and
21 come back
- 22 Q So how long was it from the time -- do you have any
23 paperwork, what time it was?
- 24 A No, sir
- 25 Q Well, let me ask you this much then. Did you -- when

1 you heard that you immediately came back?

2 A Yes As fast as my car could go

3 Q And when you got back there; what, if anything, did
4 you observe at this van that you had just seen right
5 before this?

6 A By the time I had returned, the Sheriff's Department
7 had already pulled up on the vehicle The Columbia
8 City Police Department was pulling up on the vehicle
9 And we ended up shutting down the interstate north
10 and southbound And then basically a standoff had
11 started at that vehicle

12 Q Did that basically -- was that the end of your
13 involvement in this case? I mean, you attended -- I
14 say attended Your job as a highway patrolman is to
15 protect the highway So, I mean, that was your
16 function at that point?

17 A Well, after they secured the vehicle, the interstate
18 and opened it back up, then I assisted with the City
19 and all available units we had with the manhunt that
20 followed, with mostly assisting Columbia City Police
21 Department

22 Q And to your knowledge, did the Richland County
23 Sheriff's Department get involved?

24 A Yes

25 Q And you said a manhunt Was that a search? Or where

1 was that search concentrated, if you know?

2 A Barkoot Apartments and Shady Grove Road

3 Q And is that the area that's back behind that wall you
4 described earlier?

5 A Yes

6 MR MEADORS Beg the Court's indulgence Thank
7 you, Judge

8 THE COURT Mr Burr

9 MR. BURR May it please the Court.

10 CROSS-EXAMINATION

11 BY MR BURR

12 Q Lieutenant Price (sic), did you ask any individual
13 for any proof of any identification?

14 A No, sir

15 Q Did you ask either or each of the individuals for
16 their names?

17 A No, sir

18 Q Do you recall what the second individual was doing
19 that was talking? What was he wearing?

20 A I couldn't tell you Like I said, my entire
21 conversation dealt with the one person who was
22 communicating with me The second person stayed off
23 at a distance and really never faced back towards me
24 He kept very distant from me

25 MR BURR I have no further questions, Your

1 Honor

2 THE COURT Mr Strickler

3 MR STRICKLER I have no questions whatsoever

4 THE COURT Any redirect?

5 MR MEADORS No, sir

6 THE COURT Thank you very much, Lieutenant

7 Collins You may be excused Without objection?

8 MR STRICKLER Yes, sir

9 THE COURT Approach the bench, please, counsel

10 (Whereupon, a bench conference is had)

11 THE COURT. All right, Ladies and Gentlemen

12 Counsel advised me that the next witness may be a

13 little bit lengthy And I think it's probably the

14 best time to go ahead and take our lunch break now

15 So I'll ask you to again not discuss the case among

16 yourselves or with anyone else over the lunch hour

17 I ask you to be back in your jury room at 2:15

18 The next witness is scheduled to be here at 2:15

19 So, no sense in you coming back at 2 and waiting If

20 you'll return at 2 15, we hopefully will begin right

21 away and work through the afternoon. So I hope you

22 have a pleasant lunch We'll see you at 2 15 Thank

23 you very much

24 (Jury out at 12.53 P M)

25 THE COURT. All right. We'll stand at ease

1 until 2 15

2 MR MEADORS Judge

3 THE COURT Yes.

4 MR MEADORS Thank you.

5 (Whereupon, a lunch break is taken)

6 THE COURT State ready to proceed?

7 MS CAMPBELL The State's ready, Your Honor

8 THE COURT Defense ready to proceed?

9 MR BURR. The defense is ready, Your Honor

10 MR STRICKLER The defense is ready

11 THE COURT Didn't mean to rush you

12 MR STRICKLER We're all right, sir

13 (Jury in at 2 25 P M)

14 THE BAILIFF The jury is present, Your Honor

15 THE COURT Thank you very much. I hope you had
16 a pleasant lunch, Ladies and Gentlemen We're now
17 ready to continue with the trial Solicitor, you may
18 call your next witness

19 MS. CAMPBELL May it please the Court The
20 State calls Dr Raymond Bynoe.

21 DR RAYMOND BYNOE, after being duly sworn,
22 testifies as follows.

23 THE CLERK. Please have a seat State your full
24 name Spell your last name

25 WITNESS: Yes, ma'am It's Raymond Bynoe,

B-Y-N-O-E

DIRECT EXAMINATION

BY MS CAMPBELL

Q Dr Bynoe, where are you employed?

A I am presently employed by the University of South Carolina School of Medicine, Department of Surgery, and I work at Palmetto Health Richland

Q Palmetto Health Richland? Is that what I refer to as Richland Memorial Hospital?

A Yes, ma'am

Q How long have you been working at Richland Memorial?

A Let me think Since 1988

Q Since 1998?

A So 15 years

Q Fifteen years? What do you do at Richland Memorial?

A I'm a trauma surgeon.

Q Can you tell this jury a little about your education and your training?

A I went to undergraduate school at Lincoln University in Pennsylvania. I went to medical school I went to the Medical University of South Carolina in Charleston I did my surgery training at Palmetto Health Richland and University of South Carolina School of Medicine, Department of Surgery, and did my trauma and critical care training at the University of Tennessee, Memphis, at the Elvis Presley Trauma

1 Center

2 Q And, Doctor, you've testified before as an expert in
3 the area of trauma surgery?

4 A Yes, ma'am

5 MS CAMPBELL. Your Honor, at this time we'd
6 offer him as an expert in trauma, critical care,
7 specifically as to a trauma surgeon

8 THE COURT Any objections or Voir Dire?

9 MR BURR No, sir No Voir Dire and no
10 objection

11 MR STRICKLER. I have no Voir Dire for the
12 doctor

13 THE COURT Thank you You may continue

14 Q Dr Bynoe, I want to turn your attention back to
15 October the 8th of 2002 Did you have an occasion to
16 treat a young man named Demetrio Sears?

17 A If he would have been listed as a trauma male --

18 Q Trauma male, trauma number M-020871?

19 A Yes, ma'am.

20 Q And he was later identified I believe in your
21 follow-up as Demetrio Sears?

22 A Yes, ma'am

23 Q And when he initially presented, how did you come in
24 contact with him at the hospital?

25 A He was involved in an altercation of some sort and

1 sustained multiple gunshot wounds to his chest and
2 abdomen and extremity

3 Q To his chest and abdomen?

4 A And an extremity

5 Q And an extremity?

6 A Yes, ma'am.

7 Q So he had trauma to his chest area and to his
8 abdomen?

9 A Yes, ma'am

10 Q And then when you say an extremity, which extremity
11 did he have injured?

12 A It was his left hand

13 Q His left hand? And those were the three areas where
14 he had been traumatized?

15 A Yes, ma'am

16 Q And what kind of trauma had he suffered in those
17 areas of his body?

18 A They were gunshot wounds.

19 Q Gunshot wounds? When you first came in contact with
20 Mr Sears, did you have an opportunity that day to
21 perform surgery on him?

22 A Yes, ma'am, I did

23 Q And can you tell the jury briefly, going through what
24 kind of injuries he had and what kind of surgery was
25 necessary to repair his injuries?

1 A One of the first things we tried to ascertain was the
2 number of injuries, location of the injuries on the
3 body and the number of injuries there were And we
4 initially obtained chest x-rays, x-rays of his
5 abdomen and which were the most life pressing
6 injuries that we look for We identified that he had
7 gunshot wounds to his chest and abdomen which were
8 the most life threatening of what we suspected at
9 that time, felt as though there were three areas,
10 three major injury sources that we were looking to
11 identify

12 Q And, in fact, did you perform surgery on him that
13 day?

14 A Yes, ma'am, I did

15 Q And did you repair the injuries as to his chest and
16 his abdomen area?

17 A Yes, ma'am, I did.

18 Q And you also mentioned that he had an injury, a
19 gunshot injury to his left hand, too?

20 A Yes, ma'am

21 Q Did you also treat that, or did another doctor
22 actually perform that?

23 A The orthopaedic surgeons took care of that

24 Q So the orthopaedic surgeon took care of the injury to
25 his hand?

1 A Yes, ma'am.

2 Q But in doing your assessment, I believe you said that
3 these were gunshot wounds Can you tell this jury,
4 as far as to his body, to his chest and his abdomen
5 area -- I want to take those first -- how many
6 gunshot wounds did Mr Sears suffer?

7 A On our sheet, if you look at it, we surmised that
8 there were probably two gunshot wounds to the chest
9 and one to the abdomen

10 Q You referred to a sheet I'm going to show you a
11 blow-up Is this a -- and it's kind of simplistic
12 way to show it but it helped me -- a blow-up showing
13 the general area of the gunshot wounds?

14 A Yes, ma'am, it is

15 Q Would this aid you in your testimony before the jury?

16 A Yes, ma'am, it would

17 MS CAMPBELL Your Honor, at this time we offer
18 it into evidence.

19 THE COURT Without objection

20 MR BURR Without objection

21 (WHEREUPON, State's Exhibit No 111 was marked
22 for identification and received into evidence)

23 MS. CAMPBELL Your Honor, may the witness step
24 down?

25 THE COURT. Certainly

1 Q Thank you, Doctor If you could come down here and
2 let me explain to the jury. Using 111, if you'd go
3 on that side, I think the court reporter can hear you
4 better In this it shows multiple places which are
5 gunshot wounds How many actual gunshot wounds were
6 there to the chest and abdomen area?

7 A What we surmised, that there were two gunshot wounds
8 to the chest and one gunshot wound to the abdomen
9 And the reason we came up with that was because on
10 the -- looking at the abdominal portion of it, I'll
11 start with that one, there was just one injury site
12 in the lower part of the abdomen below the belly
13 button, between the belly button and the pubic bone

14 In that area we took an x-ray and it showed that
15 there was one bullet fragment remaining in the body
16 in the posterior area back in the muscles back in the
17 back So that one, that coincided with the fact that
18 he had an injury to his large intestine in the same
19 region which was a track of one. The other two in
20 the chest --

21 Q Just let me clarify The entrance was in the front
22 of the body, right?

23 A Yes, ma'am

24 Q In front of the abdomen?

25 A Yes, ma'am

1 Q And then there were two additional injuries Go
2 ahead

3 A There appeared to be two additional chest wounds, one
4 that you could see by the x-ray report that said that
5 there were fragments that went through and went
6 through the chest and took out the tenth rib So
7 there was a fragment to the tenth rib which appeared
8 to go there So whether it went back-to-front or
9 front-to-back I can't tell you, but I can tell you
10 that this hole probably coincided with that injury
11 because that's in the region of the tenth rib

12 Q So it would have entered on one side and exited out
13 the other?

14 A Yes, ma'am.

15 Q Which is shown in the front and the back?

16 A Yes, ma'am

17 Q And those would have been corresponding?

18 A Yes, ma'am And then the one up in the upper part of
19 the chest probably corresponded with the one in the
20 upper chest and the back

21 Q So that would have been -- one would have been the
22 entrance wound in the chest and then an exit wound in
23 the back?

24 A Or vice versa

25 Q Or vice versa?

- 1 A Yes, ma'am And there were no fragments, there were
2 no bullets left behind in the chest when we did our
3 radiographs at that time to say that they were
4 anything other than that that we suspected We're
5 trying to make sure that we don't miss bullets And
6 that's why the importance of trying to figure out how
7 many holes there are and you try to correlate the
8 number of holes with the number of bullets so you can
9 actually make sure you don't miss injured organs
- 10 Q So as far as his body is concerned, the actual number
11 of gunshot wounds to the body would be one entrance
12 wound to the abdomen?
- 13 A Yes, ma'am
- 14 Q And the bullet was still lodged in him when you got
15 him?
- 16 A Yes, ma'am.
- 17 Q And then an entrance or an exit wound to the chest
18 area, one of each?
- 19 A Yes, ma'am
- 20 Q But there was a corresponding exit wound across the
21 back The two in the front were entrance wounds?
- 22 A Yes, ma'am
- 23 Q So it would be a total of three gunshot wounds to the
24 body?
- 25 A That's how we correlated, matched up things Yes

1 Q Okay You also mentioned that there was a wound to
2 the left hand?

3 A Yes, ma'am

4 Q And can you tell how many -- would the wound to the
5 left hand, would that have been consistent -- which
6 parts of the left hand were actually injured?

7 A There was an injury on the front side There was an
8 injury on the back side Whether those two
9 correlated I don't know because I didn't play an
10 actual role in trying to take care of those.

11 Q But it could have been consistent with the one
12 through-and-through?

13 A Yes, ma'am

14 Q Or it could have been separate ones?

15 A Yes, ma'am

16 Q So this man when you saw him presented with three
17 gunshot wounds to the body and one to two to the
18 hand?

19 A Yes, ma'am

20 Q And that's the maximum number of gunshot wounds?

21 A That's how we treated him at that time.

22 Q I want to move now to the nature of the injuries
23 What kind of damage was done -- and I'm assuming the
24 injuries, the gunshot wounds to the body or to the
25 chest and to the abdomen were the most significant

1 What kind of damages and what kind of wounds did he
2 sustain?

3 A The injury to his abdomen was a colonic injury which
4 went through what we call the sigmoid, the lower part
5 of your large intestine on the left side. That was
6 injured, as well as the little fatty tissue where the
7 blood vessels run as well. That was injured in his
8 abdomen. And that's what we repaired, debrided and
9 repaired and sewed it back together. So he did not
10 end up wearing a bag on his abdomen.

11 He did have -- in his chest he had an injury to
12 his lung tissue. There were two holes in the lung
13 that we actually debrided and over-sewed, and we
14 evacuated the blood from his chest as well.

15 Q Once you had completed your surgery that day and
16 repaired the injuries to his chest and abdomen area,
17 over the course of the next I believe ten days to two
18 weeks did Mr. Sears make a recovery?

19 A Yes, ma'am.

20 Q And a complete recovery from those injuries?

21 A Yes, ma'am.

22 Q Doctor, I want to talk now a little bit about the
23 types of injuries. Did the defendant suffer any
24 major vascular injury?

25 A No, ma'am. They were all -- it was just -- the

1 colonic injury was one in his abdomen And there was
2 just the injury to the parachyia, to the lung tissue
3 itself There was no major vascular -- there was no
4 artery or vein that was injured

5 Q And the significance of that, when I asked you if it
6 was a major vascular injury, vascular injuries tend
7 to bleed profusely?

8 A Yes, ma'am.

9 Q Is that an accurate thing?

10 A Yes, ma'am

11 Q Say, if I were shot here in the neck or something --
12 or what's a good vascular injury to use as an
13 example?

14 A Neck would be a good one

15 Q Neck would be a good one?

16 A Yes, ma'am Correct

17 Q If I was shot in the neck and my carotid was -- is
18 that how you say it?

19 A Yes, ma'am

20 Q Was hit, it would spew blood typically?

21 A Yes, ma'am

22 Q In this case however, that's not the nature of any of
23 these injuries None of his major arteries or any
24 other vascular organs were hit Is that correct?

25 A Correct

- 1 Q So when this man suffered these wounds, what kind of
2 bleeding did you see in this case?
- 3 A It was mainly internal Even when he arrived there
4 was no external bleeding source that we identified
- 5 Q No significant external bleeding So, in your
6 opinion as an expert, if he had gotten shot at a
7 scene, would he have necessarily left any blood
8 evidence there at the scene if he'd gotten up and
9 walked away?
- 10 A Not necessarily
- 11 Q Could he have gotten up after sustaining these
12 injuries?
- 13 A Yes, ma'am.
- 14 Q And, Doctor, you're familiar with the term "stress
15 response"?
- 16 A Yes, ma'am
- 17 Q Can you explain that to the jury and how that may be
18 significant in this case?
- 19 A I think we all have situations in which we're
20 extremely upset and scared or something scared us and
21 you realize that your heart rate starts to go up
22 You can feel your heart beating That's the same
23 sort of thing that people will exhibit when they have
24 these injuries And so you can do a lot in terms of
25 being able to get from one area to the next with

1 major injuries from that sort, in terms of having an
2 injury to your large intestine, your small intestine.
3 Some folks even have major vascular injuries and can
4 go long distances without being compromised

5 Q And can go long distances And that was going to be
6 my next question. Can go long distances without
7 being compromised. And in your opinion as an expert,
8 would this man even after sustaining these injuries
9 been able to get up, say, walk or run across a
10 parking lot and get into a van and get away?

11 A Yes, ma'am

12 Q And even with the nature of these injuries may not
13 have left any blood evidence there at the scene?

14 A Correct

15 Q As time passed, however, you mentioned that there
16 wouldn't have been any initial bleeding or most of
17 the bleeding was internal As time passed, say, if
18 he sat in a van for a period of time, would there
19 have been more external bleeding as time passed?

20 A Yes, ma'am

21 Q And if he had gone untreated long enough, could he
22 have died from these injuries?

23 A Yes, ma'am Definitely so

24 MS CAMPBELL. That's all I'd have, Your Honor

25 THE COURT Mr Burr?

1 MR BURR Thank you, Your Honor

2 CROSS-EXAMINATION

3 BY MR BURR

4 Q Doctor, I would doubt that many of our people in the
5 courtroom have actually been shot before So it's
6 kind of hard to make comparisons But the majority
7 of us have cut our finger in the kitchen or whatever
8 Do you have any major veins in the tips of your
9 fingers?

10 A Major veins? No, sir

11 Q Major veins But when you cut your finger, just a
12 minor cut, it does usually drip blood, does it not?

13 A It can.

14 Q And wouldn't it be extremely unusual to have a
15 gunshot through your hand and exit a building and go
16 60 yards and not leave a drop of blood?

17 A Ask the question again Let me hear how you phrased
18 it

19 Q Wouldn't it be extremely unusual to have a gunshot
20 that penetrated your hand and for the individual to
21 be inside a building, exit the building and cross
22 60 feet across the parking lot and not leave a drop
23 of blood?

24 A Leave a drop of blood, yes, sir

25 Q That would be unusual, wouldn't it? An individual

1 has been shot twice in the chest, once into the lung
2 and once in the abdomen Isn't it a little difficult
3 to believe that they would turn and sprint 60 feet
4 across the parking lot?

5 A I would say we see a lot more unusual things than
6 that in the course of the 15 years that I've been in
7 the trauma center

8 Q But when you see those things, that is the exception
9 to the rule, is it not?

10 A Not necessarily Not necessarily the exception

11 Q What condition was Mr Sears in when you first saw
12 him?

13 A His blood pressure was 88 over 66

14 Q Who actually did the triage or saw him initially and
15 decided --

16 A Me

17 Q You did? You saw him as they brought him in the
18 door?

19 A Me

20 Q Did you consider his condition life threatening at
21 that point?

22 A Yes, sir

23 Q Did you get to talk any of the police officers that
24 brought him in?

25 A No, sir

1 Q You did not?

2 A That's not part of the care plan

3 Q But, I mean, did anybody bring it to your attention
4 exactly where and how he had been found?

5 A No, sir I don't --

6 Q All you knew is what you saw on the stretcher?

7 A Yeah My job is to take care of the individual The
8 where and whatfor's don't play a major role in what I
9 do

10 Q Right. But was he unconscious when you first saw
11 him?

12 A No He was talking He had a Glassco of almost 414
13 Which means that he was coherent, telling us what
14 went on

15 Q Was he in any condition to get up and walk around
16 when you saw him?

17 A When you say that, from a perspective of what, when
18 you say walking around?

19 Q Was he in any condition to get up and walk from the
20 stretcher in the examining room?

21 A He was brought in by the EMS Therefore, I would say
22 that we don't allow them to

23 Q What clothes -- what was his clothing when you first
24 saw him?

25 A We took off his clothes as he came in

1 Q Were you present when the clothes were removed?

2 A I don't remember specifically what was being removed,
3 but we always take clothes off when they come in

4 Q And what I'm leading to is, was his attire covered
5 with blood when you saw him?

6 A I don't remember, because I didn't write that down

7 Q Was there any requirement or necessity to transfuse
8 or add any blood?

9 A Yes, sir, we did

10 Q How much blood was he administered?

11 A Initially in the trauma room he received two units of
12 blood And from there we gave him -- we said that
13 his blood loss was two liters

14 Q You were qualified as an expert but solely for the
15 purpose of stating his condition once you saw him
16 You have no knowledge or no way of knowing how he
17 received his injuries?

18 A Correct

19 Q What direction blood splatter or any of that stuff?

20 A Correct

21 Q No further questions Thank you, Doctor

22 THE COURT Mr Strickler

23 CROSS-EXAMINATION

24 BY MR STRICKLER

25 Q Good afternoon, Doctor.

1 A Yes, sir

2 Q My name is Doug Strickler I represent Mr Sears
3 Your treatment of Mr Sears commenced at the time he
4 entered the emergency room Is that correct?

5 A Yes, sir

6 Q And continued for how long?

7 A Until he was discharged.

8 Q Until he was discharged from the hospital? Okay He
9 had some surgical procedures conducted on him?

10 A Yes, sir

11 Q Were you involved in conducting the surgical
12 procedures subsequent to his admission to the ER?

13 A Yes, sir

14 Q All of the surgical procedures but for the procedures
15 involving -- the orthopaedic procedures involving his
16 hand Is that correct?

17 A Right, sir

18 Q Okay Let me see Sigmoid colon injury open, that's
19 one of the injuries he had I believe you described?

20 A Yes, sir

21 Q A laceration of the lung That's one of the
22 injuries --

23 A Yes, sir

24 Q -- you described? And let's see Laceration is a
25 medical term that means a cut as opposed to a bruise

1 or a scape Is that correct?

2 A Yes, sir

3 Q So the lung, you take air in and the oxygen is
4 transferred to the blood as part of the procedure
5 into the lung which then transports it around the
6 body Is that what the lungs do?

7 A Ask your question again I'm trying to figure out --

8 Q What do the lungs do?

9 A All right They're involved in gas exchange, carbon
10 dioxide and oxygen

11 Q Right And that gas is exchanged from the air to
12 what? From the air you breathe in, the gas is
13 transferred to what?

14 A To the alveoli, through the bronchi into the alveoli
15 and then subsequently into the bloodstream

16 Q The bloodstream So there is a flow of blood through
17 the lungs as part of the very process that the lungs
18 perform, correct?

19 A Yes, sir

20 Q That process is to transfer oxygen from the
21 atmosphere to the blood which it uses for the body
22 and on the other end get rid of carbon dioxide,
23 right?

24 A Yes, sir.

25 Q And the blood is the vehicle that carries that stuff

1 around, correct?

2 A Yes, sir

3 Q Okay So, he got his lung cut, and there's blood
4 running through the lung Traumatic hemothorax,
5 what's that, please, sir?

6 A Blood in the chest

7 Q I'm sorry Blood in the chest?

8 A Yes, sir

9 Q Thank you Acute respiratory failure It actually
10 says respiratory (sic) -- I'm sorry -- failure.
11 What's that?

12 A That's he required ventilation after the operation,
13 being on a breathing machine

14 Q Acute What's "acute" mean in medical terms, please,
15 sir?

16 A It means that during the course of his care that he
17 required intubation once he got to the operating room
18 in order for us to perform our operation

19 Q Why would he require intubation?

20 A Well, everybody who has major intra-abdominal surgery
21 would be put on a breathing machine.

22 Q So he had major inter-abdominal surgery?

23 A Surgery

24 Q I'm sorry So it was minor?

25 A He had minor surgery

1 Q Minor surgery?

2 A I think any time I operate on anybody, it's major

3 Q Okay This sigmoid colon, as I understand it, that's
4 the lower portion of the large intestine Is that
5 correct?

6 A Yes, sir

7 Q That was an injury to that What was the nature of
8 that injury?

9 A Through-and-through the colon itself

10 Q A bullet passed through one part of the colon and out
11 the other part of the colon? Okay So you have to
12 open up the person's lower abdomen?

13 A The abdomen

14 Q Right Okay. How long a cut you go ahead and take
15 to do that? Or is this some of this laparoscopic
16 surgery? It's just you don't have to cut?

17 A Well, part of the problem is that we don't know
18 what's injured So the incision is large

19 Q How large of an incision in this case, sir?

20 A The abdomen We open the abdomen from the zyfoid to
21 the pubic synthesis

22 Q From the what? I'm sorry?

23 A Zyfoid to the pubic synthesis

24 Q If you could explain the first word for me in
25 laymen's terms?

- 1 A Zyfold is to the tip of your breast bone.
- 2 Q So from here?
- 3 A To the breast bone
- 4 Q All right So the entire abdomen is opened up You
- 5 dig around in there, find out what the problem is and
- 6 stitch it up Is that it?
- 7 A We explore
- 8 Q Okay
- 9 A Not dig
- 10 Q Explore
- 11 A Yes, sir
- 12 Q You dig very carefully?
- 13 A No. We explore
- 14 Q Yes, sir Pneumonia, he didn't present, come into
- 15 the hospital with pneumonia, I take it?
- 16 A No, sir
- 17 Q Okay So he caught pneumonia?
- 18 A I don't think he caught it I think because of the
- 19 nature of his injuries he developed it, wasn't able
- 20 to move secretions in and out appropriately.
- 21 Q I'll accept your term I don't mean to imply
- 22 anything by "caught it". That's just a common term,
- 23 sir. Hypovolemia, what's that?
- 24 A Volume, decreased volume
- 25 Q Decreased volume of what?

- 1 A Blood
- 2 Q So he lost two units of blood?
- 3 A I said two liters
- 4 Q That was your testimony?
- 5 A Two liters
- 6 Q Two liters?
- 7 A Right He got two when he came in But he lost two
- 8 liters of blood in his abdomen when we opened him up
- 9 Q He got two units of blood when he came in but lost a
- 10 total of two liters?
- 11 A Yeah He got more blood as the course of the
- 12 operative procedure went on.
- 13 Q I've got you How much blood does the human body --
- 14 to the extent you can generalize?
- 15 A It's 70, 80 cc's per kilogram body weight
- 16 Q 70 or 80 cc's per kilogram A kilogram is
- 17 2 2 pounds?
- 18 A Yes, sir
- 19 Q 2 pounds. And 70, 80 cc, 2 1, 10 is 22. How much
- 20 did --
- 21 A I don't know
- 22 Q You didn't get a weight on it?
- 23 A I don't know it offhand
- 24 Q It's not in your records?
- 25 A (Shakes head negatively).

- 1 Q Can you -- well, perhaps we can go on
- 2 A You want a 70-kilogram person? That would be five
- 3 liters. That would be 4 9, but we'd rough it out to
- 4 five liters
- 5 Q So about a 170 kilogram person what? Is about
- 6 150-pound person, something like that? A little
- 7 more? 70 kilogram person?
- 8 A Yes, sir.
- 9 Q 140, 154 pounds Something like that?
- 10 A Yes, sir
- 11 Q Okay So 154 pounds would have about five liters of
- 12 blood Is that correct?
- 13 A Yes
- 14 Q And you replaced two liters of Mr Sears' blood,
- 15 correct?
- 16 A Yes, sir
- 17 Q That total for the two units -- a unit is not a liter
- 18 I take it?
- 19 A 150. Well, it's 300 cc's nowadays
- 20 Q Is that including the two units that were given him
- 21 at the time of the E R treatment, or is that
- 22 exclusive of that amount?
- 23 A Exclusive
- 24 Q Exclusive So two liters of blood would be how many
- 25 units?

1 A 302,000 --

2 Q 302,000?

3 A -- 67.

4 Q 67 units?

5 A Units

6 Q And then he got another two, right?

7 A Yes, sir

8 Q So a total of roughly nine units which would be, at

9 300 milliliters a unit, that's what? 2700

10 milliliters?

11 A Yes, sir

12 Q That's approaching three liters of blood then Is

13 that correct?

14 A Yes, sir

15 Q 2 7 liters of blood All right So if we call

--16 Mr Sears 155 pounds at that time and five liters of

17 blood, so he had roughly during the course of his

18 stay at Richland Memorial half of his blood lost and

19 replaced?

20 A Yes, sir

21 Q All right Acute delirium, what's that mean? I have

22 a thought on what it might mean. But if you could

23 explain, please?

24 A Confusion, disorientation

25 Q This occurred postoperative in his case?

1 A Yes, sir

2 Q And lasted -- he was operated on He came in on
3 October 8th and was operated on I take it immediately
4 or very soon thereafter, correct?

5 A Yes, sir

6 Q And when did his acute delirium resolve itself? In
7 other words, when did he become non-delirious?

8 A Probably about eight days later.

9 Q And what did you do or did the hospital do to treat
10 the delirium in this case?

11 A Medication

12 Q What types of medication was he given?

13 A Halodol and --

14 Q Halodol?

15 A And Ativan

16 Q I'm sorry Ativan?

17 A Ativan

18 Q Halodol is what class of medication? How would you
19 classify that? Antipsychotic?

20 A Yes, sir

21 Q Okay Antipsychotic And Ativan, please, sir, what
22 variety of medication?

23 A Benzodiazepam

24 Q I'm sorry?

25 A It's a Benzo

1 Q Okay Benzodiazepam I know the name but I don't --

2 A Sedative

3 Q Sedative? Okay So during the course of his
4 treatment some eight days for acute delirium he was
5 on antipsychotic medication Halodol is used often
6 in the context of someone that's undergoing
7 psychiatric medication, correct?

8 A Can

9 Q Antipsychotic?

10 A Can

11 Q Correct?

12 A Or if somebody is --

13 Q It may have some cross uses I understand that

14 A If somebody is combative

15 Q I'm sorry?

16 A If someone is combative, you can use it to stop the
17 combativeness

18 Q Okay And that's why it was being used here, because
19 he was combative?

20 A (Nods head affirmatively)

21 Q I'm sorry?

22 A That was one of the reasons it was given for that one
23 dose that he was combative Therefore, he was given
24 Halodol for one period of time and then subsequently
25 converted to the Ativan

- 1 Q So he had only one dose of Halodol?
- 2 A Or one period of time throughout a 24-hour period.
- 3 Treated for a 24-hour period
- 4 Q A period of some -- over the period of some 24 hours
- 5 he was given Halodol and the rest of the time he was
- 6 on Ativan?
- 7 A Or during that first short-term period, yes, sir
- 8 Q During the eight days?
- 9 A The first eight days.
- 10 Q During the eight days So he was psychotic?
- 11 A No
- 12 Q Given an antipsychotic?
- 13 A I said he was combative It's a drug that's used
- 14 sometimes for psychosis But we said he was
- 15 combative
- 16 Q Okay I'm sorry He exhibited symptoms of acute
- 17 delirium, not psychosis That's fine, sir
- 18 A Combative
- 19 Q You think he was making it up?
- 20 A He was combative
- 21 Q He was delirious?
- 22 A Combative.
- 23 Q He suffered from acute delirium?
- 24 A Combative
- 25 Q I'm sorry The --

1 A I'm just saying he was combative

2 Q Yes, sir The diagnosis, 293 0 acute delirium --

3 A Right

4 Q -- was that a diagnosis in his case or not, sir?

5 A That's what they put down, yes, sir

6 Q You were his treating physician, correct?

7 A We had the psychiatry team come by and see him, and
8 that's what they listed him as

9 Q So the people that specialize --

10 A Correct

11 Q -- in mental problems said he suffered from acute
12 delirium?

13 A They said it was delirium, yes, sir

14 Q And let me see Now, just a little bit more, sir

15 Temporary tracheostomy That's a procedure What's
16 involved in that?

17 A It allows us to make an opening into the neck, into
18 the trachea, so we're able to clean out the
19 secretions a lot better

20 Q So you cut a hole in his neck and put a tube down?

21 A In his airway, from his mouth to his neck

22 Q And then a sigmoidectomy, that's the procedure where
23 you cut him from the base of the -- no?

24 A That's when we resected that portion of intestine and
25 sewed it back together

- 1 Q Okay After you cut him open from the base of the
2 sternum down to the iliac crest, then you go in and
3 the sigmoidectomy is when you sew up the --
- 4 A Pubic synesis is where you make the incision, not the
5 iliac crest
- 6 Q 32.29, destroy L-O-C lung, L-E-S-N-E-C Do you have
7 this with your records? It's a summary I believe I
8 don't know what destroy L-O-C lung, L-E-S-N-E-C
9 means.
- 10 A What number?
- 11 Q 32 29 on procedure number 3
- 12 A That's just the injury to his lung That's just the
13 injury to his lung
- 14 Q Okay So that was the repair of the injury to the
15 lung?
- 16 A That's just how they documented the injury to his
17 lung.
- 18 Q Well, No 7, 37 12 pericardiectomy.
- 19 A Pericardiectomy
- 20 Q However you pronounce it, --
- 21 A Mm-hmm (affirmative).
- 22 Q -- what's that?
- 23 A That's when we open the pericardium to make sure
24 there is no injury to the heart
- 25 Q I'm sorry?

1 A We open the sac around the heart to make sure there
2 is no injury

3 Q Pericardium is the sac around the heart So, in
4 addition to cutting his stomach open and repairing
5 the injury to the lower large intestine, what? You
6 also have to open up the chest?

7 A Yeah We did a thoracotomy

8 Q I'm sorry?

9 A We did a thoracotomy We opened the chest

10 Q What's involved in doing a thoracotomy, sir?

11 A Make an skin incision into --

12 Q I'm sorry?

13 A You make an incision in the skin over the chest and
14 we open it

15 Q What do you do to open the chest? Just pull the skin
16 aside?

17 A No You cut through the muscle and you open the
18 chest

19 Q So you cut through the muscle in the chest And you
20 don't cut through any bones in the chest then?

21 A Through the muscle It's like the ribs You've had
22 ribs?

23 Q Right

24 A Right We make an incision in the muscle component
25 of the ribs

1 Q Spread the ribs apart and go in?

2 A Yes, sir

3 Q Put cut into his chest, spread his ribs apart, go in
4 and check the pericardium, the sac that surrounds the
5 heart, right?

6 A That's how we were able to repair the section of the
7 lung

8 Q Okay Other pleural incision That's listed as a
9 separate --

10 A Chest tube That's a tube we put in to drain the
11 fluid out

12 Q So after you do this, as a consequence of doing this,
13 you put a tube in to drain --

14 A Any additionally fluid and help re-expand the lung

15 Q Okay Reopen thoracotomy site It's procedure No
16 11

17 A We washed out the wound

18 Q Wound to --

19 A Chest

20 Q The chest? Is that done at the same time as you
21 repaired it, or was that done sometime later?

22 A On the 10th

23 Q On the 10th?

24 A Mm-hmm (affirmative)

25 Q So then you opened him up again and washed it out?

1 A Washed it out

2 Q Why do you have to do that?

3 A Decrease incidence of infection

4 Q Okay Was he exhibiting symptoms of infection, maybe
5 that pneumonia that you mentioned?

6 A No

7 Q Or some other symptoms of infection then?

8 A Yes, sir

9 Q Okay Fiber optic bronchoscopy?

10 A You take a light It's a tube that has the light on
11 the end that allows us to look inside the airway of
12 the lung area and secretions

13 Q Did you stick a fiber optic tube down into the lungs
14 and look around?

15 A Through the end of the trachial tube or the
16 tracheostomy tube, either one

17 Q Okay. All right, sir Are you acquainted with the
18 appearance of dried blood? Have you had the
19 opportunity to see that?

20 A I've had a couple

21 MR STRICKLER I've got seven photographs I'd
22 like to mark for I D at this particular point, Your
23 Honor

24 (WHEREUPON, Defendant's Exhibit Nos 1 through 7
25 are marked for identification only.)

1 Q You indicated you don't remember whether Mr Sears
2 had a shirt on at the time he presented at the
3 hospital or not?

4 A No, sir

5 Q And so you wouldn't be familiar with the appearance
6 or what type of shirt he was wearing. Just let me
7 present you what's marked as Defendant's 1 through
8 7 -- at this point for I D only, Your Honor -- and
9 ask if you -- taking a look at -- they're all
10 pictures of the same object -- if you can tell me
11 whether the substance that you can see in each of
12 those pictures is consistent with the appearance of
13 dried blood?

14 A That would be the appearance of it.

15 Q Okay Thank you very much, sir

16 MR. STRICKLER And, Your Honor, I don't have
17 anything further

18 THE COURT Redirect?

19 REDIRECT EXAMINATION

20 BY MS CAMPBELL

21 Q Just a couple of questions And I'll be brief. He
22 was given antipsychotic medication, just to be
23 clear -- and this will be the last time -- because he
24 was combative?

25 A Yes, ma'am

1 Q Thank you And we've also heard something about, I
2 mean, he had a lot of bleeding internally and some
3 externally Is that correct?

4 A Yes, ma'am

5 Q And the longer he sits, the more he's going to bleed,
6 right?

7 A Yes, ma'am

8 Q Both internally?

9 A And externally

10 Q And externally?

11 A Yes, ma'am

12 Q So if he's sitting in the van for a period of, say,
13 20, 30, 40 minutes, he is going to continue to bleed?

14 A Yes, ma'am

15 Q And, again, you mentioned in your direct testimony a
16 person, even a person sustaining wounds such as this,
17 even a person that's been shot in the heart, they can
18 get up and move afterwards?

19 A We've had -- yes, ma'am

20 Q And explain that to the jury, why that works, how
21 that works?

22 A It's just from the stress response that you would --
23 just the sympathetic drive, your epinephrine, no
24 epinephrine. It's kind of a -- are released in the
25 body and they will allow you to do this to a certain

1 extent, that you will get up and move around and be
2 able to move with this I mean, it's not uncommon

3 Q It's not uncommon?

4 A No, ma'am

5 Q So it's not uncommon for a person to be able to get
6 up and move?

7 A To move around. No, it's not

8 Q And it would not be uncommon or even unlikely in this
9 case for this man to have been able to get up, go
10 across a parking lot and get into a van and get away?

11 A It is not uncommon for them to get up and move

12 Q Thank you Finally, Doctor, as far as these again,
13 there were no head wounds Head wounds bleed a lot,
14 don't they?

15 A Yes, ma'am

16 Q There were no major vascular arteries or organs hit?

17 A For external bleeding

18 Q For external bleeding?

19 A For external bleeding There were no vascular
20 structures that are easily accessible to the outside
21 of the body

22 Q So initially, when he the bullets penetrated and
23 everything, there would not have be any significant
24 external bleeding?

25 A Correct. Just from the local bleeding point itself

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1 MS CAMPBELL That's all I have, Your Honor

2 THE COURT Mr Burr?

3 MR BURR. One follow-up, Your Honor

4 RECROSS-EXAMINATION

5 BY MR BURR

6 Q Doctor, you weren't testifying that when a person is
7 shot through the hand that it doesn't bleed, are you?

8 A I am not testifying to that, no, sir I'm not

9 Q And if you swing that hand blood is going to --

10 A Potentially, yes

11 MR. BURR No further questions

12 THE COURT Mr Strickler?

13 MR STRICKLER No I don't have anything
14 further, Your Honor Thank you

15 THE COURT Thank you Thank you very much,
16 Doctor You may come down Doctor be excused?

17 MS CAMPBELL Thank you

18 MR STRICKLER Without objection

19 MR BURR No objection

20 THE COURT: Thank you very much, Dr Bynoe

21 WITNESS Yes, sir

22 THE COURT Call your next witness, please

23 MS. CAMPBELL The State calls Tray Laffin

24 WILLIAM LAFFIN, after being duly sworn,
25 testifies as follows:

THE CLERK Please have a seat State your full

610

1 name

2 WITNESS Investigator William Laffin

3 DIRECT EXAMINATION

4 BY MS CAMPBELL

5 Q Investigator Laffin, where are you employed?

6 A Richland County Sheriff's Department

7 Q What do you do there, sir?

8 A Presently I'm a major crimes investigator

9 Q As a major crimes investigator, can you tell this
10 jury what your duties include?

11 A I investigate shootings, stabbings, homicides, any
12 major crime of that nature

13 Q Back in October of 2002, were you also working at the
14 Sheriff's Department?

15 A Yes, ma'am At that time I was a narcotic agent for
16 the Sheriff's Department.

17 Q A narcotic agent?

18 A Yes, ma'am

19 Q Did you have an occasion, turning your attention to
20 October 8th of 2002, to assist in an investigation
21 involving an attempted robbery on Percival Road?

22 A Yes, ma'am, I did

23 Q And can you tell this jury how you first became
24 involved in this case?

25 A Yes, ma'am I was actually traveling northbound on

1 I-77. And I was somewhere probably a couple of miles
2 out from the Decker Boulevard exit when I received a
3 dispatch call over the radio about the armed robbery
4 that had just occurred and that shots were fired on
5 the scene and that the suspects had fled and they put
6 out a be-on-the-lookout for the vehicle that they
7 fled in

8 Q And that's what we refer to as a BOLO?

9 A Yes, ma'am

10 Q And that's basically a signal that goes out over the
11 radio, a be-on-the-lookout, and it can be a
12 description of an automobile?

13 A Yes, ma'am

14 Q Or other type information?

15 A Yes, ma'am In a case like this, we were fortunate
16 that a description of the suspects and a description
17 of the vehicle went out

18 Q And once you had heard the description of the
19 suspects and the vehicle come over the radio, and
20 when you say you're on I-77 near the Decker Boulevard
21 exit, is that near the Percival Road area?

22 A Yeah If you get off on Decker Boulevard exit
23 traveling northbound on 77, you'll actually come
24 to -- the first stop light you come to is Percival
25 Road

1 Q So the first stop light, that's right, right? You
2 get off on Decker and the first stop light is
3 Percival Road?

4 A Yes, ma'am

5 Q So Percival actually crosses Decker right there at
6 that exit?

7 A Yes, ma'am

8 Q And you were traveling down And as a result of
9 listening to the BOLO, what, if anything, did do you?

10 A Well, fortunately, I was close to the area. So
11 everybody that is close to the area and receives the
12 call kind of starts panning out, searching the area,
13 taking the major, I call them escape routes, major
14 routes where you can most likely going to run across
15 the individuals

16 Q And it's important to do this as soon after the
17 people leave the scene as possible?

18 A Yes, ma'am

19 Q Because you want to try to catch them before --
20 because the further they get from a scene the less
21 likely that you're going to be able to find them?

22 A Exactly

23 Q So as part of your duties that afternoon, tell the
24 jury where you went and what you did?

25 A I was in the immediate area, so I got off at Decker

1 Boulevard and started searching Percival Road right
2 there If I remember correctly, I went through
3 Woodfield Park which is a neighborhood right behind
4 the subdivision or a subdivision right off Percival
5 Road And then it was real shortly after I got onto
6 Percival Road I heard a deputy sign out on I-77
7 southbound with a red in color minivan which matched
8 the BOLO description

9 Q And did that deputy -- you say he signed off on the
10 radio So he indicated that he had located a vehicle
11 which matched the description of the vehicle used in
12 the robbery?

13 A That's correct Yes

14 Q And as a result of receiving that information, where
15 did you go?

16 A I went directly to him And he was probably a couple
17 of miles from me. So it probably took me two or
18 three minutes to get to him

19 Q And what officer was that?

20 A That was Dowdy, Deputy Dowdy

21 Q Deputy Dowdy?

22 A Yes, ma'am

23 Q And had Deputy Dowdy actually approached the vehicle
24 at the point when you got there?

25 A No, ma'am We knew that shots had been fired. We

1 knew that an armed robbery attempt is the way the
2 BOLO went out So we automatically assume they are
3 armed It's not really policy but it's more like
4 protocol not to approach a vehicle by yourself.
5 Especially if you can see movement in the car, you
6 don't want to approach the vehicle We try and call
7 the person out of the vehicle

8 Q And those are for safety reasons?

9 A That is correct

10 Q For both the person in the vehicle as well as the
11 officers?

12 A That's right

13 Q And at that point when you got to the scene, where
14 was the vehicle located?

15 A When I got to the scene, the vehicle was between
16 Forest Drive and Fort Jackson Boulevard on I-77
17 northbound on the right-hand side of the road

18 Q On I-77 northbound?

19 A Southbound I'm sorry Southbound

20 Q I-77 southbound So that's on the side of the road
21 that's going down towards Charleston?

22 A That's correct

23 Q And you would have passed the Forest Drive exit So
24 you'd passed the Wal-Mart on your right and Sam's
25 Club right there, right?

1 A Yes, ma'am

2 Q And it's on down before you get to the next exit on
3 the right?

4 A Which is Fort Jackson Boulevard, yes, ma'am.

5 Q When you got there what did you find?

6 A When I got there Deputy Dowdy was on the scene. He
7 was trying to call the potential suspects out of the
8 van The van had I noticed a flat tire on the van

9 Q Mm-hmm (affirmative)

10 A We could see movement in the van but we couldn't tell
11 how many people were in it Sergeant Chris Cowan was
12 on the scene, and he was telling us that he saw at
13 least one person in the van, it seemed like he was
14 laying down in the back

15 Q In the back? And as a result, once you got there,
16 did other officers also respond?

17 A Yes, ma'am Several officers came from -- I believe
18 we had some city officers also show up on the scene,
19 but we had several county deputies on the scene

20 Q Because of the nature of this robbery, did you close
21 down parts of the highway that afternoon?

22 A Yes, ma'am We assumed that whoever was in the van
23 was not coming out because of hostile reasons.
24 Either they didn't want to be caught because they had
25 just attempted an armed robbery or really didn't know

1 why they wouldn't come out, they didn't want to go to
2 jail per se So we assumed they were armed So we
3 shut down the interstate so that nobody passed by
4 If there was gunfire no innocent bystanders would be
5 hit

6 Q Is that protocol in a case such as this?

7 A Yes, ma'am

8 Q Were you aware that when you got there Deputy Dowdy
9 had a video in his car?

10 A Yes, ma'am Several of our officers have video in
11 their cars I knew Deputy Dowdy to have one because
12 he's on the traffic team

13 Q And as you got to the scene and assisting Deputy
14 Dowdy, approximately how long were you there
15 attempting to get someone to come out of the vehicle?

16 A I was there probably a good 15 minutes or so It may
17 have been a longer It was quite a long time that we
18 were trying to call them out

19 Q And did someone eventually come out of the vehicle?

20 A Yeah Eventually the middle doors, I think it was a
21 sliding glass door or a sliding --

22 Q Sliding door on the van?

23 A Sliding door on the minivan, that eventually popped
24 open, and a light skinned black male fell out of the
25 vehicle.

1 Q I want to get back to that I'm going to show you
2 what's been marked as State's Exhibit 88. Do you
3 recognize this video?

4 A Yes, ma'am That appears to be the video from
5 Dowdy's vehicle

6 Q Did you review that video at my request?

7 A Yes, ma'am, I did

8 Q That fairly and accurately depicts what happened out
9 there on the side of the highway that afternoon once
10 you arrived?

11 A Yes, ma'am, it does

12 MS CAMPBELL Your Honor, we'd offer State's
13 Exhibit 88 into evidence at this point

14 MR STRICKLER May we approach, Your Honor?

15 THE COURT Sure.

16 (Whereupon, a bench conference is had)

17 Q Investigator, excuse me for my ineptitude This
18 video, you had an opportunity to review it?

19 A Yes, ma'am, I have.

20 Q Does it fairly and accurately depict the events as
21 they occurred that afternoon on the side of I-77
22 between Forest Drive and Fort Jackson Boulevard?

23 A Yes, ma'am, it does.

24 Q Has had tape been altered or changed in any way from
25 the actual events?

1 A No, ma'am.

2 MS CAMPBELL: Your Honor, at this time we'd
3 offer it into evidence

4 MR. STRICKLER Note my objection

5 THE COURT Over objection The objection is
6 overruled

7 MR STRICKLER Excuse me, Your Honor I still
8 object to the audio portions of it I have no
9 objection to the video portion

10 THE COURT: All right Objection is overruled

11

12 (WHEREUPON, State's Exhibit No 88 was admitted
13 into evidence.)

14 Q I'm also going to ask you to look at what's been
15 marked as State's Exhibit 11 and State's Exhibit 84

16 A Yes, ma'am

17 Q Do you recognize these diagrams?

18 A Yes It looks like the diagram of I-77

19 Q Okay

20 MS CAMPBELL Your Honor, at this time we'd
21 offer these in evidence.

22 MR. BURR No objection, Your Honor

23 MR STRICKLER: No objection

24 (WHEREUPON, State's Exhibit No 11 was admitted
25 into evidence)

1 (WHEREUPON, State's Exhibit No 84 was admitted
2 into evidence)

3 MS CAMPBELL Your Honor, may the witness step
4 down?

5 THE COURT Certainly

6 Q You stand over on this side so the court reporter can
7 hear you real well Investigator, can you tell the
8 jury -- let me move it up just so everybody can see
9 it -- what does this depict generally?

10 A This is a section of interstate 77

11 Q Is this interstate 77?

12 A Yes, ma'am

13 Q On this also, the event occurred at 3101 Percival
14 Road?

15 A Yes, ma'am

16 Q And that's here in Richland County?

17 A Yes, ma'am, it is

18 Q And is that location approximately depicted on that
19 map?

20 A Yes, ma'am.

21 Q And that's depicted up here?

22 A Yes, ma'am You have the Alpine Road here It's
23 just outbound from Alpine Road

24 Q Alpine Road? And then going down I-77, is this going
25 southbound, going this direction?

- 1 A Yes, ma'am That would be correct
- 2 Q And if you were at Percival Road and you wanted to
- 3 get to I-77, what would be the most direct route?
- 4 A Right down Percival Road to 77 where Percival Road
- 5 and Decker meet, you could jump right on 77 right
- 6 there
- 7 Q And that would be right here?
- 8 A Yes, ma'am
- 9 Q And then as you go on down, I notice that here is
- 10 Forest Drive which would be the next major
- 11 intersection?
- 12 A Yes, ma'am
- 13 Q Okay. And that would be going in a southbound
- 14 direction Is that correct?
- 15 A Yes If you were --
- 16 Q Towards Charleston?
- 17 A That's correct
- 18 Q And this continues a little bit better on State's
- 19 Exhibit 84 Does this yet another section of
- 20 Percival Road up here? Percival continues to run
- 21 parallel even past Decker?
- 22 A That's right
- 23 Q Back to I-77?
- 24 A Yes Actually Percival Road runs all the way to
- 25 Forest Drive

- 1 Q And down here can you see where Fort Jackson
2 Boulevard actually intersects?
- 3 A Yes, ma'am That's correct.
- 4 Q On here, too, you can see where Forest Drive actually
5 intersects?
- 6 A Yes, ma'am
- 7 Q So these two areas that kind of bow out on here, this
8 is Forest Drive And where would the Decker
9 Boulevard exit be? It's not shown on here
- 10 A It would be up here
- 11 Q Up here?
- 12 A Yeah Northbound.
- 13 Q So it would one exit The next exit would be the
14 Forest Drive?
- 15 A Exactly
- 16 Q And then the Fort Jackson?
- 17 A Yes, sir.
- 18 Q Where exactly was the vehicle located when you all
19 came up on it that afternoon? That morning Excuse
20 me
- 21 A It was between Forest Drive and Fort Jackson
22 Boulevard But as I recall it was closer to Fort
23 Jackson than it was to Forest Drive.
- 24 Q So it wasn't actually halfway inbetween?
- 25 A No It was I would say somewhere in here

1 Q Somewhere in here?

2 A Yes, ma'am

3 Q And it was located on the side of the road?

4 A That's correct

5 Q And you're aware, sir, are you not, that there's a
6 wall that runs down the side of this highway?

7 A Yes, ma'am

8 Q And that's a pretty --

9 A It's pretty tall, yeah I would guess 15 feet or
10 something It's pretty significant

11 Q It's a significant wall. And it's a solid wall?

12 A Yes, ma'am

13 Q Okay So if a person were to, say, have to abandon
14 their vehicle here, it would be difficult to get over
15 that wall?

16 MR. STRICKLER Objection to the leading

17 Q Would it be difficult?

18 A I would assume, yes I would say it would be very
19 difficult to get over that wall

20 Q And the closest exit upon exiting that vehicle in
21 your opinion would have been --

22 A Fort Jackson Boulevard

23 Q Are you familiar with Barkoot Apartments?

24 A Yes, ma'am It's an apartment complex right in this
25 general area Off of 77, if you get off on Fort

1 Jackson Boulevard, it's immediately to your right
2 here

3 Q And if you can stay standing and help me actually
4 with this. You mentioned that there was a videotape
5 that was made that afternoon? Morning?

6 A Yes, ma'am Several of our deputies have in-car
7 cameras which also have a mike, microphone that they
8 wear on their body that's hooked directly to them
9 that runs a direct signal to their vehicle for
10 officer safety and liability reasons.

11 Q And I'm putting in State's Exhibit 88. I hope this
12 works Okay

13 (Playing videotape)

14 Q What is shown here?

15 A This is the view from the front of Deputy Dowdy's
- 16 vehicle, and this is the van that he had signed out
17 with that matched the description of the BOLO put
18 out

19 Q Where are you at this point?

20 A I am behind Dowdy's vehicle and covered so that if
21 gunfire were to ensue I would be protected.

22 Q At this point I see there's still traffic coming up
23 and down this lane?

24 A Yeah Only going northbound We had already cut off
25 traffic going southbound

1 Q That's why there are no cars here?

2 A Right

3 Q And at this point had there already been attempts to
4 ask the person inside to exit the vehicle?

5 A Yes. Deputy Dowdy had tried several times over the
6 P A system to get the suspect out of the vehicle
7 You'll hear him again try some more. Right now we're
8 kind of getting officers in a position in case he
9 does come out firing or running That's over the
10 P A system

11 Q And the time that's shown on this is what time? Who
12 is that?

13 A That's me there Just a couple of seconds or a
14 minute before this tape started we had a sniper on
15 the scene and we wanted to get him in position so if
16 the guy did come out firing And that car was in the
17 way, so I just moved it out of the way so the sniper
18 would have a direct line

19 Q What time is this showing?

20 A It's showing 10 15 in the morning

21 Q And at this point -- this video goes further back --
22 you all had been there several minutes?

23 A Yes, ma'am We had been there, yeah, several
24 minutes. This is just -- and Deputy Dowdy had been
25 there even longer than I had So .

1 Q What does that show?

2 A That's the light skinned black male falling out of
3 the vehicle That's me running up to him At this
4 time I didn't know if there was another suspect in
5 there, so we're clearing the rest of the vehicle
6 That's me calling for an ambulance

7 Q So that's you calling for an ambulance?

8 A Immediately

9 Q Was there anyone else in the vehicle that day?

10 A No, ma'am

11 Q And eventually -- it's on the video -- does the
12 ambulance come?

13 A Yes, ma'am An ambulance comes and they tend to him
14 and take him to the hospital

15 Q There at the scene that afternoon, did you initially
16 try to identify the person that came out of the
17 vehicle?

18 A Yes, ma'am After he fell out of the vehicle, we saw
19 he didn't have a gun in his hand any more, we then
20 try to identify who he is Like I said, I was
21 looking at him, then I'd check out the car, you know,
22 make sure nobody was in it There were some people
23 trying to talk to him to find out information Every
24 time I was around he would not say he who he was I
25 think at one time a deputy found an I D on him

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1 Q I'm going to show you that I D , State's Exhibit 86

2 Do you recognize that?

3 A Yes, ma'am That's a South Carolina driver's license
4 of Demetrio Sears

5 Q And that was found on his person that day?

6 A Yes, ma'am

7 MS CAMPBELL Your Honor, at this time we'd
8 offer it into evidence

9 THE COURT Without objection?

10 MR STRICKLER Yes, sir

11 MR BURR. No objection

12 (WHEREUPON, State's Exhibit No 86 was admitted
13 into evidence)

14 Q Once the defendant had been transported from the
15 scene to the hospital, did you have an opportunity to
16 do some follow-up investigation as far as the van was
17 concerned?

18 A Yes, ma'am After the suspect had been transported
19 to the hospital, I was the first investigator on the
20 scene So I kind of got put in charge of the scene
21 there as far as the van was concerned Of course
22 there is other people at the initial incident at the
23 Kustom Audio

24 Q Kustom Audio?

25 A But I became in charge of the van site

1 Q And, in fact, was a forensic investigator, I believe
2 Investigator Livingston, who is here in the
3 courtroom; was he called to the scene?

4 A Yes, ma'am I had him notified so that had could
5 come process that scene

6 Q And prior to Investigator Livingston getting there
7 though, did you do a brief search of the vehicle?

8 A I did a brief search for weapons and any kind of
9 immediate paperwork that I could identify the other
10 two suspects that we still hadn't found

11 Q During your search of the vehicle, did you secure any
12 of the weapons?

13 A No, ma'am I didn't find any other weapons in it

14 Q Beg the Court's indulgence What items did you
15 actually find during the course of your search
16 however?

17 A I remember finding paperwork in the vehicle that kind
18 of gave me the identity of who owned the vehicle and
19 possibly who was driving the vehicle I also found
20 rags I guess everybody calls them dew rags
21 They're kind of the rags you put over your head You
22 can tie them on They're commonly used as masks
23 also

24 Q Did you find anything else?

25 A I found the yellow bag I found several things in

1 there. But I believe I found the -- I collected the
2 yellow bag also

3 Q And I want to show you these First you mentioned
4 some paperwork. What was the importance of you
5 trying to collect the paperwork for the van?

6 A Try to identify the other two suspects I wanted to
7 find any kind of information I could in there, who
8 the van belonged to.

9 Q And I show you this Is this the paperwork you
10 collected from the car that day?

11 A Yes, ma'am. I know that because as soon as I
12 collected it I put it in this envelope and I labeled
13 what I found.

14 Q That's your handwriting?

15 A Yes, ma'am. That's my handwriting

16 Q And that is what was collected from the car?

17 A Yes, ma'am.

18 MS. CAMPBELL. Your Honor, at this time we would
19 offer it into evidence.

20 MR. BURR I have no objection

21 MR STRICKLER None from me, Your Honor

22 (WHEREUPON, State's Exhibit No 112 was marked
23 for identification and received into evidence)

24 Q Were you able to determine that afternoon who the van
25 belonged to?

1 A Yes, ma'am The van came back to a Veronica Jones

2 Q Veronica Jones?

3 A Yes, ma'am.

4 Q I notice that some of this paperwork in here also has
5 her name on it?

6 A Yes, ma'am

7 Q In addition to that, did you find someone else's name
8 on paperwork in there?

9 A Yes, ma'am I started finding personal paperwork
10 which belonged to Willie Alexander

11 Q Willie Alexander?

12 A Yes, ma'am It was 2523 Pleasant Ridge Drive

13 Q 2523 Pleasant Ridge Drive?

14 A Yes, ma'am

15 Q And that was paperwork you found in the van?

16 A Yes, ma'am It was several items, not just one or
17 two items It was several items

18 Q I'll get back to that relationship in a minute You
19 also said that you found this yellow bag?

20 A Yes, ma'am

21 Q State's Exhibit 98?

22 A That's correct

23 Q And was this the condition it was in when you found
24 it?

25 A Yes, ma'am

1 Q Did it have anything in it?

2 A I don't remember anything in it, or it would still be
3 in there

4 MS CAMPBELL Your Honor, at this time we'd
5 offered State's Exhibit No 98.

6 MR BURR No objection

7 MR STRICKLER Without objection, sir

8 (WHEREUPON, State's Exhibit No 98 was admitted
9 into evidence)

10 Q You mentioned some rags that you found I show you
11 what's been marked as State's Exhibit No 87?

12 A Yes, ma'am

13 Q Do you recognize those?

14 A Those are black and gray, I call them dew rags They
15 were found in the vehicle behind the passenger's
16 seat You've got the driver's seat and the
17 passenger's seat up front It was found in the
18 middle behind those two but before you get to the
19 bench seat in the back where additional passengers
20 would ride up front, would ride

21 Q Why did you think those were significant?

22 A Because they could be used as masks, and I knew it
23 was just an armed robbery attempt

24 Q Once you had determined that a Veronica Jones, that's
25 who the van belonged to, were you able to later on

1 determine Veronica Jones' relationship to Willie
2 Alexander?

3 A Yes, ma'am Once I found the address of Veronica
4 Jones and of Willie Alexander, I tried to have
5 officers sent to that location to see if Willie
6 Alexander would show up at his house or at the
7 apartment I sent one officer over there, but
8 oftentimes -- I was there for so long by time I got
9 out to have somebody over there, you know, by the
10 time communication gets there, I finally had somebody
11 sent over there And I did finally catch up with
12 Veronica Jones at her apartment

13 Q At her apartment?

14 A Yes, ma'am

--15 Q Where was that located?

16 A It was Deerwood Apartments

17 Q Deerwood Apartments? And Deerwood Apartments, is
18 that located close to the Fort Jackson Boulevard
19 exit?

20 A Yes, ma'am I don't remember exactly how to get
21 there, but I remember it was relatively close

22 Q And later that day did you find the defendant, Willie
23 Alexander?

24 A Yes, ma'am I talked with Veronica Jones

25 Q And you can't say what she said Okay?

- 1 A Okay But I talked with her
- 2 Q You talked to Veronica And then --
- 3 A And then I left there and went to 2523 Pleasant Ridge
- 4 which was the address I had on Willie Alexander I
- 5 went there.
- 6 Q And did you find the defendant at that residence?
- 7 A Yes, ma'am. I found him at that residence
- 8 Q Subsequent to finding him there, did you transport
- 9 him to headquarters?
- 10 A Yes, ma'am I transported him to headquarters. And
- 11 at that time he was turned over to Sergeant Scott
- 12 McDonald
- 13 Q And Sergeant McDonald was to interview him?
- 14 A Yes, ma'am
- 15 Q The person that you saw falling out of the van that
- 16 had to be transported to the hospital, can you
- 17 identify him?
- 18 A Yes, ma'am It's Demetrio Sears, the guy in, I guess
- 19 it's the light blue shirt there
- 20 Q In the middle?
- 21 A Yes, ma'am
- 22 Q The address that you said, the Pleasant Ridge
- 23 Drive --
- 24 A Yes, ma'am.
- 25 Q -- that you said where Willie Alexander lived --

1 A Yes, ma'am

2 Q -- that's on the paperwork I believe you have in
3 there?

4 A Yeah Well, I'm looking at my statement I may have
5 some numbers backwards But I found him at his mom
6 and dad's house

7 Q And that was the address at Pleasant Ridge Drive?

8 A Yes, ma'am

9 Q The 2523?

10 A Yes

11 Q That's just one piece of paper?

12 A 2523 Pleasant Ridge

13 Q And I show you back State's Exhibit 86 That's the
14 license that you got from Demetrio Sears?

15 A Yes, ma'am

16 Q What's the address on that license?

17 A 2523 Pleasant Ridge

18 Q Pleasant Ridge Drive?

19 A Yes, ma'am.

20 Q The address where you found Willie Alexander?

21 A Yes, ma'am.

22 Q And that's the address on Demetrio Sears' license?

23 A Yes, ma'am

24 MS CAMPBELL That's all I would have, Your
25 Honor

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1 THE COURT Mr Burr

2 MR. BURR May it please the Court.

3 CROSS-EXAMINATION

4 BY MR. BURR

5 Q Officer, would you please repeat for me once again
6 exactly what you first heard, how you were first
7 notified that an incident had occurred on Percival
8 Road?

9 A I got it over the radio, over our dispatch radio that
10 there was an attempted armed robbery I'm going
11 strictly off memory unless I -- you know, I had heard
12 the 911 tape But I remember an armed robbery
13 attempt, shots fired, and a red in color, burgundy in
14 color minivan

15 Q Did they give the description -- I mean, the address
16 of 3101B Percival Road?

17 A No I don't think so I don't remember I don't
18 recall that address coming out specifically

19 Q Most of your testimony dealt with the location of the
20 vehicle out on highway interstate 77?

21 A Yes, sir

22 Q Did you ever have occasion to go over to the actual
23 location where the shooting took place?

24 A No, sir

25 Q Are you familiar with it? Do you know where Ntense

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1 Designs --

2 A I know the general area, but, honestly, I have never
3 noticed it before going out, you know, driving that
4 way I never really stopped and noticed it.

5 Q I think you stated that you're currently an
6 investigator, but at that time you were a narcotics
7 agent Is that correct?

8 A Yes, sir. I was a narcotic agent for three years

9 Q Did you have occasion to discuss this case on that
10 particular day with Officer McDonald?

11 A Yeah Yeah I mean, basically, what I found on the
12 scene and what we -- how I came to find Alexander
13 And, yes, sir

14 Q And isn't it true that originally the theory was it
15 was a drug deal gone bad, that drugs were involved?

16 A I don't recall that as being the theory, no, sir

17 Q That was certainly brought up, wasn't it?

18 A Well, in any case you have to look at every aspect
19 I mean, it just -- you throw ideas back and forth to
20 each other just so you'd cover every angle

21 Q Did Officer McDonald, Detective McDonald share with
22 you the descriptions that he had gotten from Mr
23 Patterson as to the people that supposedly robbed the
24 place?

25 A I don't recall that I got them directly from him,

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1 because I was on the scene and he was not at the same
2 scene I was It was being dispatched over the radio,
3 a description of the other two suspects that we were
4 looking for

5 Q Did he mention the Paco, the Hispanic drug dealer to
6 you?

7 A Until yesterday I'd never heard of him I guess he
8 was mentioned yesterday That's the first time I've
9 heard of him

10 Q What about a Kassim Horzendorf?

11 A Again, until yesterday I'd never heard those names
12 before.

13 Q Even in your prior job as a narcotics agent you'd
14 never heard those names?

15 A No, sir

16 Q The day of the incident, October 8th, 2002, was the
17 name Tashim mentioned to at all?

18 A No, sir Who was the second one? I thought that's
19 the second person you asked me

20 Q No

21 A Okay

22 Q The names are confusing to me also and I am terrible
23 at pronunciation One is K-A-S-S-I-M, Kassim
24 Horzendorf, who was placed, his picture, in a
25 line-up Were you a party to that?

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1 A No, sir I don't know that name either

2 Q And the other name mentioned was Tashim, later
3 identified or referred to as Tashim Vann, VA-N-N?

4 A Yes, sir.

5 Q Did you guys spend any time trying to find
6 Mr Tashim?

7 A No, sir Until yesterday that's the first time I
8 heard the name

9 Q I have no further questions Thank you

10 THE COURT Mr Strickler

11 MR. STRICKLER May it please the Court, sir

12 CROSS-EXAMINATION

13 BY MR STRICKLER

14 Q Good afternoon, Investigator

15 A Good afternoon

16 Q What kind of shape was Demetrio in when he fell out
17 of the van?

18 A When he finally came out, he was in pretty severe
19 shape

20 Q You don't think he was faking falling out of the van?

21 A No, sir

22 Q He wasn't in any shape at that point in time in your
23 opinion to go sprinting down the road?

24 A No No. Once he came out I realized that he had
25 been shot

1 Q He had was in shape to fall out of the van That's
2 the kind of condition he was in?

3 A Yes, sir I would agree with that

4 Q When you all were asking him his name, you indicated
5 he didn't respond with his name, he did -- you got
6 the I D from him supply his name, agree that that
7 was his name I don't think you but to one of the
8 other officers on the scene?

9 A Yes, sir. I recall that once we found his I D. we
10 asked him -- you know, we generally ask something to
11 the effect of Is this you, Demetrio? And he
12 acknowledged, yes, that was him.

13 Q Well, and we can agree that he was in pretty bad
14 shape when he fell out of the van?

15 A Yes, sir

16 Q Okay And you're not sitting there pretending to be
17 able to tell what was going through his mind at that
18 point in time, right, when he fell out of the van?

19 A Would I pretend to know what he was thinking?

20 Q Right

21 A No, I wouldn't No

22 Q Okay You can't tell where his thoughts were at that
23 particular point in time?

24 A No, sir

25 Q You could tell that physically he was in pretty bad

1 shape?

2 A He appeared to be, yes, sir.

3 Q And you took appropriate steps to go ahead and
4 address that. You got EMS there as fast as -- they
5 got there inside about five minutes, right?

6 A They got there pretty quickly

7 Q But he'd been sitting in that van for a period of
8 time prior to him falling out, right?

9 A Mm-hmm (affirmative)

10 Q And you said there weren't any weapons found in
11 there, right?

12 A I did not find any, no, sir

13 Q To your knowledge You didn't actually go in and
14 search the van, right?

15 A No Well, I leaned in and got some paperwork out of
16 the glove box

17 Q Mm-hmm (affirmative)

18 A And then there was a couple of items right there, you
19 know, immediate drafts that were important that I
20 felt at the time that I wanted to get my hands on

21 Q But that's -- as far as doing the thorough look
22 through the van --

23 A Yes, sir

24 Q -- that's why you had Investigator Livingston?

25 A That's right. I'd get the lab to get out there and

6:10

1 do that

2 Q Thank you very much Very good, sir

3 THE COURT Anything further?

4 MS. CAMPBELL No, Your Honor

5 THE COURT You may come down Thank you very
6 much

7 WITNESS Thank you, Judge

8 THE COURT Call your next witness

9 MS. CAMPBELL The State calls Ray Livingston

10 RAY O LIVINGSTON, after being duly sworn,
11 testifies as follows

12 THE CLERK. Please have a seat and state your
13 full name

14 WITNESS Ray O'neil Livingston

15 DIRECT EXAMINATION

16 BY MS CAMPBELL

17 Q Investigator Livingston, where are you employed?

18 A Richland County Sheriff's Department

19 Q And how long have you worked there?

20 A Since '94

21 Q Since 1994?

22 A Yes, ma'am

23 Q And prior to 1994, where were you employed?

24 A I was in the military, U S military

25 Q U S military?

26 A Yes Retired

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1 Q And how long did you serve in our U S military?

2 A 23 years

3 Q And so you retired from the military in the early
4 1990's?

5 A Yes, ma'am

6 Q And after that you became involved or you became
7 employed at the Sheriff's Department Is that
8 correct?

9 A Yes, ma'am

10 Q What do you do at the Richland County Sheriff's
11 Department, sir?

12 A Presently I work in the forensics area

13 Q And as part of the forensics area, can you tell this
14 jury generally what your duties include?

15 A Include going out processing crime scenes, collecting
16 evidence, preserving the crime scene, preserving
17 evidence of the crime scene.

18 Q And Investigator Russell testified earlier today Is
19 he in your same unit?

20 A Yes, ma'am.

21 Q And you all's responsibilities are similar?

22 A Yes, ma'am

23 Q Can you tell this jury a little bit about your
24 training and your education in the field of crime
25 scene investigation?

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1 A Yes, ma'am Training initially started at the South
2 Carolina Criminal Justice Academy, going through the
3 basic course Additional courses are fingerprint
4 identification, fingerprint -- learning how to take
5 fingerprints, photography, and crime scene
6 investigations Crime scene investigation will
7 extend throughout other schools My schools include
8 University of Maryland Homicide Investigation
9 Correction The University of Louisville Homicide
10 Investigation, University of Maryland Armed Robbery
11 Investigation And I've got -- I've been trained
12 through the A I A South Carolina Association of
13 Identifications and the National Association

14 Q And, sir, you've been qualified before as an expert
15 in the area of crime scene investigation?

16 A Yes, ma'am.

17 MS CAMPBELL Your Honor, at this time we'd
18 offer him as an expert in the area of crime scene
19 investigation

20 THE COURT Any objection or Voir Dire?

21 MR BURR None from Mr Alexander

22 MR STRICKLER I have no Voir Dire for
23 Investigator Livingston.

24 THE COURT Thank you very much

25 MR BURR Thank you, sir

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1 Q Investigator Livingston, turning your attention back
2 to October of 2002, did you have an occasion to
3 respond to a van on the side of I-77?

4 A Yes, ma'am

5 Q And approximately what time did you arrive at the
6 scene that morning?

7 A It was somewhere around I think 10 30, I believe it
8 was

9 Q Around 10 30 in the morning?

10 A Yes, ma'am

11 Q When kind of call were you responding to? Were you
12 aware?

13 A No, ma'am I was in my office I was doing some
14 processing of other evidence on other cases there I
15 had my Walkie-Talkie on I had it turned down low
16 I could a hear a motion on the radio and I turned it
17 up And then at the time I turned it up I could hear
18 someone saying that an individual had been shot on
19 the interstate, fell out of the van The evidence
20 that I had out, I couldn't just leave right away, put
21 it up And I went around and talked with my
22 supervisor and several other people to see if
23 assistance was needed out there on the interstate
24 Q So you were responding basically in assistance to a
25 call that had gone out on the radio?

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- 1 A Yes, ma'am.
- 2 Q And those are parts of your duties?
- 3 A Yes, ma'am.
- 4 Q When you got to the scene that day, what did you
5 find?
- 6 A I found a red van parked on the right-hand side of
7 I-77 southbound between Fort Jackson Boulevard and
8 Decker Boulevard Or not Decker Forest Drive
- 9 Q Were there other officers on the scene there when you
10 got there?
- 11 A Yes, ma'am
- 12 Q Was the defendant, Demetrio Sears, still there at the
13 scene, or had he been taken off by ambulance yet?
- 14 A He had already been taken off by ambulance
- 15 Q Did you have an occasion that morning to process the
16 car that was found on the side of the road?
- 17 A Yes, ma'am Once I got there I met with Investigator
18 Laffin and other officers and they explained to me
19 what had happened The first thing I like to do when
20 I arrive on a crime scene is go and do what we call a
21 walk-around, walk around, see what's in the van,
22 what's around the van Once I had heard that shots
23 had been fired I also checked the van for bullet
24 holes there
- 25 Q The first thing you did was photograph the car that

615

1 day?

2 A Yes, ma'am

3 Q And in photographing the car, I take it you would
4 start from the outside and then go in?

5 A Yes, ma'am Start from the outside area and you --
6 at some points you like to work your way away and
7 work your way up to the crime scene and then do a 360
8 around the crime scene. Then you go inside the crime
9 scene, which the crime scene was inside the van, do a
10 photographic shoot on the inside of the van.

11 Q Once you had photographed the entire van, do you then
12 process it for fingerprints?

13 A Yes, ma'am

14 Q Was that done in this case?

15 A That was done, but I had to do it in a hurry because
16 it started to rain that day. And the only thing I
17 got from that day was just smudges

18 Q Just smudges And we've heard something about
19 fingerprint collection. In an automobile, especially
20 an automobile where many different people frequent
21 it, would you expect to find smudges?

22 A Yes, ma'am You would

23 Q And tell the jury, why is that?

24 A Someone may walk by your vehicle and just rub up
25 against it or may not just put a flat hand on the

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1 vehicle to leave a perfect latent print

2 Q And, in fact, in frequently used areas such as
3 doorknobs and things like that, what happens when
4 fingerprints get put over fingerprints or smudges get
5 put over smudges?

6 A What I like to call it, it's a stack motion there
7 You're not going to get a good print there You can
8 see where a print was there, but nothing is going to
9 come out affirmative

10 Q In your processing of this van, were you able to get
11 any identifiable prints that would be useful for
12 comparison later to anyone?

13 A No, ma'am

14 Q Is that unusual in your field?

15 A No, ma'am, it's not

16 Q It's not like TV?

17 A No, ma'am

18 Q Once you had processed the van for fingerprints,
19 would you also inspect the interior of the van?

20 A Yes, ma'am I inspected the interior of the van I
21 went from there front to the back There were some
22 items in there Some had blood on it And there
23 were some on the folding on the outside to the
24 sliding door

25 Q And I want to show you what's been marked as State's

647

1 Exhibit 98, this yellow bag Are you familiar with
2 it?

3 A Yes, ma'am

4 Q Was that the yellow bag actually located in the van
5 that day?

6 A Yes, ma'am

7 Q Is this the condition it was in when you got it?

8 A Yes, ma'am There should be some blood on the side
9 Yes, ma'am, there is

10 Q There is some blood right there on the side?

11 A Yes, ma'am Just a little bit of blood

12 Q When you collected this bag, was it empty?

13 A Yes, ma'am

14 Q I'm going to show you a series of photographs and
15 just first ask if you recognize those?

16 A Yes, ma'am

17 Q And do those fairly and accurately depict the van as
18 you found it that day?

19 A Yes, ma'am

20 MS CAMPBELL: Your Honor, at this time we'd
21 offer -- and should I just go through the numbers
22 now?

23 COURT REPORTER. Yes Thank you

24 MS. CAMPBELL: State's Exhibit 94, 97, 96, 95,
25 93, 92, 91, 90, 89 and 85

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1 THE CLERK Without objection from Mr Sears,
2 Your Honor

3 MR. BURR No objection, Your Honor

4 THE COURT All right

5 MS CAMPBELL Without objection Thank you

6 (WHEREUPON, State's Exhibit No 85 was admitted
7 into evidence)

8 (WHEREUPON, State's Exhibit Nos 89 through 97
9 are admitted into evidence)

10 MS CAMPBELL Your Honor, may the witness step
11 down?

12 THE COURT Yes, ma'am.

13 Q Investigator, if you'd come on this side of me so the
14 court reporter can pick it up I'm first going to
15 show you State's Exhibit No 85 Do you recognize
16 that?

17 A Yes, ma'am. That's the van

18 Q Is that how the van appeared that day when you
19 arrived on the scene?

20 A Yes, ma'am

21 Q And that was on the side of the road on I-77?

22 A Yes, ma'am

23 Q And here on State's Exhibit 89, what does that show?

24 A That depicts a four-way shot of the van I wanted to
25 get this shot right here in the van. This where the

619

1 tire flattened when they ran over the grass and went
2 to a stop

3 Q And you mentioned that the tire was flat. Do you
4 remember which tire was flat on the van that day?

5 A I believe it was the right front tire

6 Q The right front tire?

7 A Yes, ma'am I'm not sure, but I think it was the
8 right front tire

9 Q And you mentioned that there were some areas with
10 blood on it in the interior of the van?

11 A Yes, ma'am

12 Q I'm going to show you these photographs, State's
13 Exhibits 92 and 91 Do you recognize those?

14 A Yes, ma'am That's the interior of the van

15 Q This is the interior of the van?

16 A Yes, ma'am This is where the door slides back and
17 the wheel well here. And this is some blood here
18 And this is the back seat Blood was on there also

19 Q I was getting ready to ask you Which seat in the
20 van was the blood found on?

21 A I think the blood was found on both seats there in
22 the back there

23 Q Both seats in the back?

24 A Yes, ma'am

25 Q And this would be -- there were two seats And I

1 show you -- I want to go ahead State's Exhibit 93
2 shows the two separate seats better, doesn't it?

3 A Yes, ma'am

4 Q And show me which ones had blood on them?

5 A This one back here in the rear all the way back to
6 the back was blood And then up here, up under
7 the -- in the back seat, the back side of this seat
8 here had blood on it also

9 Q Okay And in State's Exhibit 93, we might as well as
10 go ahead and get the bag -- I see a yellow thing in
11 the middle of that What is that?

12 A That's the yellow bag

13 Q This yellow bag?

14 A Yes, ma'am

15 Q And that's how you found it?

16 A Yes, ma'am.

17 Q And I notice there are some dots of the blood on the
18 floor in State's Exhibit 90?

19 A All the way in the back there was this jacket, and
20 blood was all over it back there also

21 Q And did that indicate that the person had been
22 bleeding in various spots in the --

23 A In the van, yes, ma'am

24 Q You mentioned that you also found some clothing on
25 the side of the road Is that right?

1 A Yes, ma'am

2 Q I show you State's Exhibit 94

3 A This is the clothing that was on the outside of the
4 van when I got there on the passenger's side door
5 that was open there That was just laying out in the
6 grass

7 Q Were you able to determine how this clothing got
8 there?

9 A I understand that the EMS had cut this clothing off
10 of him then

11 Q This was actually clothing cut off the defendant
12 before he was transported?

13 A Yes, ma'am

14 Q You also mentioned you inspected the car to see if
15 there were any bullet holes in the car?

16 A Yes, ma'am

17 Q And were you able to find a bullet hole?

18 A Yes, ma'am, I was

19 Q And I want to show you these photographs which are
20 State's Exhibits 95, 96 and 97 What do those show?
21 Take this one first, 95

22 A This shows a bullet hole in the passenger door, the
23 front passenger door, the lower quarter of the panel
24 here There's a bullet hole here

25 Q Okay And I'm going to show you also, this is

1 State's Exhibits 96 and 97 Are those closer up
2 views of that?

3 A Yes, ma'am

4 Q Why was it important to get close up views of this
5 bullet hole?

6 A We wanted to get close up views of this bullet hole
7 because there was rust around the bullet hole. It
8 had been there for a while, not a fresh bullet hole
9 Also, the bullet was from the inside out, not going
10 in

11 Q Okay And the significance was you were aware that
12 there were shots fired at the scene where this armed
13 robbery took place?

14 A Yes, ma'am

15 Q You found this bullet hole from the inside coming out
16 with rust on it?

17 A Yes, ma'am

18 Q And would rust indicate that it could have occurred
19 that morning?

20 A The rust made it appear that it didn't occur that
21 morning

22 Q It didn't occur that morning?

23 A No, ma'am

24 Q And, again, this bullet hole was from the inside to
25 the out Is that correct?

- 1 A Yes, ma'am
- 2 Q But did you find any other bullet holes?
- 3 A No, ma'am I didn't find any more.
- 4 Q And you inspected specifically for that?
- 5 A Yes, ma'am
- 6 Q And that's how you found this?
- 7 A Yes, ma'am
- 8 Q And that was when you inspected State's Exhibit 85?
- 9 A Yes, ma'am
- 10 Q Thank you You can take the stand Later that day
- 11 back at the Sheriff's Department, did you also have
- 12 some clothing turned over to you?
- 13 A Yes, ma'am
- 14 Q Collected from the defendant in the case?
- 15 A Yes, ma'am
- 16 Q And that would be from the defendant, Demetrio Sears
- 17 Is that correct?
- 18 A Yes, ma'am
- 19 Q I'm going to show you State's Exhibit 103 and ask if
- 20 you just recognize that first?
- 21 A Yes, ma'am. This is the striped shirt that was given
- 22 to me
- 23 Q And the shirt that's depicted on that, that came from
- 24 whom?
- 25 A From the defendant who had been shot. There at the

1 hospital

2 Q The defendant who had been shot?

3 A Yes, ma'am

4 Q And that would be Demetrio Sears?

5 A Yes, ma'am

6 Q This is laid out on it looks like on concrete Was
7 that just how you laid it out in order for you to
8 photograph it?

9 A Yeah I laid it out to photograph it because it was
10 still soaked with blood there

11 Q It was still soaked with blood?

12 A Yes, ma'am

13 Q I see it's cut up That was actually done at the
14 hospital?

15 A At the hospital, yes, ma'am

16 MS CAMPBELL At this time we'd offer State's
17 Exhibit 103

18 MR BURR No objection

19 THE COURT: Without objection

20 (WHEREUPON, State's Exhibit No 103 was admitted
21 into evidence)

22 Q Once the car had been processed and you had collected
23 the defendant's clothing in this case, did you have
24 anything further to do with the investigation?

25 A No, ma'am My investigation was through

1 Q And that photograph, the one I just put in, State's
2 Exhibit 103, the photograph of the shirt, that was
3 actually turned over to you and you took that back
4 over to headquarters Is that right?

5 A Yes, ma'am.

6 Q Richland County Sheriff's Department?

7 A Yes, ma'am.

8 MS CAMPBELL That's all I'd have

9 THE COURT Mr Burr

10 MR. BURR May it please the Court?

11 CROSS-EXAMINATION

12 BY MR BURR

13 Q Good afternoon, Mr Livingston

14 A Good afternoon.

15 Q The pictures you were just going over --

16 Ms Campbell, the car pictures?

17 MS. CAMPBELL They're there If you want, I'll
18 come find them for you

19 THE COURT Maybe they're by the jury

20 Q What is marked as State's Exhibit No 85, would you
21 look at that, please?

22 A Mm-hmm (affirmative)

23 Q The door that's open, that is the rear side passenger
24 door, is it not?

25 A It looks like it is, yes, sir

1 Q The reason I point that out, every witness has
2 testified, has made reference to the sliding back
3 door That vehicle has no sliding back door, does
4 it?

5 A Yeah, it does

6 Q It does?

7 A It's just because we know vans have sliding back
8 doors This one was open

9 Q But it opens out, right?

10 A Yes, it does Yes, sir

11 Q And you went through some of your qualifications
12 Obviously you've been doing this work for a long
13 time. In checking this vehicle you didn't find any
14 evidence that would automatically lead you to believe
15 an armed robbery had taken place?

16 A Nothing on that vehicle there

17 Q In fact, was Mr Sears still in -- he had already
18 been removed from the scene before you arrived?

19 A When I got there he was gone The only ones there
20 was just the officers on the scene

21 Q Seeing the blood and the contents of the vehicle, you
22 had no way of knowing who the perpetrator was and who
23 the victim was?

24 A No, sir, I didn't

25 Q But of course when you do process a crime scene, you

1 don't really know what you're going to find, so you
2 collect everything that might be important?

3 A That's true, sir

4 Q Now that you've gone through this whole process and
5 lived with this case for 15 months, what is the
6 significance of this yellow bag?

7 A It had blood on it. That's why I collected it

8 Q The seats had blood The entire car had blood,
9 right?

10 A The seats had blood, right But that had blood The
11 seats were attached to the car,

12 Q But other than that, it has no significance?

13 A No

14 MR. BURR I have no further questions Thank
15 you.

16 THE COURT Mr Strickler

17 CROSS-EXAMINATION

18 BY MR STRICKLER

19 Q Good afternoon, Investigator

20 A Good afternoon, sir

21 Q Just a couple of things I show you a series of
22 photographs marked Defendant's 1 through 7 Take a
23 look at those Those are a series of photographs of
24 the -- I think the last photograph you referenced
25 which was the shirt that you took the picture of,

1 right?

2 A Yes, sir

3 Q Those are photographs of the same item of clothing
4 that's referenced in that small photograph you just
5 put in, right?

6 A Right

7 Q Okay You took these photographs yourself, correct?

8 A Yes, sir.

9 MR STRICKLER. I'd go ahead and move these in
10 at this point.

11 THE COURT Offered in evidence

12 MS. CAMPBELL Without objection. A couple of
13 them are duplicates, but that's fine I have no
14 objection

15 (WHEREUPON, Defendant's Exhibit Nos 1 through 7
16 are admitted into evidence)

17 Q And you indicate that there was blood in his
18 passenger's seat --

19 A Yes, sir

20 Q -- of the vehicle? And then you said there was blood
21 on the seat in front of it also?

22 A Yes, sir.

23 Q You said -- was the blood on the portion of the seat
24 that one sits on, or was it on the back of the seat?

25 A The back of that seat

1 Q Okay So it would be blood on this passenger's seat
2 here, and then the other seat is directly in front of
3 that And there's blood on the back of the seat
4 directly in front of him?

5 A Yes

6 Q Kind of consistent with someone that's bleeding in
7 this seat, maybe leaning forward against the seat in
8 front of them, getting blood on it that way?

9 A Correct, sir

10 Q The seat in front of it didn't have blood like this
11 on the portion that you'd sit on?

12 A No, sir Not like that because the yellow bag was in
13 that seat

14 Q I'm just trying to get that straight State's 103 is
15 the one I was referring to earlier?

16 A All right

17 Q Now, that's it Thank you very much

18 THE COURT: Redirect

19 MS CAMPBELL No, sir.

20 THE COURT Officer Livingston, you may come
21 down Thank you very much. Investigator Livingston
22 can be released?

23 MS. CAMPBELL Thank you

24 MR BURR No objection

25 THE COURT Any objection?

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1 MR STRICKLER Without objection

2 THE COURT All right All right Counsel,
3 approach the bench just one minute, please

4 (Whereupon, a bench conference is had)

5 THE COURT All right, Ladies and Gentlemen.

6 Let's take a short break right now We're right on
7 schedule, let's put it that way So let's take a
8 short break We'll continue with witnesses after the
9 break I keep saying a short break, but short to you
10 and short to me is something else, a little bit
11 different sometimes But we'll call you when we're
12 ready. Thank you very much Don't discuss the case
13 among yourselves while you're in the jury room

14 (Jury out at 4 00 P M)

15 THE COURT. We'll stand at ease for about 15
16 minutes

17 (Whereupon, a break is taken)

18 THE COURT State ready to proceed?

19 MS CAMPBELL The State's ready.

20 THE COURT Defense ready to proceed?

21 MR BURR Yes, sir

22 MR STRICKLER. Your Honor, yes, sir

23 THE COURT Bring the jury, please

24 (Jury in at 4 22 P M)

25 THE BAILIFF The jury is present, Your Honor

1 THE COURT All right Thank you very much
2 Solicitor, you may continue

3 MS. CAMPBELL: May it please the Court The
4 State calls Tim Johnson

5 TIMOTHY JOHNSON, after being duly sworn,
6 testifies as follows

7 THE CLERK Please have a seat State your full
8 name

9 WITNESS Timothy Johnson

10 DIRECT EXAMINATION

11 BY MS CAMPBELL

12 Q Mr. Johnson, where are you employed?

13 A Dairyland, Incorporated

14 Q Dairyland, Incorporated? And what do you do there
15 now, sir?

16 A I deliver milk

17 Q Back in October of 2002, where were you employed?

18 A Richland County Sheriff's Office

19 Q And in the Richland County Sheriff's Department, what
20 did your duties include?

21 A Patrolling, answering calls

22 Q So if I were, say, to make a 911 call, you would be
23 one of the people who might answer my call?

24 A Yes, ma'am

25 Q Back on October the 8th of 2002, were you working
that day?

1 A Yes, ma'am

2 Q And what shift did you work, sir?

3 A I worked day shift, 7 00 in the morning to 7:00 in
4 the evening

5 Q And that morning what area of the county were you
6 assigned to?

7 A An outbound area from Percival Road to Clemson Road

8 Q Percival Road to Clemson Road?

9 A Yes, ma'am

10 Q It's considered the Northeast area?

11 A Northeast.

12 Q On that morning around 9 45, what area of the county
13 were you patrolling at that time?

14 A I was southbound on Percival Road

15 Q Southbound on Percival Road?

16 A Yes, ma'am.

17 Q And are you familiar with a business on Percival Road
18 called Ntense Kustoms and Car Audio?

19 A Yes, ma'am

20 Q And that's located at 3101 Percival Road?

21 A Yes, ma'am

22 Q And that's here in Richland County?

23 A Yes, ma'am

24 Q And that morning which way were you going on Percival
25 Road?

1 A Southbound

2 Q Southbound Is that coming into Columbia or going
3 out?

4 A That's coming in from Clemson Road to Decker
5 Boulevard

6 Q From Clemson Road towards Decker Boulevard?

7 A Yes, ma'am

8 Q And you were traveling down Percival which kind of
9 runs parallel to I-77 right there, right?

10 A Correct

11 Q And when you were coming down Percival Road that
12 morning, when you were passing Ntense Kustoms Audio,
13 tell this jury what happened?

14 A I observed two women standing outside a vehicle
15 flagging me down trying to get my attention.

16 Q And the women that were standing outside the vehicle,
17 where was their vehicle located in relation to Ntense
18 Kustoms?

19 A It was on Inglesby which was adjacent to the
20 property

21 Q Adjacent to the property?

22 A Yes, ma'am.

23 Q And as they were flagging you down, did you stop?

24 A Yes, ma'am.

25 Q And when you stopped, did they proceed to give you

1 some information?

2 A Yes, ma'am The first lady I have as witness one,
3 that would be Mrs Quattlebaum, Tina Quattlebaum

4 Q Tina Quattlebaum?

5 A She told me that she believed a robbery had taken
6 place at Ntense Kustoms She told me that she saw
7 three or maybe -- I said several -- men with masks
8 run towards a van and possibly drive away in it

9 Q And that's the information that she related to you at
10 that time?

11 A Yes, ma'am

12 Q Was there another woman with her at that time?

13 A Her mother And that was Maggie Quattlebaum

14 Q And they were, as the road is situated, right as
15 you're looking at to the left of Ntense Kustoms?

16 A Yes, ma'am. They were on Inglesby.

17 Q Based on the information that they gave you, what did
18 you do?

19 A I attempted to radio dispatch

20 Q And at that point were you successful in radioing
21 dispatch?

22 A No, ma'am They told me --

23 Q Explain that to the jury

24 A At the time I tried to report the incident, the
25 dispatcher told me to hold my traffic because they

1 only tell you that when something important is going
2 on, they're receiving a 911 call, et cetera, some
3 type of emergency And they didn't know about my
4 situation yet, so they told me to hold my traffic for
5 about a minute

6 Q Were you aware at that point that the information
7 they were receiving was actually another 911 call
8 about this?

9 A Not at the time I wasn't

10 Q And that would be the 911 call from the victims?

11 A Yes, ma'am

12 Q Did you eventually -- were you eventually able to get
13 through to dispatch?

14 A Yes, ma'am About a minute or so later I was able to
15 radio in and talk to a dispatcher.

16 Q Did you relate the information that you had gotten
17 from the Quattlebaums to them?

18 A Yes, ma'am

19 Q At the same time was there additional information
20 going out on the radio about the suspects in the
21 case?

22 A I did hear the dispatcher issue a BOLO, a
23 be-on-the-lookout, for a certain individual that was
24 occupied by three individuals

25 Q Three individuals? And the were descriptions of

- 1 those individuals going out?
- 2 A Yes, ma'am
- 3 Q And that wasn't information you'd had gotten from the
- 4 Quattlebaums?
- 5 A No, ma'am
- 6 Q That was information they had gotten from the other
- 7 911 call?
- 8 A Correct.
- 9 Q Based on the information the Quattlebaums had given
- 10 you, as well as the information you were getting over
- 11 the radio, did you request backup?
- 12 A Yes, ma'am
- 13 Q And did backup come?
- 14 A It eventually arrived
- 15 Q Prior to them arriving, what did you do?
- 16 A I attempted to secure the scene and see if anybody
- 17 was inside maybe hurt.
- 18 Q And in securing the scene, tell the jury what you
- 19 did?
- 20 A I won't allow anyone to leave or enter the incident
- 21 location And if there is any evidence I notice,
- 22 anything to preserve, I try to tape it off and wait
- 23 for investigators
- 24 Q Did you actually enter the business that morning
- 25 before other police officers got there?

1 A I went to the doorway I didn't go inside

2 Q And did you notice some evidence outside in the
3 parking lot, things that appeared to be dropped in
4 the parking lot?

5 A I saw several objects I saw -- the first thing I
6 saw was a handgun in front of the door which was
7 shattered.

8 Q Yes

9 A I also saw a blue and white ball cap and a large
10 black nylon sports bag

11 Q And at that point were the owner or any of the
12 employees of the business back there yet?

13 A Not yet

14 Q When you said you secured the scene, what do you use
15 to secure a scene? You said you wanted to make sure
16 no one enters?

17 A First I use my physical presence --

18 Q Yes

19 A -- and I don't let anybody come or go And then when
20 I get him time I use crime scene tape

21 Q You were actually in uniform that day?

22 A Yes, ma'am

23 Q Okay At some point did you receive -- did other
24 officers respond to the scene?

25 A Yes, ma'am I received backup

1 Q Shortly after your getting the information from the
2 Quattlebaums, talking to dispatch and you going up to
3 the outside of the business, did you have an occasion
4 to come in contact with Andre Stokes and Omar -- not
5 excuse me -- Sterling Patterson?

6 A Yes, ma'am They drove up while I was still trying
7 to check out the business, and that's when I was told
8 that a robbery had taken place And Mr Patterson
9 handed over a weapon He said he had exchanged fire
10 with them or had shot at them

11 Q Shot at them? Did he indicate to you whether or not
12 he thought he had shot someone?

13 A Yes, ma'am He thought he had hit one of them

14 Q At that point, as the first officer on the scene,
15 your first duty is to secure the scene, right?

16 A Right

17 Q And, actually, when they returned to the business,
18 were they able to pull into the parking lot?

19 A They did pull right up to the doorway of the
20 business, the open bay

21 Q Into the open bay They were driving what kind of
22 vehicle that day when they returned?

23 A I don't remember what kind it was

24 Q But they had parked right there at the open bay?

25 A Yes, ma'am.

1 Q Were they allowed back inside the business?

2 A No, they weren't

3 Q The items you had described in the parking lot, you
4 had already noticed those before them coming back,
5 right?

6 A Yes, ma'am

7 Q Did other officers respond shortly after the victim
8 and the other employee returned?

9 A Within a few minutes

10 Q Part of your duties as the first officer on the scene
11 is to get general information?

12 A General information such as victim, witness, suspect
13 description

14 Q And in this case did you do that?

15 A Yes, ma'am

16 Q Were the Quattlebaums able to give you any kind of
17 detailed description of the people they saw running
18 towards the van?

19 A I don't believe they gave me any detailed
20 information, just several individuals

21 Q Several individuals Did they indicate anything of
22 significance about their clothing?

23 A They did say that they had masks of some type of on

24 Q Were you able to get a little bit better description
25 from Sterling Patterson and Andre Stokes?

1 A Yes, ma'am I got the best information from Mr
2 Patterson.

3 Q And the first suspect, suspect one, were you able to
4 get a general description of him?

5 A On the incident report I've got what he told me.
6 It's an unknown male, 20 to 30 years of age, about
7 five-foot-seven, 150, light skinned, gray rag over
8 face, and a blue ball cap

9 Q A blue ball cap?

10 A Yes, ma'am

11 Q And the second individual, were they able to give you
12 a description there?

13 A The second one Unknown black male, 20 to 30 years
14 of age, five-foot-eleven, 180, no beard or mustache,
15 yellow rag over face

16 Q Were they able to give you much of a description on
17 the third guy?

18 A I didn't get anything on the third guy I don't
19 believe

20 Q Looking at page 3 of your incident report

21 A Page 3 Oh Unknown black male, 20, 30 years of
22 age, five-foot-eight, 160

23 Q That was the general description they were able to
24 give you at that time?

25 A That's all I could get.

1 Q While you were there at the scene, did you get any
2 information from both the victim, from Mr Patterson,
3 from Mr Stokes, as well as from the Quattlebaums?

4 A Yes, ma'am All the contact information for
5 investigators

6 Q So you get that for investigators?

7 A Yes, ma'am.

8 Q And that would be then, this information is turned
9 over to them?

10 A Correct

11 Q We've been through where this is located on the
12 diagrams. I want to show you a series of
13 photographs. State's Exhibit 6, 3, 2, 4 and 108 Do
14 you recognize those photographs?

15 A Yes, ma'am.

16 Q And taking these one at a time, I notice on each of
17 these photographs you can see a strip of the yellow
18 tape Is that the tape you actually put up that day?

19 A I put it up

20 Q And that was to help secure the scene?

21 A Yes, ma'am.

22 Q And, again, when you arrived on the scene after the
23 Quattlebaums flagged you down, is this how the front
24 door appeared?

25 A Yes, ma'am.

- 1 Q And you said that you immediately noticed a gun on
2 the ground Is that where the gun was when you first
3 saw it?
- 4 A Yes, ma'am I didn't touch it
- 5 Q And this was before either Sterling Patterson or
6 Andre Stokes were back at the scene. Is that
7 correct?
- 8 A Correct
- 9 Q And then I notice that you also mentioned that they
10 returned in a car and actually parked That was
11 prior to you putting up the yellow tape?
- 12 A Yes, ma'am
- 13 Q I show you State's Exhibit 3 Is that the automobile
14 and where they parked it?
- 15 A Yes, ma'am
- 16 Q But they were not allowed back in the business that
17 day, were they?
- 18 A No, ma'am
- 19 Q Specifically, as to State's Exhibit No 108 and No
20 4, are there certain items there on the ground in
21 those two photographs?
- 22 A Yes, ma'am, a blue ball cap and a black bag
- 23 Q And were those items there when you first encountered
24 the scene that day?
- 25 A Yes, they were

1 Q Was that prior to Mr Patterson or Mr Stokes
2 returning to the scene?
3 A Yes, ma'am.
4 Q And they were gone when you got there, right?
5 A They were gone when I got there
6 Q Once you came in contact with Mr. Patterson that day,
7 did he indicate that he had been involved in the
8 shooting?
9 A Yes, ma'am
10 Q That he had shot?
11 A He thought he had hit one of them
12 Q Are you aware of what happened to the gun?
13 A He gave it to me?
14 Q Immediately?
15 A Yes, ma'am
16 Q Did he volunteer that information to you?
17 A Yes, ma'am He said he had a gun, and I took it
18 Q He gave it to you?
19 A Yes, ma'am
20 Q What did you do with it?
21 A I laid it on the table inside the business and waited
22 for investigators
23 Q Did he indicate whether or not he had an extra
24 magazine in the car to you? Or was that to
25 investigators?

1 A I don't remember anything about that

2 Q Okay That's all I'd have

3 THE COURT Mr Burr

4 MR BURR Thank you, Your Honor May it please
5 the Court

6 CROSS-EXAMINATION

7 BY MR BURR

8 Q Mr Johnson, did you say that was your formal area of
9 patrol on Percival Road?

10 A Yes, sir

11 Q Were you familiar with the Ntense Kustom Designs?
12 Had you ever stopped there before?

13 A I never stopped there No, sir

14 Q How frequently did you pass the place?

15 A I'm sure on a daily

16 Q I'm sorry? Often?

17 A At least a daily basis when I was on duty

18 Q Did it appear to be a crowded place?

19 A No, sir

20 Q Not much traffic? Did you ever get any negative
21 reports about the goings on there of any sort?

22 A No, sir.

23 Q When you arrived the two Quattlebaums were physically
24 on the property or right adjacent to the property?

25 A They were on Inglesby on the right-hand side of the

1 road which is kind of opposite the property

2 Q Up near the stop sign that intersects with Percival?

3 A They were not at the stop sign They were maybe
4 50 feet from the stop sign

5 Q So somewhat back behind the actual issue
6 establishment itself?

7 A I would say on the side

8 Q Yeah To the side?

9 A Yes, sir

10 Q If someone were in the business, they could not see
11 the Quattlebaums?

12 A Correct

13 Q When you interviewed the two Ms Quattlebaums, did
14 you tape record their statement?

15 A No, sir I don't tape statements

16 Q Did you take handwritten notes?

17 A No, sir

18 Q It's been 15 months ago So obviously your memory
19 has slipped somewhat. Do you think you know verbatim
20 what was said when you talked to them?

21 A No, sir

22 Q Just they gave you a general impression they saw
23 something Were they excited? Were they scared?

24 A Oh, they were upset

25 Q So they saw something that gave them the impression

1 there was a robbery?

2 A Yes, sir

3 Q Was the bay door to the business open when you got
4 there?

5 A The bay door was open

6 Q The front door was broken The pedestrian door was
7 broken out?

8 A Yes, sir

9 Q There was also a side door Did you walk around the
10 building?

11 A I didn't go around the building.

12 Q After the backup or the additional officers arrived,
13 did you have occasion to go in the building, look
14 around?

15 A I went inside with investigators

16 Q Did you conduct any kind of search of the premises?

17 A The only search we do is for people

18 Q Just look to see if any individuals were in there
19 You didn't search for --

20 A I looked for injured people

21 Q How long did you remain on the scene?

22 A At least a couple of hours

23 Q A couple of hours?

24 A Yes, sir.

25 Q Did any customers come up while you were there?

1 A Could they go in?

2 Q Any customers come up to the business?

3 A Oh, no, sir. We tape off the perimeter

4 Q How far -- did either Mr. Patterson or Mr Stokes
5 indicate to you where the van stopped prior to this
6 whole thing happening?

7 A A general location in the parking lot was pointed to

8 Q It's a fairly large parking lot because actually the
9 building is designed for two businesses Their
10 business as you face it is on the right?

11 A Yes, sir.

12 Q The property that's a duplex was not an open business
13 at the time Where did they indicate the van had
14 stopped?

15 A It was probably in front of the other business, at
16 the other half of the duplex

17 Q And where was the baseball cap that you found?

18 A The baseball cap was closer I think to their
19 business.

20 Q It was out in the parking lot somewhere?

21 A In the parking lot

22 Q And the black leather bag? And I'm assuming this is
23 the same bag that the State put in as State's Exhibit

24 33 Is this some of the bag you saw?

25 A Yes, sir

1 Q Where was that located?

2 A It was further towards Inglesby, almost on Inglesby
3 in the parking lot

4 Q Actually to the far part of the parking lot by the
5 stop sign?

6 A Right That's right

7 Q Did you see anything -- in your walking around, did
8 anything jump out to you as being anything of real
9 value in the establishment?

10 A Objects of value? I didn't pay attention to objects
11 of value

12 Q So, I mean, there was nothing that sticks in your
13 mind --

14 A No

15 Q -- that would be worth putting in a statement?

16 A I didn't see anything

17 Q No further questions Thank you

18 THE COURT Mr Strickler.

19 CROSS-EXAMINATION

20 BY MR STRICKLER

21 Q Good afternoon, Mr Johnson. Just a couple of
22 things You indicate that you got flagged down by
23 the Quattlebaums and stopped at the scene That
24 would make you the initial officer on the scene,
25 correct?

1 A Yes, sir

2 Q And in a situation such as this, investigators are
3 going to be called, probably crime scene
4 investigators called There are going to be a lot of
5 other people involved other than you, right?

6 A Right.

7 Q So as the initial officer on the scene, you've got
8 some duties that you need to take care of personally,
9 and you know that other people are going to show up
10 to take care of a lot of other things, right?

11 A Right

12 Q I guess first thing you make sure there's no one
13 there that's injured and make sure that the scene is
14 safe as far as your presence goes?

15 A (Nods head affirmatively)

16 Q The second thing, since you've been informed that
17 there is a robbery, is if you can obtain information
18 about the individuals, get that information, get it
19 broadcast, especially the robbery that's fairly
20 recent, right?

21 A (Nods head affirmatively)

22 Q And then of course secure the scene with crime scene
23 tape You keep that in your car at that point in
24 time?

25 A Yes, sir

1 Q Tape it off, restrict entrance and exit from it to
2 keep the scene from being polluted by stuff that's
3 not associated with the incident, right?

4 A Right.

5 Q Those are pretty much the duties of the initial
6 responding officer at a scene such as this Is that
7 correct?

8 A Yes, sir

9 Q Okay And you go ahead and you generate -- at least
10 in this case you did -- what's called an incident
11 report reflecting some basic facts about the
12 incident, correct?

13 A That's right

14 Q There are other reports that people down the line
15 follow also But for something like this, really for
16 any criminal incident you get involved in, someone is
17 going to generate an incident report, right?

18 A Right

19 Q This is a standardized form used by the police, the
20 Sheriff's Department, the City Police Department
21 Every law enforcement jurisdiction uses basically the
22 same form, right?

23 A Yes, sir.

24 Q It's got spaces to record information that through
25 the years we've learned is significant in helping you

1 document and follow up on various criminal acts,
2 right?

3 A Yes, sir

4 Q I mean, it's just set out It's got a place to
5 indicate an estimate as to when the incident
6 occurred, if you know a particular time, particular
7 time, if it's a time range, you can put a time range
8 in there It's got a place to indicate when you were
9 notified of it, and if you weren't right on the
10 scene, as you happened to be in this case, when you
11 actually arrived on the scene, how long you stayed
12 there It's got a place to indicate the descriptions
13 of individuals that are potential defendants or
14 perpetrators and spaces to indicate their physical
15 characteristics, right?

16 A Yes, sir

17 Q It's got a place to record scene location It's got
18 a place to report victims' vital information Name,
19 address, contact numbers, et cetera It's got a
20 place to record information for witnesses to a crime,
21 right?

22 A Yes, sir

23 Q Then it's got a place for a narrative or for you to
24 take notes associated with what you found at that
25 point in time, right?

1 A Yes, sir

2 Q I take it you have a copy of that before you that
3 you're referring to?

4 A I do

5 Q Okay Me, too. And it looks to me like your best
6 estimate based on what you learned at the scene was
7 the offense took place sometime between 9 40 in the
8 morning and 9 45 in the morning, right?

9 A Right

10 Q And you arrived on the scene at 9 49 yourself. That
11 is both your dispatch time and your arrival time,
12 right?

13 A Yes, sir.

14 Q That reflects the fact that you got flagged down and
15 stopped there, right?

16 A Correct.

17 Q Did you get that time yourself, or did you get that
18 time from dispatch?

19 A From dispatch

20 Q That's kind of code though You hit the scene The
21 Sheriff's Department wants the times associated in
22 these things to be coordinated So when you call
23 dispatch and they give you a time as far as when you
24 arrive, right?

25 A Yes, sir

1 Q That way it's jibed up with whatever times they're
2 using in dispatching and other units, you can figure
3 out what is going on that day Okay So assuming
4 that dispatch uses the correct clock -- and I'm sure
5 they do -- you were there at 9 49 in the morning?

6 A Yes, sir

7 Q Your best guess is it happened somewhere five to ten
8 minutes earlier than that That was your best guess
9 Okay. Now, you testified that when you saw the
10 Quattlebaums they were excited And you indicate
11 that they thought a robbery had taken place and
12 they'd seen three men run to a van That was your
13 testimony, right?

14 A On the report I put several Several could be two or
15 three I guess

16 Q Okay So several More than one?

17 A Yes, sir

18 Q Okay. And let me ask you this This was
19 October 8th, 2002 That would be some 15 months ago,
20 correct?

21 A Right

22 Q And how long had you been working on the force at
23 that particular point in time?

24 A Richland County, about one year

25 Q About one year? Did you work in law enforcement

1 prior to that?

2 A Yes, sir

3 Q And how long did you work in law enforcement
4 altogether?

5 A Eight years

6 Q Eight years?

7 A Yes, sir

8 Q Safe to say not the first crime scene you'd arrived
9 on?

10 A No, sir

11 Q Safe to say not the first set of people you've talked
12 about what they saw at a crime scene, right?

13 A No, sir

14 Q Okay. All too unfortunately one of many that you've
15 had to respond to So what your note is, that's one
16 of the reasons for you to be able to record this,
17 this can be significant Your note is that several
18 people, that's the term you used, right?

19 A Yes, sir

20 Q So it would be accurate to say you're unsure as to
21 the exact number Several means more than one,
22 correct?

23 A Yes, sir

24 Q So two or three And you said -- your testimony was
25 on direct was they said they saw three men run to the

1 van You use the term "several" in your report And
2 you agree that several could be two or three And in
3 the incident report, isn't it true that what you
4 record as being related to you by W-1, and W-1
5 referenced in your report is Tina Quattlebaum?

6 A Yes, sir

7 Q What you record is W-1 observed a burgundy vehicle,
8 possibly a minivan, leave the business and noticed
9 several occupants wearing masks. Correct?

10 A Yes, sir

11 Q Okay. Now, as far as information that you recorded
12 on this incident report from either Tina Quattlebaum
13 or her mother, Maggie Quattlebaum, is there any other
14 information contained in the body of this incident
15 report from them?

16 A Not from them, no, sir

17 Q Okay. So what you've recorded on the incident report
18 15 months ago is that witness one who is Tina
19 Quattlebaum observed a burgundy vehicle, possibly a
20 minivan, leave the business and noticed several
21 occupants, that would be people in the vehicle?

22 A Yes, sir.

23 Q Wearing masks, correct?

24 A Correct

25 Q Okay Nowhere in this report does it indicate that

1 those ladies told you they saw three men run to the
2 van, correct?

3 A Correct

4 Q Okay So what was conveyed to you was not that three
5 men ran to the van It was that they saw several
6 people in a van leaving the business, several
7 occupants wearing masks, correct?

8 A That's what I wrote

9 Q Well, now, this would be significant information that
10 you were recording, correct?

11 A Yes, sir

12 Q So you take some degree of care in recording the
13 information that was provided to you, right?

14 A Yes, sir

15 Q So we should be able to rely 15 months after the fact
16 on the fact that you recorded what they told you,
17 which was they saw people in a van?

18 A Yes, sir

19 Q Not that they saw people running from the store,
20 right?

21 A If I got it correct, that's right

22 Q Well, and I'm sure you did But that's the whole
23 reason for writing it down like that, right?

24 A Yes

25 Q So, to the best of your knowledge, what they told you

1 was they saw people leaving the scene in a van with
2 masks on, right?

3 A Yes, sir.

4 Q All right Thank you very much, sir That's all I
5 have

6 THE COURT Redirect?

7 MS CAMPBELL. Just one question

8 REDIRECT EXAMINATION

9 BY MS CAMPBELL

10 Q They described the vehicle as a burgundy vehicle,
11 possibly a minivan?

12 A Yes, ma'am.

13 Q And then they talk about how they're leaving the
14 business That would be the business, the building?

15 A Yes, ma'am.

16 Q And then they mentioned they were wearing masks And
17 this is your summary of what they told you?

18 A Yes, ma'am.

19 MS CAMPBELL That's all I have, Your Honor

20 THE COURT Mr Burr?

21 MR BURR. Yes If I may, Your Honor

22 RECROSS-EXAMINATION

23 BY MR BURR

24 Q The way you wrote your report, you indicated that the
25 Quattlebaums stated to you they literally saw the red

1 minivan leaving the business?

2 A Yes, sir

3 Q Did they explain to you what their point of -- their
4 vantage point was for seeing all this?

5 A I don't remember where they were when they saw it

6 Q But obviously their observation was long enough to
7 see people actually get in the van and drive away?

8 A Yes, sir

9 MR BURR No further questions

10 MR STRICKLER. Oh, I'm sorry, Your Honor No
11 Nothing further.

12 THE COURT You may come down. Mr Johnson,
13 thank you very much May Mr Johnson be excused?

14 MR STRICKLER Without objection, sir

15 MR. BURR No objection, Your Honor

16 THE COURT Call your next witness, please.

17 MR MEADORS The State would call David
18 Collins.

19 DAVID J COLLINS, after being duly sworn,
20 testifies as follows

21 THE CLERK Please have a seat State your full
22 name

23 WITNESS David J Collins

24 DIRECT EXAMINATION

25 BY MR MEADORS

Q You're an investigator? You're now Investigator

1 Collins?

2 A Yes That's correct

3 Q And where do you work?

4 A I work for the Richland County Sheriff's Department

5 Q How long have you been there?

6 A I've been with the Richland County Sheriff's
7 Department for just over year, about a year and four
8 months

9 Q Where were you prior to that?

10 A Prior to that I was an agent with the State Law
11 Enforcement Division, commonly known as SLED

12 Q And can you tell the jury about your background, your
13 educational background and, in particular, your
14 specific area of expertise? Then I'm going to ask
15 you to testify about that

16 A My educational background includes a Bachelor's
17 Degree that I received from the Citadel in 1984
18 After I became employed at SLED I was hired as a
19 firearms and tool mark examiner with the forensic
20 services laboratory there And during the first
21 couple of years of my stay at SLED I was in training
22 to be a firearms and tool marks examiner There are
23 no college courses per se that you could take to be a
24 firearms examiner All that type of training is
25 typically done on the job And I successfully

1 completed that training course after approximately
2 two years That is the standard length of time for
3 that training

4 Following my completion of that training I
5 joined our professional association which is the
6 Association of Firearms and Tool Marks Examiners or
7 AFTA And through that I received continuing
8 education and training in my field in the form of
9 training seminars and some firearms repair or
10 armorers courses that I attended and successfully
11 completed Those courses include those offered by
12 Colt, Cig, Glock, Baretta, and High Point firearms
13 manufacturers

14 I have also successfully attended and completed
15 a gunshot residue course for doing distance
16 determinations. I remained at SLED for approximately
17 12 years, and then I moved to the Richland County
18 Sheriff's Department where I do the same job there
19 for the Richland County Sheriff's Department

20 What I do as a firearms and a tool marks
21 examiner is what is commonly referred to on TV as,
22 you might have heard of, a ballistics expert, and
23 that is the type of work that I do

24 Q And, roughly, how many comparisons or tests have you
25 conducted in this particular field?

1 A Oh, that would run into the thousands if you look at
2 each individual item of evidence that I've looked at

3 Q Have you ever been offered as an expert in the field
4 of firearms and tool mark examination, as an expert
5 in the courts of record of this state before?

6 A Yes I've testified as a firearms and tool marks
7 examiner or as an expert in firearms and tool mark
8 examination in excess of 200 times in the state of
9 South Carolina I've also been qualified as an
10 expert in the states of North Carolina and Georgia
11 and in the Federal court system

12 Q Have you ever been offered as an expert in this field
13 and not qualified?

14 A No, I have not.

15 MR MEADORS: Your Honor, at this time we'd
16 respectfully offer Investigator David Collins as an
17 expert in the fields of firearms and tool mark
18 examination

19 THE COURT: Any objection or Voir Dire?

20 MR BURR Yes, Your Honor. I'd like to
21 question him some, if I may

22 THE COURT: Certainly. Go ahead

23 VOIR DIRE EXAMINATION

24 BY MR BURR

25 Q Sir, which arms dealers have you been trained by?

1 You mentioned some schools you went to

2 A I have successfully completed armory or repair
3 courses offered by the Cig, Glock, Colt, Baretta and
4 High Point manufacturers.

5 Q And prior to working -- you're currently working for
6 Richland County or SLED?

7 A I was working for SLED when I took much of that
8 training I most recently completed the High Point
9 armorers course while I was employed by Richland
10 County, and that occurred last year

11 Q The training by those companies you've just
12 discussed, what did the training entail? What did it
13 qualify you to do?

14 A That training is essentially just a familiarization
15 of the firearms that they produce and a course in how
16 to prepare malfunctions with certain firearms
17 manufactured by these companies

18 Q And what other training have you received?

19 A I have received specific training as a firearms and
20 took marks examiner through SLED in the forensic
21 services laboratory I have also received outside of
22 that training, which encompasses most of my firearms
23 and tool marks training, I have received training in
24 gunshot residue analysis in order to determine muzzle
25 firing and distance.

1 Q And I'm not sure what the purpose of your testimony
2 is today But have you been qualified or trained in
3 the functioning of handguns as to the extraction of
4 casings?

5 A That is all a part of the training that I received
6 from SLED as a firearms and tool marks examiner, yes,
7 sir

8 Q And you testified you -- I mean, you've testified
9 previously in approximately how many cases?

10 A At least 200 times in the State of South Carolina and
11 twice in the State of Georgia, once in the State of
12 North Carolina, and once in the federal court system

13 Q How many of those were for the defense?

14 A I don't keep a record of that, but I have testified
15 for the defense in the past

16 Q No further questions Thank you

17 MR BURR I have no objections to him, Your
18 Honor

19 MR STRICKLER: Oh And I'll stipulate to his
20 qualifications as an expert in the field, Your Honor

21 DIRECT EXAMINATION

22 BY MR MEADORS

23 Q It's just habit I can't help it I used to ask you
24 when you were at SLED how cases get to SLED And for
25 the clarification, for a long period of time you all

1 didn't have your own separate division of firearms or
2 ballistics analysis at Richland County, did you?

3 A That is correct When I first was hired by Richland
4 County to be a firearms examiner for them, they
5 didn't have the laboratory facilities to accommodate
6 me They didn't have any equipment, they didn't have
7 the space for my equipment So for the first, well,
8 over a year that I was working for Richland County, I
9 actually did my work out of the exact same office and
10 lab space that I used at SLED under an agreement that
11 the Richland County Sheriff's Department had with
12 SLED

13 Q And when you did the examination you're going to tell
14 these folks about in a minute, was that done at SLED?
15 Or I know you were working --

16 A This particular examination was done in the SLED
17 laboratory

18 Q Okay If something happened today, you'd be doing
19 that in the Richland County Sheriff's Department
20 laboratory?

21 A Yes Since I did this case, my equipment has arrived
22 and the space has been set up for me and I am
23 currently operating out of the Richland County
24 Sheriff's Department headquarters

25 Q Can you explain in general before we get specific, to

1 the Ladies and Gentlemen, please, what is it you're
2 attempting to do and what do you do when you have
3 guns that may come in and either projectiles that
4 have been shot or cartridges? What are you
5 attempting to do? What are you asked to do? And,
6 specifically, what were you asked to do in this case?

7 A There are many different types of examinations that
8 firearms examiners perform on evidence that is
9 submitted to us The most frequently requested
10 examination would be the study of fired bullets and
11 cartridge cases from the scene or recovered at an
12 autopsy and the subsequent comparison of those with a
13 suspect firearm to determine if they are fired by
14 that particular gun

15 The way that we can do that particular
16 examination goes back to when the firearm was
17 manufactured Various machine processes are employed
18 that leave behind microscopic defects or
19 imperfections on various metal parts of the firearm
20 One area that we are particularly interested in is
21 the inside of a barrel In the case of handguns and
22 rifles, typically spiraling grooves called rifling
23 are cut into the barrel of the firearm. Those
24 grooves cause the bullet to spin as it leaves the
25 barrel to stabilize the bullet in flight

1 During the formation of those grooves various
2 imperfections are left behind by that machining
3 process. No two firearms will have the exact same
4 imperfections in the exact same location. When a
5 bullet passes through that barrel, it is marked or
6 scratched by those imperfections in a pattern that is
7 unique to that particular firearm in much the same
8 way that a fingerprint is unique to a person.

9 Likewise, when a cartridge or the cartridge case
10 or the back of a cartridge is fired in the gun, it is
11 also marked by various metal parts of the firearm.
12 It can be marked by the firing pin as it strikes the
13 cartridge case. It can be marked by the breach face
14 or the back of the barrel during the firing process.
15 Those marks left on a cartridge case are also unique
16 to that particular firearm, and we can also use those
17 to identify specific cartridge cases to a specific
18 gun.

19 When we receive firearms evidence of any type in
20 the laboratory, the first thing that we do is we take
21 notes as to its condition when we received it. We'll
22 describe in the case of a firearm the make, the
23 model, the serial number, all the unique
24 characteristics and all of the general
25 characteristics of that firearm. We will do the same

1 thing with bullets and cartridge cases that are
2 submitted

3 We will then test fire a suspect firearm into a
4 bullet recovery device that we have at the lab The
5 purpose for this is two-fold First, it enables us
6 to confirm that this firearm is functioning properly
7 Secondly, it enables us to recover test bullets and
8 test cartridge cases that we know are fired by that
9 gun for comparison with the evidence bullets and
10 cartridge cases

11 I will then take the evidence bullets, for
12 example, and place them under a comparison microscope
13 with a test bullet that I fired from the gun That
14 enables me to look at both of them side-by-side at
15 the same time and look for areas where those markings
16 left by the barrel may match If I find sufficient
17 matching details, then I could confirm that that
18 particular bullet was fired by that particular
19 firearm I do the same thing with cartridge cases
20 You'll examine a cartridge case fired by that gun,
21 that I know was fired by that gun with an evidence
22 cartridge case in order to determine if the same
23 markings are present

24 As I stated before, there are many other
25 examinations that we do, but those are the typical

1 types of examinations that we would perform

2 Q And by doing that examination, based on your
3 expertise and your background, you're able to either
4 include or exclude either a projectile or a weapon,
5 correct, or say that you can't tell?

6 A That is correct. Sometimes bullets -- well, bullets
7 particularly are damaged so much by whatever they
8 strike when they're fired, they may be unsuitable for
9 identification with a specific firearm or they may be
10 suitable only for inclusion as a possibility of
11 having been fired by a gun. Sometimes what you'll
12 end up having to deal with is simply looking at not
13 the minute scratch marks that are left by the barrel
14 but individual, unique characteristics, which you
15 might be just looking at how many grooves the barrel
16 has, how many rifling grooves are in the barrel, what
17 direction they twists and perhaps their widths. That
18 is not unique to that particular firearm, but it can
19 be used to exclude some firearms

20 Q And is it true that a lot depends on what's on the
21 front of the bullet, if it impacts, how much damage
22 is done, I mean, different types on each bullet,
23 correct?

24 A That is correct. On a bullet, one thing to remember
25 is that the only part of that bullet that is taking

1 markings from the gun that are unique to the gun and
2 are suitable for identification purposes is the very
3 outside layer of the bullet If that gets stripped
4 away, then you might be left with a situation you
5 can't tell much about the bullet

6 Q Everything you just told these folks about in your
7 comparisons, is that what you were asked to do in
8 this case?

9 A That is correct

10 Q Before I ask you to look at specific -- I think we
11 have some of these items in; some aren't Can you
12 look at State's 79, State's 78 and State's 80 and in
13 addition State's 32 I believe, and tell me if you
14 recognize these, how you do, and if they relate to
15 what you're fixing to tell us about? Take your time,
16 please

17 A I used to not have to do this (Witness puts glasses
18 on) State's Exhibit 32 I can confirm as being the
19 firearm that I examined in this particular case I
20 can tell that from specifically two particular areas
21 One of them is the serial number This firearm
22 matches that that I have in my report And also on
23 side of the firearm I marked it with a permanent ink
24 pen with the case number, item number and my
25 initials So that is the firearm that I

1 identified -- that I examined -- excuse me -- in this
2 case

3 Q I guess it's pretty obvious you make your marks on
4 there so you come in like you're doing now in front
5 of these folks and say this is how I know I looked at
6 it, right?

7 A That is correct I can also identify this as being
8 one of the unfired cartridges that I examined in this
9 case It also bears my markings In this particular
10 instance I used a scribing tool to mark on the item
11 so that I can identify it later

12 Q What exhibit was that?

13 A There it is

14 Q 79?

15 A Yes, sir

16 Q And the gun you identified, you said you recognized
17 was 32?

18 A This is a pistol magazine that I also examined in
19 this case Again, it also bears my markings I placed
20 on it In this case I wrote on it again with an ink
21 pen I'll also add that in each of these cases the
22 containers themselves are marked by myself, the case
23 number, or numbers as it might be, as I used both a
24 SLED case number and a Richland County case number,
25 the item number and my initials

1 Q And that is what you've said you recognized and dealt
2 with was 80, correct? State's 80?

3 A That's correct

4 Q These are for I D. at this point

5 A This Ziplock bag contains a total of what I received
6 as nine unfired 9 millimeter auto -- excuse me -- 9
7 millimeter Luger caliber cartridges During the
8 course of my examination I disassembled one of the
9 cartridges so that I could examine the internal
10 components of it Those I placed in this box But
11 all of these bear markings I placed on them so that I
12 could identify them later But that is State's
13 Exhibit 78

14 Q Where was that bag? Your Honor, at this time we
15 would offer State's 78, 79, 80 and 32

16 MR BURR. Could I see those?

17 MR MEADORS: Sure

18 MR BURR. Without objection

19 (WHEREUPON, State's Exhibit No. 32 was admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit Nos 78 through 80
22 was admitted into evidence)

23 MR BURR. No objection, Your Honor

24 THE COURT Without objection

25 Q Now, before you got here there were some other items

1 of evidence I think you had examined which have
2 already been entered into evidence However long you
3 need to look at it, and then we can go right through
4 your report But State's 73, does it have your
5 markings, or can you tell whether you looked at it
6 from the outside, the bag itself?

7 A It bears my markings on the bag

8 Q Okay

9 A And, again, I marked on the actual magazine with an
10 ink pen

11 Q And, again --

12 A Those are my marks

13 Q I apologize I did not mean to interrupt you All
14 of these have already been admitted into evidence
15 But State's 76

16 A And this also has my markings on the outside of the
17 container This envelope contains a total of six
18 unfired 9 millimeter Luger caliber cartridges I
19 also examined these They also bear markings I
20 placed on them

21 Q There again, all of these have already been admitted
22 into evidence So from looking at the package
23 itself, without opening it, do you see anywhere on
24 here --

25 A Yes I see on this particular, State's Exhibit 82,

1 this also bears my markings and the item numbers and
2 the cash number. Do you want me to open it up?

3 Q Not unless you feel a need to If you can identify
4 it from your report if you need to at a later point,
5 that will be fine I just need to get this 83 which
6 has been entered --

7 A Yes. This also bears my markings

8 Q And you're going to explain what all this is in a
9 minute If you need to take it out at that point,
10 fine And 74?

11 A And this also bears my markings.

12 Q All those have been entered into evidence. And,
13 finally, I think also State's 30 which has previously
14 been entered into evidence, was this also submitted
15 you for your comparison and identification?

16 A Yes This firearm also bears the markings I placed
17 on it in the laboratory, and it also bears the same
18 serial number as the firearm that I examined in this
19 case

20 Q All right Now, I want to hand you what's marked
21 Richland County Sheriff's Department Firearms
22 Analysis Section, and then underneath that it's got
23 Forensics Examination Report and you if you produced
24 that, and was that a result of the examination of all
25 these items?

1 A Yes This is a copy of the report that I issued as a
2 result of my examination in this case.

3 Q Now, I want you to do it whatever way is easiest and
4 most comfortable for you. But all these items were
5 submitted to you, correct?

6 A That is correct

7 Q You weren't out on the scene on Percival Road?

8 A No I never actually went to the scene

9 Q So, I believe you got projectiles, magazines, two
10 semi-automatic pistols Is that correct?

11 A That's correct

12 Q Can you tell the jury how you conducted your
13 examination. What did you do with these?

14 A First, to give a brief summary of the evidence items
15 that I received I received two firearms One was a
16 Springfield Armory Model XD9 semi-automatic pistol
17 That is this pistol here With that I received one
18 magazine and a total of ten unfired cartridges I
19 also received this firearm which is a High Point
20 Model C9 semi-automatic pistol, and it will have a
21 total of eight unfired cartridges with it And I
22 also received two magazines with that same item
23 number

24 In addition to the firearms and the ammunition
25 and magazines that I received with them, I received

1 four fired bullets or projectiles that were recovered
2 from the scene and a total of nine fired 9
3 millimeter Luger caliber cartridge cases that were
4 also recovered I believe from the scene

5 The first thing that I did when I received this
6 evidence, as I stated before, is I took the notes as
7 to its condition I described everything on my bench
8 notes Then I test fired the firearms themselves in
9 order to, (a), determine if they were functioning
10 properly, and (b), to obtain test standards that I
11 could use for comparison purposes

12 The first thing that I looked at on these
13 particular items were the bullets And that's
14 usually the first place that I go in an examination
15 In this particular case, the bullets, there were four
16 of them, but they were damaged to the point where I
17 was unable to positively identify them with either
18 firearm These bullets have a thinner copper jacket
19 material around the outside than many other bullets
20 do, and, therefore, they are more susceptible to
21 damage

22 What I was able to determine by looking at the
23 characteristics of the rifling, that is, the number
24 of the grooves in the barrel, the direction of the
25 twists in the barrel and the widths of those grooves,

1 I was able to determine they could have been fired by
2 this firearm which is State's Exhibit 30 However,
3 there were differences in the rifling characteristics
4 between the fired evidence bullets and the test
5 bullets that are fired by State's Exhibit 32 And
6 so, therefore, they could not have been fired by this
7 firearm They could have been fired by this firearm
8 or by another similar gun After reaching that
9 conclusion I moved --

10 Q And you couldn't be more conclusive because of the
11 damage?

12 A That's right Because of the damage on the actual
13 bullets Following that part of the examination I
14 moved forward to the cartridge cases And, again,
15 there were nine fired cartridge cases recovered And
16 with those I was able to determine based on
17 individual characteristics that I found that all nine
18 of those cartridge cases had been fired by this
19 firearm which is State's Exhibit 30 and were not
20 fired by State's Exhibit 32

21 Q And that's based on your test and the markings that
22 you've already explained?

23 A That is correct

24 Q Now, you started off -- and if you said it, I
25 apologize The first thing you do is see if they're

1 in working -- were both of these guns functioning
2 properly?

3 A Yes Both these guns were functioning properly

4 Q And looking at your report, I believe it says that
5 the magazine on your item 5 which is the High Point
6 Model C9 -- and I'm going to ask you to step down in
7 minute -- part of the magazine catch assembly was
8 missing but it didn't affect the proper functioning?

9 A That is correct The part that is missing on this
10 gun, there's a small plastic button that goes over
11 the magazine release here This is basically a
12 device that you would depress to take the magazine
13 out of the gun That little plastic cover is
14 missing However, the button itself still works
15 There's just a little metal post there instead of a
16 button that you can depress and remove the magazine
17 properly That has no effect on the actual
18 functioning of the firearm

19 Q And you actually test fired both of these?

20 A Yes, I did

21 Q Now, can you step down, with the Court's permission?

22 THE COURT: Certainly

23 Q And, Your Honor, before we get -- I'd marked and we'd
24 ask that this be marked State's 104. I've shown it
25 to both counsel I believe it's without objection

1 MR BURR What is that?

2 MR MEADORS That's the report

3 MR BURR No objection

4 MR MEADORS We offer 104 without objection

5 THE COURT Without objection

6 MR. MEADORS And, for the record, that's the
7 examination of Investigator Dave Collins

8 (WHEREUPON, State's Exhibit No 104 was admitted
9 into evidence)

10 Q Investigator, if you could stand down here, please,
11 and face Madam Court Reporter, please, so she can
12 hear you, and please speak up where she can hear you
13 You've testified that both of these guns were in
14 proper working order?

15 A That is correct

16 Q Let's start with this one Can you basically tell
17 the jury what type of gun this is and how it works?

18 A This is a High Point Model C9 semi-automatic pistol
19 It is chambered or designed to fire 9 millimeter
20 Luger caliber ammunition A semi-automatic pistol,
21 what I mean is that this gun is designed so that once
22 it is loaded when it fires it will fire one shot each
23 time you pull the trigger It will automatically
24 eject the spent cartridge casing from the gun and
25 reload itself and re-cock itself and be ready to fire

1 again with just another pull of the trigger

2 The way that you operate this firearm is you
3 would take a magazine, a loaded magazine, and you
4 will place it into this whole in the bottom of what
5 they call the butt of the firearm, if you will It
6 will lock into place Then you would pull the slide
7 to the rear and release it And as this goes back
8 forward, it's going to take the top cartridge from
9 that magazine and load it into the chamber of the
10 firearm and it will then be ready to be fired

11 There is a safety device on the side of the
12 firearm here which is a lever that you can press up,
13 and that is designed to prevent the firearm from
14 firing when it's in that position When you press
15 the lever down you can see a red dot. That is to
16 show you that the gun should now be able to fired

17 At this point in time you could fire the gun by
18 simply pulling the trigger Each time you pull the
19 trigger, the gun will fire, the bullet will come out
20 of the muzzle of the firearm here The cartridge
21 case will be ejected from this hole that you see on
22 the side of the slide right here As the slide comes
23 to the rear, it does this very quickly when you
24 actually fire it, but it will come back And that
25 exposes that hole It opens that hole where the

- 1 cartridge case will ejected forcibly from the gun
2 As the slide goes forward, it reloads itself and it's
3 ready to work
- 4 Q The next bullet comes up?
- 5 A The next bullet comes up The magazine is spring
6 loaded. The cartridges have a spring tension And
7 as each one is fed out, the next one is forced into
8 place to be ready to be loaded again
- 9 Q And you called this magazines on the side here,
10 correct?
- 11 A That's correct.
- 12 Q I believe you got two with what we're referring to as
13 State's 30, the High Point?
- 14 A That is correct I had two magazines submitted with
15 this firearm One of them had a capacity to hold
16 eight cartridges The other one would hold a total
17 of ten.
- 18 Q All right If you need to go back up there, do But
19 do you remember without, I mean, did you say you a
20 eight unfired cartridges?
- 21 A If I could refer to my report for just a moment
- 22 Q All right Good
- 23 A Yes There were a total of eight unfired cartridges
24 received with this firearm
- 25 Q Along with two magazines?

1 A Along with two magazines Correct

2 Q Now, you've explained the safety device One
3 thing -- and you've testified a whole bunch of times
4 You said if I fired this -- and I don't want to point
5 it at anybody If I fired this in this direction
6 towards the bailiff back at the back there, where
7 would you expect the shell casing to go?

8 A The shell casing, due to the fact that the ejection
9 point is on the right side of that firearm, the shell
10 casing is going to be ejected to the right

11 Q So if I was firing at the bailiff, and he knows I
12 wouldn't do that, then would you expect it to go this
13 way?

14 A I would, sir

15 Q And based on your training, if it hit the wall, are
16 you familiar if shell casings ricochet back?

17 A Shell casings, cartridge cases when they're ejected
18 from a firearm, they become rather unpredictable as
19 to where they're going to end up In a case where
20 you have that distance from a wall, I would expect it
21 to bounce off that wall and end up some place else
22 than where you might otherwise expect it to be

23 The only time that you can even get begin to use
24 an ejection pattern reliably to try to place where a
25 shooter would be would be if the cartridge cases

1 first off fell into something that they're going to
2 stop in immediately, like deep grass or something of
3 that nature, and, also, you can establish which
4 direction the firearm was being used

5 Q I think getting caught in something, is basically
6 what you're saying?

7 A That is correct

8 Q So, generally, it goes the right way, but after that
9 it depends on the surroundings?

10 A Yes The harder the surface the more it continues to
11 bounce around obviously

12 Q One more question before I move on This has what
13 appears an extension here which I believe is a laser?

14 A Yes

15 Q Can you describe that to the jury and tell them what
16 that is?

17 A There's actually two separate devices here This is
18 an extension that's placed on the barrel of the
19 firearm This would have come from the manufacturer
20 that serves both as a mounting location for this
21 which is a laser sight on the bottom of the gun, and
22 also it has grooves cut in it which supposedly serve
23 to reduce the report or the kick But the laser
24 device is intended to work as a supplementary method
25 of siting or aiming the gun

1 Q Now, you said this was manufactured You can tell
2 that?

3 A Yes The name of the manufacturer has a stamp So I
4 can tell that this is a factory device

5 Q But you could, if you wanted to, buy one of those,
6 buy the pistol and then add that on separately?

7 A Oh, yes

8 Q They sell them separately or together?

9 A I don't know if that is something that you would have
10 to have come from the factory like that or if it is a
11 device that you could buy from the factory and
12 install it yourself, either way On other types of
13 firearms, I've seen it happen both ways.

14 Q Tell me, if you know based on your expertise and
15 shooting this gun even, is the laser automatically
16 lined up with where you are going to be shooting at?

17 A No, sir As this thing comes out of the box from the
18 factory, personally I wouldn't trust it to be lined
19 up with where the gun is going to be aiming Even
20 the sights that are on the gun themselves, the fixed
21 sights that are normal sights may not be aligned if
22 they're an adjustable sight In some cases you may
23 have to take the firearm -- actually, in any case, if
24 I purchased this firearm, take it to a range and
25 confirm that the laser was aiming where the gun is

1 pointing, in other words, have it zeroed in or lined
2 up with the bore of the gun

3 Q From your personal experience with this gun, State's
4 30, did the sight line up with the laser when you
5 looked at it?

6 A I did not fire this gun on a range to determine
7 exactly where it was firing as I recall, but I do
8 recall noting that the laser itself in comparison
9 with the open sight on top of the gun, it was not
10 aiming at the same place as the open sights at the
11 stop of the gun

12 Q It doesn't coincide with the same location?

13 A No, it did not

14 Q And now if I could get you to describe, tell the
15 Ladies and Gentlemen what State's 32 is?

16 A State's 32 is a Springfield Armory Model XD9
17 semi-automatic pistol It is also chambered with 9
18 millimeter Luger caliber ammunition. Both of these
19 firearms fire the same caliber of ammunition This
20 functions in an almost identical fashion in that you
21 will place a loaded magazine into the grip of the
22 firearm You would also pull the slide to the rear
23 and release it to load the gun and make it ready to
24 be fired

25 The difference in these two firearms comes in

1 that this firearm does not have a lever that you
2 operate to make it safe or ready to fire It has two
3 what we call passive safety devices One of them is
4 this lever that you see on the back of the grip
5 This is a spring loaded lever And there is also
6 another one here on the trigger in the front This
7 gun is designed so that it is safe as you see it here
8 with no pressure on it either of those two levers
9 However, if the gun is loaded and you're gripping it
10 as you would to fire it, that is, depressing that
11 lever on the back of the grip and then pressing the
12 trigger to fire the gun, you are deactivating the
13 safeties and then firing the gun This particular
14 type of safety is called a grip safety

15 Q You said passive safety Is that because on the
16 other you actually --

17 A We consider them to be passive safeties, or actually
18 impassive safeties, because you're not physically
19 moving a lever or actively moving the lever to make
20 the gun safe or unsafe By gripping the gun in the
21 correct fashion and firing, you are by doing that
22 taking the gun off the safe

23 Q If I grab it and just fire it, the safety is off?

24 A That's correct.

25 Q And you test fired that gun and found it in working

1 order?

2 A Yes, I did.

3 Q And how many -- and you can sit back down now I
4 believe Thank you How many -- there was one
5 magazine with that, I believe you said?

6 A There's one magazine and a total of ten unfired
7 cartridges

8 Q And how many did that magazine hold? I've just got a
9 couple more questions

10 A The magazine has a -- it has a ten-round magazine

11 Q For the Springfield?

12 A For the Springfield

13 Q State's -- tell me again What? 30?

14 A State's 32

15 Q 32 I apologize All right And the two magazines
16 you had for State's 30 I believe, the High Point, how
17 much will they hold?

18 A As I recall, the standard magazine capacity for a
19 High Point is eight rounds And that is what one of
20 the magazines had The other magazine was what we
21 call an extended magazine It had a ten-round
22 capacity

23 Q You had eight I believe unfired cartridges with the
24 High Point?

25 A That is correct A total of eight unfired

1 cartridges

2 Q Just, finally, out of these two, is one of these guns
3 a higher quality than the other one based on your
4 experience and training?

5 A Purely based on, you know, my opinion and what I see
6 in examining these two firearms, I would consider the
7 Springfield Armory firearm, State's Exhibit 32, to be
8 of the higher quality of manufacturing that the High
9 Point firearm. However, High Point firearms do not
10 have a record of being subject to breakage or
11 malfunctions. They are just manufactured in a
12 slightly cruder fashion.

13 Q Investigator, thank you. That's all I have, Judge.

14 THE COURT Mr Burr

15 MR BURR Thank you, Your Honor. May it please
16 the Court.

17 CROSS-EXAMINATION

18 BY MR BURR

19 Q It's getting late in the day so I'll try to talk
20 fast. I know everyone is tired. Rather than getting
21 all bogging down in these exhibit numbers, the one
22 weapon does have the laser scope?

23 A That is correct.

24 Q Was it explained to you prior to you receiving it
25 that you needed any instructions as to what it had

1 been used for?

2 A As far as who --

3 Q Did they just present you a basket of evidence?

4 A I typically receive just very sketchy information
5 about the actual incident at the time that I do the
6 examination, more so then as I was at SLED and I was
7 not physically at the Sheriff's Department Now that
8 I'm at the Sheriff's Department I may know more about
9 the actual other details of the case I don't recall
10 that I knew any of the specific details of the
11 incident at the time that I did the examination

12 Q But you received two 9 millimeter pistols --

13 A That's correct

14 Q -- and three magazines?

15 A A total of three magazines between the two, yes.

16 Q Were the magazines interchangeable?

17 A The magazines for the Springfield will not fit and
18 function in the High Point They are not
19 interchangeable between the brands

20 Q The Springfield is one the one you have here which is
21 marked --

22 A State's Exhibit 32

23 Q That handgun carried what sized clip? How many
24 rounds?

25 A It has a maximum capacity of ten cartridges in the

1 magazine What that means is that the gun can
2 actually hold 11 if you had a round in the chamber of
3 the firearm

4 Q And how many rounds were in the clip when you
5 received it?

6 A There were no rounds actually in the clip The
7 magazine had been unloaded before I received it And
8 there were a total of ten cartridges with the
9 magazine

10 Q And they were a different brand than the ones -- than
11 the rest of the cartridges?

12 A Yeah The -- excuse me The cartridges that were
13 received with State's Exhibit 32 were of a different
14 brand of cartridges that were received with State's
15 Exhibit -- I believe it's 30?

16 Q 30

17 A And they were the same caliber but they were of a
18 different brand

19 Q And the Springfield, State's Exhibit 32, had the
20 unspent, good, new cartridges You had no casings,
21 no shells indicating any of these had been fired, any
22 bullets of that brand?

23 A I received unfired ammunition with both firearms
24 However, I received no evidence, no fired evidence,
25 bullets or cartridge cases, that were fired by that

1 gun

2 Q All right When you received them, were you -- I'm
3 sure if this is your area or not -- but were you able
4 to test the handguns to see whether they had been
5 fired recently?

6 A The first -- as a part of your examination of a
7 firearm, you're going to examine the inside of the
8 barrel, the bore of the gun to see if there is any
9 residue in there to indicate that any had been fired
10 since it was last cleaned If I could refer to my
11 notes for a moment, please?

12 Q If you would, please

13 A Yes Both of these firearms had some degree of
14 fouling in them, to indicate that they -- all that
15 indicates to me is that they had been fired since
16 they had last been to thoroughly cleaned There is
17 no forensic test available to us that can indicate
18 exactly how long ago that was.

19 Q So you could not tell whether it had been fired
20 recently or not?

21 A No, I could not

22 Q State's Exhibit 30, assuming this was the handgun
23 that fired the shell casings that were expended and
24 fired --

25 A That is the gun that fired the cartridge cases that

1 were taken away from the scene

2 Q All of the cartridges of that manufacturer or that
3 brand belonged to this gun at one point?

4 A Yes

5 Q So you had nine casings that had been fired?

6 A Correct, sir

7 Q Two -- how many unfired?

8 A A total of eight unfired associated with that
9 firearm

10 Q And how many did the second clip hold for this
11 firearm?

12 A The one that was submitted to me that was not
13 indicated as having been in the gun had the capacity
14 of ten

15 Q And the one that was indicated to you that was in the
16 gun, what was its capacity?

17 A It had a capacity of eight

18 Q But yet there were nine spent casings of that brand
19 found at the crime scene?

20 A That is correct It is possible to have that number
21 of fired cartridge cases within the magazine As the
22 lower capacity magazine having the capacity of eight,
23 but still have the possibility of an additional round
24 being in the chamber of the firearm which brings it
25 to a total maximum capacity of the firearm having

1 nine

2 Q But if someone were to testify, tell you at that time
3 one was jammed into the chamber, that would not be
4 possible That would indicate it had to be at least
5 ten at some point?

6 A By jammed into the chamber, sir, I'm not exactly sure
7 if you --

8 Q I'm giving you a hypothetical based on earlier
9 testimony If someone told you there was one wedged
10 into the barrel itself that had to be extracted, that
11 would be a tenth round, would it not?

12 A It could be I do not know because that could be one
13 of the eight unfired that I received As I receive
14 the evidence -- if I could refer to my notes just for
15 one --

16 Q Yeah

17 A My notes indicate that from an envelope labeled "from
18 magazine in victim weapon", there were a total of six
19 unfired cartridges There was an additional
20 cartridge that was labeled as being "right front
21 floorboard" And then there was an eighth cartridge
22 that was indicated as "chamber of victim gun"

23 Q Thank you You testified I guess when I was doing
24 Voir Dire earlier that you have been trained in the
25 extraction mode of cartridges?

1 A That is correct

2 Q When a gun is fired and the spent cartridge is still
3 in the chamber, it expands, does it not?

4 A It does expand, yes, under pressure

5 Q It takes a fair amount of pressure to extract it,
6 does it not?

7 A That is correct

8 Q So the gun is devised with a device that goes up
9 forward, clips down on the back of the cartridge,
10 pulls back on it?

11 A Yes That is called the extractor

12 Q But that's only a portion of the process We also
13 want to get that out of the way?

14 A That is correct

15 Q So there's a second device to the side, a fair amount
16 of force, that kicks it up and over to the side out
17 of the ejection port?

18 A Yes. That is called the ejector

19 Q I think I heard you earlier saying there was some
20 confusion or whatever as to where it might land
21 Laws of physics don't change. If the weapon is
22 stationary and the same device is used each time,
23 there is going to be a pattern to where they're
24 ejected to Is that correct?

25 A Yes All other things being the same, if they are

1 not disturbed from the point where they leave the
2 firearm and they stay where they initially hit, there
3 will be a pattern as to where they land, yes.

4 Q Now I'm looking at State's Exhibit No. 30 which I
5 think you said is -- I'm not sure what model gun it
6 is

7 A That's the High Point Model C9

8 Q That's the High Point, the one that we're assuming
9 that was used during the shooting?

10 A That's correct

11 Q Based on your training, if the handgun is normal
12 height, four to five feet off the ground, how far
13 will it eject a cartridge?

14 A That I cannot give you a definitive answer on based
15 on different types of ammunition being used with
16 different pressures associated with the ejection
17 process, the height of the gun from the ground, all
18 that may change how far they would be ejected So I
19 would hesitate to give a definitive answer unless I
20 had the opportunity to test fire that gun with the
21 appropriate correct ammunition under controlled
22 circumstances to be able to determine exactly how far
23 it would eject

24 Q If I were standing right here firing the target right
25 back here and you're sitting where you're sitting now

1 without the box, would you expect to be hit with the
2 brass?

3 A They may or may not

4 Q Good probability it would go at least that far, would
5 it not?

6 A It could. But, again, without testing the firearm I
7 can't tell you for sure

8 Q On an average, just typically?

9 A I can't tell you without actually testing the firearm
10 because there are no many variables that are involved
11 with how far a gun will eject a particular cartridge
12 case

13 Q Have you ever had occasion to see a handgun with any
14 ammunition when fired that the brass simply fell out
15 the side?

16 A Not very many will do that Typically, they will
17 eject some distance That distance will vary
18 depending on the make, model and caliber of the
19 firearm and the type of ammunition used

20 Q But we are talking this firearm here, this particular
21 firearm, the one that's marked as State's Exhibit No
22 30, that firearm Now, the ammunition has already
23 been spent It's exploded. The only thing in play
24 is that ejection device It's not going to change
25 from round to round or ammunition to ammunition, is

1 it not?

2 A The function of it will not change However, where
3 it will deposit ejected cartridge cases may vary
4 depending on the brand of ammunition used, the --
5 even within a brand you may have differences in
6 where -- for instance, just using this as an example,
7 Federal brand 9 millimeter ammunition with 115 grain
8 hollow point bullet may deposit in a different
9 location when ejected than Federal brand 9
10 millimeter ammunition with 147 grain bullet due to
11 the fact that you have different pressures involved,
12 different physics involved with how fast the slide is
13 coming to the rear, how hard it is being ejected
14 between the different types of ammunition

15 Will the differences be significant? They may
16 or may not But as we typically do not do an
17 ejection pattern test on firearms unless it's
18 specifically requested that we do so And in this
19 particular case I did not do an ejection pattern test
20 on this firearm All of my testing on this firearm
21 was done into a bullet recovery tank, and that
22 effectively renders any -- me incapable of providing
23 an accurate answer as to how far it would eject a
24 cartridge case

25 Q If you had been requested to test this handgun and

1 actually observe the ejection process and then visit
2 the crime scene, could you have pinpointed a location
3 that the shooter had been standing?

4 A Only if I could meet certain prerequisites And that
5 would be if I could determine accurately the
6 direction of fire and place the barrel of the firearm
7 in line with that trajectory And then I could from
8 that standpoint tell that a cartridge would have been
9 ejected to the right of that However, it would have
10 to be assumed that it would not strike another object
11 and that it would not -- and that it would come to
12 rest where it initially lands. If it strikes a wall,
13 it's going to bounce to some location that is not
14 perhaps going to be useful for placing the exact
15 shooter If it strikes a concrete or hard floor,
16 it's going to bounce around

17 A problem that we have with ejection patterns is
18 just that, all the many variables that are involved
19 with trying to determine -- trying to use that for
20 any means of determining the position of the shooter
21 We also have had cases where between the time that
22 the incident occurs and the time that a crime scene
23 person gets there to collect the evidence you might
24 have other people moving around in the crime scene
25 disturbing the location of these cartridge cases

1 which will then further confuse the issue as to using
2 them as a means of placing the shooter

3 Q Thank you, sir That's more than I needed to know
4 No further questions

5 THE COURT You asked the question.

6 MR STRICKLER Thank you, sir May it please
7 the Court

8 CROSS-EXAMINATION

9 BY MR STRICKLER

10 Q Good afternoon, Mr Collins or Investigator Collins

11 A Good afternoon

12 Q Just a couple of things You mentioned a 9
13 millimeter Luger ammunition That's also referred to
14 as a .9 millimeter Parabellum ammunition. Is that
15 correct?

16 A Yes That is another term for the same caliber

17 Q And you testified about making a determination as to
18 which weapon fired the shell cases that were
19 recovered at the scene You made a determination as
20 to that?

21 A Yes, I did, sir

22 Q They were all fired by the High Point weapon, the one
23 with the laser sight, right?

24 A That is correct.

25 Q And that determination was made by looking at various

1 microscopic markings on the shell casings themselves
2 in comparison with I guess markings on the firing pin
3 mechanism from the weapon and/or the extraction
4 mechanism?

5 A In this particular instance all nine were compared
6 with -- by looking at the breach face impression
7 The breach face is the flat area at the back of
8 the -- at the face of the slide against which the
9 cartridge case rests And that left the markings
10 that I mostly used for this, although there were some
11 good markings, matching markings, in the fired pin
12 impression.

13 Q Okay Were you asked to look at any of the unfired
14 rounds submitted to you to see whether there were any
15 markings associated with them?

16 A Not specifically in this case I don't believe But I
17 do typically look at the outside area on the
18 cartridges for areas that we could use to potentially
19 associate them with the firearm. And what we're
20 looking for there are again -- you don't have to
21 necessarily fire a cartridge in a gun to mark it in a
22 way that's going to be identified to that gun
23 Merely the loading process of using the slide to load
24 it into the chamber and then extracting it from the
25 slide from the chamber manually by pulling the slide

1 to the rear can leave marks on the cartridges that
2 are unique to that particular firearm. In this case
3 I didn't note that I covered or discovered any
4 markings that were suitable for that type of
5 identification

6 Q Referring to State's 30, I've heard of a weapon
7 getting jammed Okay? And there has been testimony
8 in this case that this weapon had a cartridge,
9 unfired cartridge jammed in it and that it was
10 jiggled and it fell out Can you tell us how
11 something gets jammed in a weapon like this?

12 A What are commonly referred to as a jam can be any one
13 of a number of different types of malfunctions It
14 can be a failure of the magazine to properly feed a
15 round into the chamber That's what that sounds like
16 based on your description, is that a round attempted
17 to feed from the magazine into the chamber and simply
18 got stuck during the process.

19 Q Where would it get stuck?

20 A It will be stuck between the magazine itself and the
21 mouth of the chamber.

22 Q Okay.

23 A And during that process, sometimes working the slide
24 slightly can dislodge the cartridge from that
25 condition and it will fall out of the ejection hole

1 Other types of jams might include a situation where a
2 fired cartridge case was not fully extract and eject
3 from the gun There are a number of different
4 malfunctions that people refer to as jams However,
5 the one that you just described sounds more like a
6 failure to properly feed

7 Q Okay. You found in just the general look that you
8 took at the unfired cartridges in this case no
9 markings that drew your attention?

10 A I didn't detect any markings that were suitable for
11 identification with this specific firearm, no, sir

12 Q Okay Thank you very much

13 MR MEADORS Just two questions, please

14 REDIRECT EXAMINATION

15 BY MR MEADORS

16 Q So if it's not put in the magazine right or properly,
17 it can cause it to jam, right?

18 A Pardon?

19 Q If it's not put in the magazine right it can cause it
20 to jam?

21 A Yes That it's a frequent cause of that type of
22 malfunction, is not having the magazine fully seated
23 into the firearm which will prevent the cartridges
24 from correctly aligning with the chamber when you
25 operate it, and, therefore, it can cause it to jam

1 Q Mr Burr asked you about the Springfield right when
2 he started And have you got the envelope labeled
3 with the magazine and the bullets that came with the
4 Springfield?

5 A That is this

6 Q And I believe you said that -- and he asked you --
7 that magazine held how many?

8 A That magazine is designed to hold a maximum of ten
9 cartridges

10 Q But it could hold 11 if you chambered one?

11 A That is correct

12 Q The gun could?

13 A That is correct

14 Q And I think Mr Strickler asked you about different
15 cartridges, or Mr Burr may have, whether they were
16 compared You're not at the scene, are you?

17 A No, sir I never went to the scene

18 Q So the only indication that you have what magazine or
19 what bullets went with what gun is from an
20 investigator who was at the scene Is that correct?

21 A That is correct

22 Q And in this case that would have been Jay Russell?

23 A That is correct

24 Q And do you know in the Springfield -- and I
25 apologize, Madam Court Reporter -- 32, is there an

1 indication where -- was there a cartridge in the
2 chamber in 32?

3 A The only thing I had to go on from that is what is
4 marked on the envelopes that contain the evidence
5 when I receive it, as the firearm was unloaded when
6 it was submitted to me And there was one cartridge
7 in an envelope that was labeled as from "chamber of
8 suspect weapon" The other nine cartridges that were
9 received were in an envelope that was labeled as from
10 "magazine from suspect weapon"

11 Q Thank you. That's all I have

12 THE COURT: Anything?

13 MR. BURR. No, sir

14 MR STRICKLER. No, sir

15 THE COURT Thank you very much You may come
16 down Counsel, let me see you And Mr Collins be
17 excused?

18 MR STRICKLER. Without objection, sir

19 MR MEADORS. Without objection Thank you,
20 Investigator.

21 (Whereupon, a bench conference is had)

22 THE COURT All right, Ladies and Gentlemen
23 Counsel tells me the next witness may be somewhat
24 lengthy, not perhaps any more lengthy than anybody
25 else we've heard; but, nevertheless, longer than you

1 probably want to stay I guess that's what I'm
2 trying to say Or maybe longer than I want to stay
3 But, no Seriously I think probably the best use
4 of our time, all indications are we'll finish this
5 case tomorrow It will not run into Friday. So
6 since that is the case, and I expect we'll work a
7 full day tomorrow, and if we do, I expect -- I can't
8 promise you anything -- that based on what I know at
9 this point in terms of the number of witnesses, it's
10 likely we can conclude the trial tomorrow So
11 there's no sense in staying late tonight if we're
12 going to have to be here tomorrow and if there's a
13 reasonable expectation we can finish tomorrow

14 So at this point I'm going to dismiss you for
15 the evening Again, I'll ask you not to discuss the
16 case among yourselves over the evening hours or when
17 you return or with anyone else over the evening
18 hours I'm going to ask you to be back in your jury
19 room at 9 00

20 Now, one juror has been a little bit tardy
21 lately. And I will just tell you we're going to try
22 to start at 9 if everybody is here If everybody is
23 not here, then we'll have to wait But a word to the
24 wise All right All right See you at 9 00
25 Thank you very much.

1 (Jury out at 5 47 A M)

2 THE COURT All right, counsel. I am going to
3 propose to give you a set of charges in the morning
4 Anything you want, if you'll please hand it up But
5 I'm anticipating what I think we'll need But we'll
6 discuss that first thing in the morning 9 00.
7 Stand at ease 'til 9.00.

8 (Whereupon, the proceedings are concluded for
9 the day, to be reconvened tomorrow morning)

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ORIGINAL

736

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) COURT OF GENERAL SESSIONS
) 2002-GS-40-10992, 10624

State of South Carolina

vs

Willie Lloyd Alexander and
Demetrio Sears,

Defendants

)
)
) TRANSCRIPT OF RECORD
) (Trial - Volume 3 of 4)
)
)
)

January 8, 2004
Columbia, South Carolina

BEFORE

THE HONORABLE G THOMAS COOPER, JR , JUDGE, and a
jury

APPEARANCES.

KATHRYN LUCK CAMPBELL, SENIOR ASSISTANT SOLICITOR
JOHN MEADORS, DEPUTY SOLICITOR
Attorneys for the State

WILSON BURR, ATTORNEY AT LAW
Attorney for Defendant Willie Lloyd Alexander

DOUGLAS STRICKLER, PUBLIC DEFENDER
Attorney for Defendant Demetrio Sears

JENNY H WILLIAMS
Official Circuit Court Reporter
(803) 576-1743

Thursday, January 8, 2004

THE COURT Counsel, let me see you for a minute.

(Whereupon, a bench conference is had)

MS CAMPBELL. Judge, one housekeeping matter.

THE COURT. Let me do one housekeeping matter, another housekeeping matter For the record, the alternate juror, Ms. Jensen, Krista Jensen, it looks like 126, has continuously been late throughout this trial, has never appeared on time when the jury was instructed to appear It's 9:15 From the best of my information, she has not appeared today I cannot allow this alternate juror to continue to hold up the progress of this trial. I, therefore, order that she be stricken from this jury panel She's the second alternate That leaves the panel with one alternate And if, as represented, the case finishes today, it should not create a problem

And I understand the defense's position that they do not agree that my dismissing the second alternate that they in any way waive their rights to a full 12-panel jury in this matter for deliberation.

I'm going to ask that the security department take this lady into custody At such time as she does appear, Ms Scott, the clerk, has appeared in

1 the courtroom, I'm going to ask Ms Scott to talk to
2 her Her name is Krista Jensen, number 126 I don't
3 know what her problem is She has not told the Court
4 that she has a problem She has just perpetually
5 been late throughout the course of this trial, and
6 she seems to think it's funny, and that offends the
7 Court

8 MS. SCOTT What do you want me to do, Your
9 Honor?

10 THE COURT I'm going to ask the security people
11 to take her in custody, hold her You may want to
12 discuss with her why she's late and report back If
13 there is a reasonable explanation, perhaps she needs
14 to be dismissed at the end of the day

15 MS SCOTT. I understand

16 THE COURT: All right Clear on that?

17 MS SCOTT: Yes, sir

18 THE COURT. Now, yes, ma'am

19 MS. CAMPBELL. May it please the Court Your
20 Honor, yesterday there was testimony about
21 Investigator Laffin finding some -- a gray and a
22 black material in the van And it was an oversight
23 on my part, but in reviewing what's in evidence, we
24 did not offer that into evidence formally in front of
25 the jury At this time we would offer it I have

1 spoken to both defense counsel, and I believe that's
2 without objection

3 THE COURT Without objection?

4 MR STRICKLER: Yes, Your Honor

5 MR BURR: Without objection, Your Honor.

6 THE COURT All right You ready for the jury?

7 MS CAMPBELL Thank you, Your Honor

8 (WHEREUPON, State's Exhibit No 87 was admitted
9 into evidence)

10 MR MEADORS: Yes, sir Let me just, Your
11 Honor, for flowing purposes, I just want to get these
12 two marked It was previously marked State's 107
13 which would be the Advice of Rights of Willie
14 Alexander In addition, before Madam Court Reporter
15 starts typing, we'd offer the redacted -- and it's if
16 it's already in, I don't know -- redacted version of
17 Mr Alexander's statement as State's --

18 COURT REPORTER 113

19 MR MEADORS -- 113 at the appropriate time,
20 just to pre-mark it

21 (WHEREUPON, State's Exhibit No 113 was marked
22 for identification only)

23 MR STRICKLER. One other potential problem.
24 Last night about 6:30 I was called to the Solicitor's
25 office regarding a four-page document that is a

1 closed incident report relating to this case It
2 documents and tracks various calls made over the 911
3 or the dispatch in this case, evidence which has not
4 been supplied to me before There may or may not be
5 a tape associated with it also I was under the
6 impression that the Solicitor was considering
7 introducing this during Mr. McDonald's testimony If
8 they're not, I'll sit down and be quiet If they
9 are, I think we ought to deal with it at this point
10 in time.

11 MR MEADORS. I agree with him, we ought to deal
12 with it Judge, that came in our possession late
13 yesterday afternoon I gave it to both of these
14 attorneys. I know there are potential discovery
15 problems there We had previously investigated and
16 found there were two phone calls that came into 911
17 At this point that's all I'm going to get out of
18 Scott McDonald And I'd like to go ahead and offer
19 that, but I will not do that I will just ask Mr
20 McDonald, through your investigation did you confirm
21 that two calls did come into 911 this morning
22 concerning this incident

23 One of them actually does have that it came from
24 Ms Tina Quattlebaum Then there is another that
25 came in two minutes later from a cell tower number

1 It doesn't have a specific number And I would argue
2 that would be Mr Andre Stokes. It just came from a
3 number that wasn't in there But I guess at this
4 point we would ask the investigator did you
5 investigate, did you find out through investigation
6 two calls did come into 911 that morning That's all
7 I was going to ask him And if it opens up the door
8 after that, then obviously we'll try to get the
9 document in

10 MR. STRICKLER: I'm sorry What?

11 MR. MEADORS: If somebody wanted to elaborate on
12 it and ask questions on it, then I would try to get
13 it in.

14 MR STRICKLER: Okay. As far as what they
15 propose to do, I don't have any problem that If
16 they intend to go any further than that at any point
17 in time, I'll ask that we have a hearing outside the
18 presence of the jury on the matter

19 MR MEADORS: And I understand that

20 THE COURT That's fine

21 MR BURR. Your Honor, I would second the
22 objection I received it late last night It could
23 be written in a foreign language as far as I'm
24 concerned I don't understand what it says So I do
25 object to the document.

1 MR MEADORS There is no 911 tape

2 THE COURT It may or may not be relevant I
3 don't really know All right. Bring the jury,
4 please

5 (Jury in at 9 20 A M)

6 THE BAILIFF The jury is present, Your Honor

7 THE COURT Thank you very much Good morning,
8 Ladies and Gentlemen We're ready to continue with
9 the trial Mr Solicitor, you may call your next
10 witness

11 MR MEADORS May it please Your Honor The
12 State would now call Sergeant Scott McDonald

13 THE CLERK. If you'd come forward, please

14 SCOTT MCDONALD, after being duly sworn,
15 testifies as follows

16 THE CLERK Please have a seat and state your
17 full name

18 WITNESS Scott McDonald

19 DIRECT EXAMINATION

20 BY MR MEADORS

21 Q Are you currently with the Richland County Sheriff's
22 Department?

23 A Yes, I am

24 Q And what is your title?

25 A I'm a Sergeant in investigations

Q How long have you been in law enforcement, Sergeant?

1 A Since March of 1988 I've been with Richland County

2 Q Could you please tell the jury about your -- first of
3 all, where are you from?

4 A I'm originally from Gainesville, Florida

5 Q How long have you been here?

6 A I've been up here since 1981 when I attended USC

7 Q When did you graduate?

8 A I graduated in 1986 with a Bachelor Degree in
9 Criminal Justice.

10 Q And after that did you go right into law enforcement?

11 A About a year and a half later, yes.

12 Q Bring you briefly, if you could, or however long you
13 need to, tell the jury about your background in law
14 enforcement and your training that you have received?

--15 A I attended the South Carolina Criminal Justice
16 Academy, completing that in January of '89 Since
17 that time I've had numerous seminars given with all
18 aspects of law enforcement, to include interview
19 interrogation, crime scene reconstruction, blood
20 spatter analysis, numerous courses over the years.

21 Q Have you always been with Richland County?

22 A Yes, I have

23 Q What different positions have you held there?

24 A My first six years there I was in the uniformed
25 division answering calls in a marked unit I

1 obtained the rank of field training officer for five
2 of those six years. From there I went to
3 investigations in August of 1994 and have been there
4 ever since I made Sergeant approximately five years
5 ago, was over the burglary unit for several years
6 And most recently I've been over the armed robbery
7 unit

8 Q So the sheriff has you all divided up into different
9 units based on crimes?

10 A That's correct

11 Q And you are basically with the major crimes unit?

12 A That is correct

13 Q And as a Sergeant, what are your responsibilities?

14 A My responsibilities are in robbery to assign and
15 ensure the investigation of all robberies, both
16 commercial and of individuals, as well as carjackings
17 and home invasions I assign these cases to my
18 investigators and myself and ensure that they
19 investigate them fully and bring them to trial.

20 Q What we're all about here today, Sergeant, back on
21 October 8th of 2002, I assume you were working that
22 day?

23 A Yes, I was

24 Q Do you work -- as a Sergeant, do you have regular
25 hours?

1 A For the most part, I'm 7 30 'til about 5 We do
2 rotate to evening shift and things like that. But
3 basically Monday through Friday

4 Q You all rotate on call basically?

5 A Yes, we do

6 Q And this particular day, were you working the day
7 shift?

8 A Yes, I was.

9 Q And did you have a -- were you working on something
10 else in the area when you heard about this?

11 A Yes I was assisting some other investigators on a
12 search warrant in the Woodfield Park area We were
13 just kind of winding it up, completing it when I was
14 notified by my lieutenant, Stan Smith, of an armed
15 robbery with a shooting over on Percival Road

16 Q And Lieutenant Stan Smith?

17 A That's correct

18 Q And I know where Woodfield is. Is that basically
19 between Decker and Percival? Woodfield?

20 A Right Just off of between Decker Boulevard and if
21 you go down and take a left on Percival, back in that
22 area back in there

23 Q So after you heard about the incident, how long did
24 it take you to get to Ntense?

25 A Approximately 15 minutes. We were just completing

1 the search warrant I wasn't able to leave
2 immediately But I wound up as quick as I could and
3 got over there It was about 10 to 15 minutes before
4 I arrived on the scene

5 Q I think we've had testimony that -- so you weren't
6 the first law enforcement officer there?

7 A No I think Officer Johnson was there when I got
8 there. And Investigator Byram had also arrived on
9 the scene He was one of the on-call day shift
10 investigators that day

11 Q With your rank in the Sheriff's Department, when you
12 got there, was it kind of your case?

13 A I went ahead and inherited it, yes Especially it
14 being a robbery, I went ahead and took over at the
15 scene

16 Q Can you describe to these folks when you got there --
17 and about what time did you get there?

18 A I got there at approximately 10-23 that morning

19 Q Do you know when the call had come out that there had
20 been a --

21 A According to the incident report, approximately 9 49
22 that morning

23 Q Describe the scene at Ntense Audio Kustoms when you
24 got there that morning? What did you see?

25 A When I arrived that morning there was crime scene

1 tape up around the entire scene Investigator Byram
2 was present as well as officer Johnson There may
3 have been one other officer present. Immediately I
4 met with Investigator Byram and Officer Johnson to
5 get briefed on what we had at this point, what we
6 knew I also observed several items laying in the
7 parking lot, a blue and white hat, a duffel bag and a
8 firearm

9 Q So the tape's up when you get there?

10 A Yes

11 Q The pictures are in here somewhere I think we've
12 already entered it in evidence. And the items of
13 evidence were still laying in the parking lot?

14 A Yes, they were They had been secured by Officer
15 Johnson And I confirmed with Investigator Byram
16 that we did have a forensic investigator in route

17 Q And that would be --

18 A Investigator Jay Russell

19 Q -- jay Russell who has testified?

20 A That's correct

21 Q And as now the lead investigator, do you want the
22 scene to stay secured and nothing moved until Russell
23 gets there? -

24 A That's exactly right Upon our initial arrival we
25 didn't go into the scene awaiting for Russell We

1 were briefed off to the side, probably just inside
2 the crime scene tape But we didn't go approaching
3 the building or anywhere near the evidence until
4 Russell got there

5 Q Why is that?

6 A We don't want to disturb anything or step on any
7 evidence that we may not be aware it's there and step
8 on something or, you know, disturb it.

9 Q So you kind of leave it for him?

10 A That's correct

11 Q Was the door busted when you got there?

12 A Yes, it was That's the first thing I noticed other
13 than the crime scene tape, is the glass busted out on
14 the door

15 Q Did you have an occasion to talk to anybody there
16 that was associated with Ntense? Specifically, did
17 you talk to Mr Sterling Patterson?

18 A Yes, I did After being briefed by Investigator
19 Byram, realizing we had two witnesses that were
20 present at the business when the incident occurred, I
21 took -- I told Mr Byram that I would take Mr
22 Patterson, interview him and do a robbery
23 questionnaire with him if he would take Mr Stokes
24 and do the same with him

25 Q Mr Andre Stokes?

1 A That's correct

2 Q So you didn't spend as much time with Mr Stokes?

3 A No Very limited Most of my time was spent with
4 Mr. Patterson initially

5 Q And I want to show you what's been talked about some,
6 this robbery questionnaire Is this sort of a
7 guideline for you all when you get there?

8 A Yes. We go over a description of the suspect. What
9 I generally do is sit down and go over the story,
10 what happened, and basically listen to Mr Patterson
11 tell me what happened. And from there, after we're
12 complete with that, then we get into the
13 questionnaire part as far as the description of the
14 suspects

15 Q And on this, did he give you a description of the
16 suspect?

17 A Yes, he did

18 Q What did he tell you?

19 A As I went down, he indicated the suspect was a
20 Hispanic or light skinned black or light skinned
21 Asian subject, that he was a male subject
22 approximately five-foot-ten in height, small framed
23 for his build, his weight, between 165 and 175. He
24 said he had a round face and gave me somewhat of a
25 clothing description He indicated he had a white or

1 gray t-shirt for a mask and he had a blue and white
2 cap He was armed with a black semi-auto pistol.

3 Q Let me stop there This form, it starts off saying
4 the victim's name Obviously he gives you that
5 information?

6 A That's right

7 Q And did he tell you the other witness' name, Andre
8 Stokes?

9 A Andre Stokes That's correct

10 Q Back then when it says "subject", you described what
11 he said he told you Now, when you said white or
12 gray t-shirt, is that beside -- I mean, you've got
13 several options there?

14 A Right

15 Q Is that beside the word "mask"?

16 A That's beside the word "mask", not that he was
17 wearing a white or gray t-shirt, but he was wearing a
18 white or gray t-shirt as a mask

19 Q And next to that is "cap or hat", then a line?

20 A Right And that's where I've got indicated it was a
21 blue and white cap

22 Q And he provided that information to you?

23 A Yes, he did

24 Q About what time?

25 A This was taken probably within ten minutes of my

1 arrival.

2 Q Then type of weapon you said was a --

3 A Black semi-auto pistol

4 Q Was there a black semi-automatic found outside in
5 that parking lot?

6 A Just outside the front door; yes, sir

7 Q Now, I think somebody -- it might have been
8 Mr Burr -- had asked you about that he -- and you
9 were taking this information down, right?

10 A Yes

11 Q This is your handwriting?

12 A Right

13 Q Something about he told you about Paco, an Hispanic
14 drug dealer What's the prompt to that that's on
15 this form?

16 A The prompt says, "Who does the robber or robbers
17 remind you of?" When I asked Mr. Patterson that, he
18 indicated the name of Paco. I said, Well, what do
19 you mean by that? He said, well, there was a
20 customer that he had had that is a Hispanic customer,
21 male customer, and from other people he had heard
22 from that this guy was associated with drugs So in
23 my kind of shorthand here I put Paco, an Hispanic
24 drug dealer

25 Q That's who it reminded you of?

1 A That's who --

2 Q Not that that's who it was?

3 A That's right.

4 Q But my question is that that's you all's question you

5 provided, who does he remind you of, correct?

6 A Right

7 Q He didn't say, Hey, he reminds me of so-and-so?

8 A No I asked him that

9 Q And then below that it says "Have you ever seen the

10 vehicle before?" Does he describe the vehicle?

11 A He describes a burgundy minivan, indicated possibly a

12 Mazda MPV

13 Q Did he say which way it was facing?

14 A In the parking lot facing northbound.

15 Q Now, did you gather other information from him, too?

16 And I'm not asking you to repeat it, and I don't

17 think you could. But did you basically take an oral

18 statement from Mr Patterson about what happened that

19 day?

20 A Right We went over the events of how this all

21 unfolded

22 Q We've all got lawyers in the courtroom here But you

23 put that down in your notes?

24 A That's correct

25 Q Oral statement from him, you put it in your incident

1 report?

2 A That's correct

3 Q Is time of the essence at this point?

4 A Yes We're trying to get as much information as
5 quickly as we can so we can get it out You know,
6 while I was in route to the scene, the radio was just
7 abuzz with activity over this incident Descriptions
8 of vehicles being put out, suspect information What
9 we try to do, of course the first arriving officer
10 tries to confirm the description that's already been
11 given out possibly from any calls And once we get
12 there, we go into a little more detail And as we
13 get more detail, if it changes, we want to get that
14 right out to the radio to alert all our units that
15 are out looking for the suspect vehicle and the
16 suspects

17 Q Had you already heard the information on the radio
18 before you had even got there?

19 A Right I'd already heard about a burgundy minivan
20 with several black male suspects

21 Q And to your knowledge, through investigations, who
22 provided that information? Do you know?

23 A Dispatch did not tell us specifically if it came from
24 one of the people calling in 911 or if it came in
25 from the victims on the scene They just put out the

1 information

2 Q Were you able to verify through your investigation
3 how many calls came into 911 that morning?

4 A Yes, I was

5 Q And how many?

6 A There were two

7 Q So at this point there's a description of a van out
8 there on the airway, correct?

9 A That's correct

10 Q You've now talked to the victim You've got a
11 description of an individual?

12 A That's right

13 Q Mr Stokes has given some sort of a description,
14 correct?

15 A Right He was talking to Investigator Byram during
16 this time

17 Q Did something happen? We've all seen the video The
18 van was then located on I-77?

19 A The van was spotted on I-77 southbound with a blown
20 out rear tire And a suspect or a person had been
21 found in that van shot several times, fell out on the
22 side of the interstate.

23 Q And I can't remember. Before I move on, did
24 Mr. Stokes also fill out robbery questionnaires?

25 A I believe he did, yes

1 Q Do you have those with you?

2 A Apparently they're not up here with me

3 Q How about I show you these and see if this is your
4 handwriting and if you recognize them?

5 A I recognize these This is not my handwriting, no
6 Like I said, Investigator Byram actually interviewed
7 Mr Stokes and filled this out

8 Q As the lead investigator in this case, are you aware
9 that Mr Stokes gave these descriptions?

10 A Right.

11 Q And was he able to identify or pick out anybody?

12 A Mr Stokes?

13 Q Yes

14 A No, he was not

15 Q Were the Quattlebaums gone when you got there?

16 A Yes, they were

17 Q And I say -- Tina and Maggie Quattlebaum I didn't
18 mean to --

19 A Right The only witnesses I was aware of at that
20 time were Mr Patterson and Mr Stokes

21 Q At this point, about what time is it right now?

22 A Which --

23 Q The way we're telling the story. It's been
24 identified on I-77?

25 A It's probably, you know, an hour into this, probably

1 an hour or so after my arrival by the time they get
2 him out of the vehicle and we start getting a name
3 Q What do you all do after the van has been located on
4 I-77 and you have a description of it? What happens
5 next? Do you all have an occasion to put a line-up
6 together?
7 A Yes After we learned that the suspect that was in
8 the vehicle that had been shot numerous times, we had
9 a name, a driver's license, I requested through my
10 phone through my lieutenant that someone develop a
11 photo line-up of Mr Sears, and if someone could
12 bring it to me since I was still at the scene talking
13 with the witnesses.
14 Q And that's standard procedure?
15 A Yes
16 Q You're at the scene You've now got a suspect
17 identified?
18 A Right.
19 Q You ask for assistance to help put together a
20 line-up?
21 A That's right
22 Q And did that happen? ,
23 A Yes, it did. Investigator Holdorf did a photo
24 line-up at headquarters and brought it out to me at
25 the scene

1 Q Tell these folks how you put together a photo
2 line-up?

3 A We look for pictures of people with similar
4 characteristics to the suspect that we want to put in
5 this picture You know, nothing suggestive We
6 wouldn't put five white males and one black male in
7 there if we're trying to identify the black male as a
8 possible suspect So we look for similar
9 characteristics. Race, facial hair, things like
10 that We want to put like individuals into the
11 line-up

12 Q If Ms. Campbell was a suspect, you wouldn't put her
13 in there with five men?

14 A No

15 Q You wouldn't put her in there with five
16 African-American females?

17 A No

18 Q You wouldn't put her in there with five redheads?

19 A No

20 Q What are you trying to make the line-up? What's your
21 goal in making a line-up?

22 A Trying to make a fair representation to show to our
23 victims to see if they can identify the suspect
24 Obviously, if we put people with different
25 characteristics in there, the suspect would become

1 very apparent So we want to make it non-suggestive
2 We want to make everyone as equal as we can
3 Q I think this has already been entered as State's 25.
4 Can you look at it and tell me if you recognize it?
5 Is it what you were just talking about?
6 A Yes. This is the photo line-up that was brought to
7 me at the scene that day
8 Q Describe the photo line-up to the Ladies and
9 Gentlemen Let me hold it up, just ask you to
10 describe it?
11 A There are six pictures here of black males with short
12 haircuts, it appears no facial hair Mr Sears is
13 located in position 1, and then the others are
14 arranged around him
15 Q All similar features?
16 A All similar features
17 Q You had this line-up brought to you at Ntense Audio,
18 correct?
19 A Yes, I did
20 Q Did you have occasion to show it to Mr Sterling
21 Patterson who had given you a description earlier?
22 A Yes, I did
23 Q Tell the Ladies and Gentlemen where you showed that
24 to him?
25 A Upon getting the line-up and reviewing it myself to

- 1 agree that it was a fair line-up, I took Mr.
2 Patterson aside in the bay area off to ourselves
3 where we could talk and he couldn't be influenced by
4 anyone and asked him to take a look at this photo
5 line-up to see if there's anyone in this line-up that
6 he recognized from earlier that day during this
7 incident I then handed him the line-up and let him
8 examine it
- 9 Q Did you attempt to suggest to him or put your finger
10 on it when you handed it to him or just downright
11 point at it? Did you cheat?
- 12 A No No
- 13 Q At that point you didn't know who the suspect was,
14 did you? You hadn't seen the suspect?
- 15 A No, I had not
- 16 Q Was he able to pick out anybody?
- 17 A Yes, he was
- 18 Q Who did he pick out?
- 19 A He picked it out the individual in position No 1
- 20 Q That is?
- 21 A Demetrio Sears
- 22 Q Is it you all's practice, do you do it, did he
23 indicate that on the form?
- 24 A Yes, he did. I actually had him put his initials
25 next to the picture he picked out, as well as the

1 date, 10-8-02

2 Q That's Sterling Omar Patterson, S-O-P?

3 A Right

4 Q Is there another form that's also used in you all's
5 business that he signs to verify that?

6 A Right In conjunction with the first pictures, we
7 also have a form that goes along, it's called a photo
8 line-up form, which I fill out the top part of this,
9 and if Mr Patterson agrees, then he would sign the
10 bottom part of it

11 Q On that form he indicated he's picked out No 1?

12 A Right On this date I showed -- Sergeant McDonald
13 showed me six pictures at 3101B Percival which is
14 where we're at when we showed the photo line-up He
15 picked out picture No 1 which is the black male who
16 committed the crime of attempted robbery at 3101B
17 Percival Road on 10-8-02 Then he signed it and I
18 witnessed it

19 Q Thank you very much. What time was this?

20 A This is probably around 11, 11 30, in that time range
21 probably

22 Q So you've obviously got a suspect You've got him
23 picked out at this point?

24 A At this point we do have a suspect identified, yes

25 Q Do you develop -- or what happens next to lead to any

1 other suspect, if anything? What happens next?

2 A Other investigators led by Investigator Laffin who
3 were down on the scene on the interstate had run the
4 tag information and found information within the
5 vehicle identifying the van's owner as a Veronica
6 Jones and also the name of Willie Lloyd Alexander
7 which we later found out to be her boyfriend They
8 then set out to try to locate Ms Jones and/or Mr
9 Alexander to get the rest of the story on this

10 Q And so while you're showing the line-up with
11 Mr Sears, there's also -- I believe Investigator
12 Laffin said he was kind of in charge of the 77 scene,
13 let's say?

14 A That's correct

15 Q You're over there at the Percival scene That's
16 going on developing that, and that leads to Willie
17 Lloyd Alexander?

18 A That's going on simultaneously, as we're out there
19 We're basically -- by this time Investigator Russell
20 had begun to process the scene, photo, and identify
21 casings and things like that And we were observing
22 him as he did his work as well, learning as he went
23 along what he was finding

24 Q And I forgot something I'm sorry Did you show
25 this also to Mr Stokes?

1 A Yes, I did show that to Mr Stokes Shortly after
2 Mr Patterson I took Mr Stokes aside, didn't let
3 them talk to one another before any of this happened
4 I took him aside in the bay area once again and
5 showed him the line-up reiterating the same things to
6 that I had spoken to Mr Patterson
7 Q And was Andre able to pick out anybody?
8 A No, he wasn't
9 Q As a result of the ongoing investigation from the 77
10 scene, did you develop -- were you able to determine
11 through your investigation there was a connection
12 between Mr Sears and Mr. Alexander? Were they
13 related?
14 A Yes. They're cousins
15 Q And, in fact, I believe Investigator Laffin has
16 testified that of the address on the license of
17 Mr Sears --
18 A 2523 Pleasant Ridge
19 Q Did that come back to anybody else?
20 A It's also where Mr Willie Lloyd Alexander was living
21 and where they actually found him later that day
22 Q And he was actually found at that address?
23 A Yes, he was
24 Q Your testimony at this point is you have a van
25 identified. It belongs to a Ms Veronica Jones?

1 A Right

2 Q Who is connected with Mr Alexander?

3 A Right

4 Q Who is connected with Mr Sears?

5 A Right

6 Q At that point did you have an occasion -- beg the
7 Court's indulgence -- did you have an occasion to
8 talk with Mr Alexander?

9 A Yes, I did He was brought to the Richland County
10 Sheriff's Department my office that afternoon, later
11 that afternoon, once he was located

12 Q At 2523 --

13 A 5623 Two Notch Road

14 Q I'm sorry No, no, no. The address where he was
15 located

16 A He was located at the Pleasant Ridge address, 2523
17 Pleasant Ridge

18 Q At that point did you have an occasion to talk with
19 him?

20 A Yes, I did, once he was brought into my headquarters

21 Q And describe, tell these folks where you talked to
22 him?

23 A In my office, along with Investigator Isenhoward

24 Q And that's the address you just gave me?

25 A Right

1 Q And that's what?

2 A 5623 Two Notch, the Sheriff's Department
3 headquarters

4 Q How long have you all been there?

5 A Probably six, seven years now

6 Q And that's right --

7 A Maybe a little bit longer now

8 Q That's right before you get to one of those other car
9 dealerships? Or what's the dealership?

10 A The Lexus dealership on Two Notch

11 Q Now, who else was present with you when you talked to
12 Mr Alexander?

13 A Investigator Kevin Isenhoward

14 Q And I want to show you -- I am going to hand you
15 what's marked 107 and ask you if you recognize --
16 does it relate to what you're fixing to talk about?

17 A All right This is an Interrogation/Advice of Rights
18 form that we use at the Sheriff's Department Before
19 we interview a suspect we advise him of his written
20 Miranda rights We go over this form with him to
21 make sure he understands it fully before we proceed

22 Q And let's do that right now like you did that day
23 Okay? And this a standard form you use?

24 A Right I sit down with the suspect and start going
25 over each line of this The first one states

1 "Before we ask you any questions you must understand
2 your rights You have the right to remain silent.
3 Anything you say can be used against you in court
4 You have the right to talk to a lawyer for advice
5 before we ask you any questions and to have a lawyer
6 with you during any questioning If you cannot
7 afford a lawyer one will be appointed for you before
8 any questioning if you wish. If you decide to answer
9 questions now without a lawyer present you still have
10 to right to stop answering at any time You also
11 have the right to stop answering at any time until
12 you talk to a lawyer "

13 You make sure he understands all that he just
14 discussed, and, if not, we would go back over it
15 And he indicated he did understand that, and he did
16 sign it.

17 Q All right Let me stop you before you go any
18 further You're reading him his rights?

19 A Right

20 Q And you actually did it?

21 A Right

22 Q You read it to him?

23 A Right

24 Q As you read it to him, does he acknowledge back to
25 you that I understand that?

1 A Right

2 Q And do you have a habit or a custom, or how do you
3 know you did that so you can come tell them?

4 A I put a check next to it after I complete each line

5 Q So when you'd ask the question, he'd respond to you?

6 A Right

7 Q Did he give you the appropriate responses to your
8 question?

9 A Yes

10 Q Like, What's your name, did he tell you his name?

11 A Right

12 Q And when you were reading him his rights, did he say,
13 I understand that?

14 A Yes

15 Q And you checked that?

16 A Yes, I did

17 Q Did you have any trouble understanding what he was
18 saying?

19 A Not at all, no

20 Q Based on the responses he gave you to your questions,
21 were they appropriate in nature? I'm not saying the
22 content of it, but --

23 A Yes He was able to carry on a conversation

24 Q He appeared to understand what you were saying?

25 A Right

1 Q Did he appear to you to be under the influence of any
2 type of alcohol, drugs, or anything?

3 A Nothing No.

4 Q He appeared to you to understand what he was doing?

5 A Exactly.

6 Q What's next on your form? And underneath that you've
7 got -- did he actually sign it?

8 A Yeah His signature is right here

9 Q In your presence?

10 A Right

11 Q And who is that next to it?

12 A I witnessed it

13 Q Underneath that is what I believe is called a Waiver
14 of Rights?

15 A Right I then read this to him It says, "I have
16 read this statement of my rights and I understand
17 what my rights are. I am willing to talk and answer
18 questions. I understand and know what I am doing
19 No promises have been made to me, and no pressure or
20 any coercion of any kind has been used against me "

21 Once again I go over that And I always go over
22 the word "coercion". A lot of people don't
23 understand what that means, or, if they do, they may
24 not have an accurate view of what it means So I
25 always explain that. Once he understood what I was

1 talking about, he also signed that he agreed

2 Q Did you also sign that?

3 A Yes, I did.

4 Q There's quite frankly another line I don't know
5 what it is above that other witness What's that?

6 A Oh That's where I signed witnessing his signature

7 Q Okay Excuse me I was looking at a different
8 document That's your signature up there and then
9 another one I was looking at another document

10 A Right.

11 Q And he signed the other one in your presence, too?

12 A That's correct

13 Q Beg the Court's indulgence. And after he said I
14 understood, in this last part you explained coercion,
15 he went ahead and signed it?

16 A Right

17 Q So going through each right he said, I understand,
18 then again you read the Waiver of Rights?

19 A Right

20 Q Is that the practice you all --

21 A That's common practice, yes

22 Q Now, at any time during reading his rights or the
23 Waiver of Rights, did he say to you Sergeant or
24 Scott, I don't want to talk you?

25 A No He wanted to -- it appeared he wanted to

1 cooperate and talk to us

2 Q Did he say, Leave me alone?

3 A No

4 Q Did he request an attorney?

5 A No, he did not

6 Q During this process of reading him his rights or
7 after you talked to him, did he ever say, Stop
8 talking to me?

9 A No

10 Q Did you ever threaten him?

11 A No

12 Q Coerce?

13 A No

14 Q Harass?

15 A No

16 Q Did you promise him anything?

17 A No

18 Q Did you lay down any hope of reward?

19 A No

20 MR MEADORS Your Honor, we'd offer State's

21 107

22 MR STRICKLER. The statement?

23 MR. MEADORS This is the Advice of Rights

24 MR BURR. No objection

25 MR STRICKLER. Subject to any previously noted

1 objection

2 THE COURT It's admitted

3 (WHEREUPON, State's Exhibit No 107 was admitted
4 into evidence.)

5 Q Sergeant, after you read him his rights, did you have
6 an occasion to talk -- and this Mr Alexander?

7 A Yes, it is

8 Q That's the person you read his rights to?

9 A That's correct

10 Q And describe the atmosphere in your office?

11 A The atmosphere

12 Q Yeah While you're talking to him and reading him
13 his rights and --

14 A He was cordial and cooperative with us, wasn't giving
15 us a hard time or anything like that.

16 Q Did you ask him about the attempted robbery at
17 Ntense?

18 A Yes, I did

19 Q And tell these folks what your procedure is in taking
20 a statement How do you do it?

21 A What I do is when we get to the point of taking the
22 statement, we take a statement on a computer I --
23 you know, kind of usually the way I do it is question
24 and answer type thing I'll ask a question, and then
25 his response to it I'll type down And as I'm typing

1 it I'm confirming with him, is this the way you want
2 it to read At the completion of the entire
3 statement I then read it to back to him I usually
4 just flip the monitor around so we both can read it.
5 I read it to him, let him read along We go through
6 it, make sure there's no other additions or deletions
7 or corrections we need to make Once he's satisfied
8 with it we print it out

9 Now, once it's printed out we present it to him
10 once again for him to look over If he has any
11 questions, concerns, additions or deletions, we can
12 correct it and re-print it. After looking it over
13 again, he went ahead and signed that this was his
14 statement

15 Q I'm going to show you what's marked State's 113 and
16 ask you if you recognize it?

17 A Yes This is the statement I took from Willie
18 Alexander that day

19 Q Make sure I'm clear on this As you're listening to
20 him, you're writing it down. Writing it down
21 You're typing it on your computer?

22 A Right

23 Q Then you let him review it?

24 A Right

25 Q And you do the entire document before he signs it?

1 A We go over the entire document I read it and he --
2 generally, my suspects follow right along as I'm
3 reading it. I flip the monitor so that we can both
4 read it And if we get to something, he says, That's
5 not what I meant, or That's not right, then we'll
6 stop and we'll correct it And once we go through
7 the entire statement like that, we print it And
8 then he has one more chance to look it over before he
9 signs it

10 Q At the bottom -- before we get to the statement -- at
11 the bottom of each of these statements, can you read
12 what it says right here?

13 A It says "I have made the foregoing statement freely
14 and voluntarily, without fear, threat, promise or
15 reward or hope of reward of any kind " Then he signs
16 it. And myself and Isenhoward witnessed it

17 Q And underneath that, what does it say?

18 A Underneath that it says "This is to certify that I
19 have read or have read to me" -- let me start over
20 "This is to certify that I have read or have read to
21 me the foregoing statement consisting of four pages,
22 and a true copy has been given to me this 8th day of
23 October, 2002 "

24 Q I'm not going to do it for every page. But of those
25 two sentences, if you will, on each page of the

1 statement?

2 A Each page has the same, yes

3 Q Signed by Mr Willie Lloyd alleged?

4 A That's correct

5 Q And yourself and Mr or Investigator Isenhoward?

6 A That's correct

7 Q Okay. And the last time I'll ask you, at any time
8 during the process of taking this statement did he
9 ever say Stop or Give me a lawyer?

10 A No. No

11 Q If he had, what would you have done?

12 A I would have had to stop at that point

13 Q You would have had to?

14 A Right

15 MR. MEADORS Now, Your Honor, at this time we'd
16 offer State's 113

17 MR. BURR Your Honor, I'm going to object The
18 document is misleading, inaccurate and incomplete
19 It's listed as though it's a verbatim transcript --

20 THE COURT No, sir

21 MR BURR. -- of the complete investigation,
22 discussion, and it is not

23 THE COURT. All right, sir. Well, the question
24 is whether it's free and voluntary, is the question
25 to be --

1 MR. STRICKLER· And as to Mr Sears, Your Honor,
2 in order to preserve previously stated objections
3 that we've dealt with in camera, I would object to
4 the introduction of this matter in that it violates
5 Mr Sears' right to confront the witnesses against
6 him under both the United States and State of South
7 Carolina Constitutions, U S Supreme Court cases of
8 Bruton, Richardson v Marsh and Gray v Maryland.
9 Thank you, sir

10 THE COURT All right Thank you very much.
11 The objections are overruled The statement is
12 admitted

13 (WHEREUPON, State's Exhibit No 113 was admitted
14 into evidence)

15 Q For the record, I'm going to hand you State's 113 and
16 let you refer to this And I'll take your copy Is
17 this the statement you took down from the information
18 you gathered from Mr. Willie Lloyd Alexander?

19 A Yes, sit

20 Q Could we start at the top and you publish this to the
21 jury?

22 A You want me to read with the first question?

23 Q Read the whole thing, statement of --

24 A All right At the top it indicates it's the
25 statement of Willie Alexander of 2523 Pleasant Ridge

1 Drive, Columbia, South Carolina, 29209. It states
2 Made at Columbia, South Carolina, this 8th day of
3 October, 2002, at 16 55 hours in the presence of
4 Sergeant McDonald and Investigator Isenhoward of the
5 Richland County Sheriff's Department

6 I, Willie Alexander, understand that I have the
7 right to remain silent Anything I say can be used
8 against me in court I have the right to talk to a
9 lawyer for advice before you ask me any questions and
10 to have a lawyer with me during any questioning If
11 I cannot afford a lawyer, one will be appointed for
12 me before any questioning if I wish If I decide to
13 answer questions now without a lawyer present, I
14 still have the right to stop answering at any time
15 I also have the right to stop answering at any time
16 until I talk to a lawyer. Do make the following
17 statement."

18 Q Now, it's got a Q there?

19 A Right

20 Q Is that you asking the question?

21 A This is me asking the question, and A would be his
22 answer to that question

23 Q Q. What's your question?

24 A "What can you tell me about your activities this
25 morning?"

1 Q It's got A What's the answer?

2 A Answer was "I was at my girl's (Veronica Jones)
3 house this morning when I woke up I woke up about
4 6 15 A M. When I got up I fixed the kids breakfast
5 and Veronica took one of the kids to school After
6 Veronica came back from taking the kids to school
7 some other guy came by the house wanting to borrow
8 Veronica's van for a job interview The guy has
9 borrowed our car before. He has a license, so I gave
10 him the keys to our Mazda MPV I went ahead and got
11 in the car him I was going to ride with him to his
12 job interview I was going to fill out an
13 application He told me he was going for an
14 interview at a car place I told him I didn't want
15 to go with him to the interview I told him to drop
16 me off at the Shell station on East Boundary and
17 Percival Road The guy then left in the van The
18 guy left heading outbound on Percival Road "

19 "I went inside the store and got a Gatoraid I
20 then went outside and waited on him to return The
21 guy returned in no more than 15 minutes When he
22 returned he came back down Percival Road He pulled
23 in the parking lot to the side of the building facing
24 East Boundary Road When he pulled up he said he was
25 shot I got in the driver's side of the van The

1 other guy got in the back of the van I pulled off
2 onto Percival Road heading towards Decker Boulevard
3 I then got on the interstate at this intersection I
4 drove on the interstate and the right back tire blew
5 out. I pulled to the side of the highway and put on
6 the hazard lights I then took off running, telling
7 the guy that whatever he had done it was stupid to do
8 in my girl's car I took off running and jumped the
9 fence. I called my girl on my cell phone I was
10 near Kilbourne Road I told her to pick me up "

11 Q "I told her to come pick me up "

12 A Yeah "I told her to come pick me up I told her
13 the guy had been shot and he might be dead. She told
14 me she would pick me up She would come pick me up
15 She told me to call 911 My phone by now was dead
16 I was running and fell in some mud and water and just
17 left it in the mud "

18 "About ten minutes later Veronica picked me up.
19 I was by Barkoot Apartments and Kilbourne Road when
20 she picked me up She took me to my mom and dad's
21 house She had the kids in the car. I changed in
22 the car while I was driving to my parents' house I
23 was wearing a black t-shirt, denim shorts and some
24 running shoes that were covered in mud Veronica
25 dropped off the kids at my parents' house and then I

1 went back to Veronica's house with her I threw the
2 clothes out of the car as she was driving down Fort
3 Jackson Boulevard I got back to her house and
4 Veronica's sister, Katrina Harris, was there saying
5 the police had come to her house asking about
6 Veronica's van Robert Harris came by and ended up
7 giving me a ride back to my parents' house "

8 Q Question ?

9 A

10 "Q What was your involvement in the
11 attempted robbery that occurred at 3101 Percival
12 Road today?

13 "A I had no involvement

14 Q Next question?

15 A

16 "Q Who else was in the van with the guy
17 when he returned to pick you up?

18 "A Nobody

19 "Q Did you fire a gun today?

20 "A No, sir

21 "Q Why did you run from the van?

22 "A I was scared because the guy was
23 bleeding

24 "Q Did you run because you knew you were
25 involved in this robbery?

1 "A No, sir

2 "Q Why didn't you call 911 for help for
3 the guy who was shot and dying in your van?

4 "A It didn't register with me to call
5 911 I was just trying to get away from the
6 van, anywhere but there

7 "Q After you ran from the van you
8 composed yourself enough to call Veronica,
9 didn't you?

10 "A Yes, sir.

11 "Q Weren't you composed enough to call
12 911 for help?

13 "A No, I couldn't do it

14 "Q Would you like to change your story
15 about the robbery attempt?

16 "A Yes "

17 Q And did he in just a few minutes change his story
18 about the robbery attempt?

19 A Yes, he did

20 Q And did something change from the first part to the
21 second?

22 A Well, you know, during this interview, I mean, it was
23 very apparent that the facts weren't adding up. We
24 were putting down what he wanted as his statement,
25 although it was very apparent he was not telling us

1 the truth, the entire truth And about this time is
2 when my lieutenant also came to my office who had
3 been interviewing Veronica to give us a little bit
4 more information that would help us on this as well
5 And --

6 Q About that morning?

7 A Yeah And when we confronted him about that, I also
8 told him, you know, if he's saying he's at this Shell
9 station, then I could certainly go pull the video and
10 verify if he was there or not And I could kind of
11 see the wheels clicking in his head that he knew that
12 wasn't going to happen I believe at that point is
13 when he went ahead and told us his version of the
14 truth

15 Q And that's when he you asked him, would you like to
16 us to tell him then?

17 A Right

18 Q And is that part of your job, doing that?

19 A Right We learned facts throughout this
20 investigation And while we were still in the midst
21 of taking this statement, we gave him another
22 opportunity, Are you sure this is what you want, or
23 would you like to change your statement at this
24 point? And he indicated that he did want to change
25 it

1 Q And the answer was yes?

2 A Right

3 Q Then question?

4 A

5 "Q Can you tell me what really happened
6 in regards to the robbery attempt today on
7 Percival Road?

8 Q Answer?

9 A

10 "A The day started the same way as I said
11 before While me and a guy were driving he told
12 that this guy had some money in rims. He called
13 him a pussy After he said I thought he was
14 going to rob him Before we got to the car
15 place we picked up another guy along the way
16 We turned of Ph D near to trailers and the guy
17 was turned off of Percival Road near some
18 trailer and the guy was waiting on us We went
19 past Old Percival Road but I'm not sure where
20 We went to the car shop Some guy told me to
21 wait right there The other two guys went
22 inside They were only inside for a little
23 while and I heard bullets. They came running
24 back out to me in the van When the guys got in
25 he said that he was shot The other guy got in,

1 too We drove off. I think that the second or
2 third street I slowed down and the other guy
3 jumped out Me and the guy went toward Decker
4 and onto the interstate After that everything
5 happened the same as I said before "

6 Q Question?

7 A

8 "Q At what point prior to the robbery
9 attempt did you know what was going to happen?

10 "A When we picked up the other guy and we
11 got to the store I hear about it.

12 "Q Did you see the guy or the other man
13 with a weapon or a mask?

14 "A No, I never saw a weapon or a mask

15 "Q Did you plan the robbery with the
16 guys?

17 "A No, sir

18 "Q Describe the other man who was with
19 you during the robbery and who you picked up?

20 "A Black guy, short hair He has about
21 the same complexion as me He had on a white
22 t-shirt and faded black jeans

23 "Q Is there anything else you would like
24 to add to your statement?

25 "A No, sir"

1 And then end of statement, October 8, 2002, at
2 18-41 hours.

3 Q And then that's 6 41?

4 A 6 41

5 Q And I believe you all started at 4 50?

6 A 4 55

7 Q And I believe you stated that previously you all had
8 also through your investigation talked to
9 Ms Veronica Jones Is that correct?

10 A That's correct My lieutenant had interviewed her.

11 Q And I think some stuff is in evidence, some
12 paperwork Through your investigation that clearly
13 was her van, correct?

14 A Yes

15 Q And she had a relationship be Mr Lloyd Alexander?

16 A That is correct

17 Q Beg the Court's indulgence. Now, after -- during
18 this time, was Mr. Sears -- and for the record, the
19 person that -- I know I did it on the rights -- but
20 the person that gave you that statement, are they in
21 the courtroom?

22 A Yes, they are

23 Q The person who signed this?

24 A Yes Mr Willie Lloyd Alexander sitting at the far
25 table next to his attorney

1 Q By Mr Burr We'd now like the record to so reflect
2 THE COURT The record will so reflect the
3 witness has identified the defendant, Willie Lloyd
4 Alexander

5 Q On October 8th, after the 77 scene, the van scene,
6 whatever you want to call it, the Mazda scene, where
7 did Mr. Sears go?

8 A He was rushed to Richland Memorial Hospital for
9 treatment

10 Q That's where Dr Bynoe treated him?

11 A That's correct

12 Q And stayed there for a while?

13 A Yes I made several calls over the next couple of
14 weeks checking on his condition Obviously we were
15 anxious to try to interview him as well

16 Q And subsequent to him getting out the hospital, he
17 was with placed under arrest?

18 A Yes, he was.

19 Q For attempted armed robbery?

20 A Yes.

21 Q And Mr. Alexander obviously was placed under arrest
22 for attempted armed robbery?

23 A Right

24 Q Beg the Court's indulgence Did you have an occasion
25 again to meet with Mr Willie Lloyd Alexander and his

1 attorney?

2 A Yes, I did On I believe it was March 5th of 2003,
3 I did meet with Mr Alexander and his attorney

4 Q And did you have an occasion to read him the same
5 Miranda rights?

6 A Yes, I did Once again, I went through his Miranda
7 rights, made sure he understood them

8 (Whereupon, a bench conference is had)

9 (WHEREUPON, State's Exhibit No 114 was marked
10 for identification only.)

11 Q I'm going to refer you to what's marked as State's
12 114 Do you recognize this? Does it have your
13 signature on it?

14 A Yes, it does It's an Advice of Rights form

15 Q And is Mr Alexander's signature on there?

16 A Yes, it is

17 Q There is another -- this is that I think I was
18 referring to before -- a line on there, I have no
19 idea what it is. Can you tell me what that is?

20 A That's his attorney's signature

21 Q No offense, Mr Burr Is that Mr Burr's signature?

22 A Yes

23 MR MEADORS All right. Your Honor, we'd offer
24 this as State's 114

25 MR BURR No objection, Your Honor

1 THE COURT Okay

2 MR STRICKLER No objection, sir.

3 (WHEREUPON, State's Exhibit No 114 was admitted
4 into evidence)

5 Q There's a former solicitor I think who had this case
6 Larry Wedekind?

7 A Yes Mr Wedekind had called earlier, had indicated
8 that Mr. Alexander and his attorney would like to
9 meet with me

10 Q Did you read him his rights like you did the other
11 time?

12 A Yes, I did.

13 Q In the presence of Mr Burr?

14 A Right

15 Q And did he say he understood them?

16 A Yes

17 Q And did you check like you did before?

18 A Right

19 Q And did you read the Waiver of Rights like you did
20 before?

21 A Yes I read them

22 Q He said he understood that?

23 A Right

24 Q Any time during that process -- well, his attorney
25 was there -- if he'd have asked for Mr Burr, he'd

1 have responded?

2 A Right

3 Q At that point was any other information provided by
4 the defendant, Mr Alexander?

5 A He provided me with the name of a third suspect by
6 the name of Tashim Vann

7 Q Tashim Vann?

8 A Tashim Vann

9 Q And that was basically the extent of you all's
10 conversation?

11 A That's correct

12 Q Did you attempt to locate this person?

13 A Yes, I did

14 Q Did you?

15 A I can't find any existence of anyone by the name of
16 Tashim Vann

17 MR MEADORS. Beg the Court's indulgence.

18 Q That was the third person that might have been
19 involved in this incident?

20 A According to Mr Alexander, yes.

21 Q Or a person Excuse me Judge, that's all I have
22 Thank you very much

23 THE COURT Mr Burr

24 MR BURR Thank you, Your Honor

25 MR STRICKLER And, Your Honor, before Mr Burr

1 starts, I'd like to register an objection to the last
2 question and last answer I have a matter of law in
3 that regard

4 THE COURT. All right Let's do that

5 MR BURR May it please the Court?

6 THE COURT: No Let's deal with that Ladies
7 and Gentlemen, there's a matter of law I need to
8 discuss with the attorneys. As I told you at the
9 beginning of this trial, there might be a few
10 instances when that occurs So I'll ask you to just
11 go to your jury room for a few minutes We'll call
12 you when we're ready. Just relax for a few minutes

13 (Jury out at 10 13 A M)

14 THE COURT. Mr Strickler

15 MR. STRICKLER: Yes, sir. Could I ask that
16 Madam Court Reporter read back the last question and
17 last answer because -- I'm sorry -- the words
18 themselves are significant I think in this particular
19 circumstance I don't want to misquote things

20 THE COURT Certainly

21 (Whereupon, the court reporter reads back last
22 question and answer)

23 MR. STRICKLER Thank you very much And that's
24 what I had written down. So I wanted to make sure
25 that the term used in the question was "The third

1 person who might have been involved in this
2 incident" The implication, my objection now is that
3 the Solicitor's question has by the nature of the
4 question identified who the second person involved in
5 it is, in the statement is, and that would be my
6 client right here

7 That would -- the question is. "That would be
8 the third person alleged to be involved in the
9 incident" The implication from that is that the
10 second is sitting right here next to me in the
11 courtroom That has, I would submit, Your Honor,
12 completely destroyed any redaction done in this case

13 And I at this point in time have to, one, renew
14 my objection again pursuant to all the previous
15 grounds I've made, two, move for a mistrial in this
16 matter in that if -- with all due respect I submit
17 they weren't -- if Your Honor's efforts in regard to
18 redacting the statement were correct and efficient,
19 then the question and answer have negated that So
20 at this point in time I'd move for a mistrial

21 THE COURT The State's position

22 MR MEADORS We'd respectfully ask that you not
23 grant a new trial I think there was a follow-up
24 question to that, Your Honor; if the court reporter
25 could read that.

1 THE COURT Go ahead

2 (Whereupon, the court reporter reads back the
3 question following the original question and answer)

4 THE COURT Or a what?

5 COURT REPORTER "Or a person. Excuse me "

6 MR MEADORS Your Honor, we've redacted.

7 You've got two people in there. We don't know who
8 the second or the third person is I said -- there
9 obviously had been testimony that three people that
10 came in. You could argue that three or four people
11 We've redacted there's a guy, a third guy I don't
12 think there's any implication that it's Mr Sears
13 versus the other guy. And then I followed up that
14 with "or another person" So I think I made that
15 clear on the record, that I wasn't specifically
16 trying to point to anybody

17 THE COURT All right All right,

18 Mr Strickler I would respectfully deny your motion
19 for a mistrial However, if a defendant or
20 defendants feel that a curative instruction is called
21 for or necessary or whether that will draw more
22 attention to the comment of the Solicitor or the
23 question of the Solicitor, I will give such a
24 curative instruction to strike that last question
25 from them But I'm not going to do that if you think

1 that it creates more damage than you perceive has
2 already been done

3 MR. STRICKLER. Your Honor, two matters at this
4 point And I neglected -- this is my fault. I
5 neglected to do this earlier Of course I would
6 request a curative instruction in general as to the
7 redacted statement, a curative instruction or an
8 instruction to the jury at this point in time that
9 that statement may only be used in reference to in
10 their consideration of Mr Alexander That comports
11 with the procedures set forth in the line of cases we
12 have discussed Of course I request that while
13 maintaining that it doesn't cure the problem It's
14 one of those legal fictions that I have to go
15 through.

16 And as to your proposed specific curative
17 instruction and strike the language, again, I
18 would -- and I think I have to do this in order to
19 preserve any objection I have -- I need to both
20 request that you -- ask that -- instruct the jury to
21 disregard the last question and answer, and at the
22 same time, Your Honor, maintain that that will not
23 cure --

24 THE COURT I understand

25 MR STRICKLER. -- the objection that I've

1 raised

2 THE COURT I understand that

3 MR STRICKLER: Okay So

4 THE COURT Curative may be too much

5 MR STRICKLER: Yes, sir

6 THE COURT. It's the best I can do

7 MR STRICKLER. I'm constantly falling short as
8 far as preserving any problems that I perceive in a
9 trial So I'm trying to address that problem of
10 mine

11 THE COURT All right State's position --

12 MR. MEADORS Your Honor, although we're fine
13 with your instruction --

14 THE COURT Let me finish my question -- on a
15 curative instruction or instructing the jury that the
16 statement that has just been read into the record is
17 applicable only to Mr Alexander

18 MR. MEADORS That is fine Yes, sir

19 THE COURT. And to dis-- and I will give the
20 curative instruction to disregard the last question
21 and answer

22 MR MEADORS Well, you mean the last -- well,
23 the last question I think was -- well, the State's
24 position, they both were appropriate The last one
25 clearly said "or" -- that's fine, Your Honor If

1 you're going to do, that you might want to strike the
2 last two is all I'm saying, not just the last one.

3 THE COURT All right. All right

4 MR. STRICKLER Thank you, sir

5 THE COURT Now, why don't we take about a
6 ten-minute break?

7 MR STRICKLER And if you could, Your Honor,
8 I'll run downstairs and grab the case law, because I
9 think there's an example of an approved curative
10 instruction --

11 THE COURT That's fine

12 MR STRICKLER -- as far as the general one
13 goes We'll get it up here

14 THE COURT That's fine Certainly

15 MR STRICKLER. Thank you, sir

16 THE COURT. You can wire it to your highly
17 efficient staff. All right Let's stand at ease for
18 about ten minutes.

19 (Whereupon, a break is taken)

20 THE COURT All right, counsel You ready for
21 the jury?

22 MR BURR: The defense is ready, Your Honor

23 MR STRICKLER Yes, sir

24 THE COURT Bring the jury. Bring the jury

25 (Jury in at 10 40 A M)

1 THE BAILIFF The jury is present, Your Honor
 2 THE COURT All right Thank you very much
 3 All right, Ladies and Gentlemen Let me just caution
 4 you in one regard The statement that was just read
 5 to you by Lieutenant McDonald was the statement of
 6 Willie Alexander, Willie Lloyd Alexander, as
 7 testified to by Officer McDonald That statement is
 8 to be considered by you only against the person who
 9 made that statement. Do you understand that? Only
 10 against the person who made the statement

11 Now, I also instruct you, further instruct you,
 12 that the last two questions and/or answers that were
 13 posed by the Solicitor are to be stricken from the
 14 record and are not to be considered by you All
 15 right

16 Mr Burr, you may continue.

17 MR BURR. May it please the Court

18 CROSS-EXAMINATION

19 BY MR BURR

20 Q Officer McDonald, I was pleasantly surprised at the
 21 briefness of your testimony So I only have a few
 22 questions to follow up with

23 MR. MEADORS. Your Honor, I'm going to object to
 24 any editorializing

25 MR BURR I'm sorry

1 THE COURT: Confine your remarks.

2 MR MEADORS: You said you were pleasantly
3 surprised I just object to that

4 MR BURR Oh, okay Editorial I withdraw it

5 Q Mr. McDonald, you were the chief investigator over
6 this entire investigation, correct?

7 A Correct

8 Q And we've heard testimony earlier about the rounds,
9 the number of rounds or whatever there were that were
10 taken Did you recover or take into custody
11 additional rounds for the guns other than the ones in
12 the clips?

13 A I didn't take any rounds into custody

14 Q But were any taken into custody to your knowledge
15 beyond what was in the clips and guns?

16 A Only what was testified to earlier in this trial that
17 I'm aware of, yes

18 Q And the .9 millimeter pistol that was found at the
19 scene, it did have a serial number on it, did it not?

20 A Yes, it did

21 Q Were you able to identify where that gun originated
22 from, who it belonged to?

23 A No We run it through NCIC, check on its status as
24 far as being stolen or anything like that before we
25 put it into evidence Generally, what we find on

1 these guns is you may have an original point of sale
2 years previously, but guns typically change hands
3 many times since then and they're not recorded.

4 There's no recording mechanism for that

5 Q Thank you As to the photographic line-up's that you
6 testified to, first off, the one description you got
7 from Mr Patterson of the main person that came in
8 that he saw best was, by your own handwriting, it
9 looked like the Paco, the Hispanic drug dealer He
10 listed him as Hispanic and/or Asian. Is that not
11 correct?

12 A That is correct

13 Q And you put a photographic line-up -- after you found
14 Mr. Sears shot, wounded in the back of the van, you
15 had a photo line-up put up, put together of
16 Mr Sears, an all African-American individuals Is
17 that not correct?

18 A That's correct

19 Q So if you were attempting to match up a line-up with
20 the description given to you by Mr Patterson, why
21 wouldn't you include Hispanic and/or Asians?

22 A We knew other black males were described by the other
23 witness in this case as being involved Mr Sears is
24 a light skinned black male

25 Q And later through your investigation you developed as

1 a possible third suspect, a Mr -- I'll ruin this
2 name -- Horzendoff. Do you have --

3 A Kassim Hozendoff

4 Q And did you also put together a photograph line-up of
5 Mr Kassim Hozendoff?

6 A Yes, I did.

7 Q Did you show that to Mr Patterson?

8 A Yes, I did

9 Q And did he positively identify that as one of the
10 perpetrators?

11 A He positively identified him as a perpetrator. After
12 signing the form and identifying him we talked
13 further about it, and what he indicated to me was
14 that the day prior to the incident he believed
15 Mr Hozendoff and Mr Sears had been in the business
16 looking at merchandise

17 Q But he did positively identify him as one of the
18 three people that came into his business during the
19 robbery?

20 MR. STRICKLER. And here I object, Your Honor
21 I have a matter of law

22 THE COURT. Approach the bench
23 (Whereupon, a bench conference is had)

24 MR BURR. Thank you, Your Honor

25 THE COURT. I'll sustain the objection. Move

1 on

2 Q Thank you, Your Honor Officer McDonald, now to get
3 to the statement that Mr Alexander made that you
4 read into the record earlier, if I understand
5 correctly, you said that the interview process
6 started at 4 55 in the afternoon?

7 A That's when the statement began I believe the
8 Advice of Rights was a few minutes before that

9 Q I'm sorry?

10 A The actual statement occurred at 16.55. I think the
11 Advice of Rights Form is somewhere in evidence It
12 was a few minutes before that

13 Q 16.45, 4 55 to us lay people And it continued into
14 18 41 which is 6 41, approximately two hours of
15 questioning?

16 A That's correct

17 Q And during that time that you read the statement I
18 was marking you indicated 16 questions were asked in
19 approximately two hours' time?

20 A Approximately, yes

21 Q I'm not insinuating any wrongdoing on your part, but
22 there is a technique to interrogation, is there not?

23 A Technique?

24 Q A technique. You are a trained interrogator, are you
25 not?

1 A Yes I interviewed Mr Alexander concerning this
2 incident, let him speak to me about what he wanted to
3 say Then I confronted him with some of the facts we
4 did know at that point, which he followed up with
5 further information to assist us.

6 Q And Mr. Alexander was scared witless during this
7 interrogation because of the seriousness of what he
8 had was involved in. Is that right?

9 A I had was concerned, but I don't think he was scared
10 witless No. I mean, he was able to carry on a
11 conversation with us. He didn't enjoy being there,
12 but he was able to talk with us

13 Q And in the initial portion of the interrogation,
14 isn't it true you questioned him about drug
15 involvement?

16 A About drug involvement?

17 Q About drug involvement about this whole incident
18 stemming from drugs?

19 A I don't recall asking him about any drug involvement,
20 no

21 Q Prior to starting this entire investigation, did you
22 tell him what the potential charges were?

23 A Well, when he came to my office he was under arrest
24 for the attempted armed robbery at that point He
25 was already in custody at that point

- 1 Q And you testified there was not only you present
- 2 during this approximate two-hour interrogation, there
- 3 is a second officer, Isenhoward Did he have any
- 4 questions to ask or make any comments?
- 5 A We were both asking questions and making comments
- 6 during the interview. Yes
- 7 Q But you only list the 16 questions here that you
- 8 asked?
- 9 A For the purpose of the statement When we get to
- 10 this point of the statement, I put in what -- you
- 11 know, I ask a question, and his response, whatever he
- 12 wants to put in is his response Basically, all the
- 13 other questions evolved around these questions that
- 14 are in this statement
- 15 Q You indicated at about a portion of the statement
- 16 where he changed from what he was originally saying
- 17 happened where he was trying to exclude himself
- 18 completely; he changed over later and said, Okay, I
- 19 do know more than what I was telling you?
- 20 A Right
- 21 Q Isn't that correct?
- 22 A Right
- 23 Q You indicated a Lieutenant Smith came into the room?
- 24 A Sometime while we took a break after this whole thing
- 25 about, you know, he could call his girlfriend on the

1 phone but he couldn't call 911 to get help for him,
2 you know, that was just totally unbelievable to any
3 of us, that coupled with the fact of I said, Well,
4 you know I can verify this story or not if you were
5 at this Shell station you say you were at, if I go
6 pull the video or pull the receipts, am I going to
7 find you there? And you could kind of see the wheels
8 clicking in his head, wringing is hands, kind of
9 nervous, and it's very apparent to us that he wasn't
10 being truthful And after confronting him with that,
11 about this time is when Lieutenant Smith came in He
12 had been interviewing Ms Jones, a little bit further
13 information, and, you know, Willie, do you want to
14 give us the truth at this point? And that's when we
15 continued on

16 Q And when Lieutenant Smith came in, opened the door,
17 Mr. Alexander could see his wife sitting in the
18 hallway crying, could he not?

19 A No My door was open during this interview, and
20 Lieutenant Smith just walked up to my doorway. His
21 office is completely at the other end of
22 investigations That's where Ms Jones was

23 Q Isn't it true that Mr Alexander was told that he and
24 his wife were both subject to go to jail if he didn't
25 come up with a better story?

1 A I don't recall that ever being said. No

2 Q Exactly what do you recall being said? In the
3 statement here it's, "Would you like to change your
4 story about the robbery attempt?" And just out of
5 the blue you're saying he said, Oh, yeah, I just
6 found Jesus and I want to tell something else?

7 A Like I said, we ended with the last question of,
8 "Weren't you composed enough to call 911 for help?"
9 He said, "No, I couldn't do it " At that point I
10 looked up. I said, Come on You can call your
11 girlfriend and tell her to come pick you up, you
12 can't call 911 and get help for your buddy who is
13 dying in the van?

14 I mean, that's just unbelievable that you can
15 carry on a conversation with a girlfriend but you
16 can't call for help for somebody who is dying

17 That coupled with the facts about, I can verify
18 your story; you know I can go to that store and pull
19 the video and if you're not on it, I'm going to know
20 you're lying to me We started hitting with some of
21 these facts, and he kind of ducked his head And at
22 that point I said, Would you like to tell us the
23 truth now? And he indicated yes

24 I mean, that might have gone on five or ten
25 minutes, talking about that; and then when we got

1 back to taking the statement, to start that statement
2 again, I led off with that question Would you like
3 to change your story about the robbery attempt?

4 Q And you did testify that he was very cooperative in
5 dealing with you, cordial, whatever; not in a bad?

6 A Right. I mean, he was not happy to be there but he
7 wasn't disrespectful or yelling or ranting or
8 anything like that I mean, we were carrying on a
9 conversation

10 Q You also testified that later Mr. Alexander in my
11 presence came up voluntarily and discussed who the
12 third person may or may not have been, or at least
13 the best that Mr Alexander could come up with, who
14 the third person was in the robbery Is that
15 correct?

16 A Yes, I did.

17 Q He was attempting to cooperate as far as you know?

18 A As far as I know, yes, he was

19 MR STRICKLER And I object again, Your Honor,
20 on the same bases as earlier stated I'll need to
21 get them on the record at some point

22 THE COURT Overruled at this point

23 MR STRICKLER. Thank you, sir

24 THE COURT I'll give you an opportunity to
25 further object

1 MR STRICKLER: Thank you, sir

2 MR BURR Your Honor, I have no further
3 questions Thank you, Officer

4 CROSS-EXAMINATION

5 BY MR STRICKLER

6 Q Good morning, Sergeant. How are you?

7 A Good morning

8 Q You testified that you're Sergeant over the robbery
9 division at the Sheriff's Department Is that
10 correct?

11 A That is correct.

12 Q Which encompasses robberies, carjackings I believe
13 you said, and what was the other?

14 A Home invasions

15 Q Home invasions Right And in that position, you're
16 responsible for the supervision of other
17 investigators I take it, correct?

18 A That's correct

19 Q And you're not the lead investigator on every case
20 that's generated or that occurs and is assigned to
21 that division, correct?

22 A No There's no way that could be possible in this
23 county

24 Q Exactly But even those cases in which you are not
25 the lead investigator, you have some supervisory roll

1 over whoever the investigator is that's assigned to
2 the case, correct?

3 A Right I assign the cases as they come in

4 Q You periodically follow up with them, whatever?

5 A Check on the progress, yes.

6 Q As opposed to that class of cases, this particular
7 case you assigned yourself as the role of lead
8 investigator?

9 A Right. I got involved with it early on I just went
10 ahead and assigned it to myself.

11 Q So you have a two-fold role in supervising the team
12 in general and then actively participating as an
13 investigator, lead investigator in certain cases
14 yourself, correct?

15 A Yes

16 Q And you discussed with Mr. Meadors a robbery
17 questionnaire that you actually completed with Mr
18 Patterson, correct?

19 A Correct.

20 Q Do you still have a copy of that with you, sir?

21 A Yes Yes, I do.

22 Q And let me ask you this Do you have in addition to
23 the copy of that the copy of the incident report in
24 this matter?

25 A Yes, I do

- 1 Q All right Because you discuss a description of a
- 2 height and weight And you -- I'm sorry Strike
- 3 that Back up You only got from Mr Patterson
- 4 descriptions related to one of the three individuals.
- 5 Is that correct? You yourself from Mr. Patterson?
- 6 A Right Right
- 7 Q Okay So -- and this was the individual who is
- 8 alleged to have actually had the gun held on
- 9 Mr Stokes, correct?
- 10 A That's correct
- 11 Q You understood that in your conversation with
- 12 Mr Meadors?
- 13 A Yes, I did
- 14 Q Okay And I believe you related his description of
- 15 the height and weight of the individual, Hispanic,
- 16 light Asian, height, five-ten, weight, 165 to 175,
- 17 correct?
- 18 A Correct.
- 19 Q Okay Now, referencing the incident report which
- 20 will contain information provided to Officer or
- 21 Deputy Johnson, the first man on the scene, who has
- 22 testified he got information I believe from Mr
- 23 Patterson in that regard?
- 24 A Mm-hmm (affirmative)
- 25 Q The height and weight of the individual who had the

1 gun was listed as what?

2 A According to Officer Johnson's report?

3 Q Yes, sir. The incident report

4 A The height is listed as five-seven

5 Q And the weight is listed as?

6 A 150.

7 Q 150? Okay So it's clear he's talking about the

8 same person His estimate on one occasion is

9 five-seven as far as height On the other occasion

10 it's five-ten as far as height. His estimate on one

11 occasion is 150 pounds as far as weight, and on the

12 other it's 165 to 175, correct?

13 A Correct.

14 Q Okay Now, in your reference in this robbery

15 questionnaire, I asked I believe Deputy Johnson

16 regarding an incident report That's a standardized

17 form, has blanks for a lot of information or

18 potential information in cases that through the years

19 police have learned is relevant and of assistance in

20 investigating and preserving information about cases,

21 correct?

22 A Correct

23 Q The robbery questionnaire is also something at least

24 as far as Richland County goes that's a standardized

25 document also, correct?

1 A Right

2 Q And it's a specialized standardized document
3 developed to record in an organized fashion
4 additional information relating to armed robbery
5 suspects, correct? Or robbery suspects?

6 A Right Trying to get a description of the suspects
7 and/or any vehicle.

8 Q And it contains, I mean, areas of information that
9 are more specific than those that are contained in
10 the generalized incident report For example, it
11 gives a place for hair length, a specific area to
12 discuss that, hairstyle Which are not -- those
13 aren't set out in that kind of detail on the incident
14 report?

15 A No. There's only so much room on this incident
16 report So we have to go to the questionnaire to get
17 into more detail

18 Q Right And there is no space here to describe facial
19 hair, that specifically says facial hair, is there?

20 A There is not on this particular one The one we
21 currently use does

22 Q Okay There is a place to describe the shape of the
23 face It says "face circle" And in this case the
24 circle is round, correct?

25 A Right

1 Q Okay And then there are a lot of places where you
2 could talk about hair length, hair color, hairstyle
3 Would it be fair to say that part of your standard
4 questioning of an individual is whether they noticed
5 any facial hair?

6 A Correct

7 Q Okay I mean, that is a -- it can be anyway a
8 distinguishing physical characteristic?

9 A Right

10 Q If you know you're looking for a guy with a mustache
11 and you're out circling the area and you see someone
12 without a mustache and it's right after the incident,
13 we don't have to worry about that one If you see
14 someone with a mustache, that might be someone we
15 need to stop and check out, right?

16 A Right

17 Q Okay So it's fair to assume that you in your
18 conversation with Mr. Patterson made inquiry as to
19 whether he noticed any facial hair on the face of the
20 person that he describes, correct?

21 A Correct.

22 Q And had he noticed any facial hair, would it be
23 equally fair to assume that you would have made
24 notation of that on the robbery questionnaire?

25 A Right A lot of times when we're questioning these

1 victims they say "I think" or "he might have" And
2 if I get that, I don't indicate that down there,
3 because if he's not sure we don't put that down So
4 we only want to put down the things that he's sure
5 of

6 Q Are you testifying that you have an independent
7 recollection that in response to asking Mr Patterson
8 regarding facial hair he said he thought or he might
9 have had facial hair and you didn't record it for
10 that reason?

11 A If he didn't tell me he definitely knew he had facial
12 hair, then I would not indicate it No

13 Q Okay All right But my question to you is, are you
14 testifying that you have an independent recollection
15 that that is what he told you, that he was -- he
16 might have had facial hair, and you didn't put it
17 down for that reason?

18 A I don't know specifically I do know that he
19 couldn't definitely tell me

20 Q Okay

21 A Because I would have indicated it if he had

22 Q So, the fact that it's not indicated is consistent
23 either with one of two situations I take it then,
24 that he expressed some question or hesitation as to
25 whether facial hair was present?

1 A Mm-hmm (affirmative)

2 Q Or the other possibility is he indicated there was no
3 facial hair present?

4 A Right One of those two

5 Q One of those two Okay. Now, you indicate -- this
6 is reflected on the questionnaire also, the robbery
7 questionnaire The van in this particular case was
8 in the parking lot facing north, correct?

9 A Correct

10 Q And that's the indication there?

11 A That's correct.

12 Q Yeah I'll use this Referring to what's marked as
13 State's 5, this diagram reflecting the location of
14 Percival Road, of the incident location on Percival
15 Road, can you tell us which direction is north?

16 A Well, I would consider north to be heading that way

17 Q Okay. All right And so, according to the
18 information Mr Patterson gave you, the van was in
19 the parking lot facing in a northerly direction,
20 correct?

21 A Right I believe the Information we had is the
22 vehicle was heading north and it turned, heading
23 southbound

24 Q And the information reflected in the robbery
25 questionnaire, the question is "Where was the

1 vehicle parked?" The response that you wrote down
2 is "In parking lot facing northbound", right?

3 A That is correct

4 Q So according to the information Mr Patterson gave
5 you at the time you interviewed him -- and that was
6 on October 8th, 2002?

7 A Right.

8 Q -- the vehicle was parked in the parking lot facing
9 northbound, correct?

10 A Right In the parking lot facing northbound

11 Q All right And you've made reference to a
12 conversation you had with Mr Alexander on
13 March 5th, 2003?

14 A Yes

15 Q Do you have any notes reflecting that conversation,
16 sir?

17 A I just -- the only note I had was I wrote the name
18 down I didn't include that in the case because I
19 didn't think it was anything of any significance

20 Q Now, you did indeed have contact with Demetrio Sears,
21 correct?

22 A Yes, I did

23 Q You sat down with Mr Sears?

24 MR MEADORS Your Honor, may we approach?

25 THE COURT Certainly

1 (Whereupon, a bench conference is had)

2 THE COURT All right, Ladies and Gentlemen
3 Another matter has come up I need to discuss with the
4 attorneys Please step into your jury room. Don't
5 discuss the case among yourselves while you're there
6 We'll be just a minute.

7 (Jury out at 11 05 A M)

8 THE COURT All right, Solicitor

9 MR MEADORS Your Honor, I don't know -- and I
10 wanted to object before we got there. If my
11 objection was premature, I apologize But I thought
12 that he was fixing to elicit testimony from
13 Investigator McDonald about a statement that
14 Investigator McDonald took from Mr Sears after he
15 got out of the hospital I don't know

16 If he was going on to that, we have an objection
17 to that as self-serving hearsay And we would ask
18 that obviously he not be allowed to elicit that
19 information; and, second of all, that he not even be
20 allowed to say, Did you read him any rights and take
21 a statement without putting it in, because that's all
22 but letting them know that he was out there And
23 that's still hearsay, and we think that would be
24 improper, just as if the State tried to do that in
25 reverse.

1 THE COURT Mr Strickler

2 MR STRICKLER Well, one, Your Honor, it's my
3 understanding that Your Honor has ruled as a matter
4 of Constitutional law the statement with the final
5 question and answer redacted is admissible In fact,
6 I did not oppose admission of that statement

7 THE COURT: Of?

8 MR STRICKLER. Of the written statement of
9 Demetrio Sears.

10 THE COURT Oh, Sears I'm sorry

11 MR STRICKLER Yes, sir That as background
12 Further background of course is the first trial of
13 this case the State felt that --

14 THE COURT I ruled -- I've only ruled, as I
15 understand it, that it was free and voluntary

16 MR STRICKLER: Yes, sir I said as a matter of
17 Constitutional law --

18 THE COURT. All right

19 MR STRICKLER -- you've made that ruling As
20 further background of course, Your Honor, during the
21 first trial of this case the State evidently took a
22 contrary position in that they introduced the
23 statement against Mr Sears during the trial of that
24 case Definitely they in one sense, since of course
25 they could not introduce some hearsay,

1 non-inculpatory statement, self-serving statement
2 during the previous trial are arguing in one sense
3 that it's an inculpatory statement, it does place him
4 at the scene of the crime, it's inculpatory to that
5 extent, and now today argue that it is merely a
6 self-serving statement And the Solicitor objects,
7 as I understand it, on two prongs One, that he's
8 afraid I'm going to try to publish the statement
9 And, indeed, I would submit I can

10 THE COURT. You can?

11 MR STRICKLER: Yes, sir I would submit I can
12 for the reasons I've just set forth, in that it is an
13 inculpatory statement

14 THE COURT. So, is that the question, whether
15 it's inculpatory or exculpatory? Or is it both?

16 MS CAMPBELL It's both

17 MR STRICKLER: Every statement I think could be
18 potentially both inculpatory and exculpatory But
19 this one is inculpatory in that it places him at the
20 scene of the crime That's as to the statement

21 Should Your Honor to my great surprise disagree
22 with me in this regard, I would submit that I am not
23 constrained from asking this Officer whether he spoke
24 with my client or not, and I am not constrained from
25 asking this officer whether he solicited the

1 statement from him, whether he freely and voluntarily
2 gave him, as he's testified he did, provided him with
3 a statement

4 Now, if I can't go into the contents of the
5 statement, I'm taking it that I'm going to then be
6 restricted from going into the scope of the
7 investigation in this case, in which case additional
8 problems arise

9 THE COURT All right. Let me see the
10 statement

11 MR STRICKLER I was looking for it I know
12 it's been marked I'm just not sure where it is at
13 this point Oh, you have it?

14 (Witness hands statement to Mr Strickler).

15 THE COURT: Anything from --

16 MR MEADORS No, sir As far as what we did
17 last trial and this trial, that's our prerogative I
18 almost didn't put it in last trial. I think that's
19 totally irrelevant here I agree with Mr Strickler,
20 I think he agrees with the State, that it would be a
21 self-serving statement for him to elicit it through
22 there The question then becomes whether he could
23 elicit the sheer fact he talked to him and gave a
24 statement That's in effect self-serving, that he's
25 saying, yeah, I did give a statement. That is a

1 statement, Your Honor, and I think it is
2 self-serving; him saying a statement And then we're
3 not offering it He's putting that out there as a
4 smokescreen, unlike if you said it I pulled up a
5 few quick research I have in my office I don't
6 think that's appropriate to even get the fact, yeah,
7 I made a statement to him

8 THE COURT. Well, --

9 MR MEADORS. Your Honor, we have no -- With all
10 due respect, we haven't gone over this and tried to
11 redact it or get it ready So we obviously are --

12 THE COURT What?

13 MR MEADORS We had no intentions of offering
14 it in this trial

15 THE COURT. I don't think you can redact it as
16 to Mr Sears I mean, that's the confrontation
17 issue

18 MR MEADORS No, sir Well, my point is we
19 didn't go through like we did on Mr Alexander's
20 statement with Mr Sears

21 THE COURT But that's a completely different
22 issue

23 MR. MEADORS I understand My point is we
24 weren't prepared with even trying to offer it. I
25 think they knew this is all I'm saying

1 THE COURT: Well, the case has been pending a
2 long time. He does put himself at the scene I
3 started to say that I don't see much difference
4 between putting the statement in and letting this
5 officer testify that there was a statement I think
6 the law is to my mind the same on both issues.

7 Now, let me just take a minute or two

8 (Pause)

9 MS. CAMPBELL Your Honor, may I go to the
10 office and pull a case or two with your permission,
11 or do I need to --

12 THE COURT One of these days we'll get this
13 courtroom wired so you just flash them up on the
14 screen.

15 MR STRICKLER If it doesn't happen soon, I'd
16 like to borrow one of those nice monitors

17 THE COURT You're certainly welcome to because
18 it's useless up here.

19 MR STRICKLER It's certainly a lot nicer than
20 the one I have in my office.

21 THE COURT Certainly.

22 MS CAMPBELL Thank you, Your Honor

23 (Pause).

24 MS. CAMPBELL: Your Honor, I would propose to
25 hand up State v Terry which is a 2000 case, State v

1 Sweet, State v Long I believe there's State v --

2 THE COURT I have Terry

3 MS CAMPBELL Okay. There's a long line of
4 cases, Your Honor And in every case when I've had
5 this issue come up before -- and this is just based
6 on my experience -- but, basically, if the State, as
7 it quotes in Terry, elects not to put in a statement,
8 then the defendant can't introduce it in furtherance
9 of his own cause

10 And as far as his contention that the statement
11 is inculpatory and not exculpatory, yes, it puts him
12 at the scene, I don't know that that's a real issue
13 in this case However, it gives his version of the
14 facts without him having to take the stand

15 MR MEADORS Your Honor, I'd like to argue if I
16 could

17 THE COURT: Let Ms. Campbell finish

18 MR MEADORS I thought she had.

19 THE COURT: Well, I don't know She's arguing
20 Terry is applicable

21 MS. CAMPBELL Terry, Sweet I believe there is
22 Maxie, Long And I'm looking for those cases, Your
23 Honor

24 THE COURT "To detain and expose a defendant
25 for criminal liability and offer to exculpate the

1 accused is not admissible unless corroborating
2 circumstances clearly indicate the trustworthiness of
3 the statement " Now, --

4 MR STRICKLER That's an evidentiary ruling

5 THE COURT I know I know

6 MS CAMPBELL: Your Honor, and even in Terry, in
7 Terry it did inculcate him somewhat As I read
8 Terry, the statement in that case just merely gave
9 his version of the facts, again reducing it from
10 murder to manslaughter So, again, that would put
11 him at the scene, as does this This is a statement
12 that just gives the defendant an opportunity to put
13 in his version of the facts which put him at the
14 scene.

15 THE COURT I understand.

16 MS CAMPBELL However, and you've read this
17 statement, clearly, he portrays himself as the victim
18 in the whole matter

19 THE COURT How does this differ from Terry, Mr.
20 Strickler?

21 MR STRICKLER I'm sorry, sir?

22 THE COURT Mr Strickler, how does this differ
23 from -- and I know the facts are different -- but
24 from the import of the Terry decision? I mean, it's
25 offered to exculpate --

1 MR STRICKLER Well, I don't know if that's the
2 term I'd advance It's not offered for the truth of
3 the matter asserted

4 THE COURT Well, I do not find at this point in
5 the trial additional corroborating circumstances
6 clearly indicating the trustworthiness of this
7 statement

8 MR. STRICKLER: Yes, sir I apologize I can't
9 provide those at this point in the trial. And I
10 would agree that that is an evidentiary concern.

11 If we could turn to the second prong which
12 Mr Meadors argues, which is I can't even ask him
13 whether he took the statement from him

14 MS. CAMPBELL Which is also addressed in Terry

15 THE COURT Oh, really?

16 MS. CAMPBELL Yes "Terry next asserts that
17 even if the trial court improperly" --

18 THE COURT Where are you reading? I can read
19 it if you'll just point me to it

20 MS CAMPBELL. It's right before the second --

21 THE COURT Because you read faster than --

22 MS. CAMPBELL I just have a printed -- it's
23 after they talk about U S v Campbell and Castro and
24 all those; the next page on my printout It says
25 "Terry next asserts that even if the trial court

1 properly excluded his statement, he should have been
2 allowed to elicit the fact that he'd given a
3 statement " It's right before part two which is the
4 Charter River records, is how it's -- I've got one
5 that's printed off of an advance sheet is my problem

6 THE COURT What page?

7 MS CAMPBELL Mine is page 12 It's
8 Subsection --

9 THE COURT No I mean what page in the
10 Reporter?

11 MS CAMPBELL My only copy is off of a -- let
12 me just hand it up to you -- is off of an advance
13 sheet So it doesn't have the proper -- it's
14 Subsection 1 here on page -- whatever page that is

15 THE COURT All right. "Terry next asserts that
16 even if the trial court improperly excluded his
17 statement to police, he should have been permitted to
18 elicit the fact that he had given a statement in
19 order to demonstrate that he had cooperated with the
20 police He contends the jury was left with the
21 erroneous impression he stood silent in the face of
22 an accusation and that he committed murder We
23 disagree Initially defense counsel" -- this is a
24 Supreme Court case, 2000 -- "Initially defense
25 counsel told the jury Terry had given a confession

1 Accordingly, his claim that the jury had the
2 erroneous impression he had not cooperated with
3 police is simply untenable. In any event, the fact
4 that Terry gave police a statement was simply
5 irrelevant to any issue at trial. Permission of the
6 fact that Terry cooperated with the police without
7 giving the substance of the statement would in our
8 opinion have been confusing and misleading to the
9 jury."

10 MR. MEADORS Your Honor, when I came in, my
11 argument was going to be relevance. You're
12 bootstrapping the self-serving starting with State v
13 Sweet and it's not relevant, his Miranda warnings and
14 whether he gave them.

15 MR. STRICKLER. Of course, Your Honor, to
16 differentiate to the extent I can, Your Honor, I have
17 never stated to this jury that Mr. Sears gave a
18 statement or a confession in this matter. So it's
19 different in that sense. As to --

20 THE COURT I don't think anybody has

21 MR. STRICKLER: No. I don't believe so. And,
22 Your Honor, as to the ruling of the Court in that
23 regard, and I would submit that employing an
24 evidentiary ruling to prevent me from fully exploring
25 the facts and circumstances surrounding this case

1 deprives Mr Sears of effective assistance of counsel
2 and deprives Mr. Sears of due process of law in
3 regard to the defense in this case and the right
4 to -- deprives him of the right to present a defense,
5 because the defense can be presented during the
6 defense case and the State's case

7 So -- and those are all, Your Honor, objections
8 based on provisions of the United States Constitution
9 and the Constitution of the State of South Carolina
10 So that's my basis. I understand the Court's ruling
11 I can hear relevance and I can hear confusion of the
12 issues, and I know those are in the rules of
13 evidence. The rules of evidence can't trump the
14 Constitution

15 THE COURT Yes, sir I understand that.

16 MR STRICKLER. Yes, sir

17 THE COURT All right

18 MR MEADORS. Your Honor, could I add one thing?
19 Or if you don't want me to I won't

20 THE COURT The tape is playing

21 MR MEADORS The other -- and I think it's
22 being said in all the issues -- leaves the jury with
23 this, there's this question out there, which I don't
24 think is fair to the State, to the jury, to anybody
25 That's why we think it's not relevant

1 THE COURT. All right Mr Strickler, as to
2 other matters involving the investigation of this
3 case, as to other matters other than the statement --

4 MR STRICKLER. Yes, sir.

5 THE COURT. -- at this point those issues are
6 not in front of the Court The question in front of
7 the Court at this time is the statement and the fact
8 that the statement was given I'm afraid I'm going
9 to have to side with the Terry case and rule that
10 both the statement and the fact that a statement was
11 given are inadmissible

12 MR STRICKLER. Thank you, sir

13 THE COURT. All right

14 MR. STRICKLER. I understand your ruling. If I
15 could before we bring the jury back just take the
16 opportunity at this point in time to note that I made
17 an objection -- let's see -- during Mr Burr's cross
18 examination, perhaps somewhat obliquely referenced on
19 my part In essence, the objection --

20 THE COURT. I understood

21 MR STRICKLER What I intended was the
22 objection be the same objection that we had just
23 earlier addressed regarding the penultimate and
24 ultimate questions and answers on the part of
25 Sergeant McDonald during his direct testimony, that

1 is, reference to this third person

2 And, Your Honor, I'm not going to belabor the
3 point The essence of my objection is that it's the
4 same, that the reference to the third person
5 implicates and points the finger at my defendant as
6 far as the other statement goes, and that as far as
7 coming from Mr Burr as opposed to the State, it
8 makes no difference. That's clear

9 And I don't fault Mr Burr at all I mean, he's
10 representing his client and doing his job But I've
11 got some case law with my name on it reflecting the
12 fact of what happens when a defense counsel commits
13 error in questioning or in argument And it doesn't
14 matter whether it was the State or the defense

15 THE COURT Well, let me -- and I assume you
16 are -- that along with that objection you're also
17 making the motion for a mistrial

18 MR. STRICKLER: Yes, sir The motion for a
19 mistrial Yes, sir

20 THE COURT Let me just give you a quick close
21 up on a case which is United States vs Quentero
22 which says Burton (sic) "does not apply when an
23 attorney for a co-defendant implicates the defendant
24 during closing argument We've never held that
25 Bruton" -- not Burton -- "Bruton applies We've

1 never held that Bruton applies when the attorney for
2 a co-defendant implicates a defendant during closing
3 argument We perceive of no reason to do so because
4 arguments of counsel are simply not evidence Bruton
5 is directed toward preserving a defendant's right to
6 cross examination, and, thus, has nothing to do with
7 the arguments of counsel based on their
8 interpretation of the evidence "

9 As I say, it's not directly on point, but it
10 deals with attorney comments And I just read that
11 into the record for everybody's edification

12 MR. STRICKLER: Yes, sir And I just for
13 further edification, as long as we're talking about
14 closings, I just give you Paine v. State

15 THE COURT. We'll do that. I've got your name

16 MR STRICKLER: 355 S C 642, 586 s e 2d 857, or
17 you can just key in Strickler and you'll come up with
18 that case It's the most recent reference Not
19 Mr Paine's attorney I would note I understand your
20 ruling, Your Honor. Thank you

21 THE COURT All right. Bring the jury.

22 WITNESS: Can I have the statement back?

23 COURT REPORTER The witness needs the statement
24 back

25 THE COURT Well, he's not going to need it

1 But it's here Just think, Mr Strickler, one day
2 Mr Mokeba will have his name on one of those
3 reports

4 MR STRICKLER I hope not because generally it
5 indicates he's done something wrong

6 (Jury in at 11 25 A M)

7 THE BAILIFF. The jury is present, Your Honor

8 THE COURT Mr Strickler, you may continue

9 MR. STRICKLER Thank you, Your Honor May it
10 please the Court

11 Q Scott McDonald, just a couple of things really It's
12 fair to say -- it would be obvious, but I will
13 belabor the obvious upon occasion -- it's fair to say
14 you were not present at the time the incident took
15 place, correct?

16 A No, I was not

17 Q And it is fair to say that you of your own personal
18 knowledge, that means having seen things as they
19 occurred cannot testify as to what took place at that
20 business, correct?

21 A Will you state that question again?

22 Q Of your own personal knowledge you can't testify as
23 to what took place between what? 9 40, 9 45 on the
24 morning of October 8th, 2002, at the business on
25 Percival Road?

1 A I was not personally there when the incident
2 occurred, no

3 Q You can describe evidence that was collected You
4 can describe what you saw after you got to the scene
5 You cannot describe what took place at that business
6 because you were not there as the events transpired,
7 correct?

8 A That's correct I was not there at the time of the
9 incident

10 Q You are the chief investigator in this case You
11 were and still are the chief investigator in this
12 case. What you can tell us is in your capacity as
13 chief investigator in this case, you know that there
14 were no shell casings recovered outside of the
15 business, correct?

16 A Correct

17 Q No shell casings?

18 A Correct.

19 Q All right You also can tell us that you know there
20 is no evidence that there was any blood found inside
21 the business, correct?

22 A Correct

23 Q And you can also tell us that there is no evidence
24 that you're aware of that there was any blood found
25 in the parking lot outside the business, correct?

1 A Correct

2 Q And certainly you would tell us, at being an
3 experienced investigator, that had blood been found
4 outside the business you would make sure in
5 conjunction with the crime scene investigator that
6 samples of that were preserved for testing and
7 possibly used later on, right?

8 A Yes, I would

9 Q Similarly, you would, had any blood been found inside
10 the business, have made sure that as part of the
11 crime scene investigation samples of that were
12 preserved also, correct?

13 A Correct

14 Q So we don't have any of that and we can be confident
15 that none was detected, correct?

16 A That's correct

17 Q Okay You are equally aware as chief investigator in
18 the case that the interior of the business does not
19 reflect any bullet holes in walls towards the rear of
20 the business All the holes associated with shots
21 fired are in the walls to the front of the business,
22 correct?

23 A That's correct.

24 Q If that's confusing as a question --

25 A Oh, I understand.

1 Q -- I don't mean to confuse you at all

2 A I understand

3 Q Okay And you would agree with Investigator Russell
4 that observing holes in the rear of the business
5 could potentially have been significant in this case,
6 correct?

7 A Correct

8 Q And that in the course of an investigation
9 potentially significant evidence would have been
10 documented and preserved, correct?

11 A Correct

12 Q I mean, he would do that as the crime scene
13 investigator, and you as the lead investigator on the
14 case would make sure that that was done, right?

15 A That's correct

16 Q Okay And so we can also be confident that since we
17 don't have anything documented of that nature that no
18 such holes were perceived at all after a thorough
19 investigation of the interior of the business? No
20 such holes, being holes in the wall to the rear?

21 A Nothing to the rear

22 Q Okay Now, to the best of your knowledge, the
23 incident took place roughly 9 40 to 9:45 in the
24 morning on October the 8th, 2002, correct?

25 A That's correct

1 Q That's the time range that's given in the incident
2 report, right?

3 A That's correct

4 Q And you don't have anything to your knowledge that
5 would call that range into question, correct?

6 A Correct

7 Q And you got an officer, Deputy Johnson, arriving on
8 the scene at 9 49 on the scene in the morning,
9 correct?

10 A That's correct

11 Q And then in your capacity as -- you talked during
12 your direct regarding when the van was found out on
13 77, and it's been a little while Sorry My notes
14 indicate -- let's see -- well, what do my notes
15 indicate? About an hour later, an hour after you
16 were at the scene you got word that the van had been
17 recovered and Demetrio Sears had been identified?

18 A It wasn't an hour after I was at the scene It
19 was -- I've got my arrival time at approximately
20 10 23 A M The van was found shortly after that

21 Q Okay Do you have in your capacity as chief
22 investigating officer in the case a supplementary
23 incident report filed by one B E Dowdy?

24 A Yes, I do

25 Q And Mr. Dowdy is another investigator with the

1 Sheriff's Department, or he is a line officer?

2 A He was a line officer assigned to the traffic
3 division

4 Q Okay And he is the -- the testimony from
5 Investigator Laffin yesterday, he was the person who
6 initially pulled up behind the van on 77, correct?

7 A Yes, he did.

8 Q Okay. So he would have been the first person there
9 Now, in your capacity as investigating officer, can
10 you tell us to the best of your knowledge, revisit
11 the question as to when the van was discovered on 77?
12 And I direct your attention to the last two words in
13 the supplementary -- narrative of the supplementary
14 incident report?

15 A It says here that our responding officer initially
16 heard the call out go out at 9 46 hours and found the
17 vehicle at 9 58 hours

18 Q Okay So, according to Dowdy, the vehicle was
19 discovered at 9.58 hours, correct?

20 A It was actually located before my arrival on the
21 scene.

22 Q Okay Well, all right. But I just -- so, incident
23 between 9 40, 9 45, first officer on the scene at
24 9 49, vehicle, calls go out right and left You just
25 testified lots of traffic going on then?

1 A That's right

2 Q Calls out right and left And indeed Deputy Dowdy
3 finds the vehicle broken down on I-77 at 9 58 in the
4 morning, about nine minutes after Deputy Johnson
5 arrived on the scene, right?

6 A Correct

7 Q Okay Now, it was some period of time after that
8 before Demetrio collapsed and fell out of the van?

9 A I believe it was --

10 Q We have that on the video?

11 A -- 15 to 20 minutes they were behind the vehicle I
12 think that's where I got the time closer to 10 30

13 Q And that's fine I'm just trying to get the times
14 down That's all No -- did you participate in any
15 search of the business itself, the business on
16 Percival Road?

17 A Yes Investigator Russell was in charge of that He
18 completed his work After photographing and
19 collecting things he was able to show us where
20 certain things were He was able to point out -- we
21 weren't standing per se in that area We might be
22 standing, you know, just outside or in a bay area,
23 and, you know, here are casings, here are
24 projectiles, that type of thing

25 Q So he's kind of in charge of the scene at that time

1 but you're keeping an eye on him?

2 A He is entirely in charge of the evidence collection
3 and preservation

4 Q Correct me if I'm wrong The way I understand a
5 scene is supposed to be worked is you go ahead and
6 work it from the outside in?

7 A That's the way they generally work it, yes.

8 Q Because as you're working it, you're actually -- I
9 don't want to argue about the word -- but your
10 presence then is altering the scene. So you want to
11 make sure you document everything before you move to
12 this area, then move your way further in so that as
13 you potentially disturb stuff you've already
14 documented it so it's not really disturbed at that
15 point, correct?

16 A Correct

17 Q And that's why you'll have numbers of pictures taken,
18 some from way back, some from up close. You document
19 something as it appeared in place and in relationship
20 to the other things in the business in this case, and
21 then you'll get a close up or a good look at it,
22 right?

23 A That's correct

24 Q And the focus of the search -- and I call it a
25 search -- the focus of working the scene, since the

1 information you had at that particular time was that
2 there had been an attempted armed robbery was
3 focusing on items that would be associated with an
4 attempted armed robbery, right?

5 A Correct

6 Q You knew the pistol had been alleged to have been
7 discharged You're looking for that, looking for any
8 other sort of things that could be associated with an
9 attempted armed robbery, right?

10 A Correct

11 Q Okay Thank you very much.

12 MR MEADORS I just have one question

13 THE COURT Redirect

14 REDIRECT EXAMINATION

15 BY MR. MEADORS

16 Q This is a direct question in response to a question
17 Mr Burr asked you. Turn to page 4 in your notes,
18 please And if you would only answer this question
19 He asked you I believe about a Kassim Hozendoff?

20 A Correct

21 Q Maybe I heard it wrong, but was Kassim Hozendoff
22 implicated by Mr Patterson or anybody else as being
23 at Ntense on October 8th?

24 A No

25 Q Thank you

1 THE COURT. Mr Burr

2 MR BURR. I have no further questions, Your
3 Honor

4 MR. STRICKLER No, sir Nothing further

5 THE COURT. Thank you very much, Sergeant
6 McDonald You may come down

7 MR MEADORS. Beg the Court's indulgence
8 (Pause)

9 MS. CAMPBELL Your Honor, at this time the
10 State would rest

11 THE COURT. All right Thank you very much.
12 Approach the bench

13 (Whereupon, a bench conference is had)

14 THE COURT. All right, Ladies and Gentlemen.

15 That concludes the State's case You'll hear no more
16 evidence or testimony from the State However, we
17 still have the defendants -- both defenses to present
18 to you Rather than begin that, because there is a
19 matter of law that I need to take up with the
20 attorneys at the end of the State's case, that's
21 standard procedure, rather than send you out, hold
22 you here, I think the best use of our time, it's
23 quarter 'til 12 now, would be to go ahead and let you
24 take an early lunch hour and ask you to be back at

25 1 00

1 I have every indication we'll finish this case
2 this afternoon, but I don't know I never know for
3 certain But that's sort of the schedule I'm trying
4 to work on So I'll ask you to go ahead and take
5 your lunch hour now Don't discuss the case among
6 yourselves when you return to the jury room or with
7 anyone else over the lunch hour. Please be back in
8 your jury room at 1 00 And I assume everybody will
9 be on time at 1 00 Thank you very much. Have a
10 pleasant lunch

11 (Jury out at 11 42 A.M.)

12 THE COURT Any motions at this time?

13 MR. BURR Nothing from Defendant Alexander

14 THE COURT All right

15 MR. STRICKLER Thank you, Your Honor As to
16 Mr Sears, of course at this point in time I would
17 move that Your Honor direct a verdict of not guilty.
18 Taking the evidence in the light most favorable to
19 the State at this point in time, as you're required
20 to, I would submit that the evidence before you is
21 insufficient to submit to the jury as it fails to
22 provide a basis for the jury to find beyond a
23 reasonable doubt that Mr Sears was guilty of this
24 charge

25 Secondly, independent of the directed verdict

1 motion, Your Honor, I would at this point in time ask
2 Your Honor to revisit my motion to sever the trial
3 made at the beginning of this case, revisit my motion
4 to suppress the introduction of the redacted
5 statement or of the statement on the part of Mr
6 Alexander, the redacted statement on the part of Mr
7 Alexander, revisit my motions for mistrial for
8 comment during the testimony of Sergeant McDonald
9 during the State's questioning of him and during
10 Mr Burr's cross examination of him.

11 I would ask that you revisit those rulings, and
12 of course, Your Honor, with all due respect ask that
13 you upon revisitation and rethinking the issue
14 realize that you committed error of law in that
15 regard in regard to all those rulings and declare a
16 mistrial at this point in time as to Mr Sears.

17 THE COURT All right, sir Thank you very
18 much.

19 MR. STRICKLER Yes, sir

20 THE COURT The -- I must respectfully deny your
21 motion for directed verdict primarily on the basis
22 that there is an eye witness that identified your
23 client at the scene, that it's in the record that --
24 there's certainly sufficient evidence to send this
25 case to the jury on an attempted armed robbery

1 charge.

2 As to the previously argued motions based on
3 Constitutional grounds that your client is unable to
4 get a fair trial because of the fact that there is a
5 non-testifying statement that's in the record that
6 may or may not inculcate your client which would
7 theoretically give grounds for severance, and your
8 motion under Bruton and its progeny for mistrial for
9 failure to exclude that statement, all -- I have I
10 think considered them as each motion was made in
11 terms of time sequentially and don't feel at this
12 point in time that there's any reason to reverse my
13 earlier rulings, and I must respectfully deny your
14 motions for mistrial And I understand your
15 exceptions to that ruling

-- 16 MR STRICKLER Yes, sir Thank you, sir

17 MR BURR Your Honor, if I may, I'd like to
18 retract that. I would like to make a motion for a
19 directed verdict -- I apologize to the Court I was
20 reading and didn't know that's where I was. There is
21 insignificant evidence at this point to connect Mr
22 Alexander to any attempted robbery He's not been
23 identified by anyone So I'd ask that you direct a
24 verdict

25 THE COURT. Well, as to that motion, I'll accept

1 it at this time There is a written statement in
2 evidence that in my opinion inculcates your client,
3 and, therefore, sufficient evidence exists for the
4 case against Mr Alexander to go to the jury also I
5 must respectfully deny your motion

6 MR. BURR Thank you, Your Honor

7 THE COURT Now, let me advise each of your
8 clients about their rights with respect to their
9 right to testify or not testify I'll start with Mr
10 Alexander. Mr Alexander, will you stand, please,
11 with your attorney

12 (Mr Alexander complies)

13 THE COURT Mr Alexander, at this time I'm
14 going to explain to you certain of your rights If
15 you do not understand anything I say, please let me
16 know If you want me to explain anything in further
17 detail, please let me know Do you understand?

18 MR. ALEXANDER Yes, sir

19 THE COURT We've now reached the stage of the
20 trial where you may present your defense You have
21 the right to testify in your own behalf However, no
22 one can make you testify In the event you have a
23 record for any conviction involving dishonesty or
24 false statement or for a crime punishable by
25 imprisonment for more than one year and this Court

1 determines that the probative value of admitting this
2 evidence outweighs its prejudicial effect to you, the
3 Solicitor will be able to introduce this record for
4 impeachment purposes to attack your credibility

5 If you elect not to take the stand I will charge
6 the jury they are not to give the fact that you did
7 not testify any consideration whatsoever, and there
8 is to be absolutely no prejudice to you because you
9 did not testify It will best left entirely up to
10 you whether or not you wish to testify You may talk
11 with your attorney, your family, your friends, your
12 counsel, or anyone else, but the ultimate decision
13 will be left entirely up to you Do you understand?

14 MR. ALEXANDER Yes, sir

15 THE COURT If you are called as a witness and
16 elect to be called as a witness I advise you that you
17 have the right to invoke the protections given to you
18 by the Fifth Amendment to the Constitution of the
19 United States and a similar counterpart provision of
20 the Constitution of the State of South Carolina.

21 The Fifth Amendment to the Constitution of the
22 United States provides in part: No person shall be
23 compelled in any criminal case to be a witness
24 against himself This provision of Constitutional
25 law means that you cannot be compelled or required to

1 testify in this case This is a right and a
2 privilege which the law extends to you This is a
3 personal privilege, and no one can waive this right
4 except you. You have the right not to testify, but
5 you also have the right to testify

6 The Court will grant you the right to consult
7 with your attorney before you make that decision If
8 you elect not to testify, your failure to testify
9 cannot be used by the State as an inference of guilt,
10 and your failure to testify cannot be considered by
11 the jury in its deliberations

12 If you elect to testify and waive the privilege
13 extended to you by the Fifth Amendment to the
14 Constitution of the United States, I advise you now
15 that you will then assume the role of a witness in
16 this case and you will waive or give up your
17 Constitutional privilege against self-incrimination

18 This means that if you voluntarily take the
19 stand and testify you will be subject -- you will
20 subject yourself to the same rules that govern other
21 witnesses, and you may be examined and cross examined
22 on any relevant issue in this case, and you may be
23 impeached to the same extent as any other witness all
24 of which is, however, subject to the rules of
25 evidence of the State of South Carolina

1 I further advise you that if you elect to take
2 the witness stand and testify, this decision on your
3 part must be freely, voluntarily, intelligently and
4 with knowledge of the protections given to you by the
5 Fifth Amendment to the Constitution of the United
6 States and with knowledge of the consequences of your
7 election to testify

8 Do you wish to consult further with your
9 counsel?

10 MR. ALEXANDER. Yes, sir

11 THE COURT I can't hear you

12 MR. ALEXANDER. Yes, sir

13 (Pause - conferring).

14 THE COURT I just can't hear you

15 MR ALEXANDER. I'll testify, sir.

16 THE COURT You wish to testify?

17 MR ALEXANDER. Yes, sir

18 THE COURT Have you discussed this decision
19 with your attorney?

20 MR. ALEXANDER Yes, sir.

21 THE COURT You understand what I have explained
22 to you?

23 MR ALEXANDER Yes, sir

24 THE COURT Do you have any questions about what
25 I have explained to you?

1 MR ALEXANDER No, sir

2 THE COURT And it's my understanding you wish
3 to testify Is that correct?

4 MR. ALEXANDER Yes, sir

5 THE COURT All right. Thank you very much,
6 sir. You may be seated

7 MR BURR. Thank you, Your Honor

8 THE COURT Mr Demetrio Sears, I'm going to
9 explain to you certain of your rights If you do not
10 understand anything I say, please let me know If
11 you want me to explain anything in further detail,
12 please let me know Do you understand?

13 MR. SEARS Yes, sir

14 MR STRICKLER Speak up, please

15 THE COURT We've now reached the stage of this
16 trial where you may present your defense You have
17 the right to testify in your own behalf However, no
18 one can make you testify In the event you have a
19 record for any conviction involving dishonesty or
20 false statement or for a crime punishable by
21 imprisonment for more than one year and this Court
22 determines that the probative value in admitting this
23 evidence outweighs its prejudicial effect to you, the
24 Solicitor will be able to introduce this record for
25 impeachment purposes to attack your credibility

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2 the jury that they are not to give the fact that you
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5 you did not testify It will be left entirely up to
6 you whether or not you testify You may talk with
7 your attorney, your family and friends, or anyone
8 else, but the ultimate decision will be left entirely
9 up to you Do you understand?

10 MR SEARS Yes, sir

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12 the right to invoke the protections given to you by
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14 States and a similar counterpart provision of the
15 Constitution of the State of South Carolina

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4 cannot be used by the State as an inference of guilt,
5 and your failure to testify cannot be considered by
6 the jury in its deliberations on your guilt or
7 innocence

8 If you elect to testify and waive the privilege
9 extended to you by the Fifth Amendment to the
10 Constitution of the United States, I advise you now
11 that you will then assume the role of a witness in
12 this case and you then waive or give up your
13 Constitutional privilege against self-incrimination

14 This means that if you voluntarily take the
15 witness stand and testify you will then subject
16 yourself to the same rules that govern other
17 witnesses, and you may be examined and cross examined
18 on any relevant in this case and you may be impeached
19 to the same extent as any other witness all of which,
20 however, is subject to the rules of evidence of the
21 State of South Carolina.

22 I further advise you that if you elect to take
23 the witness stand and testify that this decision on
24 your part must be freely, voluntarily, intelligently
25 and with knowledge of the protections given to you by

1 Fifth Amendment to the Constitution of the United
2 States and with knowledge of the consequences of your
3 election to testify

4 Do you wish to consult further with your
5 attorney?

6 MR SEARS No, sir

7 THE COURT Have you discussed with your lawyer
8 whether or not you should testify?

9 MR. SEARS Yes, sir

10 THE COURT. You understand what I have explained
11 to you?

12 MR. SEARS. Yes, sir

13 THE COURT Do you have any questions about what
14 I have explained to you?

15 MR. SEARS No, sir

16 THE COURT. Do you wish to testify?

17 MR. SEARS Yes, sir

18 THE COURT All right Thank you very much

19 MR. STRICKLER Your Honor, I'd ask in that
20 regard that we settle his record at this point in
21 time, or at whatever point in time Your Honor
22 chooses

23 THE COURT. I'd like to do it

24 MR STRICKLER I think there's only one --

25 THE COURT Go ahead and have a seat, Mr Sears

1 MR STRICKLER. I think there's only one item
2 that needs to be discussed And that would be, I
3 show a conviction on November 30th of 2000 for
4 common law robbery resulting in a youthful offender
5 sentence Actually, it looks like two counts of
6 common law robbery

7 THE COURT Two counts

8 MR. STRICKLER Youthful offender sentences,
9 concurrent

10 THE COURT That was the -- is that a clear
11 conviction?

12 MR STRICKLER. That was by way of plea, Your
13 Honor.

14 THE COURT All right Is that correct,
15 Solicitor?

16 MR MEADORS: If I could just confer with
17 Mr Strickler and make sure of something

18 (Pause).

19 MR MEADORS: I would agree with that, two prior
20 strong armed's

21 MR. STRICKLER. On one day

22 MR. MEADORS. Correct

23 MR STRICKLER At the same date

24 MR MEADORS Well, the same sentence date, at
25 least I know.

1 MR STRICKLER. The same court date, yes, sir
2 Well, that's the only applicable day as far as I can
3 tell

4 THE COURT And --

5 MR STRICKLER I'm sorry?

6 THE COURT: No

7 MR STRICKLER As I indicated last time, Your
8 Honor, I would submit with full knowledge of the case
9 of State v Alamean, and with all I will allege is a
10 passing familiarity with the laws of the rules of
11 evidence in this regard independent of Alamean, that
12 a prejudice versus probative value analysis should be
13 conducted in this matter regardless of whether or not
14 the offense is deemed, one, involving dishonesty, as
15 Alamean would hold, and that to hold that we don't
16 have to worry about prejudice in that situation as
17 opposed to the situation of any other kind of crime
18 or we don't have to balance prejudice versus
19 probative value in that situation as opposed to any
20 other crime is -- well, it boggles the mind quite
21 frankly. It boggles my mind, and it doesn't take
22 much at times, Your Honor

23 And I understand the law in this state I would
24 also just note, and with absolutely no disrespect
25 intended of course to the Court of Appeals, that

1 Alamean, if my memory is correct, is a Court of
2 Appeals case So the highest court in this state has
3 not spoken in that regard So I'd move that the
4 State not be permitted to impeach based on those
5 prior convictions

6 THE COURT. Well, sir, as much as I may agree
7 with you, the Alamean case, which is a 2003 case,
8 holds that 609(a)(2) provides for automatic admission
9 of evidence of a prior crime of dishonesty without
10 the balancing of probative value versus prejudicial
11 effect This conclusion is supported by the
12 juxtaposition of 609(a)(1) and 609(a)(2) There is
13 absolutely no language in Rule 609 (a)(2) compelling
14 a balancing test for admission in regards to a crime
15 of dishonesty. Now, I am bound by that law and I
16 must respectfully --

17 MR MEADORS Thank you, Your Honor.

18 THE COURT -- deny your motion to exclude that

19 MR BURR. Your Honor, in light of this
20 information, I bring you my motion to sever the trial
21 because just the implications will be against this
22 defendant is certainly going to carry to my defendant
23 who has not been guilty of any previous armed
24 robberies, and there's no way I can successfully
25 argue that it be separated.

1 THE COURT Oh, I don't necessarily agree I
2 think the jury can find that the separate -- the jury
3 is going to be given the opportunity, at least at
4 this point, to consider separate verdicts You may
5 take the position that the introduction of the
6 co-defendant's record somehow is prejudicial to your
7 client I think that's what you're arguing But I
8 must respectfully deny your motion based on Alamean
9 I can't get over that hurdle Yes, sir

10 MR MEADORS That's all Thank you Did you
11 say 1 earlier we're starting back?

12 THE COURT I asked the jury to be back at 1 00
13 at which time we will recommence the trial of the
14 case

15 MR. MEADORS Thank you, Your Honor

16 THE COURT Yes, sir Hold on a minute

17 (Whereupon, a bench conference is had between
18 the Court and the deputies).

19 THE COURT Counsel

20 MR. MEADORS Yes, sir.

21 THE COURT Mr Burr

22 (Whereupon, a bench conference is had between
23 the Court and the counsel).

24 THE COURT. All right We'll stand at ease
25 until 1 00

1 MR MEADORS Judge, the original unredacted
2 copy of the statement I just ask be made a Court's
3 I D if you don't have any objection.

4 MR STRICKLER (Nods head affirmatively).

5 THE COURT Okay

6 (Whereupon, a lunch break is taken)

7 (WHEREUPON, Court's Exhibit No 3 was marked for
8 identification only)

9 THE COURT State ready to proceed?

10 MS CAMPBELL The State's ready

11 THE COURT Defense ready to proceed?

12 MR. BURR: Yes, Your Honor, the defense is
13 ready

14 MR. STRICKLER Yes, sir

15 THE COURT Bring the jury, please

16 (Jury in at 1 20 P M)

17 THE BAILIFF. The jury is present, Your Honor

18 THE COURT Thank you very much, Ladies and
19 Gentlemen I hope you had a pleasant lunch We're
20 now ready to continue with the trial Mr Burr

21 MR BURR May it please the Court, Your Honor
22 The defense would call Mr Alexander to the stand

23 THE COURT: Come around, Mr. Alexander

24 WILLIE L ALEXANDER, after being duly sworn,
25 testifies as follows

THE CLERK. Please have a seat State your full

1 name

2 WITNESS My name is Willie Lloyd Alexander

3 DIRECT EXAMINATION

4 BY MR BURR

5 Q Mr Alexander, you are going to have to speak up so
6 everybody in here can hear you When I talk to your
7 wife, I refer to you as Lloyd When I talk to you or
8 to your mother, I refer to you as Willie But you're
9 commonly known by both names Willie and Lloyd
10 Alexander. Is that correct?

11 A Yes, sir

12 Q This is your opportunity to talk to the Ladies and
13 Gentlemen of the Jury, tell them about yourself and
14 what happened on October the 8th, 2002. On
15 questioning I'm going to break down into three parts
16 I want you to give them some background about
17 yourself Then I'm going to get to the important
18 date of October the 8th, 2002 I want you to tell
19 them exactly what happened on that date And then
20 I'll spend a few minutes on what's happened to you
21 since then

22 A Yes, sir

23 Q First of all, you as a person, where were you born?

24 A I was born in Fort Knox, Kentucky

25 Q Speak up.

- 1 A Fort Knox, Kentucky.
- 2 Q When?
- 3 A July 7th, 1976
- 4 Q And how did you end up being born in Ft Knox,
- 5 Kentucky?
- 6 A My father was in the military
- 7 Q Do you have brothers and sisters?
- 8 A Yes, sir I'm the youngest out of nine kids
- 9 Q Nine children?
- 10 A Yes, sir.
- 11 Q Your father, how long was he in the military?
- 12 A Over 30 years
- 13 Q Is he retired?
- 14 A Yes, sir
- 15 Q At what rank? What was his rank?
- 16 A E-9
- 17 Q Sergeant Major?
- 18 A Yes
- 19 Q He retired here at Fort Jackson?
- 20 A Fort Jackson
- 21 Q That's how you ended up in Columbia?
- 22 A Yes, sir
- 23 Q How many different locations did you live, did you
- 24 move as a child?
- 25 A Three Three

1 Q Where all did you live?

2 A Hawaii, Kentucky, and South Carolina

3 Q And where did you attend high school?

4 A I attended high school at Lower Richland.

5 Q I mentioned earlier your wife Veronica When and
6 where did you meet Veronica?

7 A I met Veronica in the tenth grade at Lower Richland
8 High School.

9 Q And you dated her throughout the remainder of high
10 school?

11 A Yes, sir

12 Q And are you still with her? Except for your current
13 situation, were you still living with Veronica --

14 A Yes, sir

15 Q -- at the time? Do you have any children?

16 A Yes, sir I have three sons

17 Q Three sons?

18 A Yes, sir

19 Q What are the names and ages of your children?

20 A Roy, Jr., he's seven Sean, he's four And Rodney,
21 he's two

22 Q On the morning of October 8th, 2002, how did your day
23 start?

24 A It started the same way I always wake up I get
25 the kids ready for school I feed 'em. Then I wake

- 1 my wife up and she takes them to daycare and to
2 school And at that time my baby wasn't in daycare
3 So I'd take him to my mom's house
- 4 Q So what time did you get up on October the 8th, 2002?
- 5 A About 6 00.
- 6 Q How did your morning proceed?
- 7 A After she dropped my older son off, she came back
8 And I already had my other two sons ready to get
9 ready to go to daycare and to my mother's house And
10 there was a knock at the door, and it was my cousin
11 "Dee"
- 12 Q Who is your cousin "Dee"?
- 13 A Demetrio Sears
- 14 Q The gentleman here in the courtroom today?
- 15 A Yes, sir
- 16 Q So your cousin How are you related?
- 17 A That's my mother's sister's son
- 18 Q So first cousins?
- 19 A Yes, sir
- 20 Q And what did "Dee" want of you that morning?
- 21 A He wanted me to take him to a job interview
- 22 Q Was he by himself?
- 23 A Yes, sir
- 24 Q What happened? Did you agree to take him?
- 25 A I agreed to take him to the job interview So I got

1 the keys to the van And I went up -- I went to my
2 friend's Patrick's house, me and "Dee" And I asked
3 Patrick what was he doing later on that day And
4 then Tashim who was another acquaintance of mine --

5 Q Who? Tell me more about Tashim.

6 A Tashim, he offered me gas money, \$10 gas money to
7 give him a ride to the rim shop on Percival Road He
8 said he wanted to pick -- he was going to pick up
9 some money from Sterling.

10 MS. CAMPBELL Objection, Your Honor Just
11 hearsay. If he can just stick to what he did and
12 what he said Thank you

13 THE COURT. You can't say anything else someone
14 else told you.

15 A Yes, sir

16 Q So you had a discussion with the person, Tashim How
17 well did you know Tashim?

18 A I used to see him around the neighborhood a lot
19 around mutual friends of mine And --

20 Q And were you aware of his representation in the
21 community?

22 A Yes, sir He's a known drug peddler.

23 Q Knowing that, you still agreed to give him a ride?

24 A Yes, sir He offered me \$10 for gas to give him a
25 ride

1 MS CAMPBELL Objection, Your Honor, to the
2 hearsay. If he can just stick to what he did and
3 what he said

4 THE COURT I have to sustain the objection.

5 Q Please do not repeat what somebody told you, just
6 what you know or your understanding. So at this
7 point who is together?

8 A "Dee", Tashim and myself And I drove to -- I took
9 them -- I was supposed to take "Dee" to a job
10 interview, and I was taking the other one to Percival
11 Road

12 Q And your agreement to take him to Percival Road, it
13 was your understanding to accomplish what?

14 A Get gas money

15 Q But what was Tashim wanting to go for?

16 MS CAMPBELL Objection, Your Honor

17 THE COURT: Sustained.

18 MS. CAMPBELL He can't say what Tashim just
19 told him, just where he was going He can only say
20 where he was going

21 THE COURT: Ms Campbell, I understand

22 MR. BURR And, Your Honor, --

23 THE COURT. I sustain the objection --

24 MS. CAMPBELL Thank you

25 MR. BURR -- what I'm trying to elicit is why

1 he took him

2 THE COURT. How could he know that unless
3 somebody told him? Where did he go and what did he
4 do?

5 Q You and Tashim and "Dee" went where?

6 A To the rim shop owned by Sterling Patterson

7 Q Did you know Sterling Patterson prior to this?

8 A No, sir

9 Q Did you even know of Sterling Patterson prior to
10 this?

11 A No, sir. I'd just heard things about him I don't
12 know him.

13 Q When you arrived tell us exactly what happened. As
14 you're driving out -- where was your apartment?

15 A On Rosewood drive On Rosewood across the street
16 from Midlands Tech.

17 Q Rosewood Drive, Midlands Tech, down Fort Jackson --

18 A Boulevard

19 Q -- boulevard Okay Approximately how far is
20 Percival Road from your address?

21 A A good way

22 Q How far?

23 A You have to get on the highway and you can veer off
24 and get off by Decker It's a good ways away from my
25 apartment

1 Q And what time of the morning is it?

2 A Well, now, it's like 8 00, 8.30, 9 00; somewhere
3 around there I'm not sure about the times.

4 Q So to get from your apartment to the business on
5 Percival Road, how many businesses did you have to
6 pass to get there?

7 A A lot of businesses up that way Numerous A lot of
8 businesses. It was just a lot There was a lot you
9 have to pass before you get on the highway to get to
10 Percival Road

11 Q How were you dressed this morning of October 8th of
12 2002?

13 A I had on shorts, my regular running shoes, Nikes, and
14 a t-shirt.

15 Q Okay Once you arrive at Percival Road, tell us
16 exactly what happened?

17 A When I got on Percival Road, he's giving me
18 directions to where the rim shop is at. So as soon
19 as I get off the interstate I take a right. And I
20 passed the buildings. Like he wasn't even sure
21 exactly. So when I passed I had to turn around. I
22 turned around and --

23 Q Let me interrupt you there What other businesses
24 are in the vicinity of this rim shop?

25 A Another rim shop, gas stations, a bar and grill

1 Q So you passed it What did you do next?

2 A I passed it I turned around And I'd say about a
3 block or two down after I turned around I came back
4 and I pulled up into his establishment of the rim
5 shop. And --

6 Q Let me interrupt you one second I'm trying to
7 retrieve the diagram of the business. And I don't
8 know the State's number I would like for you to
9 look at what's previously been marked as State's
10 Exhibit 81. Does that show you somewhat what you
11 said the building looked like?

12 A I guess so It's been a while I guess so

13 Q As you come off of Percival Road, what sized driveway
14 did you encounter?

15 A I pull up in front of the -- actually, sideways.
16 When I pulled up I pulled up sideways to the garage
17 door that was right there that was open

18 Q Get a little closer to the microphone I don't know
19 if everybody can hear what you're saying now Speak
20 up. You made your u-turn. You came back to the
21 business?

22 A Yes, sir

23 Q Tell us, how did you get into the parking lot? What
24 happened?

25 A I drove into the parking lot which was gravel, and I

1 pulled in beside a big garage door that was open.

2 And my cousins got out the car first He got about
3 three or four steps and bullets started going off
4 And then he fell into the car and mashed the back end
5 and I drove off

6 Q How long after you heard the gunfire did you attempt
7 to drive away?

8 A As soon as I heard it As soon as I heard the
9 gunshots I turned around I just put the car back in
10 drive So I drove off

11 Q What was your state of mind when you heard the
12 gunshots?

13 A I was scared I didn't know what was going on. I
14 didn't even know why I was getting shot at or
15 anything

16 Q Have you ever been shot at before in your life?

17 A No, sir

18 Q And who was in the vehicle as you drove off?

19 A Tashim and my cousin "Dee"

20 Q Prior to "Dee" getting out of the car, had you seen
21 any skull caps, face masks or handguns?

22 A No, sir

23 Q At any point in conjunction with that did you see a
24 handgun?

25 A I did see a handgun Tashim had It was silver It

1 just looked like a --

2 Q What happened? What did you do next?

3 A Oh I drove back down to the highway And before
4 Fort Jackson Boulevard my tire blew out So I pulled
5 to the side and I got out and I ran because I wanted
6 to get away from there

7 Q Did you take time -- what did you do prior? When you
8 stopped, what did you do immediately?

9 A After I seen blood everywhere is when I got out And
10 I just -- I just started walking off, running off

11 Q What was your conclusion of Mr. Sears' condition at
12 that time?

13 A I thought he was dead I called for his name He
14 didn't answer I thought he was dead

15 Q So what did you do then?

16 A After I started running a policeman had came up

17 Q Who was with you? Was anyone with you at that time?

18 A Tashim was with me.

19 Q Okay

20 A And I don't know what even Tashim was talking about
21 I just kept going. Then after he left I called my
22 wife to come pick me up. And when I called her she
23 came And she had my other two boys with her
24 And --

25 Q What was your state of mind at this point?

1 A I was scared I didn't know what to do I was just
2 trying to get away from the van And so I got away
3 And then my wife took me to my mother's house

4 Q What happened at your mother's house?

5 A My sons were there And my wife, she went back to
6 her apartment I told her, you know, my cousin was
7 dead And after that, I'd say about 30 minutes I
8 guess, the police came And I had my son in my hand.
9 They drew down pistols on me And I had my son in my
10 hand and I didn't know what to do All I did was
11 just dropped the car off

12 Q Did the police officers take you into custody
13 immediately?

14 A No, sir.

15 Q What was their original discussion with you?

16 A Just talked with me They only took like 10, 15
17 minutes They searched the house, my mother's house
18 And then they took me to -- they handcuffed me and
19 took me to a place on Two Notch

20 Q Approximately -- do you know approximately what time
21 you arrived at the police station?

22 A No, sir

23 Q Were you and your wife Veronica transported together?

24 A No, sir She went to pick my son up from school

25 Q Did they question you at all while you were present

1 at your mother's house?

2 A No, sir

3 Q What happened when you got to the police station?

4 A We went to the police station, and the investigator,
5 McDonald, was like he knows this is over drugs and I
6 need to tell him if it was over drugs because, you
7 know, this guy that shot him was going to look like a
8 hero if I don't say something And I was scared and
9 told him I would rather not be a part of that

10 Q Well, the jurors heard part of a written statement
11 that you gave that day Did you mislead, did you lie
12 in part to Officer McDonald that day?

13 A I just told -- I know I told him that I didn't want
14 to be a part of anything and I was trying to distance
15 myself from being around drugs because that's what
16 they kept talking about This was a drug deal gone
17 bad, why don't you tell the truth? And that just
18 kept going on and on And then he asked me about an
19 armed robbery, attempted armed robbery. And I said,
20 I don't know anything about that

21 Q A couple of questions Had you ever been
22 interrogated before in your life?

23 A No, sir

24 Q Who was present in that interrogation or questioning
25 room?

1 A Another --

2 MR MEADORS Your Honor, can we approach? I
3 apologize. We object

4 (Whereupon, a bench conference is had)

5 Q At some point in that questioning, the statement that
6 was read today, the way Officer McDonald had it
7 written out was, "Would you now like to change your
8 statement?" And you did It changed drastically
9 What caused you to change your statement at that
10 point?

11 A I don't know This other investigator guy came in, a
12 big guy He opened the door, and I saw my wife out
13 there crying. And he told me if I didn't say
14 something I would be convicted of a felony murder if
15 my cousin died, and I needed to talk to them, I
16 needed to say something

17 Q Prior to that point what was your impression what the
18 investigation and the charges were about?

19 A Drugs and murder

20 Q And that point on, did they inform you that perhaps
21 there was going to be a different charge?

22 A No, sir. After that then they said what was my
23 involvement in the attempted armed robbery

24 Q And did you change your story somewhat at that point?

25 A Yes, sir

1 Q What was read out of your statement today is still
2 not what you told the people here today. Which is
3 true?

4 A The story, it's not a story What happened really
5 happened that happened in 2002, October 8th at
6 Sterling's rim shop

7 Q And why did you not the tell whole story immediately?

8 A Because he was trying to put me on drugs And I
9 didn't want to be -- I done tried to distance myself
10 from the drugs and a murder I didn't know he was
11 going to live or die. I already thought he was dead

12 Q You've had the opportunity to watch the entire trial
13 sitting here today Had you ever seen this bag
14 before?

15 A Yes, sir

16 Q What's the story of this bag?

17 A It's my wife and I's. We put our kids' diapers and a
18 gallon of milk and clothes to take to my mother's
19 house

20 Q For the record, Your Honor, I'm making reference to
21 State's Exhibit 98 How long had you had this bag?

22 A I've had this bag for years

23 Q This bag actually has an airline ticket on it?

24 A Yeah

25 Q Where did that come from?

1 A Me and my wife used to live in Connecticut. I moved
2 to Connecticut with her

3 Q A second bag has been introduced which is marked as
4 State's Exhibit 33 Have you ever seen this bag
5 before?

6 A No, sir

7 Q The van that has been discussed at length in here,
8 was that in fact the van that you were driving?

9 A Yes, sir

10 Q Prior to arriving at the Kustom Shop out on Percival
11 Road, did you have any knowledge or intention of
12 robbing anyone?

13 A No, sir I had no intentions of robbing anybody

14 Q Was there ever any discussion of robbing anyone?

15 A No, sir, never a discussion about robbing anybody
16 He was just giving me gas money for a ride

17 Q October 8th after you talked to Investigator
18 McDonald, what happened to you then?

19 A He came -- I've been in jail ever since. And he
20 came I offered him -- I told him the name of the
21 other guy And I was trying to find out the guy's
22 name, which I did find out last name. And it's just
23 been sitting in jail the rest of the time just
24 waiting

25 Q You've been sitting in jail 16 months waiting to talk

1 to these people right here?

2 A Yes, sir

3 Q Any doubt at all, was this a planned robbery?

4 A No, sir

5 Q Did you know -- what's the name of the third person?

6 Tashim?

7 A Tashim Vann

8 Q Tashim Did you know his last name prior to

9 October 8th, 2002?

10 A No, sir I didn't know his last name I just -- I
11 got out -- I got to the -- I had a visit One of my
12 friends came in and told me his last name And
13 that's how I got it

14 Q On October the 8th, 2002, when you went to the rim
15 shop, did you ever get out of your vehicle?

16 A No, sir. I never got out the vehicle

17 Q Approximately how long were you in that parking lot?

18 A Not even a whole minute and a half or anything

19 Q Is there anything you would like to add and tell the
20 Ladies and Gentlemen of the Jury?

21 A It wasn't a robbery Nobody went to rob anybody It
22 just happened so fast I don't know what happened.
23 I just drove off. I was scared

24 Q Thank you.

25 A Nobody was robbing anybody

1 Q Thank you, Lloyd If you would, answer the
2 prosecutor's questions I tender the witness, Your
3 Honor?

4 MS. CAMPBELL I think it's Mr Strickler

5 MR STRICKLER: I think it's the prosecutor.

6 THE COURT Ms. Campbell

7 MS CAMPBELL Yes, sir

8 THE COURT. Cross examination

9 MS CAMPBELL. Thank you, Your Honor

10 CROSS-EXAMINATION

11 BY MS CAMPBELL

12 Q Mr Alexander, my name is Luck Campbell and I'm with
13 the Solicitor's Office I don't think either of us
14 have ever had the opportunity to meet or speak, have
15 we?

16 A No.

17 Q And I've got just some questions I need to clarify
18 some things today Okay?

19 A Yes, ma'am

20 Q So I'm going to have to ask you some questions for a
21 little while Okay?

22 A Yes, ma'am

23 Q And the first thing I want to make sure is basically
24 back to October of 2002, when all this happened, you
25 were -- well, let me go a little bit further back

1 You went to high school here in Richland County?

2 A Yes, ma'am

3 Q At Lower Richland High School?

4 A Yes, ma'am

5 Q And that's located out Bluff -- it's not Bluff Road

6 It's --

7 A Off Garners Ferry

8 Q Garners Ferry is the thing I couldn't think of It's
9 out on Garners Ferry Road. And when did you graduate
10 from high school there?

11 A I didn't graduate, ma'am

12 Q You didn't graduate? How far did you get in school,
13 sir, before you dropped out?

14 A Twelfth grade.

15 Q Twelfth grade And you met your -- you've referred
16 to her as your wife?

17 A Yes, ma'am

18 Q And I've heard other people refer to her as your
19 girlfriend Is this a common law wife, or what's the
20 situation?

21 A She's my common law wife

22 Q Your common law wife And it's somebody you live
23 with sometimes, isn't it?

24 A Yes, ma'am.

25 Q And you live with your parents sometimes, too?

1 A No, ma'am

2 Q Well, let me ask you this Who lives at the address
3 that I see on all your paperwork which is 2523
4 Pleasant Ridge Drive?

5 A That's my address to my mom's and dad's house that I
6 never changed

7 Q You never changed?

8 A I never changed it

9 Q So that's been your address for the last -- how old
10 are you now, sir? I missed that.

11 A I'm 27

12 Q 27?

13 A Yes, ma'am

14 Q So that's been your address since, say, you --

15 A Since '90

16 Q -- were in high school?

17 A Yes, ma'am

18 Q In the ninth grade. And that's the address you use
19 because that's your permanent address?

20 A That's the address that everything comes to

21 Q Everything comes to So that's why all this
22 paperwork and everything has that address on it?

23 A Yes, ma'am

24 Q And Demetrio Sears lived there with you?

25 A He lived there for a short while But he didn't live

1 there with me because I lived with my wife

2 Q Okay So he lived there, too, for a period of time?

3 A Yes, ma'am

4 Q And that's your first cousin?

5 A Yes, ma'am

6 Q How would you characterize your relationship with
7 Demetrio Sears?

8 A We were raised like brothers I guess.

9 Q Raised like brothers Did he -- when you say raised
10 like brothers, you consider him like a brother, don't
11 you?

12 A Yes, ma'am

13 Q Very close to your heart?

14 A Yes, ma'am

15 Q So 2523 is your parents' address So you frequent
16 that address, too, don't you?

17 A Yes, ma'am

18 Q And, now, this apartment where Veronica Jones -- I
19 mean, she goes by the name of Veronica Jones Is
20 that correct?

21 A Yes, ma'am

22 Q And you all have three children, right?

23 A Yes, ma'am

24 Q And you all lived in an apartment. It's right there
25 off --

1 A Rosewood

2 Q Rosewood Avenue, right? And Rosewood comes in right
3 there at Garners Ferry right where Fort Jackson --
4 they all kind of merge right there in the same little
5 area?

6 A Right. Fort Jackson is on the right

7 Q And that's probably less than a half a mile from
8 where 77 crosses Fort Jackson Boulevard, right?

9 A Yes, ma'am

10 Q So you're familiar with that area?

11 A Yes, ma'am.

12 Q You know where Barkoot Apartments is?

13 A Yes, ma'am

14 Q And you're familiar with that area?

15 A Yes, ma'am

16 Q Okay And I wanted to ask you just a couple more
17 background questions before I start asking you about
18 I missed -- where were you working that day?

19 A I wasn't working I work at Kroger's on Forest
20 Drive.

21 Q You worked at Kroger's?

22 A Yes, ma'am

23 Q How often did you work at Kroger's?

24 A I worked at nighttime or the daytime It just varied
25 whenever I had to go in

1 Q And your testimony today is you were employed there?

2 A Yes, ma'am.

3 Q At that time?

4 A Yes, ma'am

5 Q And what did you do at Kroger?

6 A I was a produce clerk

7 Q A produce clerk?

8 A Yes, ma'am

9 Q What time were you supposed to go to work that day?

10 A I was off that day

11 Q You were off that day?

12 A Yes, ma'am

13 Q And Demetrio, where was he employed then?

14 A To my knowledge that I know, the rim shop I don't
15 know if it's the rim shop, but it's something to do
16 with tires

17 Q Something to do with tires?

18 A Yes, ma'am

19 Q So Demetrio in his job was familiar with things like
20 rims and their value and things of that nature?

21 A Yes, ma'am

22 Q So he would be familiar with rim shops and how much
23 money they take in and things of that nature?

24 A I have no idea, ma'am.

25 Q You have no idea?

1 A No, ma'am

2 Q That wasn't your job, was it? It was Demetrio's who
3 you considered to be a brother?

4 A Yes, ma'am

5 Q Okay And that morning your wife got up and she took
6 your oldest son to school?

7 A Yes, ma'am

8 Q And then later that morning, I think your testimony
9 was you were supposed to take your other two sons to
10 school?

11 A My middle son, Sean, he goes to daycare at La Petite

12 Q To daycare at La Petite?

13 A Yes, ma'am

14 Q And then your other son?

15 A My baby son, he's too young, he couldn't talk So
16 he's not old enough to talk yet So I take him to my
17 mom's house so there wouldn't be nothing wrong, no
18 mishaps at the daycare.

19 Q Okay And just for clarification, did you own a
20 vehicle at that point?

21 A Yes, ma'am

22 Q Where was your vehicle that day?

23 A It was -- the transmission went out

24 Q The transmission went out?

25 A Yes, ma'am

- 1 Q So your vehicle wasn't operating?
- 2 A No, ma'am
- 3 Q So on the day in question, you testified -- and I
- 4 want to turn your attention back to October 8th, you
- 5 woke up early?
- 6 A Yes, ma'am
- 7 Q Your wife took your son to school?
- 8 A My oldest son
- 9 Q She came back and she I think you said got in bed
- 10 with you?
- 11 A Yes, ma'am
- 12 Q And then you heard a knock on the door?
- 13 A Yes, ma'am
- 14 Q Is it an upstairs/downstairs apartment?
- 15 A It's upstairs/downstairs
- 16 Q And your bedroom is on the upstairs?
- 17 A Yes, ma'am
- 18 Q So you went downstairs?
- 19 A Yes, ma'am.
- 20 Q And when you got downstairs, who was at the door?
- 21 A My cousin, "Dee" Sears
- 22 Q "Dee" Sears. And when you say "Dee", you're talking
- 23 about Demetrio, right?
- 24 A Yes, ma'am.
- 25 Q I just want to make sure about that. And were you

1 expecting him that morning?

2 A No, ma'am

3 Q You weren't expecting him that morning. So "Dee"
4 came to the door, and you had a conversation with
5 "Dee"?

6 A Yes, ma'am.

7 Q And you knew that later that morning -- your car
8 wasn't working?

9 A No, ma'am

10 Q And your wife had a van, right?

11 A Yes, ma'am.

12 Q It's in her name?

13 A Yes, ma'am

14 Q That's your wife's van?

15 A Yes, ma'am

16 Q And so those were the only two automobiles that you
17 had?

18 A We had a rental car

19 Q You had a rental car?

20 A Yes, ma'am.

21 Q Okay. You had a rental car And who had the rental
22 car? You or your wife?

23 A My wife had the rental car

24 Q She had the rental car?

25 A Yes, ma'am.

1 Q And why did she have a rental car?

2 A Because we went to Spartanburg to go see her father

3 Q You went to Spartanburg to go see your father?

4 A Her father

5 Q Her father?

6 A Yes, ma'am

7 Q And when was the rental car supposed to be turned in?

8 A I have no idea She works at the car rental She
9 was working at National Car Rentals because she got
10 it from her job.

11 Q So on that day you were free to use the van for
12 whatever you needed to do?

13 A Yes, ma'am

14 Q And on that morning your testimony is "Dee" came to
15 the door He knocked on the door and then you went
16 down there and then you went off with him?

17 A Yes, ma'am

18 Q And then you went to Patrick's house?

19 A Yes, ma'am

20 Q And what's Patrick's last name?

21 A Patrick Davis

22 Q Patrick Davis?

23 A Yes, ma'am

24 Q Is he here in the courtroom?

25 A No, ma'am

1 Q Is he a good friend of yours?

2 A He grew up in the neighborhood my mom and dad lived
3 in.

4 Q I just missed this This is the first time I've
5 heard his name Where does he live?

6 A He used to live at Colonial Villa

7 Q Colonial Villa?

8 A Yes, ma'am

9 Q And how far is Colonial Villa from where you are?

10 A That's a good ways of up Garners Ferry, too

11 Q A good ways up Garners Ferry?

12 A Yes, ma'am

13 Q Going outbound towards Sumter?

14 A Yes, ma'am

15 Q Okay And that would be more than two or three miles
16 out Sumter highway, wouldn't it?

17 A I think it would be closer than that

18 Q And at this point it's you and "Dee", right?

19 A Yes, ma'am

20 Q And you all are going out Sumter Highway to go to
21 visit Patrick at what time was it when "Dee" came to
22 the door?

23 A 8-30, 9 00

24 Q 8-30, or 9 00?

25 A Yes, ma'am

- 1 Q So at 8 30 or 9 00 you were heading two miles up
2 Sumter Highway to go see your friend, Patrick How
3 long did it take you all to drive there?
- 4 A I have no idea
- 5 Q No more than ten minutes?
- 6 A Less than that
- 7 Q Less than that?
- 8 A Yes, ma'am
- 9 Q Between five and ten minutes?
- 10 A Probably so
- 11 Q And why did you want to go see your friend, Patrick?
- 12 A Because I was asking him what he's going to get into
13 later on that day.
- 14 Q What he is going to get into later on that day?
- 15 A Yes, ma'am Because we --
- 16 Q And what were you planning on getting into later on
17 that day?
- 18 A We usually play a video game and we play cards
- 19 Q Play cards?
- 20 A Yes, ma'am
- 21 Q And --
- 22 A While the kids are playing
- 23 Q I'm sorry I didn't mean to interrupt you
- 24 A Well, he's got a brand new baby girl
- 25 Q He's got a brand new baby girl?

1 A Yes

2 Q So you went over to your friend, Patrick's, house at
3 8 30, between 8 30 and 9 in the morning out on Garners
4 Ferry Road to play cards?

5 A Yes No Not that To see what he was doing later
6 on, if we was going to play cards then

7 Q So if he was going to play cards, he was going to
8 play cards?

9 A Yes, ma'am

10 Q When you got to Patrick's house, what was going on?

11 A Nothing He was just getting ready to go to work
12 hisself (sic)

13 Q So you didn't know that Patrick had to go to work on
14 a daily basis, like some people do, they work daily?

15 A He doesn't work daily He just usually works on
16 weekends. He works at some like snack and chip
17 place.

18 Q So he usually didn't work So this was a surprise
19 Did you call Patrick ahead of time to say, Hey, I
20 might come over and visit?

21 A Patrick didn't have a house phone He had a
22 cellphone.

23 Q He had a cellphone, didn't he?

24 A Yes, ma'am

25 Q You didn't call him ahead of time You just went

1 over there to surprise him?

2 A No We called He didn't -- he lived in the
3 country That's considered the country. And the
4 phones don't work out there like that. You have to
5 come closer towards Midlands Tech

6 Q Colonial Village, you're saying that the phones don't
7 work?

8 A No, they don't Prepaid phones don't work out there

9 Q Prepaid phones don't work out there?

10 A Yes, ma'am

11 Q So let me get it straight. "Dee" shows up on your
12 doorstep unannounced and you all decide to go to
13 Patrick's house to see if he wants to play cards
14 later that day?

15 A Yes, ma'am

16 Q And when you got there though, unfortunately Patrick
17 couldn't play cards?

18 A We weren't playing cards that early in the morning,
19 ma'am

20 Q You weren't playing cards that early in the morning?

21 A No, ma'am

22 Q He didn't want to play cards that day because Patrick
23 had to work?

24 A Patrick was going to work

25 Q Patrick was going to work?

- 1 A Yes, ma'am.
- 2 Q That means he had to work that day?
- 3 A Yes, ma'am
- 4 Q So he wasn't available to play cards?
- 5 A He would play cards he said later on that night.
- 6 Q Later on that night?
- 7 A Yes, ma'am
- 8 Q I'm just trying to get it straight If I try to put
- 9 words in your mouth, you tell me, correct me Okay?
- 10 A Yes, ma'am.
- 11 Q Once you got out there though, you get to Patrick's
- 12 house And is Patrick having other people over?
- 13 A Yes, ma'am.
- 14 Q So before Patrick is getting ready to go to work --
- 15 and how old was his child at the time?
- 16 A Two One or two Around my baby son's age.
- 17 Q I thought you said it was a newborn
- 18 A No Around my son's age
- 19 Q Around your son's age Around one or two years old?
- 20 A My son was one. So I know he had to be a little
- 21 older
- 22 Q So is he helping getting the child ready that
- 23 morning?
- 24 A No, ma'am
- 25 Q But he has people over even though he's going to

1 work?

2 A His girlfriend and the baby don't live with him So
3 you know

4 Q Okay So he has people over and he is getting ready
5 you just testified, and I don't want to misquote you

6 A Yes, ma'am.

7 Q And he wasn't there but for a minute because he had
8 to leave to go to work?

9 A Yeah

10 Q So he is having -- besides you and "Dee" come over
11 that morning to check and see if he wanted to play
12 cards later in the day --

13 A Yes, ma'am.

14 Q -- he's got other people over?

15 A His house is just like a hangout spot, whatever

16 Q It's a hangout spot Understandable And one of the
17 people -- how many people were there?

18 A Just him and Tashim

19 Q Oh It was just him and Tashim?

20 A Yes, ma'am

21 Q So on this morning, just by coincidence, you end up
22 having "Dee" knock at your door, not planned You
23 get with "Dee". Then you go to Patrick's house out
24 Garners Ferry Road. When you get there your friend,
25 Patrick, can't play cards which you didn't know

1 because you couldn't call him But then you find out
2 Tashim is there?

3 A Yes, ma'am

4 Q And Tashim was a friend of yours?

5 A No, ma'am He's an acquaintance of Patrick and I've
6 seen him in the neighborhood

7 Q He lived in the neighborhood?

8 A I don't know where he lived, but I seen him
9 occasionally in the neighborhood

10 Q How many times had you met Tashim?

11 A I've seen him I've only met like handshakes and all
12 that

13 Q I just want to clarify for the jury to understand
14 You weren't really a friend of Tashim's, were you?

15 A No, ma'am.

16 Q Were you -- had you spoken to him before?

17 A Yes, ma'am. Playing cards.

18 Q Playing cards?

19 A Yes, ma'am.

20 Q Oh So you had played cards with him?

21 A Yes, ma'am

22 Q At Patrick's?

23 A Yes, ma'am

24 Q On how many occasions approximately?

25 A Patrick always has playing cards and video games at

1 his house It's like a hangout mainly.

2 Q And just to clarify Patrick is not here today Is
3 Tashim anywhere around here?

4 A No, ma'am

5 Q When you get there, Tashim is there Patrick has to
6 leave within just a minute or two of you getting
7 there?

8 A Yes, ma'am

9 Q So at that point where were you and "Dee" before you
10 met up with Tashim planning on going?

11 A Oh. To a job interview he had

12 Q To a job interview?

13 A Yes, ma'am.

14 Q Who was getting the job interview that day?

15 A "Dee", my cousin, "Dee".

16 Q "Dee" was And so I guess once Patrick left for work
17 you all left from there and went to the job
18 interview?

19 A No Tashim came over and asked me could I take him
20 to Sterling's rim shop on Percival Road

21 Q You can't talk exactly about what Tashim said to you

22 A Oh

23 Q And I know --

24 A He offered me \$10 for gas money

25 Q And you testified earlier that there is no doubt in

1 your mind you knew Tashim was a drug dealer?

2 A Yes, ma'am

3 Q You knew that when you came in contact with him?

4 A Yes, ma'am

5 Q And knowing that he was a drug dealer, he would be a
6 dangerous person to hang out with?

7 A It's not like that in my neighborhood

8 Q It's not like that in your neighborhood where drug
9 deals go on?

10 A It's not all drug dealers, ma'am

11 Q As far as you knew, since you'd played cards with
12 Tashim on multiple times and since Tashim was a good
13 friend of Patrick's at least, right?

14 A Yes, ma'am

15 Q And you had played cards with him on multiple times?

16 A Yes, ma'am.

17 Q And even though you knew the word on the street was
18 he was a drug dealer, you didn't mind hanging out
19 with him?

20 A He offered me gas money. If somebody offers me gas
21 money, I usually take them where they want to go

22 Q He offered you gas money So you take drug dealers
23 wherever they want to go?

24 A Yes, ma'am

25 Q Okay And once the drug dealer, Tashim, offered you

1 gas money, he indicated that he had to go where?

2 A To Sterling's rim shop on --

3 Q Sterling rim shop. And you say the term "Sterling"
4 like you know Sterling, but your testimony is you
5 don't?

6 A I don't know Sterling That's what I get from the
7 rim shop. I don't even know the name of the rim
8 shop. I've never been there before

9 Q Over the last several months you understand what this
10 case is about?

11 A Yes, ma'am

12 Q And you have come to learn who Sterling Patterson is?

13 A Yes, ma'am

14 Q The owner of the rim shop?

15 A Yes, ma'am

16 Q And your testimony was -- and it's not in dispute --
17 you never knew Sterling Patterson before that day,
18 did you?

19 A No, ma'am

20 Q You'd never heard of Sterling Patterson before that
21 day, had you?

22 A Just through Tashim.

23 Q Through Tashim when Tashim said he wanted to go to
24 Sterling's rim shop that day?

25 A Yes, ma'am

1 Q The first time you'd ever heard that name?

2 A Yes, ma'am

3 Q Okay I just want to clarify that So he's paying
4 you \$10 for taking him over there Did he give you
5 the \$10 up front?

6 A Yes, ma'am.

7 Q And how much gas did you have in the car?

8 A The needle broke. So it's got to be at least 15. I
9 already had 5 and then the \$10 that I put in there

10 Q You'd already put in \$10 that morning?

11 A Yes, ma'am.

12 Q When did you stop and put in gas? I missed that? On
13 the way out Garners Ferry Road?

14 A On the way going to -- coming back from the Citgo
15 right there There's Colonial Villa and there's a
16 Citgo next to Colonial Villa.

17 Q I missed that I wanted to make sure you'd gotten
18 some gas in the car that morning.

19 A Yes, ma'am

20 Q Once you got the gas in the car, after Tashim, the
21 drug dealer, gets in your car, then he tells you he
22 needs to go out to the rim shop?

23 A Yes, ma'am

24 Q And so you took him?

25 A Yes, ma'am

1 Q And when you get to the rim shop, in fact, your
2 testimony was you had to get on the highway?

3 A Yes, ma'am

4 Q Which exit did you get off to get on Percival Road?

5 A It's like by Decker

6 Q By Decker?

7 A If you go straight you're on Decker, but if you take
8 a right you're on Percival Road.

9 Q And you're going out Percival Road?

10 A Yes, ma'am

11 Q And you mentioned that you're going down the road and
12 you actually missed it and you had to turn around?

13 A Yes, ma'am

14 Q And then you pull into the driveway That's your
15 testimony here today And you pull in sideways?

16 A Yes, ma'am

17 Q Which way is your car pointing?

18 A Back towards Decker

19 Q Back towards Decker?

20 A Yes, ma'am.

21 Q Where were you all planning on going once you left
22 there?

23 A Taking "Dee" to his job interview

24 Q And who is sitting in the front seat with you?

25 A No one

1 Q And who is sitting in the back seat?

2 A There's two -- there's my seat, the passenger's seat
3 Then there's like a big seat that's in the middle and
4 a big seat in the back And both of them were
5 sitting in the window right behind me.

6 Q The one right behind you?

7 A Yes, ma'am

8 Q So both of them were in the back seat?

9 A Yes, ma'am

10 Q And that's where the door opens up?

11 A Yes, ma'am

12 Q So they can get out pretty quickly?

13 A Yes, ma'am. They could slide out

14 Q And this bag, this is your diaper bag?

15 A Yeah I put diapers, milk, everything in there,
16 clothes for all three of my sons to spend the night
17 at my mom's house

18 Q But let's get one thing straight On that date it
19 just happened not to have -- my sister has a child,
20 there's always a bunch of stuff in the bag.

21 A Should have had diapers in the car.

22 Q Nothing was in this bag then?

23 A No, ma'am There should have been diapers in the car
24 and powdered milk

25 Q But it wasn't in that bag that day for some reason?

1 A I don't know, ma'am

2 Q And then you get there and you said that you're
3 sitting in the driver's seat and they open the back
4 door, right?

5 A Yes, ma'am

6 Q And they get out?

7 A "Dee" gets out Yeah He's sitting to the door, by
8 the door Tashim was sitting by the window

9 Q At what point did you see the gun? That's what I
10 needed to ask you, too. At what point did you see
11 that gun?

12 A After "Dee" jumped back in the car

13 Q You didn't see the gun until after "Dee" had jumped
14 back into the car?

15 A Yes, ma'am.

16 Q And at that point when "Dee" gets out of the car, how
17 far away from the van does he get?

18 A Three to five steps away from the van.

19 Q Three to five steps away from the van?

20 A Yes, ma'am

21 Q And he's out in the parking lot And you testified a
22 minute ago that you heard shots

23 A Yes, ma'am

24 Q A lot of shots?

25 A Yes, ma'am

1 Q Could you tell who all was shooting?

2 A No, ma'am

3 Q And which way were the shots going?

4 A I don't know

5 Q You don't know?

6 A No, ma'am

7 Q Could you tell where the shots were coming from?

8 A No, ma'am

9 Q Were they inside or outside the business? Could you
10 tell?

11 A No, ma'am

12 Q Did you ever see anyone else in the parking lot other
13 than "Dee"?

14 A No, ma'am

15 Q And your testimony is now, how long did the shooting
16 last?

17 A It happened fast

18 Q Fast?

19 A Yes, ma'am.

20 Q Would it be more than ten seconds?

21 A That I couldn't tell you I was just trying to drive
22 off

23 Q You were trying to drive off?

24 A Yes, ma'am

25 Q Had you even put the car in park at that point?

1 A Yeah It was in park

2 Q So you were trying to drive off before "Dee" even got
3 back in the car?

4 A There was bullets coming from everywhere, from
5 wherever they was coming from I didn't want to get
6 hit by any bullets I didn't know what was going on

7 Q So you knew enough to know the bullets were coming in
8 your direction?

9 A Yes, ma'am

10 Q So they could be hitting you?

11 A Yes, ma'am

12 Q They could be hitting Tashim? They could be hitting
13 "Dee"?

14 A I don't even think I got -- like the back door, the
15 way it opens, I don't think they seen nobody else in
16 the car They couldn't probably have seen nobody
17 else in the scar

18 Q But the shots were being shot towards the car because
19 he's only two to three feet from the car --

20 A Yes, ma'am

21 Q -- when the shots are coming?

22 A Yes, ma'am

23 Q And there a lot of them?

24 A Yes, ma'am

25 Q Multiple shots?

- 1 A Yes. A lot happening fast
- 2 Q A lot happening fast?
- 3 A Yes, ma'am
- 4 Q And did you get hit?
- 5 A No, ma'am
- 6 Q And the door is open, right?
- 7 A It's the back
- 8 Q The back door Not your door The back door was
- 9 open?
- 10 A Yes, ma'am
- 11 Q And Tashim is sitting right there He's going to
- 12 follow "Dee" right out, right?
- 13 A Yes, ma'am Sliding out trying to get out, too
- 14 Q Trying to get out So he's half way out the door?
- 15 A Yeah. I guess so
- 16 Q Yeah?
- 17 A Yes, ma'am
- 18 Q And does Tashim get shot?
- 19 A No, ma'am
- 20 Q Did the car get shot?
- 21 A Not to my knowledge, ma'am I don't know
- 22 Q But "Dee" got shot?
- 23 A Yes, ma'am.
- 24 Q And "Dee" manages to jump back in, right?
- 25 A Yes, ma'am

- 1 Q And what's everybody saying at that point? It's
2 excited, isn't it? You're upset You're scared as
3 you're pulling off?
- 4 A I'm scared Yeah, I'm driving off
- 5 Q How fast do you get out of that driveway?
- 6 A Pretty fast I guess as fast as the car will take
7 me
- 8 Q As fast as the car will take you?
- 9 A I guess so. I just put it in drive and drove off
- 10 Q So at this point what's going on in your mind is you
11 know that you've gone to this business, you've been
12 paid money to get there by a drug dealer named
13 Tashim Your cousin who is like a brother gets out
14 and gets shot. There's no doubt about that?
- 15 A Yes, ma'am.
- 16 Q At what point do you know he's shot?
- 17 A When Tashim was like wanting me -- Tashim was like,
18 "Dee" is laying there in the back.
- 19 Q In the back?
- 20 A Yeah Like the third seat in the back And "Dee"
21 pulled himself into the back seat
- 22 Q "Dee" pulled himself in the back seat?
- 23 A Yes, ma'am.
- 24 Q So "Dee" was on two different seats at two different
25 times

1 A Yes, ma'am

2 Q What was he saying?

3 A He wasn't saying nothing

4 Q He wasn't saying anything?

5 A That's why I thought he was dead

6 Q Even though he's pulling himself from seat to seat
7 you thought he was dead?

8 A Like when you get in my car, you can just -- the
9 seats are so close you can just get into either seat
10 you want

11 Q One seat is in front of the other, right?

12 A Yes, ma'am.

13 Q And he got in both at some point?

14 A They're long seats.

15 Q Yes, sir

16 A Yes, ma'am.

17 Q As it's shown on these pictures?

18 A Yes, ma'am.

19 Q And he didn't say anything But then you all go down
20 the road And just so I can get this straight, you
21 think he's either dead or dying?

22 A No I think he's dead

23 Q You think he's dead?

24 A Yes, ma'am.

25 Q So at that point, at what point did you -- you had

1 your cellphone with you that day?

2 A Yes, ma'am

3 Q At what point did you call the police to tell them
4 that you had been viciously attacked in the parking
5 lot on Percival Road?

6 A I didn't, ma'am

7 Q You didn't?

8 A No, ma'am

9 Q You were the victim You all were getting shot at,
10 right?

11 A Yes, ma'am

12 Q You didn't even know there were any guns involved
13 'til then, did you?

14 A Yes, ma'am

15 Q You didn't call the police?

16 A No, ma'am

17 Q You continued down the road Where were you heading?

18 A Towards Fort Jackson Boulevard to get off at Fort
19 Jackson hospital

20 Q Oh To go to Fort Jackson hospital?

21 A There's a hospital on Fort Jackson

22 Q That's right

23 A Yes, ma'am

24 Q So it would be important to get your cousin to a
25 hospital as soon as possible, right?

1 A Yes, ma'am

2 Q And you had your cellphone with you?

3 A Yes, ma'am.

4 Q So if you weren't going to call the police for the
5 shooting that occurred to you, at least you would
6 call an ambulance once you had a flat fire?

7 A No I just got out and started running

8 Q Did you take your cousin with you?

9 A No, ma'am That's why it was so bad. Because I
10 thought he was dead and I didn't want to die, too
11 And I didn't know who was shooting. So I ran

12 Q Was anyone -- and I missed this. Was somebody
13 chasing you?

14 A Not that I know of

15 Q Did you see anyone chasing you down Percival Road?

16 A No, ma'am

17 Q Did you see anyone chasing you as you got off the
18 exit right there at Decker?

19 A No, ma'am

20 Q Did you see anyone chasing as you're going down I-77?

21 A No, ma'am

22 Q But I can see in your mind you might have thought
23 they might have been still coming for you So when
24 you stopped the car, you thought your cousin was
25 dead?

1 A Yes, ma'am

2 Q And you and Tashim jump out and start running?

3 A Yes, ma'am

4 Q Because at that point you're still scared somebody is
5 going to chase you?

6 A Yes, ma'am

7 Q So you also testified at that point as you're running
8 down the road you encountered a policeman?

9 A Yes, ma'am.

10 Q That would be the highway patrolman?

11 A Yes, ma'am

12 Q So at that point you told him about what had happened
13 to your cousin?

14 A I was just standing there I wasn't talking to him

15 Q You didn't feel safe with a police officer right
16 there in a marked unit with a uniform on?

17 A No, ma'am I just tried to get away from the van

18 Q And that's your story here today?

19 A Yes, ma'am.

20 Q Well, during this time period did you call anybody
21 else?

22 A Yes, ma'am.

23 Q So who did you call?

24 A My called my wife

25 Q You didn't call the police?

1 A No, ma'am

2 Q You didn't call an ambulance You didn't tell the
3 trooper that stopped you about what had happened to
4 you?

5 A No, ma'am

6 Q But you called your wife?

7 A Yes, ma'am

8 Q And what did you tell your wife?

9 A To come pick me up

10 Q Where were you?

11 A I was just on Fort Jackson Boulevard and I jumped
12 over the -- after the policeman had left from talking
13 to Tashim, I climbed over that wall And there was
14 like a lot of woods and stuff I was running through
15 there. And I told her I was by the Barkoot
16 Apartments when I had called her.

17 Q So you were hiding?

18 A No, ma'am. I was running

19 Q You were running?

20 A Yes, ma'am

21 Q Were you running from the police?

22 A I was running from whatever happened that day I
23 don't know what happened I just -- I don't know
24 what happened

25 Q You were running from whatever happened that day?

1 A Yes, ma'am

2 Q And you were trying to hide You had just
3 encountered a policeman who you ran from?

4 A Yes, ma'am.

5 Q You then didn't call the police, you don't call an
6 ambulance, you leave your cousin who is like a
7 brother for dead in the van, and then you climb a
8 wall to get away from it all?

9 A Yes, ma'am

10 Q Well, and you were panicked When your wife came and
11 picked you up, did you talk to her?

12 A Yes, ma'am

13 Q And at that point did you call the police?

14 A No, ma'am I just told her "Dee" might -- might be
15 dead I don't know I just ran from there

16 Q "Dee" might be dead, you didn't know; and you didn't
17 even get him an ambulance to make sure?

18 A I didn't know what was going on I was scared I
19 didn't know

20 Q You knew you didn't want to talk to the police?

21 A Yeah I knew I didn't want to get shot either I
22 have three sons

23 Q Your testimony today is not to this jury that the
24 police were trying to shoot you?

25 A No, ma'am

1 Q When you got with your wife, did you go back to your
2 apartment over on Rosewood?
3 A No, ma'am She took me to my mom's house
4 Q Who took you to your mom's house?
5 A My wife.
6 Q Your wife?
7 A Yes, ma'am.
8 Q Do you know a guy named Robert Harris?
9 A Yes, ma'am
10 Q Who is Robert Harris?
11 A A friend of mine that lived on Fort Jackson when we
12 first moved down here
13 Q A buddy?
14 A Yes, ma'am
15 Q A friend?
16 A Yes, ma'am
17 Q Did he give you a ride, or did Veronica, or you don't
18 even remember any more?
19 A No He came way after all that, after all that
20 Q That morning you'd left your cousin bleeding or dying
21 in the van?
22 A Yes, ma'am
23 Q You'd gotten away from the police You found your
24 wife You've talked to her. At what point did you
25 turn yourself into the police that day?

1 A My wife called me and said police were at her
2 apartment And I told her just tell them to come up
3 to my mom and dad's house and I'll talk to them
4 Yes, ma'am

5 Q That's what you told her?

6 A Yes, ma'am

7 Q You sure?

8 A Yes, ma'am

9 Q And then the police came and you wanted to talk to
10 them at that point. That's your testimony to this
11 jury?

12 A Ma'am, I wasn't going to say anything They had guns
13 at me So I don't know I just waited.

14 Q That's when they had the guns at you finally?

15 A Yes, ma'am

16 Q Okay And then they took you into custody?

17 A Not at first.

18 Q Not at first.

19 A They searched my mother's house first

20 Q They searched your mother's house. Did your mother
21 give them permission?

22 A I don't know She probably did

23 Q She did

24 A My mother is Spanish. She don't speak English that
25 good

1 COURT REPORTER I'm sorry. What?

2 A My mother is Spanish

3 Q Well, did you have anything to hide that they
4 shouldn't search her house?

5 A No, ma'am No, ma'am.

6 Q Then they took you into custody?

7 A Yes, ma'am

8 Q And let's get this straight They took you down to
9 the police station down there on Two Notch, the
10 Sheriff's Department?

11 A Yes, ma'am

12 Q And you knew where that is?

13 A Yes, ma'am

14 Q And when they took you down there, you came in
15 contact with Sergeant McDonald here, right?

16 A Yes, ma'am

17 Q And do you know what time of day it was when you came
18 in contact with him?

19 A It had to be like in the afternoon because my wife,
20 before we left my wife was pulling up with my older
21 son

22 Q It was after he'd gotten out of school?

23 A He had gotten out of school.

24 Q What time does he get out of school? 2-30 or 3 30?

25 A 3 00

1 Q 3 00 So it was sometime after 3 00 before the
2 police even were at your house. So then they took
3 you down to the Sheriff's Department, right?

4 A Yes, ma'am

5 Q And when they took you down there, you came in
6 contact with Sergeant McDonald?

7 A Yes, ma'am

8 Q And I don't think there's any dispute over the fact
9 that he advised of your of your rights, is there? Or
10 is there?

11 A No, ma'am Like I said, I was panicked, I was
12 scared I just was talking I seen my wife out
13 there

14 Q No, no, no, no Answer my questions. Then you can
15 explain Okay?

16 A Yes, ma'am

17 Q There is no dispute you were advised of your rights
18 I'm going to show you State's Exhibit 107. Do you
19 recognize that?

20 A Yes, ma'am

21 Q And what is that?

22 A It's papers from Richland County

23 Q It's Richland County?

24 A Yes, ma'am

25 Q And so I can understand, you seem articulate. You

1 know what you're saying and things like that?

2 A Yes, ma'am

3 Q You understand -- you can read and write, can't you?

4 A Yes, ma'am

5 Q And you understand the questions I'm asking you I'm

6 not tricking you or anything, am I?

7 A No, ma'am.

8 Q Okay So you understand what your Advice of Rights

9 is?

10 A Yes, ma'am

11 Q And you understood it on that day?

12 A Yes, ma'am.

13 Q Okay I'm just making sure to make sure that, you

14 know, that -- your signature is right here, isn't it?

15 A Yes, ma'am

16 Q And he told you what all your rights were?

17 A Yes, ma'am

18 Q Right to remain silent, if you want an attorney, all

19 those things?

20 A He told me that at my mother's house

21 Q He told you that at your mother's house And then he

22 told you again when you got to the Sheriff's

23 Department, right? Is that right?

24 A No. He'd already told me that at my mother's.

25 Q Well, when you signed this, did you know what you

1 were signing? Can you read?

2 A Yes, ma'am

3 Q And you understood at this point that you were under
4 arrest, didn't you?

5 A Yes, ma'am But I didn't know what for

6 Q They said you were under arrest, and you didn't even
7 ask them what for?

8 A No, ma'am. I've never been in this kind of situation
9 before, and he didn't tell me what I was arrested
10 for He just --

11 MS. CAMPBELL: Your Honor, we have a matter of
12 law to take up

13 THE COURT Approach. Ladies and Gentlemen,
14 let's take about a -- just a few minute break in your
15 jury room. I have a matter of law I need to discuss
16 with the attorneys. Don't discuss the case among
17 yourselves while you're in the jury room

18 (Jury out at 2-07 P M)

19 THE COURT. Ms Campbell.

20 MS CAMPBELL: Your Honor, at this time we would
21 ask permission -- I didn't want to do it without
22 apprising the Court first -- he just testified that
23 "I've never been in that situation before I didn't
24 know", I believe. And I don't mean to misquote

25 THE COURT. I understand the import of his

1 answer

2 MS. CAMPBELL Your Honor, back in 1994 he was
3 arrested for armed robbery and lynching in the second
4 degree Back in 1995 he was arrested for disturbing
5 schools. Back in 1996 he was arrested for simple
6 possession of marijuana Back in 1998 he was
7 arrested for trespassing Back in 1999, simple
8 possession of marijuana And in 2002 he was arrested
9 for unlawful possession of a pistol and possession of
10 marijuana Those would be the prior arrests so that
11 we could determine that he knew what was going on

12 MR. MEADORS And he's been convicted of the
13 disturbing schools and at least one of the
14 marijuanas, Your Honor

15 MS. CAMPBELL: Two of the marijuanas.

16 MR MEADORS Two of the marijuanas

17 THE COURT: Mr Burr

18 MR. BURR: Your Honor, the witness has never
19 been interrogated by police officers before He
20 has --

21 THE COURT: How do you know?

22 MR. BURR -- not been charged and it was nol
23 prossed. The weapon in the car in one case was not
24 his It was returned to the lawful owner

25 THE COURT The question is whether they can ask

1 whether he's been interrogated in those cases

2 MR BURR. He was not. He has never been taken
3 into custody

4 THE COURT Wait a minute Wait a minute The
5 question is whether they can ask him if he's been
6 interrogated before Can they ask him if he's been
7 interrogated before? He has said that he has not
8 They seek to ask him in those cases was he
9 interrogated

10 MR BURR: Your Honor, there is absolutely no
11 need for that. It's much more prejudicial than it is
12 probative. He was not in a situation He was not
13 convicted of those crimes. They have no evidence
14 that he was --

15 THE COURT: It doesn't matter.

16 MR BURR If they have evidence that he was in
17 fact interrogated like that, then I'd love to hear it
18 outside the presence of the jury.

19 MS. CAMPBELL He was interrogated in 1994

20 MR. MEADORS. Mr Burr, do you know for a fact
21 he wasn't interrogated in 1994? With all due
22 respect.

23 MR BURR. It is my understanding he was not
24 interrogated before. He had simple possession of
25 marijuana. He pled in magistrate's court

1 MS CAMPBELL He has two --

2 THE COURT It's clearly prejudicial It's
3 clearly prejudicial I understand that That's why
4 we're doing this outside the presence of the jury
5 But if he has been arrested that number of times, it
6 seems to me that he has denied that he's been
7 interrogated, the State could ask him in 1994 were
8 you interrogated when you were arrested for
9 so-and-so. Or arrested Let's put it that way. How
10 do you name the crime?

11 MS CAMPBELL. I'll do that, Your Honor

12 MR. MEADORS With all due respect to
13 Ms Campbell, I think the clear implication is, and
14 the way we took it is, that he doesn't have any prior
15 record

16 THE COURT I understand. I understand what
17 this issue is

18 MR. BURR. Your Honor, I have no evidence
19 whatsoever that he was interrogated If the question
20 was simply, Have you been interrogated before, I have
21 no objection. I see no cause to go into a list of
22 charges that never prosecuted him.

23 THE COURT: What records do you have? '94 was
24 what?

25 MS CAMPBELL I have in 1994 he was arrested

1 for armed robbery and petit larceny

2 THE COURT: Just slow down Just a minute
3 Arrested for armed robbery What was the disposition
4 for that?

5 MS CAMPBELL Lynching. That was a
6 non-conviction

7 THE COURT A non-conviction? That's all it
8 says?

9 MS. CAMPBELL Nol prossed a year and a half
10 later

11 THE COURT Armed robbery and lynching at the
12 same time?

13 MS. CAMPBELL: Yes, sir That's all I have.
14 Then in 1995, disturbing school, which was a
15 conviction. In 1996 --

16 THE COURT: Wait a minute It was a conviction?

17 MS. CAMPBELL: That was a conviction.

18 THE COURT: What was the disposition of it?

19 MS. CAMPBELL. 90 days on 30 days and a fine it
20 looks like

21 THE COURT: All right Let's go ahead

22 MS CAMPBELL: 1996, a simple possession of
23 marijuana conviction

24 THE COURT: Conviction?

25 MS CAMPBELL Yes, sir

1 THE COURT All right.

2 MS. CAMPBELL 1998, trespassing after notice

3 THE COURT Trespassing in 1998?

4 MS CAMPBELL Yes, sir. And I have to check
5 that disposition

6 THE COURT What's next?

7 MS. CAMPBELL. 1999, simple possession of
8 marijuana And I'm checking that disposition right
9 now And, Your Honor, in 2000 he's got a driving
10 under suspension second. I don't know that that
11 would really --

12 THE COURT Most people don't get interrogated
13 on that

14 MS CAMPBELL I will forego driving under
15 suspension And in 2002 he was arrested for P W.I D
16 marijuana, which also the accompanying charges were
17 driving under suspension, unlawful possession of a
18 weapon

19 THE COURT What was the disposition of that?

20 MS CAMPBELL He was convicted of simple
21 possession of marijuana second offense, and the
22 weapon charge was nol prossed

23 THE COURT: He was convicted of simple
24 possession of marijuana second?

25 MS CAMPBELL Yes, sir

1 MR STRICKLER A maximum of one year, Your
2 Honor, not over one year

3 THE COURT· Okay All right Well, --

4 MR STRICKLER If I could, please, sir

5 THE COURT: Yes, sir

6 MR STRICKLER And I hate to interject because
7 I do not directly, as they say, have a dog in this
8 fight, but I do indirectly. And Mr. Sears has his
9 own hurdles --

10 THE COURT Hurdles

11 MR. STRICKLER -- to deal with

12 THE COURT. Right Go ahead

13 MR STRICKLER. Now should Your Honor rule that
14 they can go into these convictions, specifically the
15 priors which are similar in nature -- not
16 convictions I'm sorry Arrests.

17 THE COURT· I'm real concerned about that

18 MR. STRICKLER· Yes, sir Priors which are
19 similar to this, that's going to impact I think --

20 THE COURT· I understand.

21 MR STRICKLER· -- spill over onto Demetrio who
22 hardly needs any more problems at this stage Now,
23 and, Your Honor, the only point I would add is I
24 would like to hear from the State what good faith
25 basis they have to assert that he was interrogated in

1 these situations. Absent such a good faith basis for
2 the question, I don't think they should be permitted
3 to ask it

4 THE COURT Okay

5 MR. STRICKLER: That's all I have

6 MR MEADORS: Judge, if I might, two concerns
7 This is the second time this has come up in this
8 direct. That concerns me. I don't want it to come
9 up again We are trying to get that good faith basis
10 coming in the courtroom any minute now Sergeant
11 McDonald is trying to do that And hopefully we will
12 have that before we finish if Your Honor let's us do
13 it. We're making a phone call to see if there was
14 actually an Advice of Rights Form We're checking on
15 that right now I had no idea this would come up

16 But that's just the second time I think the
17 implication has been given that he has no prior
18 record I just don't think it's -- it's prejudice to
19 the State

20 THE COURT. All right It would appear to me
21 even under a 403 analysis, by just getting down to
22 that basis issue, that the '95 disturbing school
23 conviction, the '96 simple possession conviction, and
24 the 2002 possession second conviction do not fail 403
25 test. The '99 armed robbery and lynching that was

1 nol proessed in my opinion fails the 403 test, which
2 means it would be more prejudicial than probative
3 It is probative of whether or not the witness is
4 being truthful if he has been arrested on prior
5 occasions, he says he's never been in any situation
6 like this Perhaps he'd never been in this
7 particular situation, there are certainly
8 similarities Every time someone is arrested, there
9 is a similar protocol on behalf of police that would
10 indicate to the Court that there was some form of
11 interrogation at an arrest, whether it be disturbing
12 schools or possession of marijuana first or second

13 Now, you've got no disposition or no indication
14 of the trespass or the '99 simple possession that
15 any -- you've got no disposition on those So what I
16 am suggesting is that you can ask him if in those
17 three instances he was interrogated by the police.

18 MS. CAMPBELL Your Honor, in a way, it might
19 be -- because -- if I may Instead of saying what
20 specifically the charges were, should I not have the
21 right just to go into the prior arrests, when you
22 were arrested in '94, '95 and '96 and then I won't go
23 into the nature of the charges?

24 THE COURT: DO it that way

25 MS. CAMPBELL That would then I think --

1 THE COURT It eliminates the --

2 MS. CAMPBELL It eliminates any -- I do
3 understand the concern over the prior armed robbery
4 arrest And that way I would be able to get into the
5 ones we discuss without bringing in the prejudice of
6 the charge

7 MR BURR I would strongly disagree, Your
8 Honor, because just the idea of being arrested, the
9 jury is going to assume the worst The average
10 citizen doesn't know the difference between an arrest
11 and a conviction

12 THE COURT· Do you want them to tell them what
13 they are?

14 MR. BURR Sir?

15 THE COURT Do you want them to tell the jury
16 what the arrests are?

17 MR BURR I don't think it should be brought up
18 at all.

19 THE COURT I understand that. But let's move
20 beyond that, because I'm going to allow some
21 reference to these arrests since he has taken the
22 position he's never been arrested, never been
23 interrogated, never been in this situation before
24 I'm not sure he said arrested. I'm not sure he said
25 arrested He said -- he implicated, he implied that

1 he'd never been in any situation like this before,
2 i e , in a police station All right

3 MR MEADORS Judge, we found out something,
4 Your Honor It is the -- Investigator Lloyd Dunham
5 was the investigator on that armed robbery in '94
6 Files in archives He has no independent
7 recollection of it, but he says it is his practice
8 and their practice in every armed robbery case to
9 interrogate somebody to find out what that is, what
10 they're involvement is Just like in this case So
11 I guess good faith would be that. We've talked to
12 the investigator. He said, That's my common
13 practice. It's been ten years ago He honestly has
14 no independent recollection

15 THE COURT It's probably not enough

16 MR MEADORS. Okay And I just was truthful
17 That's what we just found out from --

18 THE COURT. It's on the record You've got it
19 for the Court of Appeals if you need it.

20 MS. CAMPBELL So I can just go into the arrest
21 and I won't mention the charges?

22 THE COURT Yes, ma'am.

23 MS CAMPBELL Thank you

24 THE COURT Your objection is overruled

25 MR BURR: Thank you, Your Honor

1 MS. CAMPBELL All the arrests

2 THE COURT. Now, Mr Burr's objections are
3 overruled Mr Strickler had an independent source
4 of --

5 MR STRICKLER: Your Honor

6 THE COURT: Go ahead.

7 MR STRICKLER I'm sorry, sir

8 THE COURT An independent objection

9 MR STRICKLER. Well, yes.

10 THE COURT As it applies to your client

11 MR STRICKLER. As it applies to my client

12 First of all, Your Honor, with all due respect, of
13 course I understand your ruling and am not arguing
14 against it. The import of what he testifies to as I
15 heard it was that he had never gone through
16 interrogation before. That was the portion of the
17 cross in which the response was made

18 So I would submit, without arguing with your
19 ruling, I would submit that that is what it should be
20 limited to, and it's got nothing to do with whether
21 he's ever been arrested or not I'm not arguing with
22 your ruling The effect of your ruling, however,
23 Your Honor, is to go ahead and taint Mr. Sears with,
24 one, someone with prior arrests, two, someone who is
25 now being impeached on the stand being untruthful on

1 the stand

2 And, Your Honor, of course at this point in time
3 I'd go ahead and move for a mistrial in this case in
4 that regard

5 THE COURT: I don't see how you avoid these type
6 situations in co-defendant situations And I realize
7 that that begs one of your questions But,
8 nevertheless --

9 MR STRICKLER: Yes, sir. I lost that argument
10 a long time ago this week, Judge

11 THE COURT. All right I respectfully deny your
12 motion.

13 MR STRICKLER: Thank you, sir

14 MS CAMPBELL Your Honor, just for
15 clarification, I would just then like mention, When
16 you were you arrested in 1994, and not mention the
17 name of the charge?

18 THE COURT. That's correct

19 MS CAMPBELL: Thank you I just wanted to make
20 sure I was right.

21 THE COURT You can ask him if he was
22 interrogated on that occasion And I believe my
23 recollection is that he said he'd never been in a
24 situation like this before, as opposed -- and in
25 addition to the interrogation issue -- in a situation

1 like this before Bring the jury, please

2 The foreman of the jury has asked, Mr.

3 Alexander, if you'll speak up They're having a hard
4 time hearing you The jury. Okay?

5 WITNESS Yes, sir.

6 THE COURT Okay. Just be a little more -- the
7 strength of your answers The jury can't quite hear
8 you, even though you're close to the microphone

9 (Jury in at 2 22 P.M)

10 THE BAILIFF: The jury is present, Your Honor

11 THE COURT. All right Thank you Mr
12 Alexander, you see the lady on the back row? She
13 needs to be able to hear what you say All right?

14 MR. ALEXANDER Yes, sir.

15 THE COURT. Okay. Great Go ahead,
16 Ms Campbell

17 MS CAMPBELL May it please the Court

18 Q Mr Alexander, I understood you to say you'd never
19 been in that situation before?

20 A Yes, ma'am

21 Q Let me ask you this Back in 1994 when you were
22 arrested, did you understand the situation you were
23 in then

24 A No, ma'am My father was with me, and I didn't have
25 to say anything

1 Q Well, then in 1995, when you were arrested then, did
2 you understand the situation you were in then?

3 A No, ma'am My mother was with me

4 Q Then in 1996, when you were arrested in 1996, did you
5 understand the situation you were in then?

6 A I don't remember that one in '96

7 Q What about 1998? When you were arrested in 1998, did
8 you understand that situation?

9 A Yes, ma'am

10 Q So you understood what was going on in 1998?

11 A Yes, ma'am.

12 Q About what your rights were and what was going on?

13 A Yes, ma'am

14 Q What about in 1999? When you were arrested in 1999,
15 did you understand what your rights were and what was
16 going on then?

17 A Yes, ma'am

18 Q And then in the year 2002, when you were arrested
19 then, did you understand what your rights were?

20 A Yes, ma'am

21 Q But your testimony is here today that when you were
22 being advised of your rights by Sergeant McDonald you
23 didn't understand what he was going on?

24 A No Because I was scared I don't know what -- what
25 was going on I didn't know All he kept saying was

1 drugs and I didn't want to be a part of that I was
2 trying to distance myself from being a part of drugs
3 Q And let me just make sure You're 27 years old now?
4 A Yes, ma'am
5 Q And you understand what you're rights are I just
6 want to get through this part, what your rights are
7 A Yes, ma'am
8 Q Your rights are you can talk or you can have an
9 attorney and those things?
10 A Yes, ma'am
11 Q You signed off right there That's your signature,
12 isn't it?
13 A Yes, ma'am
14 Q It's signed off on this Waiver of Rights, too?
15 A Yes, ma'am
16 Q Did you understand what your rights were that day?
17 A Yes, ma'am.
18 Q And did you talk to Sergeant McDonald?
19 A Yes, ma'am.
20 Q And now, you've told this story here today about what
21 really happened according to you now?
22 A Yes, ma'am.
23 Q But back on October 8th, some -- it's not even 12
24 hours after this happened -- you gave a statement
25 about what happened?

1 A Yes, ma'am

2 Q And the first statement you gave you start out, and
3 it kind of mirrors the first part of what you told
4 the jury here today, about getting up with the kids,
5 Veronica, all the things like that, right?

6 A Yes, ma'am

7 Q And so were you telling the truth about that part?

8 A Yes, ma'am.

9 Q But then you said that you gave the guy the keys to
10 your MPV?

11 A Yes, ma'am.

12 Q That's not true?

13 A No, ma'am

14 Q Why would you lie about something like that to the
15 police that day?

16 A Because Mr. McDonald kept saying drugs, and I just
17 tried to distance myself from being around part of
18 the drug dealing, you know, whatever was going on,
19 because I didn't know.

20 Q Because you were scared?

21 A Yes, ma'am.

22 Q Your cousin was dying in the van?

23 A Dead I thought

24 Q Somebody had been shooting at you that day?

25 A Yes, ma'am.

1 Q For no reason?

2 A Yes, ma'am

3 Q So, understandably, you were upset So you decided
4 to lie about how you gave the car keys to somebody
5 else?

6 A No I'm telling the truth what happened As of
7 now -- I tried to distance myself from McDonald
8 talking about drugs He kept saying, This guy is
9 going to look like a hero if you don't tell me

10 Q I understand Investigator McDonald was scaring you,
11 right?

12 A Yes, ma'am. Then they had my wife --

13 Q And you didn't really trust him?

14 A Then they had my wife A big guy opened the door and
15 my wife is crying What was I supposed to do?

16 Q Okay Let me get one thing straight though, sir

17 MR. STRICKLER: I'll have to object, Your Honor
18 I'd like to hear him finish his answer prior to her
19 next question

20 THE COURT Let him finish his answer

21 Q Go ahead

22 A After him and the other guy, the other investigator
23 were talking, each asking me questions, the big guy,
24 this big other investigator opens the door and my
25 wife is standing there crying. And he is like, You

1 need to say something or we're taking Veronica to
2 jail

3 Q We're taking Veronica to jail?

4 A Yes, ma'am.

5 Q Okay And just for the record, Veronica had never
6 been placed into custody that day?

7 A I don't know

8 Q You don't know?

9 A I wasn't placed in custody either They just told me
10 to come in there, put my hands in handcuffs and they
11 didn't even tell me what I was arrested for

12 Q That's your testimony Okay You were arrested
13 before. So did you ask Sergeant McDonald what you
14 were arrested for?

15 A He just kept telling me drugs

16 Q Drugs?

17 A And then after that, they kept tugging at me Then
18 they said, What was my involvement in the attempted
19 armed robbery? And there was no robbery Nobody
20 went to rob anybody

21 Q Nobody went to rob anybody That's your testimony
22 here today, right?

23 A Yes, ma'am

24 Q And this was a -- it's funny you just happened to
25 have a drug dealer in the car though now, right?

1 A Excuse me?

2 Q Anyway, getting back to the statement --

3 MR STRICKLER Was that a question, Your Honor?

4 I object. She's commenting "It's funny"

5 THE COURT All right.

6 MS CAMPBELL: I'll move on, Your Honor

7 THE COURT Ask the question.

8 Q I'll ask the question. You went in the car and you
9 said you didn't go with him, and all of a sudden he
10 showed up bleeding in your car?

11 A Yes, ma'am

12 Q But he dropped you off at a gas station and that you
13 stayed at the gas station and he went somewhere and
14 came back 15 minutes later?

15 A Yes, ma'am

16 Q And just so the jury knows, is that the truth or the
17 lie that you told Sergeant McDonald that afternoon?

18 A I told the story I told a lie because he came and
19 said it was about drugs I didn't know drugs was
20 going on I didn't -- Tashim, I know he deals in
21 drugs, but I didn't want to be a part of that So I
22 tried to distance myself from it

23 Q Did you not think the truth might behoove you, that
24 you had gotten viciously attacked while driving
25 through the parking lot of the rim shop?

1 A Ma'am, Mr McDonald said -- like I said, I've never
2 been in trouble So he said I'd have a felony murder
3 if I don't talk And from my knowledge, I thought my
4 cousin was dead

5 Q Nobody ever alleged you shot your cousin, sir Did
6 they?

7 A No, ma'am But he said I was going to have that
8 charge.

9 Q He had said you were going to have that charge?

10 A Yes, ma'am

11 Q Nobody has ever alleged you ever shot anybody in this
12 case Nobody has ever said that to you, have they?

13 A No, ma'am

14 Q Okay What they have said to you is that you were
15 charged with attempted armed robbery. Isn't that
16 right?

17 A He said that after he was saying, I've been to the
18 rim shop and there's nothing in the tape and I see
19 that Sterling Patterson doesn't have any rims or
20 radios in there So there's nothing to take. We
21 know it's over drugs. It's a drug front If you
22 don't want him to look like a hero, you need to say
23 something. That's what he told me.

24 Q That's what he told you Anything else that you
25 haven't told us before?

1 A That this guy was going to get on the news and he's
2 going to look like a hero He said, If you want to
3 look like that and you know he's dealing drugs, you
4 need to tell us

5 Q So you did what he told you to do. You told him he
6 was dealing drugs That's what you told him that
7 day, right? That's what he wanted to hear, according
8 to what you just said?

9 A No I didn't tell him about drugs. I just tried to
10 distance myself away from what he was talking about
11 I tried to say I wasn't in my car.

12 Q So your testimony is he was telling you it was a drug
13 deal, he wanted to hear you say it was a drug deal;
14 but then you told him you weren't there But when
15 that didn't work, you changed your story not to say
16 it was a drug deal like you're saying he wanted you
17 to, but to say it was a robbery?

18 A The guy opened the door and had my wife right there
19 crying, and he said I need to say something or
20 Veronica is going to jail and I'm going to jail for a
21 felony murder.

22 Q And, of course, if you saw your wife there crying and
23 everything and you were being threatened to take her
24 to jail and everything, of course you'd change your
25 story to say it was a drug deal That's what you did

1 that day, right?

2 A No, ma'am.

3 Q Why did you say it was an attempted armed robbery
4 when your testimony here today is he wanted you to
5 say it was a drug deal gone bad?

6 A Mr. McDonald said it was an attempted armed robbery,
7 and I told him nobody went to rob anybody

8 Q Which did he say?

9 A I told him that Nobody robbed anybody Everything
10 happened so fast, I drove often I don't know what
11 happened He's saying he don't recall, and he knows
12 he said this to me

13 Q So all that part about how he wanted you to say it
14 was a drug deal, you held out and just said it was an
15 attempted armed robbery?

16 A No He said that I told him that nobody went to
17 rob anybody, it wasn't a robbery It was just Tashim
18 going to talk to Sterling about some money

19 Q Tashim, the drug dealer, who you gave a ride to for
20 \$10?

21 A Yes, ma'am

22 Q So after all this you do realize at some point I
23 assume that you were charged with attempted armed
24 robbery?

25 A After I go to jail and they take me to bond court

1 Q Okay And then after you've realized that, you must
2 be pretty unhappy with Sergeant McDonald?

3 A I'm unhappy with a lot of things that happened that
4 day --

5 Q Yeah I know you are

6 A -- because they involved me and I have a family

7 Q I understand that. Do you remember four to five
8 months later on March the 3rd -- 5th, excuse me
9 March the 5th of 2003?

10 A No, ma'am. Not really But I signed it, so I had to
11 have

12 Q And this time did you understand what was going on?

13 A Yes, ma'am

14 Q And your lawyer was with you that day?

15 A Yes, ma'am

16 Q And your lawyer and you contacted the Sheriff's
17 Department, got back in contact with them to give
18 them some more information, didn't you?

19 A Yes, ma'am

20 Q And that information wasn't to say it was a drug
21 deal, it was to give them the third robber?

22 A Just the third person that was with me

23 Q The third person The third robber?

24 A There was no robbery, ma'am

25 Q You never told him that day it was a drug deal.

1 A I never told him it was a robbery either I just --

2 Q You're denying that when you met with them with your
3 lawyer present that you told them the third person
4 involved in the robbery was Tashim?

5 A No, ma'am

6 Q You mentioned that somebody came to the jail and gave
7 you the last name of Tashim Who is that person?

8 A Devon Wider

9 Q Devon who?

10 A Wider

11 Q Wider?

12 A Yes, ma'am

13 Q And where does he live?

14 A I don't know if he's in Columbia any more He is
15 another military kid; like everybody I basically be
16 around is from a military family

17 Q And he's not around any more anyway?

18 A I have no idea, ma'am

19 Q He is not here today either?

20 A No, ma'am

21 Q When is the first time you told anyone this story
22 here today?

23 A About the drug deal?

24 Q Whatever this you call it

25 A I just told the jury that it wasn't an armed robbery

1 And I want them to know that it's not an armed
2 robbery Nobody went to rob anybody

3 Q I understand that At what point did you try to get
4 back in touch with Sergeant McDonald or anyone?

5 A My lawyer -- I talked to my lawyer and I left it in
6 his hands to do it I've been in jail for 15 months,
7 16 months.

8 Q At what point did you get back in touch with the
9 police to tell them this story?

10 A I never talked to the police

11 Q No, you didn't

12 A No, ma'am When you're locked up in the county jail,
13 they forget about you, like they want you to break
14 I've been in there for 15 months. And they just
15 forgot about me, you know And I don't know what's
16 going on I lost my car I lost my house My wife
17 lives in the projects And just everything All
18 I've got is my kids and my wife now I don't have
19 nothing I don't even have clothes to come in here
20 and talk to you guys

21 Q You understood you could get in touch with him
22 because you knew how to do it back in March?

23 A They don't have -- my lawyer has a phone, but it
24 doesn't have collect calls So I can't call him.
25 And I can't call my mother because her phone has a

1 block on it So I can't -- they leave you in jail
2 and they forget about you And if you want to get a
3 three-way, people charge you your breakfast, lunch
4 and dinner. And they took everything I tried to
5 get three ways, I can't get nothing. They just left
6 me back there to rot. I've never been in jail like
7 this before in my life

8 Q Just for the record, when you gave your statement
9 back then when they were wanting you to say it was a
10 drug deal, did you make up this story about you and
11 Demetrio, he had some money, he knew this guy had
12 some money in rims?

13 A Like I told you, ma'am, I just tried to distance
14 myself from that drug deal that Mr McDonald was
15 saying That's what I'm telling you today

16 Q He called him a pussy?

17 A All of that

18 Q Those are your words?

19 A I'm telling you what happened today

20 Q I'm just asking about this Are those your words?

21 A Yes, ma'am

22 Q "After he said that I thought he was going to rob
23 him"?

24 A No.

25 Q Those weren't your words?

1 A I didn't say anything about a robbery

2 Q "Before we got to the car place we picked up another
3 guy along the way " Are those your words?

4 A Yes, ma'am Like I said, I was trying to distance
5 myself from being a drug dealer but I knew he dealt
6 in trucks and I didn't want to get charged with
7 drugs. I didn't even know what my charge was until
8 they brought me to the county And like a day --
9 later on that night they gave it to me in bond court

10 Q Are you through? I'm sorry I didn't mean to
11 interrupt

12 A Yes, ma'am.

13 Q "We turned off Percival Road near some trailers and
14 the guy was waiting on us We went past old Percival
15 Road but I'm not sure where " Were those your words?

16 A Yes, ma'am

17 Q "We went to the car shop"?

18 A Yes, ma'am.

19 Q "Somebody told me to wait right there"?

20 A No, ma'am.

21 Q "The other guys went inside"?

22 A No, ma'am

23 Q Are those your words?

24 A I wrote that, but I was trying to distance myself
25 Like I told you, I was trying to distance myself from

1 this drug deal that Mr. McDonald kept screaming in my
2 ear And then there's another guy that was in there,
3 investigator, and he's just like, Oh, you're a liar,
4 you're stupid And they're just coming at me. Like
5 I said, the big guy came in and that's when he showed
6 me my wife crying and they said they was going to
7 take her to jail. That's the mother of my three
8 kids I can't let her go to jail. I had to say
9 something.

10 Q But you're so good you knew to say that they went
11 inside where the shooting took place?

12 A No, ma'am Mr. McDonald was working on the computer
13 and putting in his own little things and --

14 Q Oh So these aren't your words?

15 A No, ma'am I said he wrote that down on the
16 computer. He put it in the computer. But like I
17 said, I was trying to distance myself from the
18 situation that was at hand Then he said a felony
19 murder.

20 Q No I'm just asking you this Are these your words?

21 A Yes, ma'am

22 Q You made up this story?

23 A Yes, ma'am

24 Q And you're so good you even knew the shooting
25 occurred inside?

1 A No, ma'am. I didn't know anything I told you, when
2 they started shooting I drove off It happened all
3 fast Everything happened so fast, I don't know

4 Q "They were only inside for a little while I heard
5 bullets " Are those your words?

6 A I told them I heard bullets and I drove off

7 Q That's what you told them then or now?

8 A I told them then and I'm telling them now that's what
9 happened

10 Q Well, you just testified the first time you've ever
11 told this story you've told here today is today

12 A I told him about the shooting that happened right
13 then Everything happened fast Mr. McDonald, he
14 said he going to call it, and he knows he heard it
15 He knows he knows what I said

16 Q "They came running back out to me in the van"?

17 A No, ma'am. I'm not --

18 Q "He said he was shot They got in We drove off"?

19 A I drove off I was the driver I drove the car I
20 drove away from the situation.

21 Q You were the driver?

22 A Yes, ma'am I drove the car Nobody else was
23 driving. I drove the car It's just all that
24 shooting, I didn't want to get shot, I drove off My
25 cousin is back there bleeding to death, if not

1 already dead I see blood I called his name, he
2 doesn't say anything So I'm scared I'm panicking
3 I'm just trying to get away from where I'm at

4 Q Yeah, you were trying to get away

5 MR STRICKLER: I'm sorry Was that a question?
6 I object.

7 THE COURT: Overruled. Go ahead

8 MS CAMPBELL Just a couple more questions
9 Beg the Court's indulgence? Your Honor, may we
10 approach?

11 (Whereupon, a bench conference is had)

12 Q Mr Alexander, I'm going to show you that four-page
13 document It's your original statement actually. Do
14 you recognize that?

15 A Yes, ma'am

16 Q And that's a statement you made back on October the
17 8th?

18 A Yes, ma'am

19 MS CAMPBELL: Your Honor, at this time we'd
20 offer the original statement into evidence

21 THE COURT. Over the objection of the defense
22 the statement is admitted.

23 (WHEREUPON, State's Exhibit No. 115 was marked
24 for identification and received into evidence.)

25 Q The person that was with you that day that got shot,

1 --

2 A Yes, ma'am

3 Q -- who was that?

4 A Demetrio Sears

5 Q And that's in your statement?

6 A Yes, ma'am

7 Q Thank you

8 THE COURT: Mr Strickler

9 MR STRICKLER: Thank you, sir May it please
10 the Court.

11 CROSS-EXAMINATION

12 BY MR STRICKLER

13 Q Now, Mr. Alexander, you mentioned a number of times
14 during your questioning by Ms Campbell that Sergeant
15 McDonald during the course of his interrogation of
16 you kept telling you that there was a drug deal and
17 that if Demetrio died you'd be charged under felony
18 murder, right?

19 A Yes, sir

20 Q And it's safe to say that you don't understand what
21 the felony murder doctrine is, do you?

22 A No I don't understand what it is

23 Q You're not alone in that There are lots of lawyers
24 around the state that don't understand felony murder
25 All you know is you kept hearing "murder" --

1 A Yes, sir

2 Q -- thrown at you? Now, and I'd like to ask you just
3 a little bit about your state of mind that day,
4 October the 8th, 2002 --

5 A Yes, sir

6 Q -- when you were going to the store Okay? After
7 you all had hooked up with Tashim

8 A Yes, sir

9 Q Now, you were operating under the impression that you
10 were going to the store to pick up money associated
11 with a drug deal, right?

12 A Yes, sir

13 Q That was the impression you were operating under,
14 right?

15 A Yes, sir

16 Q Okay From all the circumstances surrounding your
17 contact with Tashim, that's the impression you had?

18 A Yes, sir

19 Q Right? Okay. Now, and as I understand your
20 testimony, you wheeled up into the lot, and Tashim
21 and Demetrio are in the back of the van?

22 A Yes, sir

23 Q And Demetrio gets out and can't have taken but a few
24 steps?

25 A Yes, sir.

1 Q Tashim isn't even out of the van yet?

2 A No He's not out the van

3 Q A bunch of shots happened?

4 A Yes, sir.

5 Q Demetrio manages to get back in the van and you're
6 taking off?

7 A I drive off.

8 Q Now, prior to that time, you had no understanding
9 that there was going to be a robbery?

10 A No, sir

11 Q Your understanding was that Tashim was there to meet
12 with.. ?

13 A Sterling.

14 Q Yes. Regarding some money?

15 A Some money that was owed to him

16 Q And some drugs?

17 A And some drugs.

18 Q Some money that was owed him for some drugs?

19 A Yes, sir

20 Q And that Demetrio was accompanying him at that
21 particular time?

22 A He was accompanying -- I was driving him to a job
23 interview

24 Q Okay Now, so, as far as what was in your mind at
25 that point in time, that's what was in your mind when

1 you arrived on that scene, right?

2 A Yes, sir.

3 Q Okay. Now, you know you can be in trouble for
4 getting involved in a drug deal, right?

5 A Yes, sir.

6 Q You don't want to be in trouble for being involved in
7 a drug deal, right?

8 A I don't want to be in no trouble.

9 Q You know you can be in trouble, or evidently you've
10 been told you can be in trouble for something called
11 felony murder Even though you don't do anything,
12 somebody dies, that's your understanding of felony
13 murder, right?

14 A Yes, sir.

15 Q Okay So you think you can be in trouble for felony
16 murder, right?

17 A Yes, sir

18 Q Okay So you don't want to be involved in drugs and
19 you don't want to be involved in a felony murder,
20 right?

21 A That's right, sir

22 Q This is all going through your mind, for example,
23 when you have the encounter with the highway
24 patrolman out on interstate 77?

25 A Yes, sir.

1 MS CAMPBELL. Objection to that, Your Honor.

2 THE COURT What's the objection?

3 MS. CAMPBELL The objection is he hasn't had
4 any contact with that theory at that point

5 THE COURT It's fair cross examination

6 Q You knew your cousin, or you thought your cousin was
7 dead or dying in the back of that van, right?

8 A I thought he was dead

9 Q Okay Your understanding of why that van went to the
10 location was that it went there dealing with drugs
11 and money?

12 A Yes, sir

13 Q Collecting some money owed for some drugs, right?

14 A Yes, sir

15 Q Guns, money and a dead body Did you have an
16 interest in getting yourself in the middle of that at
17 that point in time?

18 A No, sir

19 Q Okay Did you have an interest in getting yourself
20 in the middle of those affairs when you talked with
21 Investigator McDonald?

22 A No, sir

23 Q You keep saying you're trying to distance yourself
24 from that?

25 A Yes, sir

1 Q I'm not sure what -- well, what was your testimony?
2 You didn't know what you were being charged with at
3 that point in time?

4 A I didn't know

5 Q Mr McDonald keeps mentioning it's a drug deal?

6 A Yes, sir

7 Q You know you don't want any involvement in a drug
8 deal?

9 A Yes, sir

10 Q You end up telling him -- well, let me ask you this,
11 a few things about this interrogation. I'm showing
12 you what's marked as State's Exhibit 107, this thing
13 that's an Advice of Rights Form?

14 A Yes, sir

15 Q Okay? Now, this indicates that there's -- got a date
16 on it, October 8th, 2002?

17 A Yes, sir

18 Q Did you read that? And right next to it it's got a
19 time on it, 16:50 Do you see that?

20 A Yes, sir

21 Q 16 50, that's military time That would be 4 50 in
22 the afternoon, right?

23 A Yes, sir

24 Q I mean, you're a military brat just like me You
25 know what military time is, right?

1 A Yes, sir

2 Q Okay And so that means that that Advice of Rights,
3 you went through it at 4:50 in the afternoon And
4 then what's marked as State's Exhibit 115, this is a
5 copy of the statement?

6 A Yes, sir

7 Q Okay And that was begun at -- what time does it say
8 it was started?

9 A 4:55

10 Q Okay It says 16:55?

11 A 16 55

12 Q That's military time again, 4.55 in the afternoon,
13 right? Okay And then the last page of the
14 statement at the end of this thing, it says when it
15 was ended, right?

16 A At 18 41 hours

17 Q 18:41. So that's what time? Military time? 6:41 in
18 the evening?

19 A Yes, sir

20 Q So it started at 4 55 in the afternoon and ended at
21 6 41 in the evening, almost two hours later, right?

22 A Yes, sir.

23 Q And during the course of this time, you were in the
24 office there with Mr. McDonald?

25 A Yes, sir

1 Q Sergeant McDonald?

2 A And another Investigator

3 Q Another investigator? Were you handcuffed at that
4 time?

5 A Yes, sir

6 Q Did they have one hand cuffed, cuffed to a chair and
7 the other hand free? Or what?

8 A I was handcuffed to the chair at first Then when
9 they took me to his office they handcuffed me

10 Q They what?

11 A They put the handcuffs on both of them

12 Q They put the handcuffs on both of them So once you
13 are back in his office you've got handcuffs on both
14 of them Let me ask you this You talk about
15 Veronica at one point seeing her in the hall in tears
16 and being threatened about what was going to happen
17 to her if you didn't cooperate?

18 A Yes, sir.

19 Q While you were being interrogated, where was the tape
20 recorder? Like these tape recorders here, where was
21 the tape recorder located that they were taping your
22 conversation with?

23 A There was no tape recorder

24 Q Where was the tape recorder that they were taping the
25 conversation so we can make sure no one was

1 threatening you in any way?

2 A There was no tape recorder in there There was
3 nothing

4 Q Okay Well, then I'm sorry Then --

5 MR MEADORS: I apologize I apologize

6 MR. STRICKLER: He need to use the restroom
7 Your Honor, I need to ask for a brief break.

8 THE COURT: All right Let's take about a
9 ten-minute break. Don't discuss the case among
10 yourselves while you're in the jury room, Ladies and
11 Gentlemen

12 (Jury out at 2 50 P M)

13 MR MEADORS: I'd just like to put that on the
14 record, too, Your Honor

15 THE COURT Please don't.

16 MR MEADORS. I apologize Never mind then.

17 THE COURT Somebody may have to read it.

18 MR MEADORS: Mr Burr couldn't handle it. He
19 was looking at me

20 THE COURT Cut that off

21 (Whereupon, a break is taken)

22 THE COURT The State ready for the jury?

23 MR. MEADORS The State's ready

24 THE COURT: Defense ready?

25 MR STRICKLER Yes, sir

1 THE COURT. Bring the jury, please

2 (Jury in at 3 00 P M)

3 THE BAILIFF The jury is present, Your Honor

4 THE COURT Thank you. Mr Strickler, you may
5 continue

6 MR STRICKLER. Thank you, Your Honor May it
7 please the Court

8 Q Mr Alexander, I'm sorry for the interruption. I
9 believe I was asking you when we broke where the tape
10 deck was located that was recording your conversation
11 with Sergeant McDonald You had indicated there was
12 no tape deck, right?

13 A Yes, sir

14 Q Okay You are handcuffed in his office, correct?

15 A Yes, sir

16 Q Okay He is there There's another police officer
17 there?

18 A An investigator.

19 Q Another investigator I'm sorry Plain clothes --

20 A Plain clothes.

21 Q -- police officer, right? Periodically other people
22 come through the door there?

23 A Yes, sir

24 Q I believe there is another officer who comes?

25 A A big guy comes through. He's taller than me

1 Q Taller than you?

2 A Yes, sir

3 Q And your testimony is you're being threatened with a
4 felony murder charge?

5 A Yes, sir

6 Q And you are being informed that your common law wife
7 will be arrested if you don't cooperate?

8 A Yes, sir

9 Q And, indeed, at one point in time you see your wife
10 in the hall in tears?

11 A Yes, sir.

12 Q Okay. So, where is the video camera located that was
13 recording this interrogation so that we can see that
14 you're telling a lie about all this?

15 A I didn't see a video camera

16 Q Could there have been one of those two-way mirrors
17 somewhere in that office and there's a video camera
18 behind there that you didn't see?

19 A I didn't see a mirror in there

20 Q So to the best of your knowledge, there's no tape
21 recorder doing an audio tape of it, and there is no
22 video camera taking a videotape of it, right?

23 A No. None of that was in there

24 Q Okay. So what it comes down to then is it's going to
25 be what you have to say against what the police

1 officer has to say, right?

2 A Yes, sir

3 Q Okay And they've got you there isolated from
4 family, friends, any outside influences You and the
5 police officer, right?

6 A Yes, sir

7 Q All right Did you go there to rob that place that
8 day?

9 A No, sir

10 Q Did Demetrio go there to rob that place that day?

11 A No, sir

12 Q Why did you go there, to that place that day?

13 A Tashim offered me gas money to go talk to Sterling
14 about some money Sterling owed him.

15 Q Some money Sterling owed him for some drugs?

16 A Yes, sir

17 Q How long were you all in the parking lot altogether
18 before Demetrio got lit up and you lit out? Was it
19 15 seconds?

20 A If that If that

21 Q Thank you very much, Mr Alexander

22 THE COURT. Mr Burr

23 MR. BURR May it please the Court

24 REDIRECT EXAMINATION

25 BY MR BURR

1 Q Lloyd, back in 1995, when you had to pay a fine for
2 disturbing a school, did anybody interrogate you,
3 scream and holler at you while you were being
4 interrogated?

5 A No, sir.

6 Q And in 1999, when you had to pay \$200 for a simple
7 marijuana possession, did anybody scream at you or
8 bring you to court like this or anything?

9 A No, sir

10 Q In 2002 you had a second offense of simple possession
11 of marijuana You had to pay \$300. Is that correct?

12 A Yes, sir

13 Q Did you have to come to court like this that day?

14 A No, sir.

15 Q Anybody scream and holler at you?

16 A No, sir.

17 Q Those are the only three convictions you ever had in
18 your life?

19 A Yes, sir

20 MS. CAMPBELL· Your Honor, may we approach? We
21 have a matter of law on that

22 (Whereupon, a bench conference is had).

23 THE COURT Go ahead

24 MR. BURR· Thank you, Your Honor

25 Q Lloyd, I think both the prosecution and Mr Strickler

1 asked you about State's Exhibit 113. Can you
2 identify that?

3 A Yes, sir

4 Q Okay. If you look on the -- and I think
5 Mr Strickler brought out that the discussion with
6 the investigators lasted approximately two hours?

7 A Yes, sir

8 Q So obviously a lot of stuff was said that's not
9 included on there, right?

10 A Yes, sir

11 Q I want to direct your attention to the first page,
12 ask you the first question The answer -- well, the
13 question was "What can you tell me about the
14 activities?" The answer is in the form of two full
15 paragraphs. Is that an exact quote of what you said,
16 or is that a summary of that the police officer did?

17 A A summary

18 Q It continues over onto page 2 There are two
19 additional paragraphs in response to questions. Is
20 that a quote of what you were saying or the police
21 officer's summary of what you were saying?

22 A A summary of what I was saying

23 Q On page 3 about half way down, the question is "Can
24 you tell what really happened that day on Percival
25 Road?" Once again, it's about a 15, 20 line

1 paragraph Is that verbatim, or is that a summary of
2 what you said?

3 A It's a summary

4 Q And he's paraphrasing what you said?

5 A Yes, he is

6 Q But if you get down to the last question on that
7 page, the next to the last question in the entire
8 statement, two hours of interrogation, you've told
9 your story. Question "Did you plan the robbery
10 with the guys?" What was your answer?

11 A "No, sir "

12 Q That's a direct quote "No, sir"?

13 A Yes, sir

14 Q And did you at any time plan the robbery?

15 A No, sir

16 MR BURR I have no further questions, Your
17 Honor

18 THE COURT Ms Campbell

19 MS CAMPBELL Just one

20 RECROSS-EXAMINATION

21 BY MS CAMPBELL

22 Q Just one quick one He just went over your
23 statement Just turning to page 3 again, he talked
24 about that being a summary But those are your
25 words That's what you told him that day, right?

1 A He was writing in the computer, listening and
2 writing So I don't know.

3 Q Listening and writing?

4 A I don't know what he was --

5 Q Those are the words you gave to him?

6 A He stopped me And the other investigator was
7 questioning me, too And his questions aren't on
8 there.

9 Q I'm asking you, you've read over this, haven't you?

10 A Yes, ma'am

11 Q That's a summary of what you told him that day?

12 A Yes, ma'am

13 MS CAMPBELL. Thank you, Your Honor I don't
14 have any further questions.

15 THE COURT. Mr Strickler.

16 MR STRICKLER No, sir

17 THE COURT. All right Thank you very much, Mr
18 Alexander, you may come down. Anything further on
19 behalf of Mr. Alexander?

20 MR BURR No, Your Honor, there's not

21 THE COURT Mr Alexander rests?

22 MR BURR Yes, Your Honor We rest.

23 THE COURT: Mr Strickler

24 MR STRICKLER. Thank you, Your Honor. May it
25 please the Court The defense calls Demetrio Sears.

1 THE COURT Come around, Mr Sears.

2 THE CLERK If you'd come forward, please

3 DEMETRIO O. SEARS, after being duly sworn,
testifies as follows

4 THE CLERK Please have a seat and state your
5 full name

6 DIRECT EXAMINATION

7 BY MR STRICKLER

8 Q Demetrio, please state your full name for the record?

9 A Demetrio O Sears

10 Q Demetrio? Spell that first name, please.

11 A D-E-M-E-T-R-I-O

12 THE COURT Just lift that microphone up so you
13 don't have to bend down to it every time That's
14 good

15 Q That was my next -- Demetrio, you can be kind of
16 soft-spoken So, if you will, please, speak in the
17 microphone, try to speak up so these folks can hear
18 you Okay? You might want to even just turn your
19 chair a little bit I want to make sure that we hear
20 what you have to say Demetrio, how old are you?

21 A 21 years old

22 Q And where were you born?

23 A San Diego, California.

24 Q San Diego, California?

25 A Yes, sir.

1 Q Okay What was your -- what line of work was your
2 father in?

3 A Military

4 Q Military?

5 A Yes, sir

6 Q Okay. And how long have you been living in the
7 Columbia area?

8 A I think --

9 Q Roughly

10 A -- probably about four years. Five Probably about
11 New Year 2000

12 Q You moved here about the year 2000?

13 A Yes, sir

14 Q And is your father still living?

15 A Yes, sir

16 Q Is he still in the military?

17 A Yeah. But he and -- my mom been married to my
18 stepfather. He's in the military, too.

19 Q Okay. Did you move here because your parents moved
20 here?

21 A No. I moved here was because they moved to Germany
22 and I didn't want to go

23 Q You didn't want to go to Germany?

24 A Hmm-mm (negative)

25 Q How many different places have you lived while you've

1 been growing up, roughly? My family moved every two
2 years when I was growing up in the military.

3 A I've lived everywhere

4 Q You've lived everywhere?

5 A (Nods head affirmatively)

6 Q Okay And how far have you gone in school?

7 A I think I got -- I was moving around so much that my
8 courses and my credits, they got like mixed up So I
9 just went ahead and got my G E.D

10 Q You got your G E.D.?

11 A Yes, sir

12 Q Now, Demetrio, in November of 2000 you pled guilty to
13 three counts of common law robbery, didn't you?

14 A Yes, sir.

15 Q Not armed robbery, common law robbery Is that
16 correct?

17 A Yes, sir

18 Q Okay. And you are currently in prison in your
19 sentence on that case Is that right?

20 A Probation violations for this

21 Q Yes. For this. Now, in October of 2002, where were
22 you living?

23 A In Spring Valley Apartments.

24 Q Spring Valley Apartments?

25 A Yes, sir

1 Q With whom were you living?

2 A With my girlfriend

3 Q Who was that?

4 A Jennifer

5 Q Did you ever have occasion to live with Mr

6 Alexander?

7 A I lived with him briefly

8 Q Okay

9 A When I came down here, I was staying with his mom

10 His mom and my mom were sisters. I was staying with

11 him at his mom's house Then I lived with him like

12 shortly after that for like two months and then back

13 to is mama's house Then I went --

14 Q Then what?

15 A Back to his mama's Then I moved in with her.

16 Q You need to speak up, please So in October of 2002,

17 you were living in the Spring Valley Apartments?

18 A Yes, sir

19 Q Okay And were you employed at that point in time?

20 A Yes, sir

21 Q What job did you have then?

22 A I worked at Frazier Tire Service on Bluff Road

23 Q How long had you worked there?

24 A Like a little over six or seven months

25 Q Okay And what type of job was that?

- 1 A I basically -- when I first started there I basically
2 just -- we don't do like commercial tires We do
3 like 18 wheeler tires. I had to break them down and
4 put them back on And I started just doing oil
5 changes. They made me deliver tires to trucking --
6 to -- they made me deliver tires to trucking
7 companies And that's basically what I was doing
- 8 Q So you dealt with commercial tires or industrial
9 tires as opposed to passenger vehicle tires Is that
10 right?
- 11 A Well, we had passenger vehicle -- I mean, like a
12 regular car or regular -- we had really any tires you
13 really needed But mainly we just did 18 wheelers
14 You know what I'm saying You wouldn't really come
15 to our store for -- if you're tire got a flat You
16 know what I'm saying. If your 18 wheeler got a flat,
17 you would come to our store
- 18 Q And I take it from your description of what you did,
19 you pretty much did whatever they asked you to go
20 ahead and do, right?
- 21 A Yeah Pretty much
- 22 Q What kind of hours did you work there?
- 23 A Monday through Friday from 7 30 'til 5 And then
24 Saturday, every other Saturday from 8 to 12
- 25 Q And I'm sorry I've been referring to you as

1 Demetrio No disrespect intended I mean, is it all
2 right if I use Demetrio, or would you rather me use
3 Mr Sears to you?

4 A It doesn't matter to me

5 Q It doesn't matter?

6 A The same thing

7 Q I'm roll with Demetrio if that's all right Okay?

8 A (Nods head affirmatively)

9 Q Now, obviously you know Mr Alexander?

10 A Yeah That's my cousin

11 Q He's your cousin Okay, sir Can we turn to October
12 8th of 2002? Okay Let me ask you this Just stop
13 right now. Did you on October the 8th, 2002 enter
14 the store on Percival Road and put a gun to
15 Mr Stokes' head?

16 A No

17 Q Did you on October 8th, 2002 enter the store on
18 Percival Road with the intent to commit a robbery in
19 that store?

20 A No

21 Q Did you on October 8th, 2002 exit the van in the
22 parking lot of the store on Percival Road and move to
23 enter the store?

24 A No

25 Q Now, were you in the van at the parking lot on

1 Percival Road on October 8th, 2002?

2 A Yes

3 Q Okay Let's talk about what happened. All right?

4 If you can, when did you -- how did you come in
5 contact with Willie Alexander on October 8th of 2002?

6 A I think I had called him earlier that morning

7 Q Okay

8 A He only got one call So I called him early that
9 morning. My girl had to go to a doctor's
10 appointment So it was either go with her, and I
11 definitely didn't want to do that. It was like go
12 with her or, you know what I'm saying, find another
13 ride So I called my cousin.

14 Q Go ahead

15 A I was going to say I'm pretty sure I called him
16 because I know I wouldn't go all the way across to
17 Spring Valley High School when he stays on Rosewood
18 So I'm pretty sure I called him and was like, Will
19 you take me, you know what I'm saying. And then --

20 Q Were you working that day?

21 A No I had took comp time

22 Q You took comp time? Why did you take comp time?

23 A Because I was trying to get another job

24 Q Oh, okay So you wanted to get another job?

25 A Yes, sir.

1 Q You don't remember where you were going to apply for
2 a job

3 A Where I had applied?

4 Q You say you wanted to get another job. What other
5 job?

6 A It was at Elm Street right up here at Executive
7 Staffing Service. When I had started working at
8 Frazier Tire Service, they had called me at the same
9 time. But I knew that Executive Staffing Service was
10 like a temporary job So I didn't want to -- you
11 know, I didn't want to work there for like two weeks
12 and then not have a job, you know what I'm saying
13 So I just took the job at Frazier Tire even though
14 they was paying less I figured even though they're
15 paying less I'd be working there longer

16 So the lady that I was talking to in there, she
17 said that I had needed like six months experience
18 doing something in order to get -- she was like six
19 months experience She said she going to word it
20 around differently She was like six months
21 experience straight at a job, and then she'll be able
22 to get me a -- she'll try her best to get me a job at
23 Boyd which is where I was trying to get a job at
24 And that's where they do the hiring.

25 Q So that was where you were going to go on the 8th?

1 A Yes, sir

2 Q To follow up on that job lead?

3 A Yes, sir

4 Q Okay How did you come in contact with Willie
5 Alexander on the 8th?

6 A My girl dropped me off

7 Q Your girl dropped you off? Where?

8 A At his -- I really couldn't remember. But if he -- I
9 can't really remember. But I'm pretty sure it was --
10 I thought it was Colonial Village, but it could be
11 his apartments. I can't really remember that much,
12 too much I guess it don't make too much of a
13 difference, but. .

14 Q Did you indeed come in contact with him?

15 A Yeah.

16 Q Was anyone else at his place when you came in contact
17 with him?

18 A No

19 Q What happened after you came in contact with him?

20 A Went up to Colonial Village, you know That's where
21 everybody hang out

22 Q Let me ask you this About what time in the morning
23 was it, roughly? About what time in the morning?

24 A It was about -- I don't know

25 Q When your girl dropped you off, first of all?

1 A I ain't really sure It was probably before 9 or
2 8.30 or 8 something It was early in the morning I
3 had like time to kill, a little bit of time I
4 wasn't supposed to be there until like 11

5 Q Okay. So you get dropped off and then you and Mr
6 Alexander go up to Colonial Village you say?

7 A Yes, sir.

8 Q That's where people hang out?

9 A Yeah. Well, my friend --

10 Q I'm sorry?

11 A My friend, Patrick, he's got an apartment out there
12 But it's like everybody will just go there and
13 they'll play cards or gamble, you know what I'm
14 saying, or whatever, just kill time.

15 Q Okay So what happened then?

16 A We went there

17 Q All right Did you encounter anyone else at your
18 friend's place?

19 A When we got there?

20 Q Mm-hmm (affirmative).

21 A It was him, I think somebody else been there, and
22 Tashim been there

23 Q And Tashim?

24 A Yes, sir

25 Q What was the nature -- or let me ask you this. Were

1 you acquainted with Tashim?

2 A I know him I'm not like -- I never went to school
3 with him I don't even think he's in my age range,
4 you know what I'm saying But I don't know him like
5 somebody I would know every day. But I know him like
6 being around in the same neighborhood, the same --
7 going to the same gym, you know what I'm saying,
8 watching him at the same convenience store and
9 everything, being around the same people

10 Q You know him to say hi to?

11 A Yeah.

12 Q Okay I'm sorry, Demetrio. How old are you?

13 A 21

14 Q You are 21 now?

15 A (Nods head affirmatively)

16 Q So on October 8th, 2002, you were how old? 20?

17 A 20

18 Q 20? Got you All right. So Tashim was there. I
19 believe you said another fellow?

20 A Yeah

21 Q Okay. Did you have occasion to get hooked up with
22 Tashim?

23 A Oh You talking about when we went --

24 Q To -- yeah

25 A Yeah.

1 Q Tell us what happened How long did you stay at
2 Colonial Villa?

3 A We ain't stayed long I think he -- he was talking
4 to my cousin I think he offered him like gas money
5 And, you know, my cousin is the type of person if you
6 offer him gas money, you know, he'll take you You
7 give him the right amount, he'll take you across the
8 country.

9 Q If you give him the gas money he'll take you
10 anywhere?

11 A Pretty much

12 Q Did you have an understanding of where you were going
13 to be going?

14 A He said he wanted to go off --

15 MR MEADORS. Objection to hearsay

16 THE COURT: Yes, sir. Sustained

17 A Well, --

18 Q Yes, sir Now, where was your personal destination
19 that morning? Where were you going?

20 A Executive Staffing.

21 Q Okay Now, what was your understanding of where you
22 were going when you left the place? Were you going
23 to Executive Staffing?

24 A No It was too early

25 Q Where did you understand that you were going before

1 you went to Executive Staffing?

2 A So Tashim could go --

3 MR. MEADORS Objection to anything Tashim said
4 That would be hearsay

5 THE COURT. I understand.

6 Q I'm not asking you --

7 A I didn't say what he said.

8 THE COURT Sustained

9 Q Thank you Okay, Demetrio

10 A Well, we was going to Percival Road

11 Q Going to Percival Road. I don't care what Tashim
12 said. I want to know what was going on in your mind
13 Okay? Why did -- what did you think you were going
14 to Percival Road for?

15 A So -- so we can pick up some money

16 Q So who could pick up some money?

17 A Tashim

18 Q So it was your understanding, your belief at that
19 point in time was that you were going to Percival
20 Road so Tashim could pick up some money Is that
21 correct?

22 A Yes, sir

23 Q Okay. Did you have any belief or understanding as to
24 why the money was going to be picked up?

25 MR MEADORS. Your Honor, the only way he can

1 answer that would be through hearsay testimony --

2 THE COURT I understand.

3 MR. MEADORS. -- and we object

4 THE COURT I understand Sustained

5 Q Okay So your understanding was that you were going
6 out Percival Road so Tashim could pick up some money
7 Is that correct?

8 A (Nods head affirmatively)

9 Q Okay Now, did you have a weapon with you when you
10 went to Mr Alexander's house first thing in the
11 morning?

12 A No

13 Q No? Okay Did you have a weapon with you when you
14 got in the van to ride with Mr Alexander and Tashim
15 out Percival Road and then later to go to your job
16 interview?

17 A No.

18 Q No? Okay

19 A No.

20 Q Did you eventually have a weapon in your hand at some
21 point in time?

22 A Yes, sir.

23 Q Okay Let's talk about that point in time All
24 right? Did you have occasion to arrive at the
25 business on Percival Road --

1 A Yes, sir

2 Q -- that morning?

3 A Yes, sir.

4 Q If you would, please, tell us what happened Start
5 when you approached the business and just tell us
6 what happened.

7 A Well, we passed -- my cousin passed up the business.
8 But like I was sitting -- my cousin was driving. I
9 was like -- the MPV -- I think my cousin had spilled
10 something on the front passenger's seat So nobody
11 was sitting in that seat. And like I was in the
12 right right behind him I was right behind the
13 passenger's seat from the front Tashim was right
14 behind Lloyd's driver's seat.

15 Q So your location would be --

16 A I'm like right next to the sliding door

17 Q Right next to the sliding door Okay. And you say
18 your cousin passed the place. What way did he head
19 out there? Let me show you something here This is
20 State's 5 This would be Percival Road here heading
21 back towards Columbia What way did you come out
22 Percival, or what way did you travel on Percival
23 Road? Which-direction did you travel?

24 A This is Percival Road or --

25 Q No That's Percival Road

1 A Oh We came out this way

2 Q So you came out from Columbia Is that right?

3 A Yeah

4 Q So you say your cousin passed it?

5 A Yeah.

6 Q Then what? Turned around and came back?

7 A Yeah.

8 Q At that point in time you're in the back passenger's
9 seat or in the rear on the side closest to the
10 sliding door Is that right?

11 A Yes

12 Q Okay. Tell us what happened

13 A Well, we -- when we passed the place Tashim was like,
14 you passed the place, you passed the place; you know
15 what I'm saying So I looked over the place and the
16 I saw like somebody in the doorway, but I didn't
17 think nothing of it We just rode up and he turned
18 into like a trailer park or something Then he
19 pulled back out and he came back in. And he came in
20 and this time he was facing the other way and he
21 pulled into the parking lot And we was in the
22 parking lot

23 Q Okay. And when you pulled into the parking lot, what
24 happened?

25 A When we pulled into the parking lot, you know, he

1 stopped the car Well, first I should say this.

2 Tashim had a gun

3 Q Tashim had a gun?

4 A Yeah

5 Q What kind of gun did he have?

6 A I think it was like silver or gold or something It
7 was like a little small gun But, see, I had already
8 seen this like earlier But, see, then I already
9 knew he sold drugs So I know they go hand-in-hand
10 So I went, you know what I'm saying --

11 Q You had already seen it earlier By that you mean
12 earlier in that day or at some earlier time when
13 you'd seen Tashim? Or what?

14 A Because he was sitting next to me, when he sat down

15 Q Okay During the ride out there you had seen the
16 gun?

17 A Yeah. He had put it on his seat I don't think my
18 cousin saw it But he had put it on his seat And I
19 was just -- you know, it wasn't my van, it wasn't my
20 gun, you know what I'm saying

21 Q So you got there And what were you all going to do
22 when you got there?

23 A I didn't think he was going to do nothing He was
24 going to get out and talk to him

25 Q He was going to get out there and have a talk?

1 A Yeah But, see, I was closest to the door and he was
2 sitting right there So I had to get out to let him
3 out

4 Q So what happened then? You all stopped You're
5 closest to the door What happens then?

6 A Well, I pulled open the door

7 Q Mm-hmm (affirmative).

8 A And I don't know if it was opened or sliding or
9 what, you know what I'm saying But I pulled open the
10 door and I stepped out And when I stepped out, you
11 know, normally I just look down at my clothes And I
12 looked down, you know what I'm saying, to make sure I
13 was clean I had on like --

14 Q What do you mean by make sure you were clean?

15 A To make sure I was, you know what I'm saying, my
16 clothes were all right, you know what I'm saying

17 Q Sure That you had a presentable appearance? That
18 you looked okay?

19 A Yeah You know how you like step out of a car and
20 re-adjust yourself?

21 Q All right.

22 A I just looked down You know, I had on my shirt and
23 jeans and my shoes. And I had looked up, and
24 Sterling been out of the -- he been out of the
25 business He been like not towards the front door

1 but towards the bay door

2 Q Let me stop you for just a second I show you what's
3 marked as State's Exhibit 81, this right here?

4 A Yeah

5 Q Do you recognize what this depicts? I mean, does it
6 make any sense to you?

7 A Yeah It's a rough outline

8 Q Okay So, if you can, please, take my pen here And
9 if you would, please, just go ahead and take the pen
10 If you would, please, point to where you thought the
11 van -- roughly where the van was parked Move that
12 out of the way

13 A It was like --

14 Q I want you to speak up now

15 A It was like right in front of here

16 Q The van was parked right about there?

17 A Yeah It was in front of the roll-up doors

18 Q In front of the roll-up door?

19 A It wasn't like that close, you know what I'm saying
20 But it was up there

21 Q All right So it was roughly in front of this
22 roll-up door?

23 A Yes, sir

24 Q Okay And you indicate you got out of the van, out
25 of this -- which side of the van would you have

1 gotten out of? The side that faces the business or
2 the side that would have been facing away from the
3 business?

4 A Well, the car was pointing this way

5 Q Okay

6 A So the sliding door was on the passenger's side So
7 it was like on this side

8 Q All right So you got out that door You say you
9 straightened your clothes And then what happened?

10 A I looked up, and Sterling Patterson been outside and
11 he had a gun in his hand He been standing --

12 Q Whereabouts was he?

13 A He been around right -- there was like the Coke
14 machine right there But he been like half -- like
15 the door -- I don't think that's right because I this
16 roll up thing is a little closer there But --

17 Q Well, it's not to scale Let's not worry about that

18 A There been like a side door right there He been
19 like standing outside the door, like half way, like
20 right in the middle, like half way under the roll-up
21 door thing towards the vehicle

22 Q All right. And at this point in time you were by the
23 car yourself? The minivan?

24 A Yeah I was by the van

25 Q Okay Where was Tashim?

1 A He was starting to get out behind me

2 Q Starting to get out behind you? Where was the silver
3 380?

4 A I think it was -- it was on the seat

5 Q It was on the seat? Okay What happened next?

6 A It could have been gold, but --

7 Q Okay Was it a black 9 millimeter?

8 A No

9 Q Did it look like a black 9 millimeter?

10 A No

11 Q Now, was it in your hand?

12 A The gun?

13 Q Mm-hmm (affirmative)

14 A No.

15 Q Okay Now, what happened? You had gotten out of the
16 van checking your clothes You look up Sterling is
17 out by the roll-up door What happened?

18 A Well, when I stepped out the van I looked up and I
19 saw him I saw him with a gun in his hand So I
20 reached back I could have been -- you know, I could
21 have -- he said something like, What the fuck; you
22 know what I'm saying, or something hostile, you know
23 what I'm saying You could just tell from the body
24 language. But when I seen him, you know I could have
25 just been -- I seen the gun.

1 Q Did you see a gun?

2 A Yeah. I seen his gun

3 Q Where was that?

4 A In his hand

5 Q Okay

6 A So I seen his gun. And I could have -- you know what
7 I'm saying He said something hostile I was just
8 going to be like, Yo, you know what I'm saying, I
9 ain't got no problems, you can shoot him, you know
10 what I'm saying. But I just reached back and grabbed
11 the gun that been on the seat And when I grabbed
12 the gun that been on the seat, I like -- I reached
13 back and I grabbed it And when I grabbed that gun I
14 saw -- I didn't really see too much of his gun come
15 up as I seen that little laser thing on his gun come
16 up So when he raised up his little laser thing on
17 the gun, I started to raise the gun that was in my
18 hand

19 Q Right

20 A So when I -- I didn't even think I had it raised,
21 and then I just heard like the gun been loud, you
22 know what I'm saying I didn't know it would be that
23 loud. I just heard him fire off a round And it had
24 hit me in the shoulder, you know I ain't much feel
25 it, but I knew I been shot because the bullet had

1 jerked back my shoulder So I think I fired off like
2 a round I think I fired off like a bullet And
3 that was it, you know what I'm saying Because after
4 that he shot -- I mean, he just kept shooting and
5 shooting, you know what I'm saying And the gun been
6 like really loud

7 So after that, after he shot me in the shoulder,
8 you know, another bullet came and hit me in the
9 stomach, you know what I'm saying I ain't really
10 feel the one that hit me in the shoulder, but I felt
11 like the blood coming down and I knew I been hit
12 because, you know, two-and-two, you hear a loud gun
13 and you feel your shoulder jerk back, you know you're
14 shot But the bullet that hit me in my stomach, you
15 know, that been like a hot flash of heat, you know
16 what I'm saying So I really felt that, you know
17 what I'm saying

18 So -- and then the first thing, I didn't want
19 to -- I didn't want to -- he shot me but I really
20 didn't want to turn around because, you know,
21 realizing I could have got shot in the front, in the
22 face, I was thinking if I turned around, you know
23 what I'm saying, I might get shot in the back of my
24 head or something. So I turned around I turned
25 around sideways and I felt a bullet hit me in my

1 side

2 Q Okay

3 A And then --

4 Q You're still at the door of the van now or close to
5 it?

6 A Yeah I'm trying to get in the van See, when I
7 tried to get in the van, when I tried to get in the
8 van, it was harder than what I thought it would be.
9 Because when I turned around I put -- I tried to
10 raise my hand, but the bullet that had hit me in the
11 shoulder, it had cut off all my serves in my
12 shoulder So I couldn't even move this hand

13 Q That was what? Your left hand?

14 A Yeah, my left hand.

15 Q And what -- go ahead Go ahead You're turning
16 around You got shot

17 A I turned around I got shot And then --

18 Q Where did that shot hit you?

19 A It hit me in the side right here

20 Q Okay

21 A So when I turned around, I turned like all the way
22 around I was trying to get in the van and I felt
23 him shoot me in the back And then the two -- the
24 two bullets that hit me in the hand, I ain't much
25 feel them, you know what I'm saying. I don't know at

1 what point in time I got shot like that

2 Q Did you manage to get back in the van?

3 A Yeah, I got back in the van.

4 Q Did anyone else get out of the van?

5 A No

6 Q Okay Now, after that, are you conscious at that
7 point in time?

8 A Man, I'm barely conscious I don't even -- I got
9 back in the van and I leaned back in the seat And I
10 was leaned back in the seat And I just -- man, I
11 ain't say nothing I mean, my cousin, he was like --
12 he was like, Man, he shot you; he shot you And I
13 ain't say nothing I just leaned back in the seat
14 I had blood all over my shirt and my hand was
15 bleeding bad and, you know what I'm saying,
16 everything just been covered with blood I just, you
17 know --

18 Q How were you feeling then? Pretty bad?

19 A I felt like I was -- man, I been cold But I -- man,
20 I don't know I was -- I was cold. Right? But it
21 was like I was feeling lazy and drunk at the same
22 time And I was leaning back in the seat, and I
23 heard my cousin saying -- he was screaming, panicking
24 whatever. I don't know what he been saying But,
25 you know what I'm saying, I didn't want to talk

1 because I didn't want to -- I ain't --

2 Q Did you have any conversation with anyone in the van?

3 A I ain't have no conversation with nobody

4 Q Okay Do you remember the van stopping on the
5 interstate? Were you conscious of that?

6 A As soon as I left, as soon as I got back in the van,
7 when I leaned back in the seat, like almost as soon
8 as that happened I passed out

9 Q Okay. Do you remember the police -- you sat here
10 They played a video from the police car Do you
11 remember police calling on you in the van to get out
12 of the van?

13 A No I must have still been passed out

14 Q Do you remember falling out of the van?

15 A I remember when I was in the van. And I looked down.
16 I woke up like real quick. Like in the van, I don't
17 know how long they said they'd been out there, but I
18 woke up like real quick And I was -- I sat there
19 for a second and I heard something, you know, out the
20 back I prayed I comprehended enough to figure it
21 was like the police back there So I sat and I was
22 like, Damn, you know what I'm saying Nobody was
23 trying to come help me So I sat there for a second
24 I didn't -- I just felt bad I didn't feel like
25 getting up I had been shot I didn't feel like

1 getting up I just -- I didn't want to -- it had
2 seemed like to get up to open the sliding door, it
3 was too much effort, you know what I'm saying So --

4 Q Did you manage to do that eventually?

5 A Yeah When I figured nobody was coming to help me, I
6 was like, man, I've got to do something, you know
7 what I'm saying, because my hand still been bleeding
8 My shirt is covered with blood Everything is all
9 bloody

10 And I raised up And it took like everything
11 I raised up And I slid the door. And I don't know
12 I guess I fell, stepped down or whatever I fell
13 out. And then after I fell out, I felt like I ain't
14 had my eyes open.

15 I felt people there was running, and they was
16 touching me, and they was like, you know what I'm
17 saying, You've got to stay awake, you've got to stay
18 awake I was like I don't know They been asking me
19 like a whole bunch of questions I pretty much
20 knew -- I knew I had my license on me and everything.
21 So I knew they was going to find out who I was So,
22 you know, I didn't feel like wasting my breath
23 telling them, you know what I'm saying, because I
24 couldn't really talk too good anyway

25 Q You were taken to the hospital. How long were you at

1 Richland Memorial Hospital? Was it Richland Memorial
2 that you were taken to?

3 A Yes, sir

4 Q How long were you there for?

5 A Like two weeks

6 Q Two weeks?

7 A Two weeks or so

8 Q Do you remember when you were discharged? Do you
9 remember what day it was when you were discharged?

10 A It was like the 20 something.

11 Q Okay Were you in intensive care then?

12 A Yeah Pretty much almost the whole stay

13 Q Almost the whole stay? Just a couple of other
14 things, please, Demetrio. I show you what's marked
15 as State's Exhibit No 30 Have you ever had this
16 weapon in your hand?

17 A No, sir.

18 Q No. Okay. I'll show you what's marked as State's
19 Exhibit 32 Have you ever had this weapon in your
20 hand?

21 A No, sir.

22 Q Have you ever seen this weapon before?

23 A No, sir.

24 Q Did you travel with Mr Alexander and Tashim to go
25 rob Mr Patterson's store?

1 A No, sir

2 Q Did you get out of the van with Tashim and Willie
3 Alexander and enter Mr Patterson's store to rob it?

4 A No, sir

5 Q Did you enter Mr Patterson's store --

6 A No.

7 Q -- to rob it and place a gun at the head of
8 Mr Stokes?

9 A No.

10 Q Were you shot by Mr Patterson inside his store?

11 A No.

12 Q On October -- I'm sorry.

13 A No. He shot me outside when I was right outside the
14 van

15 Q Did you ever get inside the store that day?

16 A No. I wasn't trying to get inside the store

17 Q Demetrio, thank you very much Answer any questions
18 the Solicitor may have.

19 MR MEADORS Beg the Court's indulgence

20 CROSS-EXAMINATION

21 BY MR MEADORS

22 Q You say your cousin was talking to you after you had
23 been shot and you were driving off?

24 A I'm pretty sure

25 Q You're pretty sure?

1 A Well, I mean, when I been shot, it been like -- I
2 heard him talking I'm pretty sure it was him
3 talking But, you know, it's like you're trying to
4 hear something that's far -- he might be right next
5 to me, but it sounded like he was far away because I
6 guess I been going unconscious or something

7 Q You guess you were going unconscious A minute ago
8 you testified you heard your cousin say, Man, he shot
9 you, he shot you Right?

10 A Yeah

11 Q There's no question you were talking to your cousin
12 then?

13 A I wasn't talking to him That's what he was saying

14 Q No question he was talking to you. You heard him?

15 A Yeah

16 Q And you answered him back. Yeah, he shot me?

17 A No I didn't answer him

18 Q You didn't answer him You just remember him saying
19 that?

20 A Yeah

21 Q So based on him saying that to you, he knew you were
22 alive then, didn't he? You were talking You heard
23 him talking?

24 A Yeah I had just stepped back in the van So I had
25 to be alive to step back into the van

1 Q You said you were waiting for somebody to give you
2 help Did your cousin take you to the hospital?

3 A Not that I'm aware of

4 Q I'm sorry?

5 A Not that I'm aware of.

6 Q And where did this third person, Tashim, go?

7 A I don't know I was passed out As soon as -- I
8 mean, when they saw the video, I was the only one in
9 the van, you know what I'm saying I was passed out
10 Then when I stepped out, you know what I'm saying, I
11 passed out right back again

12 Q So you don't remember anything from the time you're
13 in that van until when? When do you first remember
14 something?

15 A From the time --

16 Q When do you black out? What's the last thing you
17 remember?

18 A You talking about the first time or the second --
19 when he shot me or when I stepped out the van?

20 Q When he shot you, what's the next thing you remember?

21 A Stepping back in the van

22 Q What after that?

23 A I sat down or I leaned back in the chair

24 Q Then what happened?

25 A Then I passed out I don't remember talking I

1 passed out

2 Q Then you passed out The next thing you remember is
3 what?

4 A When I woke up in the van and I heard the people on
5 the back, on the back of the -- in the back of the
6 van on their little sound system.

7 Q I think you said with Mr. Strickler that you can't
8 remember whether you went to Colonial or over to Mr
9 Alexander's house that first morning Then you said
10 it doesn't really matter?

11 A Well, I don't see how it does matter.

12 Q Well, I'm asking you, it matters to me Do you
13 remember where you went?

14 A I probably went to his house

15 Q You probably went to his house So if you testified
16 previously at another hearing that you went to
17 Colonial Villa, would you dispute that?

18 A No

19 Q You wouldn't dispute that?

20 A I told him that I didn't remember.

21 Q I believe previously you've testified you went to
22 Colonial Villa?

23 A In my statement I said I didn't remember. I said I
24 went to Colonial Village, but I just couldn't
25 remember if I went to my cousin's house first or my

1 girl dropped me off at Colonial Village or if she
2 dropped me off at my cousin's house

3 Q When is the first time you saw the gun that Tashim
4 had?

5 A When we been -- I think it was on our way there
6 When he sat down, he had put it in the seat. He sort
7 of like tucked it under his leg or whatever I guess
8 it been in his waistband when he sat down I guess
9 he then just covered it or wherever he put it there

10 Q You said you weren't surprised to see it?

11 A I mean, I knew he sold drugs, you know what I'm
12 saying It's not a big revelation You see drug
13 dealers and you see guns Just like you see cops;
14 you see badges

15 Q And actually where were you going that day?

16 A To Executive Staffing Service.

17 Q And for what reason?

18 A Just to try to get a better job.

19 Q You were working at Frazier?

20 A Yes, sir

21 Q Making pretty good, weren't you?

22 A No, sir

23 Q What were you making?

24 A I think I was -- I was still like in the \$6 range,
25 you know.

1 Q And what time was your -- where is this Executive
2 place you were going?

3 A Right up there on Elm Street

4 Q And what time was your appointment?

5 A It wasn't really an appointment. She just told me to
6 come in But, see, I had to tell my cousin to take
7 me to a job interview. So I told him to take me to
8 the job interview

9 Q Sir, didn't you testify previously under oath you had
10 an appointment at 11?

11 A Yeah It was like an appointment, you know what I'm
12 saying I had to be there at 11 She said come in
13 at 11 But it wasn't like an appointment
14 appointment, not like a job interview appointment
15 appointment You know what I'm saying? It's like
16 you go there and she talks to you and see if she can
17 get you into the job, you know what I'm saying But
18 it's not a guarantee, you know what I'm saying It's
19 not like you've got a -- like you're going to,
20 applying for an Executive job or something

21 Q And where is the first place -- I'll move on Where
22 is the first place that you saw your cousin that
23 morning?

24 A Probably at his house

25 Q Then where did you go?

- 1 A Colonial Village
- 2 Q Okay And who did you see there?
- 3 A Oh Pat and -- it might have been -- I don't know
- 4 if -- I don't think I really saw Pat. But Tashim and
- 5 he been playing cards with somebody. I don't know
- 6 Q So you didn't see somebody named Pat that Patrick?
- 7 A It was his house He had to be there. He might have
- 8 been there I don't know.
- 9 Q But you can't remember seeing him?
- 10 A No. I didn't stay that long
- 11 Q Had you ever been to Patrick's house before?
- 12 A Yeah.
- 13 Q What's Patrick's last name?
- 14 A Davis
- 15 Q What's Tashim's last name?
- 16 A Well, I know Vann because he said it now, you know
- 17 what I'm saying
- 18 Q Do you know it?
- 19 A I know it now
- 20 Q Did you know it prior to that day?
- 21 A Prior to today or the day?
- 22 Q October 8th Did you know it, his last name prior to
- 23 that?
- 24 A No
- 25 Q Do you know where he is now?

- 1 A No No
- 2 Q Do you know where Patrick is?
- 3 A Probably, yeah
- 4 Q Where?
- 5 A He probably stay in the same apartments.
- 6 Q Now, this is your hat, isn't it?
- 7 A Yes, sir
- 8 Q There is no question about that?
- 9 A No
- 10 Q And there's no -- tell this jury, there's no question
- 11 you got shot, is there?
- 12 A No. No question.
- 13 Q And Dr Bynoe saved your life, didn't he?
- 14 A Yeah. I love the man
- 15 Q You love the man?
- 16 A Yes, sir
- 17 Q He's a good doctor?
- 18 A Yes, sir
- 19 Q I love him, too And do you remember testifying
- 20 previously how many injuries you had?
- 21 A Yeah.
- 22 Q Didn't you testify previously you had eight gunshot
- 23 wounds?
- 24 A Yeah I do
- 25 Q You didn't have that many gunshot wounds, did you?

1 A I do

2 Q You weren't hit but four times, were you?

3 A No I was hit at least six

4 Q So that means it wasn't eight?

5 A No 'Cause, see, what it was is when I went there,
6 when I was going for my check ups, he said -- he
7 didn't tell me about the exit wounds, but I took them
8 to be entry wounds. But I just figured that he had
9 cut in because, you know what I'm saying, he cut me
10 so much, I just figured he cut the bullets out But
11 I have at least six entry wounds At least I have
12 eight wounds in all I have two on my side I have
13 two on my back I have one in my stomach I have
14 one right here on my shoulder. And I've got two in
15 my hand So I've got at least eight And it
16 couldn't have been four because one bullet he said he
17 had to go in and dig out, you know what I'm saying
18 So that couldn't have been an exit wound

19 Q But you previously testified under oath you had eight
20 wounds You're now saying it's six?

21 A That's what -- that's what he had told me

22 Q I'm not asking you that I'm asking what you
23 testified to previously

24 A I'm testifying, I mean, I'm telling you --

25 Q I mean, when why are you looking over there? I'm

1 asking you the question Did you testify
2 previously --

3 A I'm looking at you

4 Q No, you weren't, sir You were looking at them.

5 A Yes, I am I'm looking at you.

6 Q Now you are

7 THE COURT Mr. Meadors, let him answer the
8 question, please Ask the question Let him answer
9 the question

10 Q Did you testify previously, you, testify previously
11 under oath that you'd been shot eight times?

12 A Yes, sir

13 Q And you said a minute ago, well, it had to be at
14 least six Is that right?

15 A Yeah. At least six.

16 Q And it would have been four if you had entrance and
17 exit, couldn't it?

18 A No, it couldn't He said -- if you listened to what
19 the doctor said, he said he had to pull the bullet on
20 out -- he had to pull the bullet out of my sigmoid
21 colon He didn't go in -- he said like the two
22 bullets that were right here, I've got two wounds
23 right here So that's two wounds If you take them
24 two wounds and you say that they're either exit or
25 entry wounds, along with the two wounds in my back,

1 then that's two bullets right there

2 So then one more bullet would be in my stomach
3 that he said he had to pull out That's three
4 bullets right there The fourth bullet would be the
5 bullet that hit me in the shoulder The fifth and
6 sixth bullets would be the ones that hit me in the
7 hand. He didn't comment on that. He was talking
8 about -- he didn't comment on the -- when he was up
9 here, he was saying what he did But, you know what
10 I'm saying, he is a surgeon and he worked on all
11 this

12 And, you know what I'm saying, I said I love him
13 for it, but he saved my life But he didn't work on
14 my shoulder because a neuro -- it cut through my
15 brachial plexus A neurologist worked on that He
16 didn't work on my hand because it was a hand injury
17 and an orthopedist, orthodontist, one of them worked
18 on it

19 Q You love him, but he's wrong about the bullets?

20 A No, he's not wrong I'm saying --

21 MR. STRICKLER. I object That's pitting

22 THE COURT That's pitting

23 MR. STRICKLER And I have a matter of law

24 MR MEADORS. Your Honor, he just said it.

25 THE COURT All right, counsel You know, I

1 know it's getting late in the day Approach the
2 bench

3 (Whereupon, a bench conference is had)

4 THE COURT Move on, please

5 Q Now, you said you were working at Frazier Tire when
6 that you're scheduled? What was your schedule at
7 Frazier Tire?

8 A Like 7 I usually wake up like 6 But it was like
9 from 7 30 to 5 Monday through Friday

10 Q And you worked on Saturdays?

11 A Every other Saturday

12 Q I'm sorry You're right What day of the week was
13 this?

14 A This was Tuesday

15 Q And you took a comp day?

16 A Yeah

17 Q Had you worked the day before?

18 A I -- I don't believe so

19 Q Did you take a comp day for that day?

20 A I -- I don't know if I had that many hours I might
21 have had like half a day I might have had like 12
22 hours. If I took the day before then, I would have
23 had to take eight hours And then the day that I was
24 going for the job interview might have been like a
25 half day. I might have came in late or something

1 like that

2 Q Now, I mean, you fired a gun that day, didn't you?

3 A Yeah. I'm pretty sure

4 Q You're pretty sure you did? Where did you fire it?

5 A It was like a blind shot Really I was already hit
6 I just raised it up and tried to put it in his
7 general direction But, you know what I'm saying, I
8 ain't too sure where it went.

9 Q So you fired a weapon?

10 A Yeah

11 Q And what type of weapon was it?

12 A It was like a 380. It was like a smaller gun, you
13 know what I'm saying

14 Q Where did you get that weapon?

15 A Off the seat

16 Q And you got that weapon off the seat as you were
17 heading into Ntense Kustom Audio on Percival Road,
18 didn't you?

19 A Can you repeat that?

20 Q Yes, sir You got the weapon off the seat before you
21 went in to go towards Ntense Audio?

22 A Before I went in?

23 Q Well, yes, sir I'm not -- did you get the gun from
24 the van and then go toward Ntense Audio? That's all
25 I'm asking

- 1 A I was outside the vehicle I reached back in
- 2 Q Explain that to me, sir?
- 3 A I was outside the vehicle and I reached back in to
- 4 grab it when I saw his gun
- 5 Q So you saw his gun and then reached back in for this
- 6 other gun?
- 7 A Yeah I was just like out of the back of the -- the
- 8 back of the van been like right here, you know what
- 9 I'm saying
- 10 Q Where was Tashim?
- 11 A He was getting ready to get out.
- 12 Q Wasn't he on his way out behind you?
- 13 A He was pretty close
- 14 Q Well, whose gun was it?
- 15 A His
- 16 Q So he didn't have it with him?
- 17 A I don't guess he was taking it with him He wasn't
- 18 going to be there long.
- 19 Q So you're going out and he's behind you?
- 20 A He ain't right behind he He's got to wait until I
- 21 get out
- 22 Q Well, the gun is on the seat. Is it behind him? I
- 23 mean, the gun wasn't with you, was it?
- 24 A No
- 25 Q Where was it in the seat?

- 1 A I was sitting like towards the end And, you know,
2 we was talking All three of us was talking on the
3 way there So I was sitting like on the end of the
4 seat really. Tashim wasn't like right behind Lloyd
5 He was like towards the middle of the seat, and I was
6 like towards the end of the seat
- 7 Q And we're not talking -- it's one of these second
8 seats that's all -- I mean, it's not like these two
9 juror seats. It's one seat, isn't it?
- 10 A Yeah It's like a couch seat
- 11 Q They're connected. A couch seat Thank you So
12 you're sitting over here if this is the passenger's
13 side, and you're saying Tashim is right here, right?
14 Beside you.
- 15 A Yeah Beside me
- 16 Q Yeah. And he's got the gun?
- 17 A Yes It's under him
- 18 Q And you go out first?
- 19 A Yeah.
- 20 Q Tashim comes out after you?
- 21 A He didn't come out
- 22 Q How long did he wait before he came out?
- 23 A I was only out like one second before I looked up and
24 I saw him And he been like getting ready to stand
25 up and come out the vehicle But I reached back and

1 grabbed it When we was firing at each other, he
2 fired at me and I fired back

3 Q Had he already fired at you at that point?

4 A No I didn't grab the gun yet

5 Q I didn't ask what you did Had Mr Patterson already
6 fired at you at that point?

7 A At what point? I don't understand your question

8 Q When you're getting out of the van, I thought you
9 testified you got out of the van, you saw him with a
10 gun?

11 A Yeah

12 Q Had he fired at you at that point?

13 A No.

14 Q Okay Did you think he was going to?

15 A He ain't looked -- he -- he might have I don't
16 know

17 Q You don't know You were just going there to visit?

18 A Well, he came outside with a gun, man I'm not going
19 to sit there like a dummy and get shot

20 Q And he didn't fire at you at that point?

21 A He had a gun outside

22 Q Your testimony, you go then get a gun?

23 A I reached back and got a gun

24 Q Had he fired at you at that point?

25 A Yeah.