

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Chesterfield County S.C. Supreme Court
R. Ferrell Cothran, Jr., Circuit Court Judge

MICHAEL LAMONT WATTS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000302

APPENDIX

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STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
MICHAEL L. WATTS	)	
<u>DEFENDANT</u>	)	

July 30th - August 1st , 2007
 Chesterfield, South Carolina
 Volume Number 01 of 03

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE; and a jury.

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ANGELO MASON,
TAMEKA AUSTIN,
DANNY BENNETT,
MIKE TRESDALE,
LARRY BROWN,
JENNIFER STONER,
DAN DEFREESE,
JANICE ROSS,
CRYSTAL JONES,
FERMAN MACKEY,

HATTIE O. GORDON
Circuit Court Reporter

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VOIR DIRE OF THE JURY

THE COURT: Solicitor, you want to call the first case for trial.

MR. JOYNER: Yes, sir. Got a few indictments here, Judge. State calls 05-GS-13-0471. This is State of South Carolina v. Michael Watts. He's indicted for murder.

05-GS-13-0474; Michael Watts. Indicted for assault and battery with intent to kill.

05-GS-13-0473, State v. Michael Watts. Second indictment for assault and battery with intent to kill.

05-GS-13-0499, State v. Michael Watts. Indicted for possession of a weapon during the commission of a violent crime.

05-GS-13-0476, State v. Michael Watts. Indicted for discharging a weapon into an occupied building.

And the final indictment is 05-GS-13-0475, State v. Michael Watts. Indicted for firearms in a public building.

THE COURT: Ladies and gentlemen of the jury. As you heard the State has called the first case for trial. There are several indictments, and I will go over these one more time with you. The Defendant, Michael Watts, is present in Court and is represented by Mr. Rogers of the South Carolina Bar, is charged in the bills of indictment by the Grand Jury of Chesterfield County under 05-471 with

1 the offense of murder. On 474 the offense of assault and
2 battery with intent to kill. On 05-473 with the offense
3 of assault and battery with intent to kill. On 476
4 discharging a firearm into an occupied building. And 475
5 firearms in a public building. And 499 for possession of
6 a weapon during commission of certain crimes.

7 Mr. Watts, as I said, is present in Court represented
8 by Mr. Rogers, and I'm going to ask Mr. Watts at this time
9 for purposes of voir dire questions to stand and face the
10 jury so I can pose the kinship and relationship questions.
11 Thank you, sir. You may be seated.

12 Do I have anybody on the panel who is related by
13 blood or marriage or has any business, social, religious
14 fraternal relationship with Michael L. Watts? If so we
15 need you to stand at this time. Your name, please?

16 JUROR: Josie Bivins.

17 THE COURT: If you will step forward. I need you to
18 come to the box where Madam Court Reporter is located.
19 Counsel, you may approach.

20 CLERK OF COURT: 147.

21 THE COURT: How does the question apply?

22 JUROR: Well, him and my daughter cause they stayed
23 together.

24 THE COURT: He and your daughter used to reside
25 together?

1 JUROR: His girlfriend.

2 THE COURT: Okay. Anything else?

3 JUROR: No, sir.

4 THE COURT: If you were to be seated on this jury
5 could you give both the State and the Defendant a fair and
6 impartial trial?

7 JUROR: Yes, but I'd rather not.

8 THE COURT: You would rather not serve, but you feel
9 you could be fair and impartial?

10 JUROR: Yes.

11 THE COURT: Anything else you need to tell us about?

12 JUROR: No, sir.

13 THE COURT: Okay. You're not related by blood to the
14 defendant?

15 JUROR: No, sir.

16 THE COURT: Okay. And there was never any marriage
17 in there that causes any marital kinship?

18 JUROR: No, sir.

19 THE COURT: Okay. You may return to your seat. I
20 think I'm going to stay right here. The same question I
21 posed to you. Anybody related by blood or by marriage,
22 have any business, social, religious or fraternal
23 relationship or affiliation with any of those individuals.
24 If so we need you to stand. I'm going to ask you to come
25 forward possibly, okay. If these folks are present in the

1 Court we'd like for you to stand and face the jury panel
2 where they can see you. Jeff Crowder, David Evans, Latoya
3 Miller, Tameka Austin, Kevin Johnson, Tyrone Miller,
4 Charles Miller, Dewayne Miller, Angelo Mason, Mike
5 Tresdale, Chief Larry Brown with the Pageland P.D., Eric
6 Brown, Ethan Foard, D.C. Bennett, S.L.E.D. Agent Dan
7 Defreese, S.L.E.D. Agent Jennifer Stoner, Doctor Joel
8 Sexton of Newberry, Crystal Jones. If so -- y'all may be
9 seated. If so we need you to stand at this time. If you
10 will come forward one at the time. We need to talk with
11 you up here.

12 JUROR: Your Honor you said ---

13 THE COURT: If you know them that's fine. The
14 question was if you are related by blood or marriage or
15 have any business, social, religious or fraternal
16 relationship with any of those individuals we need you to
17 come up and tell us about it. Your name?

18 JUROR: (inaudible).

19 THE COURT: How does that question apply to Mr. Larry
20 Brown?

21 JUROR: (inaudible).

22 THE COURT: You are related to Larry Brown? Anyone
23 else?

24 JUROR: No, sir.

25 THE COURT: That's by marriage?

1 MR. JOYNER: Number Six?

2 THE COURT: Yes, sir.

3 JUROR: I know Larry Brown. We went to school
4 together and I know him pretty good.

5 THE COURT: Okay. Are you related to him in any way?

6 JUROR: No just went to school together.

7 THE COURT: All right. And the fact that y'all went
8 to school together would that affect your ability to be
9 fair and impartial?

10 JUROR: No, sir.

11 THE COURT: All right. On Miss Baker, unless y'all
12 want me to take care it's a marital relationship then that
13 Baker is out. Anyone else? Ladies and gentlemen of the
14 jury, those alleged offenses occurred up in Chesterfield
15 County up in the Town of Pageland allegedly at the Matrix
16 Nightclub in Pageland on November 28th of 2004.

17 If you have any personal knowledge about this matter
18 and more specifically whereby that you feel you could not
19 be a fair and impartial juror or you have developed some
20 feelings of any prejudice or any bias towards either the
21 State or the Defendant or you have formed an opinion about
22 this matter we need to know about it at this time.

23 All right. If anybody feels that they cannot be fair
24 and you feel like that you are prejudiced or biased in any
25 way against the Defendant or the State of South Carolina

1 we need for you to come up and talk with us at this time.

2 Does anybody on the jury know of any reason
3 whatsoever why you could not serve on this jury? Anybody
4 on the panel presently represented or represented in the
5 past by the Solicitor's Office of the Fourth Circuit or
6 Mr. Rogers? All right, gentlemen, any other questions?

7 Anybody read or have heard any news accounts about
8 this matter in the newspaper or whatever source that you
9 feel like -- well, let me leave it at that. If you've
10 read or heard any news account about any of the
11 allegations in this matter we need you to stand at that
12 time.

13 If you have had -- if you've got any special
14 knowledge, training or experience in the use of firearms
15 or for instance anybody out there that's got a concealed
16 weapons permit or you've been trained or you feel like
17 that you are an expert or have special knowledge about
18 firearms we need to know about that at this time.

19 Anybody out there that regularly use firearms for
20 training. We're not talk about hunting or anything of
21 that nature? Has a special familiarity with firearms?
22 That will do it.

23 MR. JOYNER: Yes, sir.

24 MR. ROGERS: Yes, sir.

25 SELECTION OF THE JURY

1 THE COURT: As your name is called you need to come
2 around by Madam Bailiff. Come right up here in front of
3 Madam Clerk's desk, turn around and face both tables where
4 everybody can get a good look at you and they will decide
5 at that time whether they will receive you or excuse you
6 for this trial. Okay, bring your personal belongings with
7 you. Please do not believe them back there cause if
8 you're seated on the jury you're going to need them. And
9 you have my permission to feel awkward because if I was
10 one of y'all I would, too. So just relax. Okay.

11 MR. ROGERS: Your Honor, the strikes are five and
12 ten?

13 THE COURT: Yes, sir.

14 CLERK OF COURT: Number 34, Otis G. Gainey. What
15 says the State?

16 MR. JOYNER: Present the juror.

17 CLERK OF COURT: Defense?

18 THE COURT: Hol up just a minute, counsel. We just
19 left out a name. Let me pose another question. If
20 everybody's recall -- let me pose an additional question
21 to you. Anybody on the panel related by blood or by
22 marriage to Clifton Funderburk, Jr. now deceased. If so
23 we need you to stand at that time. If you had any
24 business, social, religious or fraternal relationship or
25 affiliation with Mr. Funderburk we need you to stand at

1 this time. All right. I apologize. You may continue.

2 MR. ROGERS: Please excuse Mr. Gainey.

3 CLERK OF COURT: You may return to your seat. Number
4 45, William J. Horton, Jr. What says the State?

5 MR. JOYNER: Present the juror.

6 CLERK OF COURT: Defense?

7 MR. ROGERS: Court's indulgence just one moment.
8 Please excuse Mr. Horton.

9 CLERK OF COURT: Number 130, Lance J. Abernathy.
10 What says the State?

11 MR. JOYNER: Present the juror.

12 CLERK OF COURT: Defense?

13 MR. ROGERS: Please present the juror.

14 CLERK OF COURT: You may have a seat in the jury box.
15 Number 123, Christy M. Woodward. What says the State?

16 MR. JOYNER: Present the juror.

17 CLERK OF COURT: Defense?

18 MR. ROGERS: Please swear Miss Woodward.

19 CLERK OF COURT: Have a seat in the jury box, please.
20 124, Darryl Wright. What says the State?

21 MR. JOYNER: Excuse the juror, please.

22 CLERK OF COURT: You may return to your seat, please.
23 Number 129, Pamela S. Amerson. What says the State?

24 MR. JOYNER: Please present the juror.

25 CLERK OF COURT: Defense?

1 MR. ROGERS: Please excuse Miss Amerson.

2 CLERK OF COURT: You may return to your seat. Number
3 147, Josie A. Bivins. What says the State?

4 MR. JOYNER: Please excuse the juror.

5 CLERK OF COURT: You may return to your seat. Number
6 144, Penny L. Koyne. What says the State?

7 MR. JOYNER: Present the juror, please.

8 CLERK OF COURT: Defense?

9 MR. ROGERS: Please swear the juror.

10 CLERK OF COURT: Have a seat in the jury box, please.
11 Number 94, Threadgill Redfearn. What says the State?

12 MR. JOYNER: Please present the juror.

13 CLERK OF COURT: Defense?

14 MR. ROGERS: Please swear Mr. Redfearn.

15 CLERK OF COURT: Have a seat in the jury box. Number
16 48, Kathy L. Huggins. What says the State?

17 MR. JOYNER: Please present the juror.

18 CLERK OF COURT: Defense?

19 MR. ROGERS: Please swear Miss Huggins.

20 CLERK OF COURT: Have a seat in the jury box, please.
21 Number 51, Julie S. Isgett. What says the State?

22 MR. JOYNER: Present the juror.

23 CLERK OF COURT: Defense?

24 MR. ROGERS: Please excuse Miss Isgett.

25 CLERK OF COURT: Return to your seat, please. Number

1 135, Bryan J. Starling. What says the State?

2 MR. JOYNER: Present the juror, please.

3 CLERK OF COURT: Defense?

4 MR. ROGERS: What was the number, please.

5 CLERK OF COURT: Number 135.

6 MR. ROGERS: Please swear Mr. Starling.

7 CLERK OF COURT: Have a seat in the jury box, please.

8 Number 73, Bryan J. McManus. What says the State?

9 MR. JOYNER: Present the juror.

10 CLERK OF COURT: Defense?

11 MR. ROGERS: Please swear Mr.

12 CLERK OF COURT: Have a seat in the jury box, please.

13 Number 93, Tonya L. Rayfield. What says the State?

14 MR. JOYNER: Please excuse this juror.

15 CLERK OF COURT: You may return to your seat, please.

16 Number 131, Janet F. Caulder. What says the State?

17 MR. JOYNER: Please present the juror.

18 CLERK OF COURT: Defense?

19 MR. ROGERS: Please excuse Miss Caulder.

20 CLERK OF COURT: You may return to your seat. Number

21 24, Dorothy M. Covington. What says the State?

22 MR. JOYNER: Present the juror, please.

23 CLERK OF COURT: What says the Defense?

24 MR. ROGERS: Please swear Miss Covington.

25 CLERK OF COURT: You may have a seat in the jury box.

1 Number 137, Robin S. McAlister. What says the State?

2 MR. JOYNER: Please present the juror.

3 CLERK OF COURT: Defense?

4 MR. ROGERS: Please excuse Miss McAlister.

5 CLERK OF COURT: You may return to your seat. Number

6 47, Johnathan J. Hudley. What says the State?

7 MR. JOYNER: Please present the juror.

8 CLERK OF COURT: Defense?

9 MR. ROGERS: Please swear the juror.

10 CLERK OF COURT: Have a seat in the jury box, please.

11 Number 29, Doris A. Deese. What says the State?

12 MR. JOYNER: Present the juror, please.

13 CLERK OF COURT: Defense?

14 MR. ROGERS: Please excuse Miss Deese.

15 CLERK OF COURT: You may return to your seat. Number

16 46, Veaundra L. Hough. What says the State?

17 MR. JOYNER: Please present the juror.

18 CLERK OF COURT: Defense?

19 MR. ROGERS: Please excuse Miss Hough.

20 CLERK OF COURT: You may return to your seat. Number

21 114, Jeffrey W. Watson. What says the State?

22 MR. JOYNER: Present the juror, please.

23 CLERK OF COURT: Defense.

24 MR. ROGERS: Please tell me the number, again.

25 CLERK OF COURT: 114.

1 MR. ROGERS: Please swear Mr. Watson.

2 CLERK OF COURT: Have a seat in the jury box. Number
3 132, Alvin L. Myers. What says the State?

4 MR. JOYNER: Please excuse the juror.

5 CLERK OF COURT: You may return to your seat. Number
6 142, Steven J. Douglas, Sr. What says the State?

7 MR. JOYNER: Please present the juror.

8 CLERK OF COURT: Defense?

9 MR. ROGERS: Please swear Mr. Douglas.

10 CLERK OF COURT: Have a seat in the jury box. Number
11 40, Sherry B. Hancock. What says the State?

12 MR. JOYNER: Present the juror, please.

13 CLERK OF COURT: Defense.

14 MR. ROGERS: Please swear Miss Hancock.

15 CLERK OF COURT: Have a seat in the jury box, please.

16 These are the alternates. Number 103, William T.
17 Smallwood. What says the State?

18 MR. JOYNER: Present the juror, please.

19 CLERK OF COURT: Defense?

20 MR. ROGERS: Please swear the juror.

21 CLERK OF COURT: Have a seat in the jury box, please.

22 Number 91, Kevin O. Pryor. What says the State?

23 MR. JOYNER: Please excuse the juror.

24 CLERK OF COURT: You may return to your seat. Number
25 76, Tony E. Melton. What says the State?

1 MR. JOYNER: Present the juror, please.

2 CLERK OF COURT: What says the Defense?

3 MR. ROGERS: Please swear Mr. Melton.

4 CLERK OF COURT: Have a seat in the jury box, please.

5 THE COURT: Counsel, any matters with -- concerning
6 jury selection?

7 MR. JOYNER: None from the State, Your Honor.

8 MR. ROGERS: Court's indulgence just one moment. No,
9 Your Honor, no matters.

10 THE COURT: I'm going to ask all the jurors except
11 Miss Covington to step back to the jury room for just a
12 minute. Please if she will remain in. You will come
13 around Miss Covington.

14 (WHEREUPON, the jury panel was excused from the
15 courtroom at 1:17 p.m.)

16 THE COURT: Counsel y'all may approach.

17 MS. COVINGTON: I was a friend of the family, but I
18 didn't know the guy.

19 THE COURT: You didn't know the alleged victim?

20 MS. COVINGTON: No, sir.

21 THE COURT: You know the family?

22 MS. COVINGTON: Yes, sir.

23 THE COURT: All right. You know the family. I'm
24 going to ask you if you are seated on the jury can you be
25 fair and impartial to both the State and the Defense?

1 MS. COVINGTON: Um hum.

2 THE COURT: If there is any question about it we want
3 to hear it now.

4 MS. COVINGTON: No problem.

5 THE COURT: You're not related to anybody that's been
6 named -- been called?

7 MS. COVINGTON: No.

8 THE COURT: How do you know the family?

9 MS. COVINGTON: One of his aunt's nephew is by my
10 brother.

11 THE COURT: Say that again.

12 MS. COVINGTON: One of Clifton's aunts got a kid by
13 my brother his aunt has got kids by my brother.

14 THE COURT: Kinship.

15 MR. ROGERS: Yes, sir.

16 MR. JOYNER: Yes, sir.

17 THE COURT: Okay. Under those circumstances I'm
18 going to excuse you.

19 MS. COVINGTON: Okay. That's fine.

20 THE COURT: Okay. If you will go back with the jury
21 panel over there. We can do one of two options. You put
22 both names in the box. You can seat whichever ends up is
23 the regular and draw another one. I think we already have
24 two alternates. This guy with the arm didn't he tell us
25 he had a problem?

1 A. He did. He said that had a day care problem. You
2 were going to keep him on any way if he can make
3 arrangements in the morning hours. So your plan is to
4 select another juror but leave that juror the same?

5 THE COURT: That's the way I'll have to do it unless
6 y'all want me to draw another name out?

7 MR. ROGERS: My preference would be to draw another
8 one and replace that lady with a new one.

9 THE COURT: Madam Clerk, we take the two alternates,
10 put them back in the box. Whoever you draw out will be
11 moved up to the regular and we need to go ahead and seat
12 another alternate, okay? Anybody got a problem with just
13 dropping two name in the cup?

14 MR. JOYNER: No, sir.

15 MR. ROGERS: No, sir.

16 CLERK OF COURT: Number 76, Tony E. Melton. What
17 says -- will move to replace Dorothy Covington?

18 THE COURT: That's right. We need to draw another
19 alternate. Strikes are one and two.

20 CLERK OF COURT: Number 134. Lorine R. Sutton, Jr.
21 What says the State?

22 MR. JOYNER: Present the juror, please.

23 CLERK OF COURT: What says the Defense?

24 MR. ROGERS: Please swear Mr. Sutton.

25 THE COURT: Mr. Sutton, come over and -- that will be

1 fine. Okay, since we have an additional draw any motions
2 concerning the jury selection?

3 MR. JOYNER: None from the State, Judge.

4 MR. ROGERS: Not from the Defendant.

5 THE COURT: Ladies and gentlemen of the jury that
6 remain on the jury panel at this time I am going to thank
7 you for coming and being willing to serve. We thank you
8 for your patience with the Court. We will let you know at
9 this time and ask for you to call in after 6:00 tonight.
10 Please try to check in between 6:00 and 7:30 at the number
11 that has been provided to you. If you do not have that
12 number please obtain it before your leave. With that said
13 y'all are excused for the afternoon. Thank you very much.

14 (WHEREUPON, the jury pool was excused from the
15 courtroom at 1:25 p.m.)

16 THE COURT: All right. All jurors are clear. I've
17 got an emergency hearing at 2:30 that will take about two
18 or three minutes. It shouldn't interfere with this trial
19 very little, but what time do we want them back or any
20 special issues we got or are we ready to go?

21 MR. JOYNER: Judge, I've got a -- I did have a
22 Jackson v. Denno issue but he's going to stipulate to it
23 so I don't have -- we're ready to go.

24 MR. ROGERS: We don't have any issue other than
25 sequestration of the witnesses.

1 THE COURT: Any problem with that?

2 MR. JOYNER: That's fine.

3 THE COURT: Y'all advise me now. The facilities are
4 very limited. There are a couple rooms back here and
5 maybe some rooms available back that you have to make
6 arrangements during lunch to make sure you divide it.

7 MR. JOYNER: Do we need to put his witnesses in a
8 separate location?

9 MR. ROGERS: Yes, sir. I'll take care of that.

10 MR. JOYNER: I just didn't know.

11 MR. ROGERS: I'll make sure that she's not in the
12 courtroom.

13 MR. JOYNER: Okay. That's fine.

14 THE COURT: Now, your investigator is going to be
15 Chief Brown?

16 MR. JOYNER: Yes, sir.

17 THE COURT: He can stay. Anything else?

18 MR. JOYNER: No, sir.

19 THE COURT: Let's bring them back in here and turn
20 them loose for lunch and maybe we can get started about
21 2:35.

22 (WHEREUPON, the jury panel enters the courtroom at
23 1:34 p.m.)

24 THE COURT: Everyone okay? Way into the lunch hour
25 so we're going to break now in just a minute and let you

1 get something for lunch. There are several eating
2 establishments close by here in Chesterfield. We're going
3 to try to keep a tight schedule and we want to start back
4 at 2:35. Okay. We're going to be back at 2:30. I've got
5 an emergency hearing on another matter that doesn't have
6 anything to do with this case I'm obligated to try to help
7 some attorneys with.

8 We'll be back at 2:30. If we're in here doing
9 something with that ease on through and go back to the
10 jury room. You're not under oath yet, but do not discuss
11 this case. Don't even discuss it amongst yourselves until
12 you are asked to do so which will be the deliberation
13 time.

14 Should anybody try to approach you in any form or
15 fashion do not discuss this case with them and immediately
16 let me know of any such contact. If it's not here in the
17 courthouse certainly you contact the Sheriff's Department
18 cause that would be highly improper for anybody to attempt
19 to do. So with that said y'all will be excused until
20 2:30. Remember, be careful to whom you talk and what you
21 may say. Anybody before I release them, counsel?

22 MR. JOYNER: No, sir.

23 MR. ROGERS: No, Your Honor.

24 THE COURT: Seems like there is something else.

25 MR. JOYNER: Judge, one thing if I can ask; that they

1 not read any papers. We usually ---

2 THE COURT: Well, let me go ahead and advise you
3 about that. This case, I talked with counsel about, it's
4 not going to take a tremendous amount of time. Please
5 avoid any press coverage, local press conference. That's
6 T.v radio or newspaper print until after we get through
7 with this case. You don't need to be improperly
8 influenced by some possible misinformation that could be
9 in the press. So be careful about that. Tony Melton.

10 JUROR: Yes, sir.

11 THE COURT: You were drawn so you move up into the
12 regular 12, okay. All right. We will -- I will work on
13 selecting a foreperson. I've got to look over your
14 background sheets here. I want to do that and then we
15 will put you under oath and we'll get to work right after
16 lunch. With that said everybody else remain seated while
17 the jury departs.

18 THE COURT: All jurors are clear? Okay, ladies and
19 gentlemen, the triers of fact are now seated. You had a
20 look at them. I would encourage you to possibly discuss
21 and maybe negotiate a possible resolution. If the Court
22 can be of any assistance let me know. We'll be back in
23 less than an hour.

24 MR. JOYNER: Thank you, Judge.

25 THE COURT: In recess until 2:30.

1 (WHEREUPON, Court was in recess at 1:34 p.m. and
2 reconvened at 2:35 p.m.)

3 THE COURT: Okay, Solicitor, if you're going to call
4 another companion case we need to get that on the record.

5 MR. JOYNER: Yes, sir.

6 THE COURT: Where I can hear from Defense on it and
7 also I recover my tracks by notice to the jury during the
8 opening, my opening.

9 MR. JOYNER: All right. Judge, the other case is
10 Docket 05-GS-13-0477. State v. Michael Watts. Indicted
11 for common law escape.

12 THE COURT: Anything from the Defense about the
13 calling of that?

14 MR. ROGERS: No, Your Honor.

15 THE COURT: Any voir dire on that? Any additional
16 voir dire before we swear the jury?

17 MR. JOYNER: None from the State.

18 MR. ROGERS: None from the Defense.

19 MR. JOYNER: Judge, the only other thing, I wanted to
20 go ahead and get -- to bring this into evidence. This is
21 the defendant's statement and I let my officer go, and he
22 was going to stipulate to this coming into evidence.

23 MR. ROGERS: I stipulated that we didn't have to have
24 the Jackson v. Denno. I wasn't challenging the statement
25 but I wasn't stipulating in agreement that the statement

1 just automatically comes in. It would have to come in
2 through somebody.

3 MR. JOYNER: That's why the officer was here, and
4 that's the whole point of me having the officer here.

5 THE COURT: All right. Let's get him back up here
6 when the time comes.

7 MR. JOYNER: That's no ---

8 MR. ROGERS: I only thought you meant for the Jackson
9 v. Denno hearing.

10 MR. JOYNER: That's okay. I can get him back up
11 here.

12 MR. ROGERS: The other matter, Your Honor. I renew
13 my motion on sequestration of witnesses. I know we were
14 about to start soon and swear the jury and I believe there
15 are some State's witnesses in the courtroom.

16 THE COURT: All right. That was granted. We need to
17 take care of any witnesses we've got out there, Solicitor.
18 I believe that takes care of that. All right. We'll
19 bring the jury in.

20 (WHEREUPON, the jury panel enters the courtroom at
21 3:06 p.m.)

22 THE COURT: All right. If I could have the first row
23 to shift down one. Let the record reflects that
24 Miss Hancock will be foreperson of the jury. Now, ready
25 to put you under oath and we'll get started.

1 (WHEREUPON, the jury panel was sworn in at 3:08 p.m.)

2 THE COURT: Ladies and gentlemen, thank you very much
3 for your patience. We are ready to commence the trial of
4 this case and we're going to go through several different
5 phases. First of all I'm going to talk with you just a
6 little bit just to let you know how we're going to move
7 forward through the phases of the trial and general
8 information.

9 And then both the State and the Defense will have an
10 opportunity to make an opening statement to you. Opening
11 statements are meant to be an outline of the case, and
12 they will be very brief. Don't have to make one, but most
13 of the time you will hear an opening statement from each
14 side.

15 After that will come the evidentiary portion of the
16 case where you will receive the evidence. It is crucial
17 that you listen and observe the evidence because you are
18 the triers and finders of the facts in this case. No one
19 else in the courtroom will be allowed to find the facts in
20 this case.

21 I don't even get involved in that. I'm the judge of
22 the law. The end result of any case is to reach a
23 verdict. Verdict is a Latin derivative word which means
24 in effect a true saying. So it can be said that the trial
25 in our court system is a search for the truth. How do you

1 reach a verdict? You find the facts from the evidence
2 presented.

3 In other words you have to sort through that evidence
4 and figure out what's the truth and what's not true. And
5 apply those facts as you find them to the law of the case
6 that I will provide to you at the end of the case to those
7 facts and thus reach a verdict.

8 Evidence may take several different forms. It maybe
9 testimony from this witness stand. Could be photographs.
10 Could be documents, other physical type items. Whatever
11 it maybe it is critical that you listen and observe
12 because of what I just told you. Now, you are to try this
13 case using your common sense. You are to try this case
14 based on the evidence and law that's presented to you in
15 this courtroom.

16 This case has nothing to do with any movie,
17 television show, theatrical performance or something you
18 hear from the outside. So keep in mind the evidence that
19 you study, you deliberate comes from the courtroom. Not
20 on what you may have been told or maybe improperly told
21 during the progress of this trial. So that's why I gave
22 you the little talk about being careful about what you say
23 and who you say it to and also the warning about not
24 letting anybody approach you.

25 During the progress of this trial remember don't talk

1 with anyone about it. Don't even talk to any other family
2 members about this cause their opinion could improperly
3 influence you. You should, if you've got other folks
4 living in your home let them answer the phone when we're
5 not in Court just to give you a little insulation in case
6 somebody tries to pull something improper.

7 Very seldom happens but sometimes it does. After the
8 evidentiary part of the case will come the time for what
9 we call closing arguments. And that's where counsel from
10 both side try to persuade you to see the evidence as they
11 see it. Now, what counsel has to say is not evidence.
12 They may review the evidence and they may quote the
13 evidence or repeat the evidence, but the evidence is what
14 you receive from the witness stand not by what anybody
15 else says.

16 After the closing argument will come the time to
17 deliberate as I give you the charge. In other words I'll
18 charge you the law and then you will be asked to go back
19 and deliberate the case. Only after you are instructed to
20 deliberate should you deliberate this case. Don't discuss
21 it amongst yourselves during a break.

22 I don't have any rules about note taking. Some
23 judges do. I'll leave that up to you. But if I were a
24 juror I would not take notes. And if you do take notes
25 you've got to keep them to yourself. You can't share them

1 with anyone else. Why would I not take notes? Because I
2 noticed back in my college days if I get too involved in
3 taking a note down and get my mind on that I'm going to
4 miss something else the professor is saying. So there is
5 an inherent weakness in that. You need to be careful of
6 that. So think about that.

7 Please do not fall asleep on me. If you feel like
8 that you're getting sleepy and you're going to dose off
9 let us know. Get Madam Bailiff's attention or wave at me
10 and we'll take a coffee break, okay. Because it can have
11 disastrous consequences if we loose somebody to a nap.
12 Think about that.

13 One other warning. The chairs you sit in I think are
14 pretty well secured but they will make you think they will
15 throw you backwards and you could pull you back. So be
16 careful on how you lean back. I apologize for the
17 facilities. The county council is working on that.
18 Hopefully within the year we will be better facilities for
19 juries to convene in. We affectionately call that The
20 Hole where y'all were. Where I am over here we call it
21 The Closet.

22 There are a lot of closets bigger than this chamber.
23 And to tell you the truth there are a lot of closets
24 bigger than where y'all were and it's very uncomfortable
25 and we are working on that. And matter of fact while we

1 speak they're working. So hopefully in a year or two
2 we'll take care of it.

3 The other problem we have here is acoustics. If you
4 can't hear me or you can't hear one of the attorneys or
5 you can't hear a witness let us know and we'll tell them
6 to speak up. If anybody is hard of hearing and you want
7 to move a little closer then y'all swap around and we'll
8 get you closer to the front.

9 Now, this is a criminal case. There are alleged
10 crimes that the defendant committed and I will go over
11 those in just a minute to make sure the you are aware of
12 the criminal acts that have been alleged in this case that
13 you will be ultimately deciding by reaching a verdict.

14 Because it is a criminal case the burden of proof is
15 on the State of South Carolina to prove every alleged
16 criminal offense to you beyond a reasonable doubt. And I
17 will give you a full charge as to what that means when I
18 close this case out to you and before I ask you to begin
19 your deliberations.

20 All right. Once again, now, we've got an indictment
21 for murder it's alleged. Also assault and battery with
22 intent to kill. The victim in that being one or one
23 alleged victim being one David Eric Evans. Another
24 assault and battery with intent to kill. Alleged victim,
25 Jeffrey Darryl Crowder. And possession of a weapon during

1 the commission of certain crimes. Also discharging a
2 firearm into an occupied dwelling, firearms in a public
3 building. And also an indictment for escape.

4 As I told you the burden is on the State to prove
5 each and every one of those alleged indictable offenses
6 beyond a reasonable doubt. You will have to reach a
7 verdict on each of those indictments. They're separate
8 verdicts, and you will have to take each one up and
9 deliberate them on an individual basis and reach an
10 appropriate verdict when the time comes.

11 I think I have covered everything with you except to
12 tell you once again if you need a break or if you have any
13 problem let us know and we will try to take care of it.
14 With that said I'm turning it over to counsel to make
15 opening statements, and because the State has the burden
16 of proof they get to go first. Solicitor.

17 OPENING STATEMENT BY MR. HALES

18 MR. HALES: May it please the Court, Mr. Rogers.
19 November 28 of 2004 was a very tragic day. It was tragic
20 for Clifton Funderburk, Jr. because he was killed at the
21 age of 27. It was a tragic day for his family and friends
22 and loved ones left behind because they had to deal with
23 the loss. It was a tragic day for Jeffrey Crowder and
24 David Evans cause they were both shot. Luckily they lived
25 to tell about it. We're all here today for a trial. We

1 have a murder and two assault and battery with intent to
2 kills cause that man, Michael Watts, shot three people and
3 killed one.

4 And my name is Kevin Hales along with J.R. Joyner we
5 represent the State in this case. I'm from across the
6 river in Marlboro County. He's from Patrick right here in
7 Chesterfield. Now, what happened in this case is that
8 Mr. Watts along with some associates decided to drive down
9 from Lancaster to Pageland. Decided to go to the Matrix,
10 a bar, a club, whatever you want to call it.

11 And they got to the Matrix and they went in and while
12 inside something happened. An altercation, an argument,
13 something. Well, after that altercation, argument,
14 Mr. Watts he goes outside. He leaves the Matrix. He's
15 out in the parking lot. He goes to his car or maybe not
16 his car. The car he came in. While in that car he gets a
17 gun. Just had an argument inside. He goes outside and
18 gets a gun and decides he's going to go back in.

19 He goes back in with that gun. He walks up to
20 Clifton Funderburk and shoots him in the chest. Shoots
21 him with a 45. You will hear testimony from the doctor
22 that performed the autopsy who will tell you the hole in
23 Clifton's chest .45 inches wide. That's not enough. He
24 pops off a couple more rounds. Shoots a few more times.
25 He hits David Evans and he hits Jeffrey Crowder. Like I

1 said luckily those two gentlemen didn't die but they were
2 shot.

3 Now, during the course of this trial the way you're
4 going to come about some information is that you will get
5 what's called evidence and get that evidence from the
6 testimony. It's going to be some eyewitnesses who
7 testify, people who were actually there at the club who
8 actually saw what happened. You're also going to meet
9 experts and those people are people who are trained in a
10 field.

11 They're highly trained people and they're able to
12 give their opinion as to what happened. They weren't
13 there. Based on the fact that they have their ability to
14 give their expert opinion and let you know what they think
15 happened. You're going to hear from the doctor that
16 performed the autopsy, someone from S.L.E.D. who does
17 gunshot residue, toxicologist, someone who -- a firearms
18 expert, as well as the people that were there at that
19 club.

20 And they're all going to tell you what happened. And
21 while you're getting all this information, all the
22 testimony, I want you to remember three questions and I
23 want you to answer these three questions through that
24 testimony. And those three questions are, first, who
25 started this conflict? When did this conflict take place

1 between Clifton, between Jeffrey Crowder and David Evans
2 and the defendant, Michael Watts? What caused that? What
3 cause that incident?

4 Second question I want you to answer is who has the
5 gun. Who out of all those people had a gun? Who had a
6 weapon. And the third question I want you to answer is
7 how many times was each person involved shot. If you
8 answer those questions the way we think you're going to
9 answer you're going to return a verdict of guilty on
10 murder and two counts of assault and battery with intent
11 to kill. I thank you very much.

12 THE COURT: Mr. Rogers.

13 MR. ROGERS: Yes, sir.

14 OPENING STATEMENT BY MR. ROGERS

15 MR. ROGERS: May it please the Court. Members of the
16 jury, my name is Jimmy Rogers, and I practice in Columbia
17 and I represent Michael Watts here today in this trial.
18 There is one thing that all of us can agree on. This is a
19 tragic day for Mr. Funderburk and the two other gentlemen
20 that were shot. That's the only thing we all agree on
21 because you see the Assistant Solicitor just stood up here
22 and told you a story about their theory, their version of
23 what occurred but that's your job. Your job is to
24 determine exactly what happened in this case not from what
25 he says to you not from what I say to you but from the

1 evidence you hear from this witness stand and from the
2 various exhibits that may be introduced during this trial.

3 What you bring to our judicial process is your common
4 sense because you realize that if we didn't have a jury
5 the Solicitor would be able to come in here and say that's
6 what happened on such and such a day and the Judge finds
7 him guilty and he gets his sentence. But you analyze the
8 facts that you hear. You use your common sense.

9 You ask yourselves as you're listening to the
10 testimony does this person have something to gain by the
11 way their testifying or you ask yourself does this
12 person -- was that person in a position to see what he or
13 she says she saw. Now, remember this shooting took place
14 in a club with upwards of 80 people in the club. Once the
15 firing started people ran in various directions and a lot
16 of things were going on.

17 So you're going to have the unenviable task of having
18 to sift through all this information that you hear, all of
19 the testimony from the witness stand and come to a
20 conclusion beyond a reasonable doubt as to what occurred.

21 You see our system understands that a person really
22 can't prove himself not guilty. So they put the burden on
23 the State to prove a person guilty. They introduce facts
24 and if those facts are sufficient to convince you beyond a
25 reasonable doubt then you have to return a verdict of not

1 guilty.

2 But if after you hear all of the evidence, all of the
3 testimony in this case and you're still saying to
4 yourself, "Well, I'm not sure what happened," or "I have a
5 doubt about so and so's testimony," then that's a doubt
6 that you have reason to and under the oath that you have
7 just taken you would be obliged to return a verdict of not
8 guilty.

9 The State has the burden of proving to you. Michael
10 didn't have the burden of proving anything, but you will
11 hear from Michael in this case and he will tell you
12 exactly what happened that night and exactly what he did.
13 I do want to point out to you that it is clear to me from
14 what the State just said in its opening statement that
15 they think, and I think their theory is, that Michael
16 killed Mr. Funderburk and shot those two other
17 individuals.

18 And the reason that they think that is because they
19 think Michael was the only person shooting. I think the
20 evidence is going to show that even after Michael was
21 outside on the ground in handcuffs there were shots still
22 being fired in the club. So it is clear that other shots
23 were being fired. So you have to determine which shot
24 fired the fatal shot.

25 If Michael Watts' shot fired the fatal shot

1 intentionally or if someone else shot in response to the
2 firing or in response to what they perceived was firing
3 and unfortunately one person was killed and two other
4 people were shot.

5 I think after you listen to all the evidence in this
6 case and hear from Michael you will have a doubt that you
7 can give a reason to and thereby return a verdict of not
8 guilty. Thank you.

9 THE COURT: Thank you.

10 MR. HALES: State calls David Evans.

11 DAVID EVANS, after being duly sworn, testified
12 as follows:

13 (WHEREUPON, State's Exhibit Nos. 1, 2, 3 AND 4 were
14 marked for identification only.)

15 DIRECT EXAMINATION

16 BY MR. HALES:

17 Q. Please state your full name.

18 A. David Eric Evans.

19 Q. Where do you live, Mr. Evans?

20 A. Pageland, South Carolina.

21 Q. Okay. How long have you lived there?

22 A. Approximately four years.

23 Q. Four years. You work anywhere?

24 A. Yes, sir.

25 Q. Where is that?

1 A. I work Barcom Press in Charlotte, North Carolina.

2 Q. Are you married?

3 A. Yes, sir.

4 Q. You got kids?

5 A. Yes, sir.

6 Q. How many?

7 A. I have six boys.

8 Q. Six boys. You remember the night of November 28th
9 2004?

10 A. Yes, I do.

11 Q. Where were you on that night?

12 A. At first I was at home which was a Saturday night.
13 The 27th being my birthday I was employed with the Matrix
14 Night Club as a bouncer. And at this time I was called by
15 my cousin and told me to come down to the club and want to
16 celebrate with me a little bit for my birthday.

17 Q. Who was your cousin?

18 A. Marlee Mungo.

19 Q. Did you go down to the Matrix?

20 A. Yes, I did.

21 Q. Okay? You remember anything special about that
22 night?

23 A. When I arrived that night, I'm not sure what time it
24 was, but I wasn't there probably five minutes and an
25 altercation had occurred on the dance floor. Then

1 Detective Brown was -- I went to assist him.

2 Q. Who was that?

3 A. Detective Brown.

4 Q. All right.

5 A. And wasn't nothing happening but just a verbal that I
6 can tell, but the altercation -- physical altercation had
7 already occurred. At that time Detective Brown asked me
8 to stand and watch a gentlemen that I did not know at the
9 time. And I stood there at the bar with him if while
10 Detective Brown and another gentlemen walked out.

11 Q. Who were those two guys, do you know?

12 A. At the time I didn't know, but the one I was standing
13 at the bar was named McElwain. I'm not sure of his first
14 name. Last name McElwain, and the other gentlemen was a
15 tall gentlemen. I think his first name is Rick something
16 or other, but he walked outside with Detective Brown.

17 Q. What happened then?

18 A. After that Mr. Watts and two ladies was coming from
19 the dance floor towards the front of the club. The two
20 women was escorting Mr. Watts, which he seemed like he
21 might have been intoxicated at that time. I'm not sure,
22 but he walked by and moments later another staff member
23 was dragging another person out that he was found on the
24 dance floor unconscious.

25 Q. Who is he?

1 A. I'm not sure who he was, but they went ahead and drug
2 him to the lobby area. By that time someone screamed, "He
3 got a gun. He got a gun." and the side entry, the subject
4 came in with a handgun.

5 Q. Who was the subject?

6 A. Mr. Watts.

7 Q. Do you see him?

8 A. Yes, sir.

9 Q. Where is he?

10 A. Right there.

11 Q. Can you describe what he's wearing?

12 A. He's wearing an OD Green Army Field Jacket, carrying
13 a handgun that look like a nine millimeter or .45 blue
14 steel wooden handles. Either Springfield or Lama.

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

16 A. Yes, sir.

17 Q. What's he wearing today?

18 A. He wearing a blue shirt, tie, and I can't tell what
19 pants he had on.

20 MR. HALES: I'd like the record to reflect that he
21 identified the defendant, Michael Watts.

22 THE COURT: Okay.

23 BY MR. HALES:

24 Q. So you actually saw the defendant with the gun?

25 A. Yes, sir.

1 Q. Okay. I'm showing you State's Exhibit Three. Do you
2 recognize that?

3 A. Yes, sir.

4 Q. And what's that?

5 A. This is the Springfield Model 118243 -- well, Model
6 1911A1 Colt .45.

7 Q. Okay. And you recognize that at all?

8 A. Yes, sir.

9 Q. Where you recognize that from?

10 A. The night of the incident.

11 Q. Who had that?

12 A. Mr. Watts.

13 Q. Okay. Show you what's been marked as State's Exhibit
14 Four. Do you recognize that?

15 A. Yes, sir. This is OD green Army Parker.

16 Q. Have you ever seen that parker before?

17 A. Yes, sir.

18 Q. Where was that?

19 A. The suspect was wearing that that night.

20 Q. So after he walked in wearing the green jacket with
21 the gun what happened then?

22 A. He stood approximately four to 5 feet away from me
23 and was looking around like he was looking, searching for
24 someone. He walked towards the back towards the dance
25 floor, probably about from me to you, stopped look towards

1 his right. He started saying some words, raised the
2 handgun up.

3 I could see it was somebody in the corner. I
4 couldn't tell who it was. And at the time he just said --
5 I could see that he was mumbling something and then he
6 fired one shot. Two females exited from the area that he
7 shot at. At that time I seen a male victim slide down the
8 wall and on the floor and he moved several moment and that
9 was it.

10 Q. What happened after that?

11 A. Mr. Watts walked back through the club past me to the
12 front of the club exit and at that time I was looking back
13 at the victim and looked back where Mr. Watts had exited
14 and at that moment I said, "Well let me see what he's
15 driving so I can describe it to law enforcement."

16 So instead of going behind him I walked out the side
17 door where he can't make entry and at that time me and
18 Mr. Watts ran into each other.

19 Q. When you say ran into each other you mean face each
20 other or did you actually touch?

21 A. We came face to face. When I came out the door he
22 was coming and at that time he said, "Oh, you swung on
23 me?" I said, "No.." He said, "Yes, you did." He raised
24 that weapon and fired at me four to five times striking me
25 in the leg.

1 Q. How many times were your hit?

2 A. One.

3 Q. And you were shot in the leg. What leg was that?

4 A. It was my right leg.

5 Q. All right. You have a scar?

6 A. Yes, sir.

7 MR. HALES: Court's permission to have Mr. Evans come
8 around.

9 (WHEREUPON, the witness steps down from the witness
10 stand.)

11 BY MR. HALES:

12 Q. If you don't mind if you would show the jury where he
13 shot you. Thank you. You can return to your seat.

14 (WHEREUPON, the witness returns to the witness
15 stand.)

16 BY MR. HALES:

17 Q. So you were shot in the leg?

18 A. Yes, sir.

19 Q. What happened next?

20 A. I made my way back into the club. At that point the
21 glass front door was shot out, but I'm standing there. I
22 took my belt off and wrapped it around my leg cause I
23 didn't know how bad I was bleeding. I know I was
24 bleeding. At that time I was looking to see which way he
25 was at cause I didn't want to face him again, but he was

1 stand out talk to Mr. MacElwane. At that time I seen
2 another person pointing a firearm in that direction which
3 I recognized to be Pageland police officer because of
4 their weapons.

5 And then I made entry outside. I told officer Dean
6 Mackey that he had a subject down inside and he didn't
7 look good. We needed to get paramedics. I got shot in
8 the leg. Also described him as a male with an Army green
9 field jacket on with a handgun. By that time Officer
10 Brown had -- and Detective Brown had him at gunpoint. Him
11 and two of his partners.

12 Q. Who is him?

13 A. Mr. Watts and Mr. MacElwane and the other victim.
14 The other subject. I didn't know his name.

15 Q. All right.

16 A. Detective Brown asked me and another bouncer to
17 assist and handcuff them which we did. At that time a
18 female came around and said they were shooting in the
19 back. They were shooting in the back. At that time all
20 the law enforcement officers kind of like merged to the
21 back. Mr. Watts jumped up while handcuffed and took off
22 running down Number Nine East towards Chesterfield. At
23 that time I gave chase and tackled him at the end of the
24 driveway.

25 Q. Okay. Anything else happen after that?

1 A. The Pageland police put him -- secured him in a
2 vehicle and, basically, that was it. I was treated by
3 E.M.S. and transported to Union Memorial.

4 Q. Did you spend the night in the hospital?

5 A. No. No, sir.

6 MR. HALES: Court's indulgence just one moment.

7 BY MR. HALES:

8 Q. Mr. Evans, were you able to get a look at the car?

9 A. Yes.

10 Q. How do you remember that car?

11 A. I was parked right outside the door where I got shot
12 in the leg.

13 Q. You remember what it looked like?

14 A. It was a white Pontiac or Pontiac Bonneville or Grand
15 Prix. I think it was.

16 (WHEREUPON, State's Exhibit Nos. 5, 6, 7 AND 8 were
17 marked for identification only.)

18 BY MR. HALES:

19 Q. I'm showing you what's been marked as State's
20 Exhibits Five through Eight. Take a look at those. Do
21 you recognize those?

22 A. Yes, sir.

23 Q. What is in those pictures?

24 A. White Bonneville Pontiac four door.

25 Q. Do you recognize that vehicle?

1 A. Yes, sir.

2 Q. And where do you recognize that vehicle from?

3 A. That night at the club the suspects were all driving
4 in that vehicle.

5 Q. Okay.

6 MR. HALES: At this time the State would move these
7 be entered in evidence?

8 MR. ROGERS: No objection.

9 THE COURT: In without objection.

10 (WHEREUPON, State's Exhibit Nos. 5, 6, 7, and 8 were
11 admitted into evidence.)

12 (WHEREUPON, State's Exhibit Nos. 9, 10, 11 AND 12
13 were marked for identification only.)

14 BY MR. HALES:

15 Q. You testified previously that the door to the Matrix
16 was shot out; is that correct?

17 A. Yes, sir, the front door.

18 Q. Front door?

19 A. Well, there is two -- it's really three front doors.
20 Three doors in the front of the building, but one is used
21 for the main entrance. The main entry door was shot out.

22 Q. The main entry door?

23 A. Yes, sir.

24 Q. Okay. I'm showing you what's been marked as State's
25 Exhibits 9, 10 and 11. I'd ask you to take a look at

1 those. Do you recognize those?

2 A. Yes, sir.

3 Q. And what's that?

4 A. That's the main entry to the club up in Pageland, the
5 Matrix.

6 Q. What condition is that?

7 A. Glass is shattered and missing.

8 Q. And do those pictures accurately depict the way that
9 door looked?

10 A. Oh, yeah.

11 Q. Thank you, Mr. Evans.

12 MR. HALES: At this time I would move that State's
13 Exhibits 9, 10 and 11 be entered in evidence?

14 MR. ROGERS: No objection.

15 THE COURT: In without objection.

16 (WHEREUPON, State's Exhibit Nos. 9, 10 and 11 were
17 admitted into evidence.)

18 BY MR. HALES:

19 Q. Showing you what's been marked as State's Exhibit
20 Two. Do you recognize that?

21 A. Yes, sir.

22 Q. Where do you recognize that person from?

23 A. This is Mr. Funderburk. This is minus some facial
24 hair.

25 Q. And when did you see Mr. Funderburk?

1 A. That night at the Matrix.

2 Q. And is that accurate representation of the way he
3 looked minus some facial hair?

4 A. And dress. I mean he wasn't wearing a tux.

5 Q. Thank you.

6 MR. HALES: At this time we move that State's Exhibit
7 Two be entered in evidence?

8 MR. ROGERS: No objection.

9 THE COURT: In without objection.

10 (WHEREUPON, State's Exhibit No. 2 was admitted into
11 evidence.)

12 BY MR. HALES:

13 Q. All right. Mr. Evans, please answer any questions
14 Mr. Rogers may have for your. Thank you.

15 CROSS-EXAMINATION

16 BY MR. ROGERS:

17 Q. Mr. Evans, I take it you knew Mr. Funderburk before
18 November 28th of 2004?

19 A. No, I didn't.

20 Q. You didn't know him at all?

21 A. No, sir.

22 Q. That was the first night you'd ever seen him?

23 A. Yes, sir.

24 Q. Did you know Mr. Watts before that night?

25 A. No, I didn't.

1 Q. And you have not seen him again since that night?

2 A. No, not really. I seen him at the -- couple of Court
3 dates and Court appearances.

4 Q. You came to Court with the family?

5 A. Yes.

6 Q. But prior to that date you'd never seen him before?

7 A. Never seen him.

8 Q. All right. Now, I believe you testified that you got
9 to the club that night. Were you alone or with friends?

10 A. No, I was by myself.

11 Q. And approximately what time did you arrive?

12 A. I'm not sure. I'm sure it was probably after
13 twelve o'clock. I know that.

14 Q. Midnight.

15 A. It was after midnight.

16 Q. And how long had you been in the club before you
17 observed this altercation?

18 A. Well, I didn't really observe the altercation.

19 Q. You didn't observe it?

20 A. It transpired in the back of the nightclub. When the
21 altercation occurred you see a rush of people. Security
22 went for it. Detective Brown went -- I went to assist
23 him.

24 Q. So you don't know who was involved?

25 A. I don't know who was involved.

1 Q. Give this jury kind of an understanding so we can get
2 a mental picture of the club. Is the club as large as
3 this courtroom?

4 A. No, it's not as large as this courtroom. If you
5 minus the jury section and probably the counselor's area
6 it's back towards the wall the length probably maybe so
7 minus you know add bars and stools.

8 Q. Okay, so you're saying the width of the club would be
9 the width of the courtroom?

10 A. Yes, sir.

11 Q. And is it as deep as from that wall to the wall?

12 Okay. From you to where would be ---

13 A. Probably where Detective Brown is sitting. Maybe
14 smaller than that because they have a kitchen area that's
15 not really being utilized.

16 Q. And where -- so if where you're sitting is the front
17 of the club where would the bar be?

18 A. You mean at the front door?

19 Q. Yeah, at the front door?

20 A. The bar would be located wo my left back probably
21 about 10, 15 feet.

22 Q. So if we assume that the front door is behind you,
23 okay, and you come in the front door to the Matrix?

24 A. Okay.

25 Q. And then you're saying the bar would be to your left?

1 A. Okay, let's say if I went in the front door this way.

2 Q. Yes.

3 A. If I went in the front door this way this is the far
4 end of the west side of the building, okay. This lobby
5 area this is where you great most of your customers and
6 patrons. You go through a door. The bar is right there.
7 You have tables and booths. You go down. You have a VIP
8 room to your left. At the far end of the bar you have
9 another VIP room to your right, right beside the second
10 door. The restrooms are past the VIP rooms to your left
11 and then you have the dance area.

12 Q. Okay ---

13 A. And third to ---

14 Q. And so let's try to get a mental picture of the club.
15 Let's assume that where you're sitting is the front door
16 entrance. Did I understand you to testify that there is
17 another door after you enter that door?

18 A. Yes, you come in the front door turn to your right
19 ---

20 Q. To your right.

21 A. --- go probably about 25 feet, 30 feet there is
22 another side entrance.

23 Q. Okay. So would it be beyond this wall if that was
24 the front door? The side entrance would be beyond this
25 wall at 25 feet?

- 1 A. Yes, probably where the metal detector is.
- 2 Q. The metal detector. You estimate about 25 feet?
- 3 A. Yes.
- 4 Q. And that's where that side door is?
- 5 A. Yes.
- 6 Q. How many people were inside the club if you can give
- 7 us a guess?
- 8 A. I really couldn't say cause I didn't make it to the
- 9 dance floor. When I came in I stopped at the lobby
- 10 socialize with a few of the staff members.
- 11 Q. I'll ask it this way. Was the club crowded?
- 12 A. I've seen it crowder than that.
- 13 Q. Do you know how many people the club holds?
- 14 A. I would said it holds over a hundred people.
- 15 Q. That wasn't the first time you'd been to the Matrix
- 16 Club?
- 17 A. No.
- 18 Q. What was the lighting like?
- 19 A. The lights in the bar area is very illuminated
- 20 because money transactions and the bartender is mixing
- 21 drinks. The dance floor area is pretty much dark.
- 22 Q. So you would say nothing in the bar would be as light
- 23 as it is in here right now, correct?
- 24 A. No.
- 25 Q. All right.

1 A. Well, enough where you can see.

2 Q. It's a bar? It's a club?

3 A. Yes.

4 Q. I'm still not clear where the bar is from the front
5 door. Would you go through that again. You turn to the
6 right?

7 A. Turn to the right, go through a door. The bar is
8 right there.

9 Q. You turn to the right and go through this other door?

10 A. If you come in the front door make a right, come
11 through a door, the bar is to your left.

12 Q. Okay. How many feet is that from the front door
13 would you guess?

14 A. Probably about 10 feet.

15 Q. Okay. Now, this happened over two years ago,
16 correct? Have you ever been shown a photographic spread
17 of Michael Watts to make an identification of the person
18 that you saw that night?

19 A. No.

20 Q. So your testimony here today is recollecting what you
21 saw -- the person that you saw from over two years ago?

22 A. Yep.

23 Q. Okay. The weapon, your testimony was that this was
24 the weapon that you saw?

25 A. Yes, sir.

1 Q. But isn't it more correct to say that that weapon
2 looks like the weapon you saw? You have no way of knowing
3 if it's the exact same weapon?

4 A. I'm not going to say it's the exact same weapon, but
5 I ---

6 Q. Your familiar with firearms?

7 A. Oh, yes. Very familiar with firearms.

8 Q. Then you know you can't say ---

9 A. I can say ---

10 Q. --- that that's the exact same weapon?

11 A. I haven't done ballistics on it, and I'm not saying
12 that I'm a ballistics expert ---

13 Q. That's correct.

14 A. --- but, from my visual standpoint, I know my
15 handguns. I know my assault rifles. I know my shotguns.

16 Q. And you would have to say that the gun looks similar
17 to the one you saw there night?

18 A. Yes, sir.

19 Q. Same thing with the jacket. There are many green
20 Army jackets?

21 A. That's true.

22 Q. You can't say that that was the jacket you saw that
23 night two and a half years later?

24 A. That's true.

25 Q. It's similar?

- 1 A. Yes, similar.
- 2 Q. Now, your testimony was that -- where were you in the
3 club when you saw Michael come in?
- 4 A. I was standing at the end of the bar adjusting to the
5 second side entrance.
- 6 Q. That would be?
- 7 A. If you're at the front door there is another ---
- 8 Q. No, no, let's stay in this frame of reference with
9 you being at the front door?
- 10 A. Okay.
- 11 Q. So if you are at the front door entrance, cause
12 that's what I have in my mind, where would the bar be?
- 13 A. The bar is 10 feet to my left.
- 14 Q. To your left?
- 15 A. And then the second door probably about another 10
16 feet down.
- 17 Q. And is that the side door that you were talking about
18 earlier?
- 19 A. That's the second front door. The front door.
- 20 Q. Well, I'm confused.
- 21 A. The other -- it's three front doors.
- 22 Q. Please don't -- I'm not trying to trick you.
- 23 A. Yeah, I understand.
- 24 Q. I thought you said you turned to the right to get to
25 that side?

- 1 A. If you're coming in through the front you turn right.
- 2 Q. Okay.
- 3 A. If I'm standing there the bar would be to my left.
- 4 Q. Well, if you came in the front door is the bar to
- 5 your right?
- 6 A. Yes, sir.
- 7 Q. Okay. That's where I was confused. The bar is about
- 8 25 feet in that direction?
- 9 A. If I'm in the front door?
- 10 Q. Yes.
- 11 A. Yes, sir.
- 12 Q. Okay. And you were near the bar?
- 13 A. I was standing at that end of the bar.
- 14 Q. At the end of the bar and a person comes in and you
- 15 said he looked intoxicated but you don't know that?
- 16 A. When he was walked out he looked intoxicated.
- 17 Q. Oh, when he was walking out. Did you see him when he
- 18 walked in?
- 19 A. Prior to the gun?
- 20 Q. Yes.
- 21 A. No.
- 22 Q. Okay.
- 23 A. He was already in the club.
- 24 Q. So when you first saw him he was in the club?
- 25 A. Yes.

- 1 Q. At the bar?
- 2 A. No.
- 3 Q. Or on the dance floor?
- 4 A. Walking past the bar.
- 5 Q. Walking past the bar.
- 6 A. Going in towards the front entrance.
- 7 Q. Okay. And then your testimony was that you saw him
- 8 and he had this weapon out the entire time?
- 9 A. He had the weapon in his right hand.
- 10 Q. Was never in his coat or a pocket or concealed
- 11 somehow?
- 12 A. No.
- 13 Q. It was in his hand?
- 14 A. Hand.
- 15 Q. Down or up?
- 16 A. Down.
- 17 Q. Down like this?
- 18 A. He didn't have it pointed at nobody. Come in
- 19 swinging left and right and looking around. And I'm
- 20 looking at the gun. So they say he got a gun so I want to
- 21 make sure he got a gun which he did.
- 22 Q. So you heard somebody say that somebody had a gun?
- 23 A. Somebody screamed he had a gun. People panicked.
- 24 People started jumping over the bar, exiting the building.
- 25 I just didn't run.

1 Q. So people ran before there was ever any gunfire?

2 A. Correct.

3 Q. Okay. All right. So then the person came in and
4 acted like he was looking for someone?

5 A. Yes.

6 Q. And then you saw him turn and what did you see then?

7 A. He come in. He was standing close to me than you,
8 and he was twirling. And I'm looking at him. I was going
9 to advance on him, but I said, "No, I'm not going to do
10 that."

11 Q. Did you have a weapon?

12 A. No, I didn't have a weapon, but I was wanting to try
13 to stop him cause I didn't know what his intentions was.
14 But I backed off. He walked back towards the dance floor,
15 stopped, turn to his right, pointed, said something,
16 pointed the gun up and discharged the weapon.

17 Q. Pointed the gun up?

18 A. Pointed the gun up. Holding it side ways.

19 Q. Side ways like that?

20 A. Yep.

21 Q. Did you see him fire it?

22 A. Yes.

23 Q. And how many times?

24 A. Once.

25 Q. After ---

1 A. Inside now. Outside ---

2 Q. All right. After that -- you saw that gunshot inside
3 did you hear any more gunshots?

4 A. Not until he started at me outside.

5 Q. So you didn't hear any more gunshots inside?

6 A. No.

7 Q. So he left and went out the front door and you went
8 out the side door?

9 A. The one he came in I went out. He went out the front
10 door.

11 Q. Oh, okay. He went out the side door and you went out
12 ---

13 A. No, no, no. He went out the front door. He came in
14 the side ---

15 Q. Sorry.

16 A. --- shot, walked past that same door he came in,
17 walked out the front door and that's when I went out the
18 side door and we ran into each other.

19 Q. Would it have been closer for him to go out the side
20 door?

21 A. Yes, it would have.

22 Q. Okay. Now -- and then y'all had a confrontation or
23 y'all met up outside the club?

24 A. Met up, yes.

25 Q. And where were you and where was he at that moment?

1 A. I came out the side door. My back was to the side
2 door about from here to the wall. He was probably from
3 here to the court reporter and he said "Oh, you swung on
4 me." I said, "No."

5 Q. Did you have any idea at that point what he was
6 talking about?

7 A. I'm sure he -- yeah -- he -- yeah.

8 Q. Did you know what he was talking about?

9 A. Oh, yeah. If somebody swing on you that means
10 somebody is throwing a blow at you, a punch.

11 Q. Okay, but I mean -- go ahead.

12 A. But it wasn't me cause I had just got there. So I
13 was like, naw, and he started raising the gun at me.

14 Q. But you were aware of this earlier altercation?

15 A. Yea, but I didn't know who was involved.

16 Q. Okay but so what I'm asking you is when that question
17 was asked did you think of the earlier altercation in the
18 club or did you think about something that happened two
19 weeks ago?

20 A. No, I knew it has to stem from the club.

21 Q. So you thought it was related to the earlier
22 altercation in the club?

23 A. Yeah, yes.

24 Q. Okay. And how many shots do you remember hearing
25 outside?

1 A. Well, I was dipping and dodging and he fired four to
2 five rounds.

3 Q. And your testimony was that he was firing at you or
4 just firing?

5 A. No, he was firing at me.

6 Q. Firing at you?

7 A. Oh, yeah.

8 Q. And you saw that?

9 A. Oh, yeah. When I saw the first two shots the other
10 ones I didn't see cause I was moving too quick there.

11 MR. ROGERS: With the Court's permission I'd like the
12 witness to come down and show me -- kind of demonstrate
13 where he was when he got shot?

14 THE COURT: All right.

15 THE WITNESS: So I came out the door. I pushed the
16 door. If I had peeped out the door I would be all right.
17 I came out the door.

18 BY MR. ROGERS:

19 Q. Came out that glass door that was shot.

20 A. Not that one. This is the second one.

21 Q. This is the second one?

22 A. Mr. Watts standing there said, "You swung on me."

23 Q. This close to you?

24 A. Pretty much.

25 Q. And where was the weapon?

- 1 A. It was in his right hand.
- 2 Q. Okay. So you did look at the weapon in his hand
- 3 then.
- 4 Q. And then at that time he started raising and I
- 5 started moving. She needs to take it, your answer. I'm
- 6 sorry. You did look at his hand at that time?
- 7 A. Oh, yeah. Yeah.
- 8 Q. How long were -- did that take place while y'all were
- 9 standing there?
- 10 A. That was under probably ten seconds.
- 11 Q. Okay, and then what happened?
- 12 A. He was moving to his right.
- 13 Q. Okay.
- 14 A. And I was ---
- 15 Q. Stop me this way?
- 16 A. No. And he was raising the gun.
- 17 Q. Okay.
- 18 A. And while he was moving I was moving.
- 19 Q. Y'all were kind of going like this?
- 20 A. And he started firing. I started moving towards the
- 21 front. Okay.
- 22 Q. Where are you hit with the first shot or one of the
- 23 later shots?
- 24 A. The first shot hit the ground. I seen dirt coming
- 25 up.

1 Q. Okay.

2 A. Okay. The second shot, I'm not sure where it hit,
3 but when I hit the door the door was open out this way.
4 That's when it shot out. The bullet hit me and went
5 through the door and caught me in my knee.

6 Q. Let me see that scar.

7 A. It came in on a downward angle like this. It caught
8 me right there. It hit me in my shin and ricocheted off.

9 Q. This wound looks likes the shot was from the front?
10 You're saying it was not from the front?

11 A. If it was from the front it would have went in and
12 exited from the back of my calf.

13 Q. So you're saying the shot came from this side?

14 A. Yes, sir. When it came in it was opened up.

15 Q. Okay. All right. And did you hear any other shots?
16 You can take your seat again. And it was that shot that
17 broke the window?

18 A. That shot and another shot. There were three bullet
19 holes that hit the door.

20 Q. Okay. You saw that or you heard that?

21 A. Oh, no. You can go right there now and the bullet
22 hole is still in the door and the glass got shot out. The
23 top and bottom piece of glass both was shot out.

24 Q. I'm asking you about what you observed that night and
25 heard that night. Did you see the bullets enter the wall

1 there?

2 A. No, I didn't see. I could see a bullet. I see where
3 it struck the door and hit my leg.

4 Q. Let me ask you that. Did the glass -- the bullet
5 that strike you was the same bullet that shattered the
6 glass?

7 A. Yes.

8 Q. Okay.

9 A. One of the bullets.

10 Q. Okay. Now, so you were -- when you got shot you were
11 in -- where were you?

12 A. I was in the threshold of the door of the front
13 entrance.

14 Q. You remember giving a statement to the police about
15 this on December 6 of 2004?

16 A. Um hum.

17 Q. And you told them at that time that you were shot
18 outside?

19 A. I wasn't quite in the building. I was at the
20 threshold of the door. That's still considered outside.

21 Q. And do you remember when you were treated at the
22 hospital for the gunshot wound? You remember when you
23 were treated?

24 A. Yes, sir.

25 Q. Trying to see the date. Do you recall the date?

1 A. November the 28th.

2 Q. Is when you were treated?

3 A. Yes.

4 Q. Do you remember telling the doctor or whoever that
5 treated you that, "the patient states that he was standing
6 inside of night club with when a person came in and
7 started shooting up the place. Patient was hit by a stray
8 bullet in anterior right leg?"

9 A. I don't recall telling the doctor that I was shot
10 inside.

11 Q. Let me know show you a copy of this medical report
12 and ask your is that in fact contained in that report?

13 A. That's what it says.

14 Q. Okay. So it's your testimony today that you told
15 them, the doctors, this or they got it wrong?

16 A. Which one signed it?

17 Q. Neither one.

18 A. I signed a statement.

19 Q. Here?

20 A. From the police department.

21 Q. So?

22 A. That's the more accurate one.

23 Q. What you told the doctor wasn't correct?

24 A. The doctor didn't get that from me.

25 Q. Didn't get it from you. Okay. Did you see

- 1 Mr. Funderburk when he was shot?
- 2 A. Yes.
- 3 Q. Did you see him go down?
- 4 A. I seen him slide down the wall.
- 5 Q. Did he end up -- he slid down to wall?
- 6 A. Facing me sliding down the wall. Hit the floor.
- 7 Q. You mean his back was ---
- 8 A. No, chest area.
- 9 Q. I'm sorry. Forgive my ignorance. I'm not getting a
10 picture of what you're telling me?
- 11 A. May I?
- 12 Q. Yes.
- 13 A. When Mr. Funderburk was shot ---
- 14 Q. He was against the wall like that?
- 15 A. He was against the wall. When he was shot he turned
16 and hit the wall and slid down.
- 17 Q. And where was the bar in relation is him? Right to
18 his right?
- 19 A. The bar, to about the second jury panel back there.
- 20 Q. Okay. Did you see any other weapons in the club?
- 21 A. Nope.
- 22 Q. But you did hear -- did you see a shotgun?
- 23 A. No, I didn't see a shotgun.
- 24 Q. Did you hear any other gunshots fired after the one
25 that you testified in the club and the ones outside?

1 A. No.

2 Q. You didn't hear any more?

3 A. No more.

4 MR. ROGERS: Court's indulgence, Your Honor. No
5 further questions of this witness.

6 MR. HALES: Redirect, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. HALES:

9 Q. Mr. Evans, Mr. Rogers was asking you about this, I
10 guess doctor's report?

11 A. I guess so.

12 Q. Did you write this?

13 A. No, sir.

14 Q. Did you prepare this?

15 A. No, sir.

16 Q. Did you type it up?

17 A. No, sir.

18 Q. Did you sign it anywhere?

19 A. No, sir.

20 Q. Have you ever seen this before?

21 A. No, sir.

22 Q. Okay. You did give a statement to the police?

23 A. Oh, well, to a S.L.E.D. agent.

24 Q. Okay.

25

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

3 BY MR. HALES:

4 Q. I'm showing you what's been marked as State's Exhibit
5 12. You recognize that?

6 A. Yes.

7 Q. What is that?

8 A. This is the statement I gave on December 6th 2004.

9 Q. How do you know that's the statement you gave?

10 A. Cause I prepared it.

11 Q. Is there a signature on that page?

12 A. Yes, sir.

13 Q. And whose signature is that?

14 A. It's my signature.

15 Q. Okay.

16 MR. HALES: I would ask that Mr. Evans be able to
17 read that statement into the record?

18 THE COURT: Any objection?

19 MR. ROGERS: I think that's improper, Your Honor.

20 The whole statement, I didn't question him on the whole
21 statement. The whole statement would not be allowed in
22 evidence in any regard. If he's attempting to use it for
23 impeachment, impeachment is not substantive evidence so it
24 need not go into evidence. This statement clearly should
25 not come into the record. It's his statement.

1 THE COURT: I agree.

2 MR. JOYNER: All right. That's all right. Thank
3 you, Mr. Evans.

4 THE COURT: Mr. Rogers, anything else?

5 MR. ROGERS: Yes, I'm sorry, Your Honor.

6 RECROSS EXAMINATION

7 BY MR. ROGERS:

8 Q. When you said you prepared this statement you didn't
9 type it?

10 A. Yes, on my PC.

11 Q. You did type it?

12 A. Yes, sir.

13 Q. On your PC?

14 A. Yes, sir.

15 Q. When?

16 A. At home.

17 Q. So you weren't in the police station when you gave
18 this statement?

19 A. When I signed it I signed it at the police station.

20 Q. So you typed this up at home, took it to the police
21 station and said, here is my statement?

22 A. Yes, sir.

23 MR. ROGERS: No further questions.

24 MR. HALES: Nothing further, Your Honor.

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

1 MR. JOYNER: State calls Latoya Miller to the stand.

2 THE COURT: I'll tell you what. While we're bringing
3 her in let's take about a ten minute recess. We'll come
4 back and run until 5:00 or shortly thereafter.

5 (WHEREUPON, the jury panel was excused from the
6 courtroom and Court was in recess at 4:07 p.m.)

7 (WHEREUPON, State's Exhibit No. 13 was marked for
8 identification only.)

9 (WHEREUPON, Court reconvened at 4:20 p.m.)

10 THE COURT: Y'all are ready. Suits me if we quit as
11 close to 5:00 as you can.

12 MR. HALES: That will be fine.

13 MR. ROGERS: Judge, what time do you happen to start
14 in the morning?

15 THE COURT: You're commuting?

16 MR. ROGERS: Yes, sir.

17 THE COURT: You want 10:00?

18 MR. ROGERS: That would be great. I can work with
19 9:30 if we had to if we get crunched at the end of the
20 week.

21 THE COURT: I understand that. We'll go with 10:00.

22 (WHEREUPON, the jury panel enters the courtroom at
23 4:22 p.m.)

24 MR. JOYNER: All right. Judge, State calls Latoya
25 Miller to the stand.

1 LATOYA MILLER, after being duly sworn, testified
2 as follows:

3 DIRECT EXAMINATION

4 BY MR. JOYNER:

5 Q. Afternoon, Miss Miller.

6 A. Hey.

7 Q. How you doing?

8 A. I'm good. How are you?

9 Q. I'm fine, thank you. Would you please state your
10 name for the Court.

11 A. Latoya S. Miller.

12 Q. And where are you from?

13 A. Pageland, South Carolina.

14 Q. How long have you lived there?

15 A. All my life.

16 Q. How old are you?

17 A. Twenty-four.

18 Q. You ever been to the Matrix?

19 A. Yes.

20 Q. How many times?

21 A. Ten or more.

22 Q. Okay. I want to take you back to November 28th 2004.
23 You remember that day?

24 A. Yes, sir, I do.

25 Q. What were you doing that day?

1 A. At the Matrix. We were standing on the side of the
2 wall, just stand there talking.

3 Q. Who was with you?

4 A. Me, Champ, my cousin and her boyfriend.

5 Q. Who is Champ?

6 A. Cliff.

7 Q. Clifton who?

8 A. Funderburk.

9 Q. And tell me a little bit about what happened that
10 night that made it stick out in your memory?

11 A. For one, we had just got there. A couple of guys had
12 started to fight. We were still standing there talking.
13 One guy started a fight. One of the guys that was
14 actually fighting left out the club, came back in the
15 club, walked across the club by the bar from the outside
16 door, had a gun in his hand, had a green jacket on, came
17 to the middle -- went to the middle -- not all the way to
18 the middle of the dance floor and started to shoot.

19 Q. Okay, now, did you see the gun that he had?

20 A. Yes, I did. He had it in his hand.

21 Q. What did it look like?

22 A. Black and it had a brown handle. Something on the
23 handle that was brown.

24 Q. Black with a brown handle?

25 A. Um hum.

1 Q. Sort of like this?

2 A. Yes, sir.

3 Q. Similar to this?

4 A. Yes, sir.

5 MR. ROGERS: Objection. The leading.

6 MR. JOYNER: Sorry.

7 THE COURT: Rephrase your question.

8 MR. JOYNER: No problem, Judge.

9 BY MR. JOYNER:

10 Q. What color jacket did you see he had on?

11 A. It was green.

12 Q. What color is this jacket?

13 A. It's green.

14 Q. How did it compare to this jacket?

15 A. It looked exactly like that jacket.

16 Q. Exactly like it?

17 A. Yep. I remember cause I knew it was an Army green
18 coat.

19 Q. All right. And you left off between walking to the
20 dance floor. What happened after you got to the dance
21 floor?

22 A. He walked in the middle of the floor and started
23 looking around like he was looking for somebody and then
24 all of a sudden he just started shooting.

25 Q. Who was he looking for?

1 A. Maybe one of the guys he was fighting with.

2 MR. ROGERS: Objection. Speculation.

3 MR. JOYNER: I'm sorry.

4 THE COURT: You're asking her the speculate.

5 MR. JOYNER: I know. I apologize for that, Judge.

6 BY MR. JOYNER:

7 Q. Can you show me how he was shooting?

8 A. He was shooting around, just shooting around.

9 Q. Did he hit anybody?

10 A. Yes, sir, he did. Champ, cliff.

11 Q. And where were Champ in relationship to you?

12 A. We was actually right beside each other.

13 Q. Did Champ have a gun?

14 A. No, sir, he didn't.

15 Q. Did you see anyone with a gun?

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

17 Q. After Champ was shot what happened then?

18 A. When he began shooting and Champ was shot we were
19 trying to get out the side door. When I noticed that
20 something was wrong, actually, Champ had his finger in my
21 belt loop. So we was going in the same direction trying
22 to get out the door. And I felt a big yank on my belt --
23 on my pants, and I turned around and he fell and then
24 there were a lot of people trying to go out the same door
25 I was so I got pushed out the door. I went out that door

1 and came around in another entrance to the Matrix and then
2 he was laying there on the floor.

3 Q. Did anything go on outside? Anything in particular?

4 A. I'm not sure. At the time while I was out there?

5 Q. Yes.

6 A. No, I went straight out the door and went straight
7 back in the club to see where he was and where the people
8 that were with me.

9 Q. How long would you say you were outside?

10 A. Maybe not even five or ten minutes cause I ran around
11 and came right back in.

12 MR. JOYNER: No further questions, Judge.

13 CROSS-EXAMINATION

14 BY MR. ROGERS:

15 Q. Miss Miller, before that night in the Matrix Club had
16 you ever seen Michael Watts before?

17 A. No, sir.

18 Q. So you don't know him at all?

19 A. No, sir.

20 Q. But you were at the club with Mr. Funderburk?

21 A. Yes, sirs. We were all together.

22 Q. And another couple or another girl?

23 A. My cousin and her boyfriend.

24 Q. Okay. Either one of you dating Mr. Funderburk?

25 A. Nor.

- 1 Q. Just friends?
- 2 A. Yes, sir.
- 3 Q. And you had known him for quite some time?
- 4 A. For a while.
- 5 Q. Couple years or longer?
- 6 A. Maybe a year. We're family.
- 7 Q. Okay. Let me just briefly go through your testimony
- 8 again. You saw a couple of people fighting, yet
- 9 Mr. Funderburk was not involved in the fight at all?
- 10 A. No.
- 11 Q. The fight occurred on the dance floor?
- 12 A. Yes, sir.
- 13 Q. And were y'all standing near the bar?
- 14 A. No, sir.
- 15 Q. You were not near the bar?
- 16 A. No.
- 17 Q. Where were you standing?
- 18 A. We were at that end of the dance floor. It's a
- 19 walkway from the bar to the dance floor. We were in
- 20 between the dance floor and the bar.
- 21 Q. Is there another wall there or door or something?
- 22 A. No, it's just an open walkway.
- 23 Q. Open walkway. Just divides the bar and the dance
- 24 floor?
- 25 A. Right.

1 Q. So there is some division there between the end of
2 the bar and the dance floor?

3 A. Yeah, just open space.

4 Q. Oh, open space. So y'all were just standing near the
5 end of the bar?

6 A. No, we wasn't by the bar. We were -- the dance floor
7 and then there is a door like an open walkway. We were
8 right there in that open space on the side of the wall.

9 Q. I'm just trying to get a mental picture if I can.
10 Was it near the side door or the front door?

11 A. It was the side door right there beside me.

12 Q. Okay. And that's the side door that you eventually
13 went out of?

14 A. Right.

15 Q. I believe your testimony was this person came in in a
16 green jacket and started firing; is that correct?

17 A. He went in the middle of the floor, looked around and
18 then he started firing.

19 Q. Okay. So he was in the middle of the dance floor
20 when the shots occurred?

21 A. He was in the middle, right, but not all the way in
22 the middle.

23 Q. But on the dance floor?

24 A. Right.

25 Q. And how many shots did you -- did you see any shots?

1 A. No, cause when I heard the first shot and we started
2 running.

3 Q. So you didn't see any shots?

4 A. I heard the first shot.

5 Q. Okay. I'm getting to get to hearing, but for right
6 now you didn't see a shot? You didn't see the fire come
7 out the muzzle or see somebody shoot?

8 A. No, I didn't see him shoot.

9 Q. Okay. That's what I wanted to get at. You didn't
10 see the shooting?

11 A. Right.

12 Q. But you heard things?

13 A. Right.

14 Q. All right. And you say you heard how many shots?

15 A. I heard one and started running.

16 Q. Okay. And were there other shots after that?

17 A. Yeah, cause when I got outside I heard more shots.
18 Maybe two more.

19 Q. And that was when you got outside, right?

20 A. At the door.

21 Q. Do you remember giving a statement to Mike Anderson
22 of S.L.E.D.?

23 A. Yes, sir, I do.

24 Q. Okay.

25 MR. ROGERS: May I approach the witness, Your Honor?

1 THE COURT: Yes, sir.

2 BY MR. ROGERS:

3 Q. Does this appear to be the statement that you gave?

4 A. Yes, sir, it is.

5 Q. Did you write that statement or did Michael Anderson

6 write it?

7 A. I wrote it.

8 Q. You wrote it yourself?

9 A. Um hum.

10 Q. Do you -- and I'll give it back to you in a minute.

11 Let me just find my place. Do you remember telling him,

12 and this was on January 13th, correct?

13 A. Um hum.

14 Q. When you gave this statement. Did you go in his

15 office? Did he come to your house?

16 A. Pageland Police Department.

17 Q. Pageland. You went to Pageland. Do you remember

18 telling him, "He stood and looked around like he was

19 looking for someone. Then he started making a loud noise

20 with the gun like a clicking noise. That's when I heard

21 all the shooting start?"

22 A. Yes, I do.

23 Q. So that's what you told Officer -- Agent Anderson

24 when that occurred?

25 A. Um hum.

1 Q. So your testimony -- are you saying that today your
2 testimony is that you heard a clicking noise and then you
3 heard shots?

4 A. Yes, when he walked in the middle of the floor he
5 looked around. That's when I heard the clicking noise.

6 Q. But you can't even ---

7 A. It wasn't that many.

8 Q. Okay. But you can't even or can you say that the
9 clicking noise you heard came from that direction?

10 A. No, I can't. I just heard the clicking noise.

11 Q. All right. Good. So -- but that's what you told him
12 shortly after this incident occurred?

13 A. Yes, sir.

14 Q. And then Mr. -- y'all ran. Everybody started to run
15 at that time. Me, Latoya Miller and Clifton Funderburk
16 started to trying to get out of the side door?

17 A. Um hum.

18 Q. So I'm just trying to get the chronology of events.
19 You heard clicking. You heard gunshots. Then y'all were
20 running?

21 A. Um hum.

22 Q. And at some point you felt this tug on your pants?

23 A. Right.

24 Q. Okay. You can't say today that the tug on your pants
25 was the precise moment that Mr. Funderburk got shot?

- 1 A. No.
- 2 Q. Or was it?
- 3 A. The tug on my pants and then I looked and he was
- 4 falling. He fell.
- 5 Q. He was falling?
- 6 A. Yeah.
- 7 Q. And at the time he was falling was approximately at
- 8 the time when you were hearing these shots?
- 9 A. Right, it was after that, yes.
- 10 Q. Okay. Thank you, Miss Miller. I believe that's all
- 11 I have. Oh, let me ask you this. You said you were
- 12 outside about five or ten minutes?
- 13 A. Not even five or ten minutes. It was less than five
- 14 or ten minutes.
- 15 Q. Less than five. Would you say less than five would
- 16 probably be closer to it?
- 17 A. Right.
- 18 Q. But then you were able to go back in the club?
- 19 A. Around the front entrance.
- 20 Q. Nobody stopped you?
- 21 A. No.
- 22 Q. The place hadn't been corrended off or sealed or
- 23 locked down or anything?
- 24 A. No.
- 25 Q. And you went in to look for Mr. Funderburk?

1 A. Yes, him and my cousin.

2 Q. You weren't aware or were you aware that Mr. Watts'
3 girlfriend was in the club?

4 A. No.

5 Q. And so that when he was looking around he could have
6 been looking for her.

7 A. No.

8 Q. You can't say who he was looking for?

9 A. No.

10 Q. Thank you, Miss Miller.

11 (WHEREUPON, State's Exhibit No. 14 was marked for
12 identification only.)

13 REDIRECT EXAMINATION

14 BY MR. JOYNER:

15 Q. Miss Miller, I'm showing you what's been marked as
16 State's Exhibit 14. Do you recognize that?

17 A. Yes, sir, I do.

18 Q. What is it.

19 A. It's my statement I gave.

20 Q. Would you please read it to the Court.

21 MR. ROGERS: Objection, Your Honor. Not the proper
22 use of that statement.

23 MR. JOYNER: Judge, he just impeached her on that
24 whole statement and the rule of completeness would allow
25 me to bring that in.

1 MR. ROGERS: I only used a portion of the statement
2 to impeach her, Your Honor. Putting the statement in
3 would only be in an attempt to bolster her testimony and
4 that's certainly not permissible.

5 MR. JOYNER: Judge, he cross-examined her on that
6 statement three different times, three different locations
7 all over that statement. I think the rule of completeness
8 allows me to if she was impeached to ---

9 THE COURT: I'm going to be just like I always am, as
10 liberal as I can on that. The statement is not coming in
11 as evidence but you may ask her to read a portion of it.

12 MR. JOYNER: Yes, sir. That's all I can to do,
13 Judge, is have her read it.

14 BY MR. JOYNER:

15 Q. Miss Miller, please read your statement for me.

16 A. "November 28th 2004, me, myself, Latoya Miller and a
17 cousin, Takisha Rhode, went to a club in Pageland called
18 the Matrix. When arriving we waited for Jodie and Clifton
19 Funderburk to arrive. After they arrived we all stood in
20 the back for a few minutes and then we separated.

21 After a -- after a -- after two guys started to argue
22 over a large belt buckle those two guys started to fight
23 towards the back of the club and two guys were fighting up
24 by the speakers. After separating the guys were told to
25 leave the club. One of the guys that were fighting which

1 was wearing a green jacket came back into the club and had
2 a gun in his hand.

3 He stood and looked around like he was looking for
4 someone. Then he started making a loud noise with the gun
5 like a clicking noise. That's when all the shooting
6 started. Everyone started to run. At that time me,
7 Latoya Miller and Clifton Funderburk started trying to get
8 out the side door.

9 When doing that we had a -- when doing that he had a
10 grip on my belt loop. Then I, Latoya Miller, felt a large
11 jerk on my pants like something fell. After leaving out
12 of the Matrix he was nowhere in sight. So I entered back
13 into the club to see if I could find him, Clifton
14 Funderburk and my cousin Takisha Ravens."

15 Q. Thank you. Miss Miller, when you said you felt a tug
16 and you ran out and he was nowhere in sight, who is he?

17 A. Clifton Funderburk.

18 Q. Okay. And would you remind us when Clifton was
19 fighting that night?

20 A. He wasn't fighting.

21 Q. When did Cliff pull a gun out?

22 A. He didn't pull a gun out.

23 Q. Did you ever see him with one?

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

25 Q. Was Cliff shot that night?

1 A. Yes, he was.

2 MR. JOYNER: No further questions, Judge.

3 RECROSS EXAMINATION

4 BY MR. ROGERS:

5 Q. Do you know who was fighting?

6 A. I know two of the guys and then I know that he was
7 fighting.

8 Q. He who?

9 A. The one that did the shooting.

10 Q. And who is that?

11 A. The one sitting beside you.

12 Q. Have you ever looked at a photographic spread before
13 today?

14 A. No, I haven't.

15 Q. And at the time the shots were fired you didn't see
16 who was firing the shots, did you?

17 A. No, sir, I didn't but he came back in. I saw him
18 come back in the club with the green jacket and the gun in
19 his hand.

20 Q. I understand that, but when the shots were fired you
21 heard a clicking noise and shots were fired?

22 A. Right.

23 Q. You didn't see who fired those shots?

24 A. No, sir.

25 Q. Thank you.

1 MR. ROGERS: No further questions.

2 THE COURT: You may step down. Thank you.

3 MR. HALES: Tyrone Miller.

4 THE COURT: Mr. Miller, if you will come up to the
5 Bible, please.

6 TYRONE MILLER, after being duly sworn, testified
7 as follows:

8 MR. ROGERS: Your Honor, may we approach, please?

9 THE COURT: Sure.

10 (WHEREUPON, a bench conference was held off the
11 record in the presence of the jury, but out of the
12 hearing of the jury.)

13 DIRECT EXAMINATION

14 BY MR. HALES:

15 Q. Please state your name?

16 A. Tyrone Miller.

17 Q. Mr. Miller, how old are you?

18 A. Thirty-one.

19 Q. Where are you living?

20 A. I'm in the Bureau of Prisons right now.

21 Q. Where is that.

22 A. In Butler, North Carolina.

23 Q. Okay. What are you there for?

24 A. Conspiracy to drugs.

25 Q. Conspiracy to drugs. How long is your sentence?

1 A. Fourteen years.

2 Q. About how long you been doing on that sentence
3 already?

4 A. Twenty-seven months.

5 Q. Back on November 28th of 2004 where were you on that
6 day?

7 A. At the Club Matrix in Pageland.

8 Q. Okay. Where were you living at that time?

9 A. 587 -- I can't even think of the road right now.

10 Q. What town is it in?

11 A. Pageland.

12 Q. Okay. So you lived in Pageland. What can you tell
13 me about that night?

14 A. I arrived at the club about 12:15 or 12:30 and I was
15 standing at the bar getting a drink and I seen a bunch of
16 movement going on in the club. And I asked somebody that
17 walked by me what was going on. He said ---

18 MR. ROGERS: Objection. Hearsay.

19 THE COURT: Can't go into hearsay. Don't go into the
20 hearsay unless.

21 THE WITNESS: I was at the club and seen a bunch of
22 movement going on and I walked to the dance floor to see
23 what was going on. And my cousin and them was in an
24 altercation.

25 BY MR. HALES:

1 Q. Who is your cousin?

2 A. Dewayne Miller.

3 Q. And who -- you said your cousin and them? Who?

4 A. Kevin Johnson and Charles O'Bryant Miller.

5 Q. All right.

6 A. They were in an altercation and during the
7 altercation when they were fighting, whatever, and
8 everything got calmed down after Angelo Mason came in and
9 broke up everything. Shortly after that a guy came to me
10 with a gun. A black pistol in his hand and pointed at my
11 head and asked me who hit him.

12 And I told him I hadn't seen him and I walked to --
13 shortly after that I walked to the men's bathroom. I
14 heard a shot fired, and after that shot was fired I got
15 ready to go come out of the bathroom and I heard some more
16 shots and I ran into the women's bathroom.

17 And after the shots was fired I came out of the
18 women's bathroom. And when I come through I seen a guy
19 laying on the floor with a white or cream sweater on
20 laying on his face.

21 Q. Okay. Now, let's back up here a minute. You say
22 some guy came up and pointed a gun at you?

23 A. Yes, sir.

24 Q. Do you remember what this guy looked like?

25 A. Yes, sir.

- 1 Q. What did he look like?
- 2 A. This guy right here.
- 3 Q. What guy is that?
- 4 A. Michael Watts.
- 5 Q. Is he sitting in the courtroom?
- 6 A. Yes.
- 7 Q. Where is that?
- 8 A. Right here at this table.
- 9 Q. Okay. You remember what he was wearing that night?
- 10 A. He had on a green field jacket.
- 11 Q. All right. You remember what that gun looked like
- 12 that he pointed at you?
- 13 A. It was black. It either had to be a nine millimeter
- 14 or bigger.
- 15 Q. How do you know that? You know anything about guns?
- 16 A. I mean I done had a .45 Rugger registered in my name
- 17 before.
- 18 Q. Okay. And you said you went in the men's bathroom
- 19 after he pointed the gun at you?
- 20 A. Yes, sir.
- 21 Q. And you came out. What happened when you came out?
- 22 A. I heard the shots fired and I walked in the women's
- 23 bathroom with like 10 or 15 more people and after the
- 24 shots and stuff had stopped being fired ---
- 25 Q. People ran in the bathrooms?

1 A. Yes, sir.

2 Q. And after that did you walk back out?

3 A. I walked out the bathroom. And when I walked out the
4 bathroom there was a guy lying on the floor with a sweater
5 on. A cream or either white sweater laying on the floor
6 on his face.

7 Q. Did you know who that was at the time?

8 A. No, sir.

9 MR. HALES: Court's indulgence just one moment.

10 BY MR. HALES:

11 Q. Thank you, Mr. Miller. Answer any questions
12 Mr. Rogers may have.

13 CROSS-EXAMINATION

14 BY MR. ROGERS:

15 Q. Mr. Miller, you gave a statement to S.L.E.D. Agent
16 Mike Anderson on December 6th of 2004, correct?

17 A. I think so. I can't remember the exact date.

18 Q. All right. Let me show you this statement and ask
19 you if that looks to be that statement that you give to
20 him?

21 A. Yes, sir.

22 Q. That's the statement that you gave about a week later
23 after this incident?

24 A. Yes, sir.

25 Q. Anywhere in that statement do you say anything about

1 Michael Watts?

2 A. No, because I didn't know his name at that point in
3 time.

4 Q. All right. Have you -- how did you learn his name?
5 How did you learn Michael Watts' name?

6 A. I learned his name because on my subpoena it had his
7 name on there and everything and before the -- after the
8 incident and everything happened the girls that are around
9 in Pageland that I knew had called his name also.

10 Q. Okay. So you didn't know other than what you were
11 told?

12 A. Not as far as knowing who he were, no.

13 Q. And by that I mean you were never shown a
14 photographic lineup sometime before that statement or
15 after that statement where you were to be allowed to pick
16 out the person that you saw shooting in the club that
17 night?

18 A. No, sir.

19 Q. You've never done that?

20 A. And when I was in Darlington Mr. Joiner came and
21 talked to me and asked me could I pick him out because of
22 him pointing the gun in my face. And I told him that if a
23 man pointed a gun in my face I'll always remember what he
24 looks like.

25 Q. Okay. But you didn't tell -- you didn't identify

1 that person in the statement, did you?

2 A. No, sir.

3 Q. And when did Mr. Joyner come and talk to you about
4 that?

5 A. I can't remember the exact date. It was -- it may
6 have been some time in August or something like that. I
7 can't remember.

8 Q. Of last year?

9 A. Of 2006.

10 Q. That's last year. August of 2006?

11 A. Yes, sir.

12 Q. So what would have been a whole year after this had
13 happened?

14 A. Yes, sir.

15 Q. So nobody ever asked you to look at a photographic
16 spread to say that the person that pointed a gun to my
17 head is in this picture -- in these pictures?

18 A. Whenever I said -- I told you whenever he came to
19 Darlington. He showed me a picture and I pointed him out,
20 and he said, "Is that him?" She showed me two or three
21 pictures and in one of them he had braids in the picture,
22 and I told him that that didn't look like him. And it
23 happened to be an earlier picture of him.

24 MR. ROGERS: Your Honor, may we approach?

25 THE COURT: Sure.

1 (WHEREUPON, a bench conference was held off the
2 record in the presence of the jury, but out of the
3 hearing of the jury.)

4 BY MR. ROGERS:

5 Q. You have your statement there. Mr. Miller, I believe
6 your testimony was that after this person had come up to
7 you and said, "Well, you're the person that hit me," and
8 then sometime later in your statement you say 20 to 25
9 seconds later I heard gunshots; is that correct?

10 A. Yes, sir.

11 Q. And how many gunshots did you hear?

12 A. At first I think it was maybe anywhere from one to
13 two gunshots and shortly after that when I went in the
14 bathroom I heard two or three more gunshots.

15 Q. You heard two more?

16 A. Yes, sir, at least two or three. Somewhere,
17 approximately in that area.

18 Q. Okay. So then you ran into the men's room?

19 A. From the first shot that was fired.

20 Q. Okay. Did you see who fired those first shots?

21 A. No, sir.

22 Q. Did you see who fired any of the shots you heard
23 while you were in the bathroom?

24 A. No, sir.

25 Q. When you finally came out of the bathroom and you saw

1 Mr. Funderburk -- you did see Mr. Funderburk?

2 A. Laying on the floor.

3 Q. Yeah.

4 A. The guy that got shot, yes, sir.

5 Q. Where was he?

6 A. He was close to right where you come off the dance
7 floor. He was like right up in that area laying on his
8 face with a white or cream colored sweater laying on his
9 face.

10 Q. Was his near the side door entrance?

11 A. It was -- I can't say exactly how close it was, but
12 it was on up maybe just a little farther than that.

13 Q. How many feet from -- well, was he on the dance
14 floor. I guess let me start that way?

15 A. As far as like coming out the door, the dance floor
16 and as far as the door wise is kind of close.

17 Q. Okay.

18 A. So he was like you know like real close to in between
19 like where you come off the dance floor and right where
20 you get ready to walk out.

21 Q. Out the door?

22 A. Yes, sir.

23 Q. Okay?

24 MR. ROGERS: Court's indulgence. No further
25 questions. Thank you.

1 MR. HALES: No redirect.

2 THE COURT: You may step down. Thank you.

3 MR. JOYNER: Judge, State would call Charles Miller.

4 CHARLES MILLER, after being duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. JOYNER:

8 Q. Afternoon, Mr. Miller?

9 A. Afternoon.

10 Q. Please state your name for the Court.

11 A. Charles O'Bryant Miller.

12 Q. How old are you, Mr. Miller?

13 A. Twenty-nine.

14 Q. Where are you from?

15 A. Jefferson.

16 Q. How long have you lived there?

17 A. All my life off and on from here to Columbia.

18 Q. Okay. You ever been to the Matrix?

19 A. Yes, sir.

20 Q. How many times?

21 A. A lot.

22 Q. Is that a pretty cool place to go in Pageland?

23 A. Yeah. Ain't nothing else to do around here.

24 Q. I want to take you back to November 28th 2004. You
25 remember that day?

- 1 A. Yes, sir.
- 2 Q. Where were you that night?
- 3 A. I was at the Matrix.
- 4 Q. You remember anything in particular?
- 5 A. Yeah, it was a fight ensuing and Clifton end up
6 getting shot and killed.
- 7 Q. Who?
- 8 A. Clifton. Champ.
- 9 Q. Did you see anybody shotting that night?
- 10 A. Yes, sir.
- 11 Q. Who?
- 12 A. Mr. Watts.
- 13 Q. You saw him?
- 14 A. Yes, sir.
- 15 Q. Is he in the courtroom?
- 16 A. Yes, sir.
- 17 Q. Can you point him out for us?
- 18 A. Yes, sir.
- 19 Q. What's he wearing?
- 20 A. Blue shirt with a brown and black tie.
- 21 Q. About what time did you get to the club that night?
- 22 A. I can't really remember. I know it was around 11:00
23 or 12:00, maybe.
- 24 Q. What did you do when you got there?
- 25 A. Soon as I walked in the door I went to the bar and

1 seen Crystal and Tanesha, that's Chrystal's sister. And
2 Mr. Watts came up and we introduced ourselves because,
3 Tanesha, I used to talk to her and Michael was with
4 Crystal. So we introduced ourselves and I bought him a
5 drink at the bar.

6 Q. Okay. How long were you there before all the action
7 took place?

8 A. Maybe two hours I think. It might not have been that
9 long. Maybe two hours or so.

10 Q. How did this all get started what you saw?

11 A. There was a belt with a big belt buckle laying in the
12 floor, and at the time a lot of people had them, and my
13 brother had a belt exactly like the one that was on the
14 floor. And I looked at the belt on the floor and I was
15 like what my brother belt doing on the floor cause I
16 thought it was my brother's because he had one exactly
17 like it that night.

18 And I picked it up. And when I picked it up a guy
19 come up to me and was like, man, what the hell you doing
20 with my belt. But he was -- I mean I was like I thought
21 it was my brother's, man. I give it back to him.

22 Q. Did you know that guy?

23 A. I didn't know him at the time.

24 Q. Did you later learn who he was?

25 A. Yes, sir.

1 Q. Who?

2 MR. ROGERS: Objection. Hearsay.

3 THE COURT: Could be.

4 MR. ROGERS: I don't know the basis. I think his
5 needs to lay the proper foundation to get that out.

6 MR. JOYNER: There is no problem.

7 THE COURT: Okay.

8 MR. JOYNER: I can leave that alone.

9 BY MR. JOYNER:

10 Q. Now, start back you find the belt buckle?

11 A. And he came up to me and he was -- he asked what the
12 hell I'm doing with his belt. So I ended up giving it
13 back to him but for some reason the guy he didn't just
14 want to take the belt and leave. He kept on talking junk
15 like, "Motherfucker, you don't know me." And he kept on
16 talking. I was like, man, I already gave you the belt
17 back, man. Just leave us alone, but he kept on talking
18 and I was like, well, you ain't going to talk to me about
19 no belt.

20 So we were standing there. It was about to be a
21 confrontation, and Mr. Watts came and was like, what's
22 popping? What's popping? And my home -- my cousin came
23 up and said, "Man, you know what's popping," and they just
24 started swinging and start swinging. I can't really
25 remember hitting Mr. Watts or not, but my -- anyway, we

1 had -- it was one dude in the corner that was getting hit
2 that we were fighting and one dude had gotten taken out by
3 Mr. Brown. And we had to do it in the corner and the
4 lights came on so the fight broke up and they were pulling
5 the dudes out and they turned the lights back off.

6 And maybe three or four minutes later -- five
7 minutes, then I seen -- I was standing on -- the way the
8 Matrix is set up it's like there is a door like in the
9 middle and D.J. booth and everything else is in the back.
10 And I was in this corner and like the door is right here
11 and i was standing in this corner and I seen somebody come
12 through with a gun.

13 And then I heard a shot and I took off running and I
14 heard like two more shots and I ran outside.

15 Q. Who did you see come through with the gun?

16 A. Mr. Watts.

17 Q. What did he have on?

18 A. He had on a I think -- I know he -- I can't remember
19 exactly what he had on then that night. He had on a green
20 jacket with a -- I think an orange undershirt with a
21 Philadelphia -- might have been a Philadelphia Phillies
22 hat that was green. Green and orange or something.

23 Q. When he came through were you able to see a gun?

24 A. Yes, sir.

25 Q. What did it look like?

1 A. It was a black handgun. I know it was a black
2 automatic. I couldn't tell if it was a nine or .40
3 caliber or .45 caliber, but I know it was a black
4 automatic handgun.

5 Q. Did you see him hit anybody when he was shot?

6 A. Honestly, I didn't see him hit anybody when he was
7 shot but -- cause I just heard the shot. When I heard the
8 shot I took off running. I didn't stay to see the impact
9 or nothing I just seen him with the gun. As soon as I kind
10 of seen him run in with the gun up I knew it was the dudes
11 we had got in a confrontation with. When I heard the shot
12 I took off running.

13 Q. Did you know Cliff prior to that night?

14 A. I didn't know him but I -- a lot of people said I
15 seen him. If I seen his face I might remember him. I
16 remember seeing him a couple of places but I don't know
17 him personally.

18 Q. Did you see him that night?

19 A. No.

20 MR. JOYNER: One moment please. No further
21 questions, Judge?

22 CROSS-EXAMINATION

23 BY MR. ROGERS:

24 Q. Mr. Miller, you left something of out of your
25 testimony, haven't you?

1 A. What's that?

2 Q. The other gun?

3 A. Well, there was a guy -- a big dark skinned guy that
4 was kind of heavy set. The gun that he had I, honestly, I
5 was think it was the gun. Other people say it was a bat,
6 but I know he had it like over his shoulder. If it was a
7 gun it was a shotgun. It wasn't a handgun.

8 Q. You didn't tell this jury that right now, did you;
9 that there was another gun in the club?

10 A. Well, I can remember seeing as I ran -- like as I was
11 running out the dude with a gun. I don't know who he was
12 with so I didn't really pay no attention to him. I looked
13 at him with the gun, but I didn't care who he was with. I
14 didn't know if he was with Mr. Watts at that time or if he
15 was with another guy or what.

16 Q. But you've been called as a witness and you've taken
17 an oath to tell the truth about this whole event, correct?

18 A. And I'm telling the truth.

19 Q. And you left out the part about another gun being
20 there?

21 A. But that don't mean I'm lying about it.

22 Q. But you left that out, didn't you?

23 A. Yes.

24 Q. You told to police about it?

25 A. Yeah.

1 Q. When you first gave your statement?

2 A. Um hum.

3 Q. And you don't know anything more? Who had it? Where
4 it was?

5 A. Later on he said, she said who it was.

6 Q. Okay. But of your own knowledge you don't know what
7 happened to that gun?

8 A. No, sir.

9 Q. What about other guns in the club?

10 A. No, sir.

11 Q. No, sir, what?

12 A. There were no other guns?

13 Q. You didn't see any or there were no other guns?

14 A. There were none as far as I could see.

15 MR. JOYNER: Judge that would be speculation.

16 MR. ROGERS: I'll rephrase it.

17 BY MR. ROGERS:

18 Q. You didn't see any other guns?

19 A. No.

20 Q. But you can't testify nobody else in the club had
21 guns?

22 A. No.

23 Q. How many people were in the club?

24 A. Maybe 50. Maybe 50. Something like that.

25 Q. And where were you when the shooting started?

- 1 A. In the left hand corner.
- 2 Q. Of the dance floor?
- 3 A. Of the dance floor.
- 4 Q. So that -- would you say that would be at the back of
- 5 the club?
- 6 A. Yeah.
- 7 Q. Well ---
- 8 A. No, not if you consider the back, the DJ booth, no, I
- 9 was towards the door.
- 10 Q. Well, for my own point of reference if where you're
- 11 sitting is the front entrance of the club, okay? Where is
- 12 the front door? Where would the dance floor be in
- 13 relation to you at that front door?
- 14 A. Well, if I'm at the front door there is a bar here
- 15 and then there was a wall separating the dance floor from
- 16 the area that the bar is in.
- 17 Q. There is a wall there?
- 18 A. Yes.
- 19 Q. Separating the dance floor from the bar?
- 20 A. Yes.
- 21 Q. Is it a full wall or a half wall?
- 22 A. It's a full wall. Just enough room for a door.
- 23 Q. If you were standing in the bar your view to the
- 24 dance floor would be obstructed by this wall?
- 25 A. Not necessarily.

1 Q. There is a door there, right?

2 A. But you can still see through the dance floor because
3 the bar is pushed out you can see directly ---

4 Q. Through that door?

5 A. --- through the door.

6 Q. But there would be parts that would be blocked by the
7 wall?

8 A. Not if you're standing at the bar.

9 Q. Not if you're standing at the bar?

10 A. Just the back part.

11 Q. So you were at the end of the dance floor?

12 A. No. I was at the beginning of the dance floor on the
13 left side.

14 Q. Okay. Were you near the side door entrance? Let's
15 put it that way.

16 A. No.

17 Q. Okay. Were you on the opposite side of the room from
18 the side door entrance?

19 A. From the side door entrance?

20 Q. Yes.

21 A. Yes.

22 Q. Did you see where Mr. Funderburk fell?

23 A. No.

24 Q. I believe you told the police officers that Lamont
25 was shooting as he entered the dance floor. He passed me?

1 A. Yes.

2 Q. So he came on the dance floor, passed you and began
3 shooting?

4 A. Yes.

5 Q. In what direction?

6 A. He had the gun like this, so I don't know.

7 Q. And how many shots did you hear or see?

8 A. I know I seen one. I seen fire come out the barrel.
9 At least one.

10 Q. Did you hear any other shots?

11 A. Yes.

12 Q. Right after that?

13 A. Yes.

14 Q. Okay.

15 MR. ROGERS: Court's indulgence.

16 BY MR. ROGERS:

17 Q. Let me get this straight. Mr. Funderburk was not a
18 part of the altercation about the belt?

19 A. Not at all.

20 Q. But you were?

21 A. Yes.

22 Q. And you struck someone?

23 A. Yes.

24 Q. Mr. Watts?

25 A. I think so but I really can't remember the fight.

1 Like when you're fighting and it's more than two or three
2 people on each side you really just swing.

3 Q. And he hadn't swung on you first?

4 A. Yes, he ---

5 Q. He swung at you?

6 A. Yes.

7 Q. And missed or hit you?

8 A. I got hit first.

9 Q. By him or by somebody else?

10 A. I think it was him.

11 Q. Who else was standing -- y'all were on the dance
12 floor?

13 A. Yes.

14 Q. Who else was standing there?

15 A. There was two guys with Mr. Watts and my cousin came
16 up and my sister was standing beside me.

17 Q. And so the fight was about this belt buckle?

18 A. Yes, sir.

19 Q. And two of the people involved in the fight left or
20 were taken outside?

21 A. Yes.

22 Q. And you saw one of those people come back in with a
23 weapon and one come back in with a shotgun?

24 A. I seen -- I didn't see the guy come back in with the
25 shotgun. I saw Mr. Watts run to the dance floor with his

1 pistol.

2 Q. They returned. Lamont with a pistol. The other guy
3 with the shotgun. Did you say that to the police?

4 A. I seen the guy with the gun. I didn't say -- is that
5 what that statement says?

6 Q. Yes, sir. I'm sorry. It's where I have it
7 underlined there. Start there.

8 A. I didn't -- I don't remember. Honestly, I didn't see
9 the guy walk in the club with the shotgun. But I remember
10 the guy having something on his shoulder that looked like
11 a shotgun. But I know Mr. Watts had a pistol because I
12 seen fire come out of it and I seen the pistol.

13 Q. All right. Thank you.

14 MR. ROGERS: Nothing further.

15 REDIRECT EXAMINATION

16 BY MR. JOYNER:

17 Q. Mr. Miller, y'all were talking earlier about someone
18 named Lamont. Who is that?

19 A. Mont. Mr. Watts.

20 Q. Okay. Now, that night did you have a gun?

21 A. No, sir.

22 Q. Who had one?

23 A. Mr. Watts.

24 Q. What did it look like?

25 A. A black automatic handgun.

1 Q. How did it compare to this?

2 A. It was like that, but I couldn't tell what the -- if
3 it was wood grain or not because his hand was over it.

4 Q. What did he have on again?

5 A. I know he had on a green jacket.

6 Q. How does it compare to this one?

7 A. It was like that, but -- it was like that, but I
8 don't think that was it exactly. I don't know if that was
9 it exactly, but I know it was a green jacket. I can't
10 tell you the material it was made out of.

11 Q. But it was green?

12 A. It was a green jacket.

13 MR. JOYNER: No further questions, Judge.

14 MR. ROGERS: Nothing further.

15 COLLOQUY

16 THE COURT: Thank you, sir. You may step down. All
17 right. We are well after 5:00. Let's break for the
18 evening and let you, unless there is something we need to
19 get in this afternoon. Okay. Ladies and gentlemen of the
20 jury, we're going to go into recess until 10:00 in the
21 morning. Remember my instructions about anybody making
22 any improper contact. Y'all have a good night. Report to
23 the jury room at 10:00 in the morning and we will move on
24 from there.

25 (WHEREUPON, the jury panel was excused from the

1 courtroom at 5:11 p.m.)

2 THE COURT: All right. Jurors are clear. Anything
3 else before we break?

4 MR. HALES: Not from the State, Your Honor.

5 MR. ROGERS: Judge, I want to put on the record this
6 matter with Tyrone Miller. It was testimony about Mr.
7 Miller that he was shown photographs or a photograph by
8 Mr. Joyner last August. That information had not been
9 provided to me. Of course, had I known that I would have
10 required that the State go through a nearly vigorous
11 hearing so we can determine whether that out of Court
12 procedure somehow taint any in Court identification.

13 I was surprised when he testified in that regard. I
14 think, and as a result of that I think I should make a
15 motion for a mistrial. I've discussed this matter with
16 Mr. Watts. He does not want me to make that motion. He
17 wants to get on with this trial. I don't know what the
18 remedy should be, Your Honor. I did not, even after the
19 Judge instructed me, I did not go into any further
20 cross-examination with this witness.

21 I would like an opportunity to develop the
22 circumstances of showing the picture to him at that time
23 and also go into another matter that quite frankly I
24 forget to go into because I was blind sided by this issue.
25 And I'm not trying to put any blame on anybody. I'm just

1 saying that I would like an opportunity to further cross
2 Mr. Miller?

3 THE COURT: All right. We need to keep him here.

4 MR. ROGERS: All right.

5 THE COURT: We need to keep him here, Sheriff. And
6 all I was going to say was that if you want some type of
7 curative instruction or any charge on it at the
8 appropriate time you be thinking about that and I'll be
9 glad to help you.

10 MR. ROGERS: I will, Judge. I will try to provide
11 something to the Court.

12 MR. JOYNER: Judge, I don't think he really has a
13 right to any of that information. Number One, it was not
14 an official out of Court identification. I was meeting
15 with him at the jail and it was work product on my behalf.

16 Rule Five, Number Two, says, "That information not
17 subject to disclosure -- it says this rule does not
18 authorize the discovery or inspection of reports,
19 memoranda or other internal prosecution documents or
20 information made by the attorney or the prosecution or
21 other prosecution agency in connection with the
22 investigation or prosecution of the case or statements
23 made by prosecution witnesses or perspective witnesses
24 provided that after the prosecution calls the witness he
25 has testified on direct examination." Judge, none of this

1 information, me meeting with a witness asking him to look
2 over my discovery, I mean it doesn't ---

3 THE COURT: In your defense you didn't bring it out.

4 MR. JOYNER: No.

5 THE COURT: But on the other hand Mr. Rogers' got a
6 point. That's where you've got to be careful as the
7 prosecutor not to get in to the investigative field. You
8 catch what I'm saying?

9 MR. JOYNER: Yes, I understand, Judge, and that's the
10 point I was trying to make. I wasn't -- all I was doing
11 was preparing my case for trial and it was simply a work
12 product. I wasn't going to say, "Look at this" and then
13 use that as evidence for him to say, "Yes, I identified
14 him here. I identify him there." I wasn't trying to use
15 that to bolster the case.

16 THE COURT: No, you did not bring it up. But on the
17 other hand in defense of Mr. Rogers and what I agree with
18 him. You can make an argument there that that suggested
19 later identification in Court. And wasn't -- he wasn't
20 aware of so I understand his concern, but I think we can
21 take care of it.

22 MR. ROGERS: Yes.

23 THE COURT: Just let me know what I can help you with
24 in an instruction. Ten o'clock in the morning.

25 MR. HALES: Thank you, Judge.

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I, HATTIE O. GORDON, Official Court Reporter for the 4th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Chesterfield County, South Carolina, on the 30th day of July, 2007.

January 4, 2008

HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
<u>COUNTY OF CHESTERFIELD</u>	)	05-GS-13-0471
		05-GS-13-0473
		05-GS-13-0476
		05-GS-13-0474
		05-GS-13-0475
		05-GS-13-0477
		06-GS-13-0499

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
MICHAEL L. WATTS	)	
<u>DEFENDANT</u>	)	

July 30th - August 1st , 2007
 Chesterfield, South Carolina
 Volume Number 02 of 03

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE; and a jury.

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

FRANKLYN JOYNER, ASSISTANT SOLICITOR
 Attorney for the State

KEVIN HALES, ASSISTANT SOLICITOR
 Attorney for the State

JIMMY ROGERS, ESQ.
 Attorney for the Defendant

DAVID EVANS,
 LATOYA MILLER,
 TYRONE MILLER,
 CHARLES MILLER,

KEVIN JOHNSON,
DEWAYNE MILLER,
ANGELO MASON,
TAMEKA AUSTIN,
DANNY BENNETT,
MIKE TRESDALE,
LARRY BROWN,
JENNIFER STONER,
DAN DEFREESE,
JANICE ROSS,
CRYSTAL JONES,
FERMAN MACKEY,

HATTIE O. GORDON
Circuit Court Reporter

COLLOQUY

1
2 THE COURT: Solicitor, Mr. Rogers, any developments?
3 Are we ready to go?

4 MR. JOYNER: We're ready.

5 MR. ROGERS: Your Honor, I had just spoken with
6 Mr. Joyner about how we wanted to handle Mr. Miller. I
7 know you were going to allow him to recross him. He
8 proposed I call him in my case. I was thinking that we
9 just recall him now and let me finish my cross, but either
10 way is okay with me.

11 THE COURT: Isn't he waiting to be transported?

12 MR. JOYNER: Sir?

13 THE COURT: Isn't he waiting to be transport back
14 somewhere?

15 MR. JOYNER: No, he's here for the remainder of the
16 week. He's at the jail.

17 MR. ROGERS: He's at the detention center.

18 MR. JOYNER: Yes, sir.

19 MR. ROGERS: Waiting to be transferred back to his
20 federal facility, yes.

21 THE COURT: But he's not physically present here in
22 the courthouse?

23 MR. ROGERS: No, sir.

24 THE COURT: I'll let you work him back in, but we've
25 got to get him back here.

1 MR. ROGERS: Yes, sir.

2 THE COURT: But we're not going to wait.

3 MR. ROGERS: No, sir, I understand.

4 OFFICER: Your Honor, we can bring him back now if
5 you wanted to.

6 THE COURT: Do that for us. I want to be as flexible
7 as I can. Try to keep our time. We don't want to keep
8 them back there in The Hole.

9 MR. JOYNER: Yes, sir.

10 THE COURT: You're ready.

11 MR. JOYNER: Yes, sir, we are.

12 THE COURT: All right.

13 MR. JOYNER: Your Honor, the State would call Kevin
14 Johnson.

15 THE COURT: Madam Bailiff, I you would be getting Mr.
16 Johnson we'll get the jury back in here. We've have
17 everybody, haven't we?

18 MR. ROGERS: Your Honor, before the witness comes
19 up ---

20 POLLING OF THE JURY

21 THE COURT: Hold up just a minute, Madam Bailiff.

22 MR. ROGERS: I would ask you to question the jury. I
23 don't know what your normal procedure is about that.

24 THE COURT: All right. Madam Clerk, you will poll
25 the jury. Make sure they haven't been contacted by

1 anybody.

2 (WHEREUPON, the jury panel enters the courtroom at
3 10:21 a.m.)

4 THE COURT: Thank you. Everyone accounted for. Good
5 morning, everyone. Thank you for your patience. We took
6 a few minutes and worked in two matters that were pending
7 tomorrow that we needed to move back. So with your
8 patience we took care of that. Now, we're back with this
9 case and I'm going to ask Madam Clerk at this time to poll
10 the jury.

11 CLERK OF COURT: Okay. Good morning. When I call
12 your name I want to know if anybody has contacted you
13 about this case or if you have read it in the newspaper or
14 seen on t.v. So all I want is a yes or no answer. Lance
15 J. Abernathy?

16 JUROR: No.

17 CLERK OF COURT: Christy M. Woodward?

18 JUROR: No.

19 CLERK OF COURT: Penny Koyne?

20 JUROR: No.

21 CLERK OF COURT: Threadgill Redfearn?

22 JUROR: No.

23 CLERK OF COURT: Kathy Huggins?

24 JUROR: No.

25 CLERK OF COURT: Bryan J. Starling?

1 Juror: No.

2 CLERK OF COURT: Bryan J. McManus?

3 JUROR: No.

4 CLERK OF COURT: Tony E. Melton?

5 JUROR: No, ma'am.

6 CLERK OF COURT: Jonathan Hudley?

7 JUROR: No, ma'am.

8 CLERK OF COURT: Jeffrey Watson?

9 JUROR: No.

10 CLERK OF COURT: Steven Douglas?

11 JUROR: No.

12 CLERK OF COURT: Sherry B. Hancock?

13 JUROR: No.

14 CLERK OF COURT: William T. Smallwood?

15 JUROR: No.

16 CLERK OF COURT: Lorine Sutton, Jr?

17 JUROR: No.

18 THE COURT: Thank you. Solicitor, anything further
19 from the jury as far as polling?

20 MR. JOYNER: No, sir.

21 THE COURT: You may call your next witness.

22 MR. JOYNER: Kevin Johnson.

23 KEVIN JOHNSON, after being duly sworn, testified
24 as follows:

25 DIRECT EXAMINATION

1 BY MR. JOYNER:
2 Q. Good morning, Mr. Johnson?
3 A. Morning.
4 Q. Please state your name for the Court?
5 A. Kevin Johnson.
6 Q. How old are you, Mr. Johnson?
7 A. Twenty-two.
8 Q. Where are you from?
9 A. Jefferson.
10 Q. How long you lived there?
11 A. Basically, my whole life.
12 Q. Been to the Matrix before?
13 A. Yes, sir.
14 Q. How many times?
15 A. A bunch.
16 Q. All right. Take you back to November 28th of 2004.
17 Where were you that night?
18 A. In the club.
19 Q. Which club?
20 A. Club Matrix.
21 Q. What time were you there?
22 A. It was around maybe 1:30, twelve o'clock,
23 one o'clock. Something like that. Late in the evening.
24 Q. Did you see anything in particular that night that
25 stayed in your memory?

- 1 A. Yes, sir.
- 2 Q. What did you see?
- 3 A. The fight at the club. I mean dudes came in with a
4 gun and started shooting.
- 5 Q. Who came in with a gun?
- 6 A. Michael Watts.
- 7 Q. Have you seen Michael Watts before?
- 8 A. Before then?
- 9 Q. Yes.
- 10 A. No, sir.
- 11 Q. Did you see him that night?
- 12 A. Yes, sir.
- 13 Q. Is he in the courtroom?
- 14 A. Yeah.
- 15 Q. Point him out to us. What's he wearing?
- 16 A. A yellow shirt.
- 17 Q. Okay. How did this incident start at the club that
18 night?
- 19 A. Over a belt buckle.
- 20 Q. Explain that to me?
- 21 A. My cousin, Charles, was dancing with a girl and it
22 was a belt buckle on the floor. And my cousin, Tyrone, he
23 had on one just like it. And so Charles thought it was
24 Tyrone's belt and he told the girl to pick it up. And a
25 few gentlemen approached Charles talking about a belt

1 buckle and then the altercation started -- started
2 fighting.

3 Q. Were you there when this happened?

4 A. Yeah.

5 Q. You witnessed this?

6 A. Yeah.

7 Q. Was Michael Watts there at this time?

8 A. At the club?

9 Q. Yes.

10 A. Yeah.

11 Q. Okay. What happened? Describe the altercation?

12 A. Okay. It was words exchanged and there were blows
13 and I mean after blows he got escorted outside and then he
14 came back in.

15 Q. Okay. How did the -- when blows were being thrown
16 how was the altercation broken up?

17 A. By security.

18 Q. And you said he was taken outside. Explain that to
19 me?

20 A. Angelo took him -- escorted him outside and let him
21 go cause he was fin to go, but he came back.

22 Q. Okay describe when he came back?

23 A. I didn't see exactly what -- well, yeah, I did. He
24 came through. He shot the door and he came in shooting.
25 I mean there were no other way to describe it but as he

1 was shooting.

2 Q. Okay. Do you remember what he had on that night,
3 clothes?

4 A. Army fatigues.

5 Q. What do you mean Army fatigues?

6 A. It was the green Army fatigue. I think it was a
7 jacket. I know it was a jacket. A green fatigue jacket.

8 Q. And you said he was shooting. Did you get a chance
9 to see the gun?

10 A. The black gun.

11 Q. Okay. Earlier you said something about Tyrone. What
12 is Tyrone's full name?

13 A. Tyrone Miller.

14 Q. Did you see Tyrone that night? Did you see any
15 interaction with Tyrone and Michael Watts?

16 A. No, sir, I didn't see, well, when he was the so
17 called do what he did to Tyrone. No, but I didn't see
18 that.

19 Q. Describe Michael Watts coming through the door the
20 second time?

21 A. The second time?

22 Q. The time he had the gun?

23 A. Honestly, I seen him come through. I didn't see him
24 come through the door. Know what I'm saying. I seen him
25 pull the gun out -- I mean out the car, and that's when I

1 went back to the dance floor area.

2 Q. Okay.

3 A. I didn't see him physically come through the door
4 like walk through the door. No, I didn't see that.

5 Q. Did you ever see him inside the club with the gun?

6 A. Yeah.

7 Q. Describe that to me?

8 A. Describe that to you?

9 Q. Yes, please.

10 A. When he shot -- when he shot he kind of turned and he
11 shot off some more rounds and that's when I ran out the
12 club. He fired some rounds into the dance floor area and
13 that's when I ran out the club.

14 Q. How many people were on the dance floor area at that
15 time?

16 A. I don't know. Everybody was running.

17 Q. If you had to estimate?

18 A. Maybe.

19 Q. Was there a lot or not many?

20 A. Ain't going to say it wasn't a lot. Ain't going to
21 say it wasn't many, but it was a handful. Quite a few.

22 Q. Okay. After you ran outside after the shooting
23 started did you see Michael Watts again that night?

24 A. When he was handcuffed.

25 Q. Did you ever hear any other shooting?

1 A. After I ran out the club?

2 Q. Yes.

3 A. Not that I can remember, no.

4 Q. Okay.

5 MR. JOYNER: One moment please, Judge.

6 BY MR. JOYNER:

7 Q. Mr. Johnson, were you hurt that night?

8 A. Yes.

9 Q. Where?

10 A. In my lower right leg.

11 Q. Who shot you?

12 A. Who shot me?

13 Q. Yes.

14 A. Whoever was doing the shooting.

15 Q. Okay.

16 MR. JOYNER: I have no further questions, Judge?

17 MR. ROGERS: Thank you, Your Honor. Please the
18 Court.

19 CROSS-EXAMINATION

20 BY MR. ROGERS:

21 Q. Mr. Johnson, if I understand your testimony you say
22 you saw Michael Watts come in the club and just begin
23 shooting?

24 A. Yeah.

25 Q. And who did -- was he -- how many shots did you hear?

1 A. I heard a couple. I can't remember. I can't
2 remember exactly how many but I heard a couple.

3 Q. More than two?

4 A. Yeah.

5 Q. And did you see Mr. -- did you know Mr. Funderburk?

6 A. Did I know him?

7 Q. Yeah.

8 A. Yeah, I knew him.

9 Q. Did you see him get shot?

10 A. Did I see him get shot? No. After he got shot I
11 jumped. I mean I seen his body. Yeah, I did see that.

12 Q. Did you see him when he got shot?

13 A. No. Did I see Michael shoot him? No, I didn't see
14 him.

15 Q. That's what I'm asking?

16 A. No I didn't see him get shot.

17 Q. So your testimony is that this altercation happened,
18 Michael Watts came back and just started shooting?

19 A. Yeah.

20 Q. And you say at least two times?

21 A. Yeah.

22 Q. And you didn't hear any more shots?

23 A. I didn't say I didn't hear any more shots. I said he
24 shot a few times. I didn't say he only shot twice.

25 Q. That's what I'm trying to get at?

1 A. He shot more than twice.

2 Q. How many times did you hear him shoot?

3 A. A couple. I don't know exactly how many.

4 Q. How many -- was there other people shooting?

5 A. Nope.

6 Q. Okay. You give a statement about this event back in
7 December of 2004, didn't you?

8 A. Around, about that time.

9 Q. When you were interviewed by the police you told a
10 completely different story?

11 A. No. I said -- I remember my statement. I can
12 remember my statement like it was yesterday. I said it
13 was an altercation broke out. It was a fight. Started
14 fighting. Okay. He got out the club. He came back in
15 with a big, black gun and started shooting. That's what I
16 said.

17 Q. Okay. I have your statement here. Does this look to
18 be your statement that you gave?

19 A. Yeah, this is it.

20 Q. That's it?

21 A. Yeah.

22 Q. Okay. So in December you told Michael Anderson of
23 S.L.E.D. ---

24 A. Um hum.

25 Q. --- that after the fight the guy with the green

1 jacket on pulled out a big, black gun out of the white
2 car?

3 A. Um hum.

4 Q. Then he started into the club. And by the way, you
5 wrote this statement, didn't you?

6 A. Yeah, I wrote that.

7 Q. And he walked up to Tyrone Miller and put a gun to
8 his head?

9 A. Yeah, that's what Tyrone told me and that's what my
10 cousin told me, so I didn't see him. No.

11 Q. Let me ask you a question. That is not what you just
12 told this jury, is it? You didn't say anything about
13 Michael Watts putting a gun to Tyrone Miller's head, did
14 you when you just testified when Mr. Joyner was talking to
15 you? You never mentioned Tyrone Miller at all?

16 A. Until he asked me about Tyrone.

17 Q. You never said to this jury that you saw Michael
18 Watts put a gun to Tyrone Miller's head?

19 A. No.

20 Q. Is what you told the police that day?

21 A. I know cause like I told y'all I didn't see him put
22 the gun to Tyrone's head.

23 Q. But you told the police back in December that that's
24 what you saw, isn't it?

25 A. Didn't I say Tyrone said ---

1 Q. No, you didn't.

2 A. --- put a gun to his head?

3 Q. No, you didn't. You want to take a look at your
4 statement?

5 A. I just told you that Tyrone told me he put the gun to
6 his head.

7 Q. Did you say that in your statement?

8 A. No, I didn't say that, sir.

9 Q. So what you're testifying before about to this jury
10 is based on what other people told you?

11 A. No. That was the only thing that was based about
12 what other people told me, okay. Everything else, that's
13 fact there.

14 Q. Okay. Let's talk about the blows. That was not a
15 very accurate description of the fight was it; that blows
16 were passed?

17 A. What am I supposed to say? He hit him in the mouth.

18 Q. I want to know who passed past the first lick?

19 A. Huh?

20 Q. Who passed the first lick?

21 A. Well, honestly, I can't say who passed the first
22 lick. I know who landed the first lick.

23 Q. Who landed the first lick?

24 A. My cousin, Dewayne.

25 Q. And who did he hit?

- 1 A. Him.
- 2 Q. Him who?
- 3 A. Michael.
- 4 Q. Did you see Michael swing?
- 5 A. Did I see him swing?
- 6 Q. Yeah.
- 7 A. Yeah, I seen him swing.
- 8 Q. Did you put that in your statement?
- 9 A. No, I didn't put that in there, sir.
- 10 Q. Your statement isn't very long, is it?
- 11 A. No, it ain't.
- 12 Q. And that's all you told the police right after this
- 13 happened?
- 14 A. What was I supposed to do? Describe the fight in
- 15 detail?
- 16 Q. You weren't asked about the fight?
- 17 A. Huh?
- 18 Q. You weren't asked about the fight?
- 19 A. They asked what happened, and I said an altercation.
- 20 Q. You didn't think the police wanted to know who
- 21 started the fight?
- 22 A. He started the fight.
- 23 Q. He who?
- 24 A. Him.
- 25 Q. I don't know who him is?

1 A. Michael.

2 Q. Michael started the fight?

3 A. Yes.

4 Q. I thought you said the fight was about a belt buckle?

5 A. Over a belt buckle. He approached my cousin about
6 the belt buckle which was petty but that's what it was
7 about.

8 Q. So you're testifying now that Michael came up on the
9 dance floor and was arguing about ---

10 A. He approached my cousin about a belt buckle that was
11 laying on the floor.

12 Q. Isn't it true, Mr. Johnson, that what happened was
13 that the guys were arguing about the belt buckle, Michael
14 walks up and said, "Hey, what's going on?" That's not
15 true?

16 A. No, That's not true.

17 Q. That's not true?

18 A. No.

19 Q. He himself was arguing about a belt buckle?

20 A. That's what it was about. That's what the whole
21 situations was about. Was it his belt buckle? I don't
22 know. Was it his home boys? I don't know, but the whole
23 thing was about a belt buckle. There were some words
24 exchanged. There was a lot of drinking going on.
25 Regardless ---

- 1 Q. There was a lot of drinking going on?
- 2 A. Yeah.
- 3 Q. You were drinking?
- 4 A. It's a club. Was I drinking? No, I wasn't drinking.
- 5 I wasn't but 18 at the time. Eighteen, 19, one of the
- 6 two.
- 7 Q. Was your cousin drinking?
- 8 A. Was my cousin drinking? He was old enough to drink,
- 9 so, yeah, he was drinking.
- 10 Q. Did you see him drinking?
- 11 A. Did I see him drink? Yeah, he's grown. He can
- 12 drink.
- 13 Q. Did you see Michael drinking?
- 14 A. I wasn't paying him no attention like that until it
- 15 was time for whatever.
- 16 Q. Okay. Now, when you said you saw Michael come in the
- 17 club and begin firing where was he?
- 18 A. Where was he?
- 19 Q. Yeah, in the club? Was he on the dance floor? Bar?
- 20 Where was he?
- 21 A. When he first came in he was right there by in the
- 22 middle right. I ain't going to say he was all the way in
- 23 on the dance floor. He wasn't all the way in there by the
- 24 bar.
- 25 Q. And you saw two shots?

1 A. Listen. Listen to me. I didn't say I saw two shots.
2 It was more than two shots fired. That's what I'm telling
3 you. I said I heard a couple shots.

4 Q. And you can't tell this jury who fired all those
5 shots, can you?

6 A. He the only one I seen with a gun.

7 Q. Okay. So that's why you think he fired all the
8 shots?

9 A. Yep.

10 Q. Because you didn't see anybody else with a gun?

11 A. Nope, I didn't.

12 Q. Did you hear any gunshots when you got outside?

13 A. Outside the club?

14 Q. Yeah.

15 A. No, I wasn't listening for none. I was running.

16 Q. And did you just run home?

17 A. I just ran. I ran straight through the woods, around
18 this trailer, over on back to the store.

19 Q. And then what did you do?

20 A. Went to the ambulance.

21 Q. Where was the ambulance?

22 A. On the side of the club right here.

23 Q. So you came back to the club when you saw the
24 ambulance?

25 A. I came around the street and I seen the ambulance

1 right there and I went over to the ambulance.

2 Q. When did you first tell the police -- well, let me
3 ask you this. When did you get shot?

4 A. In the club. I felt the burn the whole time I was
5 running, but I didn't stop and check.

6 Q. Okay, so ---

7 A. I didn't get pierced. No, I didn't.

8 Q. You got grazed?

9 A. I got grazed. I got burnt.

10 Q. So you saw two shots, right? I'm just going by what
11 you testified to?

12 A. Listen, man, you can't fool me, man.

13 Q. I'm not trying to fool you, Mr. Johnson?

14 A. I didn't say I seen anything, man.

15 MR. JOYNER: I would just object to asking and
16 answering. Been over this.

17 THE COURT: Sustained.

18 BY MR. ROGERS:

19 Q. Well, let me ask you this way. Where you hit by one
20 of those two shots?

21 A. Honestly, man, it was more than two shots. That's
22 what you want me to tell you?

23 Q. And you don't know what shot hit you?

24 A. I know I got hit by one, you know.

25 Q. How many people were on the dance floor?

1 A. A handful.

2 Q. Can you give me a number? Ten, 15, 20, 25?

3 A. I couldn't give him a number. I can;t give you one
4 either.

5 Q. Thank you, Mr. Johnson.

6 REDIRECT EXAMINATION

7 BY MR. JOYNER:

8 Q. Mr. Johnson, did you see Mr. Watts that night?

9 A. Did I see him? Yeah, I seen him.

10 Q. Did he have a gun?

11 A. He had the gun. A black one.

12 Q. Did he shoot that gun?

13 A. He shot it.

14 Q. Where were you hit?

15 A. In the leg.

16 Q. Did you see anybody else with a gun that night?

17 A. No, sir.

18 MR. JOYNER: No further questions, Judge.

19 THE COURT: You may step down.

20 MR. HALES: Dewayne Miller.

21 DEWAYNE MILLER, after being duly sworn,

22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. HALES:

25 Q. Please state your name?

- 1 A. Dewayne Terry Miller.
- 2 Q. Mr. Miller, where do you live?
- 3 A. In Jefferson.
- 4 Q. What do you do?
- 5 A. I work at Maxway in Pageland.
- 6 Q. On November 28th 2004 were you at the Matrix?
- 7 A. Yes, sir.
- 8 Q. What were you doing there?
- 9 A. Just partying, drinking.
- 10 Q. You remember anything about that night?
- 11 A. Yes, sir.
- 12 Q. You please speak up?
- 13 A. Yes, sir.
- 14 Q. Tell me what you remember about that night?
- 15 A. Well, at the time before all that commotion started
- 16 me and my cousin were dancing with two females.
- 17 Q. Who is your cousin?
- 18 A. Charles Miller.
- 19 Q. Okay?
- 20 A. And it was a belt laying on the floor similar to his
- 21 brother's belt. And he picked the belt up.
- 22 Q. Who is his brother?
- 23 A. Tyrone.
- 24 Q. Okay. So who picked up the belt?
- 25 A. Charles.

1 Q. Okay.

2 A. He picked the belt up and some little black guy come
3 up and he was like you know, that's my belt.

4 Q. You know who he was?

5 A. No, I don't know him.

6 Q. Okay?

7 A. And you know they -- he got to fussing, cussing for
8 no reason. It was a mistake or whatever and while they
9 were having their altercation or whatever I stepped from
10 the female that I was dancing with and stood beside
11 Charles. And this guy in the green jacket comes running
12 up and holler, what's pooping off. What's popping or
13 whatever.

14 Q. Who was that?

15 A. The guy over there.

16 Q. Okay. And what's he wearing now?

17 A. A green jacket.

18 Q. What is he wearing now?

19 A. What is he waring now?

20 Q. Today.

21 A. Oh, a yellow shirt and a tie.

22 Q. All right?

23 A. And he come cup hollering, what's popping. What's
24 popping and I asked him like what's popping and next thing
25 he swung.

- 1 Q. Who swung?
- 2 A. He swung.
- 3 Q. Michael Watts swung?
- 4 A. Um hum, he swung.
- 5 Q. Who did he swing at?
- 6 A. Me and my cousin was side by side. I don't know if
- 7 he was trying to him me or him, but I leaned back and
- 8 swung back.
- 9 Q. Okay.
- 10 A. And me and him got tangled or whatever fighting and
- 11 probably about I'd said a good 50 seconds. It wasn't
- 12 long, and then I seen some heavysset guy pick him up you
- 13 know and walk -- took him out the door.
- 14 Q. You know who that guy was?
- 15 A. I have no idea.
- 16 Q. Took him to the door?
- 17 A. Yes, I guess they was walking him to the car but they
- 18 left the club or whatever.
- 19 Q. Okay. What happened then?
- 20 A. And there was another fight going on like closer to
- 21 the bar over in the corner.
- 22 Q. That involved you at all?
- 23 A. Well, no.
- 24 Q. Okay?
- 25 A. I mean I was over there but it didn't involve me.

1 Q. Do you know what that was about at all?

2 A. No. I don't know if that was his friend or what was
3 going on with that.

4 Q. But you don't know what happened?

5 A. No.

6 Q. Then what happened?

7 A. And then probably a good -- I'd say from 15 to 20
8 minutes he entered the club.

9 Q. What is his name?

10 A. What's his name? I don't know his name. Watts,
11 Michael, or something.

12 Q. Okay?

13 A. He entered the club with a handgun and me and my
14 cousin, Tyrone, were standing at the bar when he entered
15 the club and walked straight up to my cousin and put the
16 gun in his face and said, "Where's that nigger at that hit
17 me?" Those exact words. And my cousin replied, "What
18 nigger? I don't even know what you're talking about?"

19 And as he turned away from Tyrone I jumped over the
20 bar and took cover and I heard a gunshot and I thought my
21 cousin had gotten shoot, but after that happened I didn't
22 see anything else or know nothing else.

23 Q. Okay. So you doesn't actually see him shoot?

24 A. No, I didn't see him shoot.

25 Q. You jumped over the bar. How long did you stay back

1 there?

2 A. Until everything was over. Well, I got under -- I
3 was up under the bar, but after I heard gunshots I got up
4 and ran inside the kitchen area cause behind the bar there
5 is a door that goes to the kitchen. I ran in the kitchen
6 area.

7 Q. What did you do back there in the kitchen?

8 A. I called the police.

9 Q. You stayed back there?

10 A. Just stayed back there until they got there.

11 Q. Okay. Did you see anybody else that night with a
12 weapon?

13 A. Uh mum.

14 Q. Did you hear any other shots?

15 A. Actually, I heard three shots.

16 MR. HALES: Court's indulgence just one moment.

17 (WHEREUPON, State's Exhibit No. 15 was marked for
18 identification only.)

19 BY MR. HALES:

20 Q. Now, did you talk to the police about that?

21 A. Well, when I got on the phone with the police all I
22 told the police was that they needed to get down here
23 because somebody is in the club shooting. I don't know if
24 somebody got shot or what.

25 Q. Okay. But after that did you talk to the police and

1 give a statement or anything like that?

2 A. Not the Pageland Police or Chesterfield County
3 Police. I talked to a S.L.E.D. agent from Columbia, I
4 think.

5 Q. You remember his name?

6 A. No, sir, but ---

7 Q. You think it might be Mike Anderson?

8 A. Mike who?

9 Q. Anderson?

10 A. He is kind of a heavy set?

11 Q. Yeah?

12 A. That's him.

13 Q. I'll tell him. I'll show you what's been marked for
14 I.D. as State's Exhibit 15?

15 A. Yes.

16 Q. You recognize that?

17 A. Yes, sir.

18 Q. What is that?

19 A. This is a statement.

20 Q. Whose statement is that?

21 A. Yes, sir.

22 Q. Did you sign that statement?

23 A. Yes, sir.

24 Q. Is anything in that statement about the fight that
25 occurred? Altercation?

1 A. No, sir.

2 Q. Why not?

3 A. I mean I was shook up when he came to my house and
4 you know.

5 Q. Who came to your house?

6 A. The -- Michael Anderson, whoever. He came to my
7 house and I wrote the statement there. I thought maybe I
8 might have been getting in some trouble. For what reason
9 I don't know, but I was nervous.

10 Q. Why did you think you might be getting in the
11 trouble?

12 A. Because somebody telling them that I was in there
13 fighting or whatever.

14 Q. So you thought you might be charged with fist
15 fighting?

16 A. Yes.

17 Q. But everything in that statement is yours?

18 A. Mine, yes, sir.

19 Q. One moment. Please answer any questions Mr. Rogers
20 may have.

21 CROSS-EXAMINATION

22 BY MR. ROGERS:

23 Q. Mr. Miller, you and Kevin Johnson are cousins?

24 A. Yes, sir.

25 Q. And also both of you are cousins with Charles Miller?

1 A. Yes, sir.

2 Q. And Tyrone Miller?

3 A. Yes, sir.

4 Q. And Latoya Miller has a baby by?

5 A. Tyrone.

6 Q. Tyrone. So y'all are all kin?

7 A. Besides Latoya.

8 Q. Besides Latoya. All of y'all are cousins. And
9 you'll talked about this before you went to the police,
10 didn't you?

11 A. No.

12 Q. You never talked about it?

13 A. No.

14 Q. You were never shown a photographic spread of Michael
15 Watson and asked to pick him out?

16 A. No, sir.

17 Q. So when you identified Michael just now in Court that
18 was from seeing him in the club three years ago? Two and
19 a half years ago?

20 A. Well, I had seen him after the fact of what happened
21 in the club cause I got in some trouble probably about a
22 year or two years ago, and we was locked up in
23 Chesterfield County together.

24 Q. But you gave a statement to Michael Anderson from
25 S.L.E.D. on January of 2005, did you not? You have the

1 statement there?

2 A. Yeah.

3 Q. And you said in that statement if I direct your
4 attention to the first line: "On November 28th I saw
5 Lamont enter the club." And you wrote this yourself?

6 A. Um hum.

7 Q. How did you know what name to write if you did not
8 previously identify Michael Lamont Watts or nobody had
9 told you what that person's name was?

10 A. Well, he told me his name when I give the statement.

11 Q. Who told you his name?

12 A. The S.L.E.D. agent.

13 Q. Okay. So he told you that it was Lamont Watts? You
14 didn't tell him? He told you?

15 A. I don't know too many people that if they're not from
16 Jefferson or Pageland, no, I don't know them.

17 Q. So he came to you and said the person that was
18 shooting in the club is Lamont Watts, and that's why you
19 wrote Lamont in here because he gave you the name?

20 A. Well ---

21 Q. You didn't know the name yourself, did you?

22 A. No.

23 Q. You'd never seen him before that night?

24 A. Said what now?

25 Q. You'd never seen Michael Watts before the night of

1 the shooting?

2 A. Until the night of the shooting.

3 Q. I'm sorry?

4 A. You said until the night of the shooting?

5 Q. Yes.

6 A. Right.

7 Q. And you were never asked to identify him from a photo
8 line up or anything?

9 A. Uh huh.

10 Q. And the officer came to you and said, "It was Lamont
11 Watts?"

12 A. He ain't say it the way you're saying it.

13 Q. How did he say it?

14 A. We have a Lamont Watts in custody or whatever for the
15 murder or whatever and asked me what did I see and for me
16 to give my statement.

17 Q. And you said you heard three shoots?

18 A. Um hum.

19 Q. And this is why while you were be behind the bar?

20 A. No, I heard one when I was behind the bar.

21 Q. One behind the bar?

22 A. Yeah, and when I heard the first one that's when I
23 got up and ran into the kitchen area.

24 Q. Okay. So then there was a pause between the first
25 shot and the next shot you heard?

1 A. Yeah, but it wasn't a ---

2 Q. And you can't testify today who fired any of the
3 shoots that you heard?

4 A. I can't tell you who shoot. I know who I seen with
5 the gun.

6 Q. Right. And did you hear any shots coming from
7 outside at any time that night after the shooting on the
8 inside? Did you later hear any shots on the outside?

9 A. The outside to the club?

10 Q. Outside the club. Where were you inside the club?

11 A. In the kitchen area right behind the bar.

12 Q. Would being in the kitchen prevent you from hearing
13 shots if they were fired outside? You would have heard
14 shots if they were fired outside?

15 A. Outside.

16 Q. Okay. I think that's all.

17 MR. HALES: Just briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. HALES:

20 Q. You didn't know Michael Watts by name but you saw
21 what he was wearing that night?

22 A. Yes, sir.

23 Q. What was that?

24 A. A green jacket.

25 Q. And you saw he had a gun?

1 A. Yes, sir.

2 Q. What that look like?

3 A. It was a big one. I don't know as far as like who
4 make what or Nine, 40s or 45s, but it was a big handgun.

5 Q. Thank you very much.

6 RECROSS-EXAMINATION

7 BY MR. ROGERS:

8 Q. You didn't put anything in the statement about the
9 green coat. You didn't say, "I saw a black male with a
10 green coat and a handgun, approximately 6 feet, you know
11 thin built?" You didn't give a description of the person
12 doing the shooting. You just said Lamont because that was
13 the name that was given to you? Thank you.

14 MR. HALES: That's it.

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

16 MR. JOYNER: State calls Angelo Mason.

17 THE COURT: May he leave?

18 MR. HALES: No objection.

19 THE COURT: Thank you, sir. You're excused. Come
20 around and be sworn.

21 ANGELO MASON, after being duly sworn, testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. JOYNER:

25 Q. Morning Mr. Mason?

1 A. Morning.

2 Q. Please state your name?

3 A. Angelo T. Mason.

4 Q. Any how old are you?

5 A. Thirty-eight.

6 Q. Where are you from?

7 A. Originally from Washington, D.C. but I stay in

8 Pageland.

9 Q. How long have you lived in Pageland?

10 A. Ever since '94.

11 Q. How much times you been at the Matrix?

12 A. It's been over a year or more since I been back to

13 the Matrix.

14 Q. Okay. I'm going to take you back to November 28th

15 2004. You remember that day?

16 A. Yes, sir.

17 Q. Where were you?

18 A. I was working at the front door.

19 Q. Front door where?

20 A. At the Matrix. Of the Matrix.

21 Q. And you were security?

22 A. Yes.

23 Q. Do you remember anything in particular about that

24 night?

25 A. Yeah, we had some guys come in from uptown and we

1 were told to watch these guys. So I alerted everybody on
2 the floor cause I stayed at the front. And I'd say
3 probably 45 minutes to an hour we got a call that there
4 was a fight on the floor which we all responded and
5 grabbed certain individuals and walked them to the door
6 and then ---

7 Q. Who was fighting?

8 A. It was a couple guys from Lancaster and a couple guys
9 from Jefferson.

10 Q. You see any of them in here today?

11 A. Yes, sir.

12 Q. Where?

13 A. One sitting here.

14 Q. What's he got on?

15 A. Yellow shirt.

16 Q. You know his name?

17 A. It was Michael Watts, Mr. Watts, something like that.

18 Q. What happened when you went to the dance floor to
19 break up the fight?

20 A. Okay. After we secured the bar we got the guys
21 separated. It was one Mr. Watts and two ladies. He was
22 one of the guys fighting and so I grabbed him before the
23 owner of the club grabbed him. And he said he was leaving
24 so I walked to the door and locked the door back.

25 And they got the other guys out, and then I walked

1 back to the front after we thought the situation was
2 handled and next thing I heard, I'd say -- I can't give a
3 good time. 15 minutes maybe. Twenty minutes ---

4 MR. ROGERS: Sorry, Your Honor, I can't hear.

5 A. About 15 or 20 minutes later I heard the gunshot. I
6 stepped back and said, "What was that," and they said he
7 got a gun. Myself and another guy that works security and
8 young ladies at the front were grabbing the young lady and
9 one of the security guys and push them out the door.

10 And you know when I thought things kind of quite down
11 I walked back towards the door and I seen Mr. Watts coming
12 towards the door and I backed up and started hearing more
13 shoots being fired until he came out with the gun. When
14 he came outside the gun was empty.

15 Q. Do you remember what he was wearing that night?

16 A. I remember wearing a green, military issued like
17 jacket. Shirt and stuff I don't remember. He had dreads
18 in his head at the time.

19 Q. Does you remember what the gun look like?

20 A. It was a blue steel or black .45.

21 Q. Okay. Did you ever see him shooting?

22 A. No, I never saw him shoot Mr. Funderburk, but I did
23 see him shoot the weapon.

24 Q. How many times did you see him fire?

25 A. Well, I didn't count. I just seen him fire until the

1 weapon was empty.

2 MR. JOYNER: One moment, please.

3 BY MR. JOYNER:

4 Q. Did you see anybody else ---

5 A. No.

6 Q. --- with a gun ---

7 A. No.

8 Q. --- that night?

9 A. No.

10 Q. Nobody?

11 A. Nobody.

12 Q. Okay. Thank you. No further questions.

13 CROSS-EXAMINATION

14 BY MR. ROGERS:

15 Q. Mr. Mason, if I understand your testimony you didn't
16 see the fight on the dance floor?

17 A. No.

18 Q. You were told about an altercation?

19 A. No, it was -- every time a fight break out we get a
20 call from the DJ. He say, "Security to the floor," and we
21 respond.

22 Q. Okay. And how do you get that call?

23 A. Through a microphone through the speakers in the
24 back.

25 Q. Okay. And you go to the dance floor and you see

- 1 Michael?
- 2 A. No, we seen a bunch of guys.
- 3 Q. Okay. How many?
- 4 A. Total, eight, ten.
- 5 Q. And you escorted Michael out of the club?
- 6 A. Yes.
- 7 Q. Why did you grab him out of the eight or ten?
- 8 A. I didn't grab him. Not directly cause he said he was
- 9 leaving.
- 10 Q. He said he was leaving?
- 11 A. He was leaving.
- 12 Q. So you didn't see him get hit?
- 13 A. No.
- 14 Q. And so then you said you locked that door?
- 15 A. Yes.
- 16 Q. And which door was that?
- 17 A. The front door.
- 18 Q. The front door. Did you have ever later unlock it?
- 19 A. Yes, sir.
- 20 Q. And then you said approximately 15 or 20 minutes
- 21 after that is when you heard the gunshot?
- 22 A. I heard the shot, yes.
- 23 Q. So where were you inside the club?
- 24 A. At the front door.
- 25 Q. At the front door?

- 1 A. Yes, sir.
- 2 Q. Did you see Michael Watts enter the club?
- 3 A. No, I didn't see him enter the side door. No, sir.
- 4 Q. You would have seen him come in the front?
- 5 A. Yes, sir.
- 6 Q. Is there any other entrance?
- 7 A. Yes, sir, it's three doors on the front.
- 8 Q. So you didn't see which door he came back in?
- 9 A. Well, we keep the first two front doors locked and
- 10 the side door was open.
- 11 Q. So there is only one door he could have come back in?
- 12 A. Yes, sir.
- 13 Q. And that was the side door?
- 14 A. Yes, sir.
- 15 Q. You didn't see that?
- 16 A. No.
- 17 Q. But by your estimation it was 15 or 20 minutes later?
- 18 A. Yes.
- 19 Q. Then you hear gunshot?
- 20 A. A shot.
- 21 Q. A shot?
- 22 A. A shot.
- 23 Q. Okay. And then your testimony was that you saw
- 24 Michael running towards you?
- 25 A. No, sir. I stepped back and said, "What was that,"

1 and heard someone say, "He got a gun."

2 Q. Okay. And then -- somebody who was at the front door
3 with you?

4 A. No, it was one of the patrons said he had a gun.

5 Q. Where you were standing?

6 A. Yes cause were I stand I can see the whole floor.
7 It's a door. You can see straight back to the dance
8 floor.

9 Q. So you heard the one shot? Somebody told you he's
10 got a gun and then you see Michael running towards you?

11 A. I didn't say he ran towards me.

12 Q. I'm sorry?

13 A. I didn't say he ran towards me.

14 Q. I'm sorry. You saw Michael running, didn't you?

15 A. I didn't say he ran. I said I grabbed the young lady
16 and one of the guys that worked there we went out the
17 front door.

18 Q. Okay. You then later saw Michael?

19 A. I was, yes, going to walk when I hear -- no. It was
20 a lot of commotion after shots had stopped. I was walking
21 back towards the front door and I seen him coming and I
22 stepped back and then he started busting off more shots.

23 Q. Oh, he shot?

24 A. Yes, Mr. Watts.

25 Q. Okay. You didn't say that.

1 A. He shot more shots.

2 Q. You said you saw him running towards you and there
3 were more shots. It wasn't clear to me you saw him fire?

4 A. I saw him fire the weapon until he emptied.

5 Q. And that was inside the club?

6 A. He was coming towards the door firing until he got
7 outside. He shot the glass out and he shot the bottom of
8 the door and the weapon was empty.

9 Q. So what was he shooting at?

10 A. I don't know who he was shooting at. There was
11 another person inside he was shooting at. I'm assuming it
12 was David Evans because he was hit by a bullet.

13 Q. You assume he was shooting at the person that he
14 ultimately hit? Is that what you're saying?

15 A. Yes, he was shooting at someone. He wasn't shooting
16 for nothing.

17 Q. Well, couldn't he be shooting to warn people away?
18 Not shooting at anybody? That's not possible to you?

19 A. No, it's not?

20 Q. That's not possible?

21 A. No.

22 MR. JOYNER: Judge, I'm going to object. He's asking
23 him to speculate why Mr. Watts would be shooting.

24 THE COURT: Well, it happened. Go ahead.

25 BY MR. ROGERS:

1 Q. So you saw him fire those shots?

2 A. Yes, sir.

3 Q. And where did those shots land?

4 A. One hit the glass. One hit the bottom of the door.
5 Where the rest of the bullets went I don't know.

6 Q. And he wasn't outside when those shots occurred?

7 A. He was standing right at the front door.

8 Q. So he was outside?

9 A. He was coming out firing, yes. Then come outside ---

10 Q. Well, I'm unclear about your testimony. I'm not
11 trying to trick you.

12 A. Okay.

13 Q. Were those other shots that you heard that you say
14 came from him were they inside the club or outside the
15 club?

16 A. He was firing walking backwards out the club until he
17 got outside he was still firing until the gun emptied.

18 Q. So he was walking out the door firing? Is that what
19 you're saying?

20 A. He was shooting at one direct angle.

21 Q. In one direction?

22 A. Yes, he was.

23 Q. And you could count when the gun was empty?

24 A. Right. I know when the gun locks back that means
25 it's empty.

- 1 Q. Okay. And then he was at the side door then?
- 2 A. No, sir at the front door.
- 3 Q. He was at the front door?
- 4 A. Yes.
- 5 Q. And you never heard any more shots?
- 6 A. No. After his emptied the weapon there was no more
- 7 shots being fired.
- 8 Q. Did you ever later hear any shots?
- 9 A. No.
- 10 Q. Where were you?
- 11 A. I was at the front door.
- 12 Q. The whole time?
- 13 A. Yes, until a young lady informed me there was a
- 14 gentlemen laying on the floor. And so I walked back in
- 15 and seen him and we informed the officer what's going on,
- 16 but by that time they were in handcuffs.
- 17 Q. He was in handcuffs?
- 18 A. Yes, sir.
- 19 Q. Did you hear any shots fired after Michael was in
- 20 handcuffs?
- 21 A. No.
- 22 Q. And you were in the club?
- 23 A. No.
- 24 Q. And where were you?
- 25 A. I was outside.

1 Q. You were outside?

2 A. Yes, sir.

3 Q. Had there been shots fired from inside the club while
4 he was outside being handcuffed you would have heard?

5 A. Yes.

6 Q. Did you ever look for another gun?

7 A. No, sir.

8 Q. Do you know if any other weapon was looked for?

9 A. No, sir.

10 Q. Were you ever told about another fight? Not a fight
11 on the dance floor but a fight near the bar?

12 A. No, sir.

13 Q. Okay. Thank you.

14 THE COURT: Anything further?

15 MR. JOYNER: No, sir.

16 THE COURT: Thank you, sir. You may step down. Can
17 he be excused or do you need him to say?

18 MR. JOYNER: Judge, we don't need him.

19 THE COURT: You're excused.

20 MR. HALES: Tameka Austin.

21 TAMEKA AUSTIN, after being duly sworn, testified
22 as follows:

23 DIRECT EXAMINATION

24 BY MR. HALES:

25 Q. Please state your name?

- 1 A. Tameka Austin.
- 2 Q. Speak up so everybody can hear you?
- 3 A. Tameka Austin.
- 4 Q. Where you live, Miss Austin?
- 5 A. In Pageland.
- 6 Q. In Pageland. How long have you lived in Pageland?
- 7 A. About 12 years.
- 8 Q. Twelve years. On November 28th 2004 were you at the
- 9 Matrix?
- 10 A. Yes, sir.
- 11 Q. Okay. What were you doing at the Matrix?
- 12 A. I just was with my sister.
- 13 Q. Who is your sister?
- 14 A. Jennifer.
- 15 Q. Jennifer?
- 16 A. Um hum.
- 17 Q. Okay. You remember anything about that night?
- 18 A. Yes, I remember a fight occurring and then after the
- 19 fight ---
- 20 Q. Who was the fight between?
- 21 A. Mr. Watts and a dude named Dewayne.
- 22 Q. Okay. Did you know Dewayne?
- 23 A. Um hum.
- 24 Q. How did you know Dewayne?
- 25 A. From high school.

- 1 Q. Did you know Mr. Watts?
- 2 A. I heard of him, but I didn't know him.
- 3 Q. Have you ever seen him before?
- 4 A. Yes, sir.
- 5 Q. Where have you seen him?
- 6 A. In Lancaster.
- 7 Q. So you had seen him before?
- 8 A. Um hum.
- 9 Q. Did you know his name?
- 10 A. Uh uh.
- 11 Q. There was a fight between Mr. Watts?
- 12 A. Yes, sir.
- 13 Q. What happened after that?
- 14 A. Security took Mr. Watts out and then I remember him
- 15 entering back in the club and shortly after that gunshots
- 16 started going everywhere.
- 17 Q. Okay. Did your see Mr. Watts when he came in?
- 18 A. Um hum. Yes.
- 19 Q. Can you describe him?
- 20 A. He had on a green like trench coat.
- 21 Q. And you heard gunshots?
- 22 A. Yes, sir.
- 23 Q. Did you see anybody shoot?
- 24 A. Uh uh.
- 25 Q. Where were you positioned?

1 A. Behind the D.J. booth.

2 Q. So you were over behind the D.J. booth?

3 A. Um hum.

4 Q. So you really didn't have a view of what was going
5 on?

6 A. No, sir.

7 Q. What did you do after you hear the gunshots?

8 A. I ducked behind the speakers.

9 Q. How long did you stay behind the speakers?

10 A. About ten minutes.

11 Q. When did you come out?

12 A. After I heard the gunshots and stuff clear and
13 everybody else started running out and went out and then I
14 went out, too.

15 Q. Okay. And what did you do when you got outside?

16 A. I was looking for my sister, but I couldn't find her.

17 Q. Were you able to find her?

18 A. Um hum.

19 Q. Okay. What did y'all do after that?

20 A. We left.

21 Q. Did you give a statement to the police?

22 A. Yes, sir.

23 Q. Please answer any questions Mr. Rogers may have.

24 CROSS-EXAMINATION

25 BY MR. ROGERS:

- 1 Q. Mrs. Austin, how many shots did you hear?
- 2 A. A couple of shots. I can't remember exactly how
- 3 many, but it was a couple of shots.
- 4 Q. Could it have been more than two?
- 5 A. Yes, sir.
- 6 Q. Could it have been as many as seven?
- 7 A. No, sir.
- 8 Q. No. Now, did you, after the first series of shots,
- 9 did you later ever hear any more shots?
- 10 A. No, sir. I just heard people screaming.
- 11 Q. You just heard one set of shots and that was the end
- 12 of it?
- 13 A. No, it was a couple of shots. After the shots
- 14 cleared it was just people hollering and running and
- 15 everything.
- 16 Q. So after those couple of shots you never heard any
- 17 more?
- 18 A. No, sir.
- 19 Q. You never saw Michael with the gun?
- 20 A. No, sir.
- 21 Q. And you never saw him fire the gun?
- 22 A. No, sir.
- 23 Q. You just saw him come back in and the next thing you
- 24 heard was gunshots?
- 25 A. Yes, sir.

1 Q. You never were shown a photographic line up of
2 Michael before?

3 A. No, sir.

4 Q. To identify him as being the person in the club that
5 night?

6 A. No, sir.

7 Q. Thank you.

8 MR. HALES: Nothing further.

9 THE COURT: You may step down. May we excuse the
10 witness?

11 MR. HALES: Yes, sir, Your Honor.

12 MR. JOYNER: Judge, would you mind if we took a brief
13 recess just to get everything right?

14 THE COURT: Let's take a 10 to 15 minute recess.

15 MR. JOYNER: Thank you, Judge.

16 THE COURT: Jury may step back.

17 (WHEREUPON, the jury panel was excused from the
18 courtroom at at 11:12 a.m.)

19 (WHEREUPON, Court was in recess at 11:12 a.m.)

20 (WHEREUPON, State's Exhibit Nos. 16 THROUGH 38 were
21 marked for identification only.)

22 (WHEREUPON, Court reconvened at 11:30 a.m.)

23 (WHEREUPON, State's Exhibit No. 39 was marked for
24 identification only.)

25 (WHEREUPON, the jury panel enters the courtroom at

1 11:32 a.m.)

2 THE COURT: All right.

3 MR. JOYNER: Judge, the State would call Investigator
4 Bennett from the Lancaster County Sheriff's Office.

5 DANNY BENNETT, after being duly sworn, testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. JOYNER:

9 Q. Good morning, Mr. Bennett. Would you please state
10 your name for the Court?

11 A. Danny Bennett.

12 Q. And where are you from?

13 A. Lancaster County Sheriff's Department.

14 Q. And what is your job title?

15 A. Investigator.

16 Q. And what does that involve being an investigator?

17 A. Investigating any kind of criminal activities.

18 Q. Okay. How long have you been involved in law
19 enforcement?

20 A. I've been working full time probably seven years now,
21 investigations.

22 Q. Okay. Where did you first see the defendant in this
23 case?

24 A. I first met him at the Pageland Police Department.

25 Q. Did you take a statement from him?

1 A. I did.

2 Q. Mr. Bennett, are you familiar with Miranda Warnings?

3 A. I am.

4 Q. Would you explain for the jury what a Miranda Warning
5 is?

6 A. A Miranda is a warning or a statement given to a
7 possible suspect when they're being questioned to the
8 point that they may become a suspect. It advises them of
9 their right not to incriminate themselves by any statement
10 they might make.

11 Q. Okay. Did you give a Miranda Warning to Mr. Watts?

12 A. I did.

13 Q. I'm showing you what has been marked as State's
14 Exhibit One and ask do you recognize that?

15 A. I do.

16 Q. Would you explain to the jury what it is?

17 A. This is the -- a statement that Mr. Watts gave me
18 after being advised of his Miranda and I have a copy of
19 that in relation to how he came in possession of this
20 weapon.

21 Q. Okay. Would your please explain to the jury how you
22 went about advising him of his Miranda rights?

23 A. I explained it to him and I also gave him the rights
24 on another sheet of paper. And it was also on this
25 statement. This is a copy of that Miranda that he signed.

1 And I read each one to him and explained them to him. He
2 agreed to give me a statement with that in mind. I'm
3 sorry. I thought you had that.

4 (WHEREUPON, State's Exhibit No. 40 was marked for
5 identification only.)

6 Q. Mr. Bennett, I am also showing you what has been
7 marked as State's Exhibit 40 and ask do you recognize
8 that?

9 A. I do.

10 Q. Would you explain to the jury what it is?

11 A. There is a Miranda form like a form letter and it has
12 the seven different things that are addressed in the
13 Miranda Warning.

14 Q. Okay. Would you read them for the jury, please?

15 A. All right. The first one says "You have the right to
16 remain silent meaning you don't have to make any
17 statements. It says anything that you say can and will be
18 used against you in a court of law. You have the right to
19 talk with a lawyer and have him present with you while
20 you're being questioned.

21 If you can't afford to hire a lawyer one will be
22 appointed to represent you before any questions if you
23 wish: And you can decide at any time to exercise these
24 rights and not answer any questions or make any
25 statements. Then you ask do you understand each of those

1 rights that I have explained to you. The last one is
2 having these rights in mind are you willing to talk to me
3 or talk to us that this time."

4 Q. Okay. And what was his response?

5 A. He said he would be glad to talk to me.

6 Q. Is his signature on that paper?

7 A. Yes.

8 Q. Okay.

9 MR. JOYNER: Judge, I move that State's Exhibit 40 be
10 moved into evidence?

11 MR. ROGERS: No objection.

12 (WHEREUPON, State's Exhibit No. 40 was admitted into
13 evidence.)

14 BY MR. JOYNER:

15 Q. Let's go back to State's Exhibit One. Would you
16 please read the Miranda Waiver on State's Exhibit One,
17 please?

18 A. Miranda on the statement says, "And I, Michael Lamont
19 Watts, do hereby give freely and voluntarily the statement
20 to D.C. Bennett and it lists -- I have a place for another
21 officer, who identified themselves as officers of the
22 Lancaster County Sheriff's Office, Lancaster, South
23 Carolina.

24 I've been advised that I do not have to make this or
25 any other statement and that I -- and that what I say can

1 and will be used against me in a court of law. I've been
2 advised that I have a right to counsel with an attorney of
3 my choice. And if I am financially unable to obtain an
4 attorney the Court will appoint an attorney to represent
5 me. I have not been threatened or promised any reward to
6 make this and I do so voluntarily, and I understand that I
7 have the right to stop answering questions at any time."

8 Q. Did he sign that paper?

9 A. He did.

10 MR. JOYNER: Judge, I would move that State's Exhibit
11 One be entered in evidence at this time?

12 THE COURT: Any objection?

13 MR. ROGERS: No, Your Honor.

14 THE COURT: Without objection.

15 (WHEREUPON, State's Exhibit No. 1 was admitted into
16 evidence.)

17 Q. Mr. Bennett, would you please read your questions and
18 then Mr. Watts' answers in his statement, please?

19 A. All right. My question is, "What can you tell me
20 about what happened Saturday night in relation to the
21 pistol used in that incident."

22 Q. Okay. What was his answer?

23 A. His answer was, "The four of us were together in my
24 girlfriend's sister car and started out on Tenth Street
25 and I wanted to come to Pageland to the club that Jamar

1 MacElwane's cousin owned. My girlfriend was going to be
2 at the club. I did not want to drive to the club and
3 Ricky Simpson said he would go to Carolina Court and get
4 another car. We went to his and his sister's house at
5 Carolina Court and he walked around Carolina Court and
6 came back with a white car.

7 He drove to Pageland and as we were going through
8 Midway, Ricky handed me the gun and I looked at it and put
9 it under the back of the front seat of the car. After we
10 got to the club and a fight took place I went to the car
11 and got the gun to get my buddies out of the club."

12 My next question was, "When was the first time you
13 saw the pistol used in the incident?" His answer is, "In
14 the car when Ricky Simpson handed it to me."

15 Q. Thank you.

16 MR. JOYNER: No further questions.

17 CROSS-EXAMINATION

18 BY MR. ROGERS:

19 Q. Investigator Bennett, Mr. Watts was cooperative with
20 you?

21 A. He sure was. .

22 Q. Forthright? Wasn't attempting to be evasive?

23 A. None, whatsoever.

24 Q. He answered all of your questions?

25 A. Yes.

1 Q. And he told you that he went back in the club with
2 the gun to get his friends out of the club?

3 A. Yes.

4 Q. And you ended your inquiry of the matter at that
5 point?

6 A. That is correct.

7 Q. When you took his statement were you typing it as he
8 was saying it to you or did you took notes and later type
9 it up?

10 A. Typed it on a computer.

11 Q. You typed it on a computer as he was telling it to
12 you?

13 A. I typed it on the computer.

14 Q. I'm sorry?

15 A. On a laptop computer.

16 Q. Laptop. And then you printed it out?

17 A. Yes.

18 Q. And you had him sign it. That's your normal
19 procedure?

20 A. Yes, sir.

21 Q. You would take a statement from a defendant or a
22 witness where he brought the statement to you typewritten?
23 You've never done that, have you?

24 A. No. We did it in Pageland P.D. and that's the way we
25 did it.

1 Q. Excuse me?

2 A. That's the way we did it.

3 Q. This is the way you did it in Pageland?

4 A. Yes, sir.

5 MR. JOYNER: Nothing further.

6 THE COURT: Thank you. Witness is excused.

7 MR. HALES: State calls Michael Tresdale.

8 MICHAEL TRESDALE, after being duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. HALES:

12 Q. Please state your name?

13 A. Michael Tresdale.

14 Q. Mr. Tresdale, where do you live?

15 A. On [REDACTED], Lancaster, South Carolina.

16 Q. How long have you lived in Lancaster?

17 A. All my life.

18 Q. Okay. What do you do for a living?

19 A. I own a night club in Pageland. The Matrix.

20 Q. Okay. Did you own that back in 2004?

21 A. Yeah, Co-owned it. Yeah.

22 Q. On November 28th 2004 were you there at the Matrix?

23 A. Yes.

24 Q. Okay. What were you doing?

25 A. Just a normal night of business. Setting the club up

1 and, oversee the operations that night.

2 Q. Okay. Generally when you're there at the club, when
3 you were co-owner at the time, what is your general night
4 like?

5 A. Generally, I come in and make sure the bar is set up
6 and make sure my employees are there, my security. And at
7 the time I was working along with the police department.
8 So I was making sure they were going to be there that
9 night and whatever.

10 Q. So you just sort of coordinate the night?

11 A. Yeah, overseeing everything, yeah.

12 Q. Okay. You remember anything special about that
13 night?

14 A. That night, yeah. We had a pretty nice crowd that
15 night, and we had some problem. Had a night that night
16 and the shooting.

17 Q. Okay. Were you in -- where did the fight occur?

18 A. Where did it occur?

19 Q. Yes, sir.

20 A. From my understanding the dance floor.

21 Q. Okay. But you weren't inside?

22 A. At the time of the night?

23 Q. Um hum?

24 A. Yeah, I was inside.

25 Q. Okay. Did you see the fight?

1 A. I saw the commotion and I seen people being brought
2 from the dance floor by security and the police officers
3 we had there.

4 Q. So you didn't go over there and break up the fight?

5 A. No.

6 Q. That's why you have security?

7 A. Yes.

8 Q. After the fight happened anything else happen that
9 night?

10 A. Well, after the night happened you know we tried, my
11 security, tried to settle the fight down. Thought we were
12 doing, and one of the guys that was there went out to the
13 car.

14 Q. Who was that?

15 A. I think Michael Watts.

16 Q. Okay. Did you know him at all?

17 A. I knew of him but I didn't know him like that. He
18 hung with my little cousin.

19 Q. Have you ever seen him before?

20 A. Probably saw him, you know around. You know down the
21 club maybe. Think come into the club.

22 Q. But you weren't good friends with him?

23 A. No, man. He was like one of my cousins. He hung
24 with my younger cousin.

25 Q. Who is your younger cousin?

- 1 A. Demarco MacElwane.
- 2 Q. Okay. Did they come together that night?
- 3 A. Yes.
- 4 Q. You saw the defendant go out to the car? Is that
- 5 what you just said?
- 6 A. Yeah.
- 7 Q. What happened then?
- 8 A. Well, we thought he was going out. He told us he was
- 9 leaving and going to the car.
- 10 Q. Was he involved in that altercation?
- 11 A. I don't know. That's what I don't know. I don't
- 12 know the details of the fight or nothing like.
- 13 Q. Okay. But you thought he was leaving?
- 14 A. Yeah.
- 15 Q. And then what happened?
- 16 A. Then he went to the passenger side of the car. I was
- 17 standing out in the parking lot and I saw him with a gun.
- 18 I saw him cock a gun and the way he said, "F that. F
- 19 that" or something and was going towards my side door of
- 20 my building which I thought was going to be locked, but
- 21 the door wasn't locked. And I saw the end of the
- 22 building. That's all I saw after that.
- 23 Q. When you say he was cocking was he racking it back?
- 24 A. Yeah.
- 25 Q. Okay. And you saw him go through you say the side

1 door?

2 A. Yeah. I have three doors on the side of my building.

3 It's the front door entry where we let people in. The
4 middle door where we let people out at the end of the
5 night, and we have a door on our dance floor.

6 Q. Which door was he going towards?

7 A. The middle door.

8 Q. And what did you do when you saw him go towards that
9 door?

10 A. I went across the street to the store at Jim's
11 Variety.

12 Q. Why did you go over there?

13 A. Cause everybody was running over there and I went
14 over there trying to get to safety cause I saw the gun.

15 Q. Okay. Now were other people outside?

16 A. Yeah, there were a lot of people outside. It was a
17 lot of people there that night.

18 Q. Okay. So you go across the street to the store. Is
19 there any reason why you went across the street?

20 A. Cause I saw -- I mean I feared for my life. I saw a
21 gun. My first reaction was I'm ain't got nothing to stand
22 around for if I see a gun.

23 Q. I understand. Did you do anything when you got over
24 there to the store?

25 A. I think I might have called. Somebody may have

1 called the police, but I'm not a hundred percent sure.

2 Q. Somebody might have called but you can't remember?

3 A. Yeah, I know -- I don't know if I called from my cell
4 phone. I can't remember exactly the details.

5 Q. The police came?

6 A. Well, we had police working there that night.

7 Q. Okay.

8 A. They were already there for the back up, yeah.

9 Q. Did you at any point during that night go back over
10 there?

11 A. Yeah.

12 Q. To your bar?

13 A. Yes..

14 Q. When was that?

15 A. I think that in general after all the guys that was
16 involved with this incident, where the shooters were
17 apprehended.

18 Q. So it was a little while before you went back over
19 there?

20 A. Ten, 15 minutes, maybe.

21 Q. Did you actually see anybody get shot?

22 A. No.

23 Q. Did you see the gunfire?

24 A. No, I heard the gunshots.

25 Q. Okay. You heard the gunshots. Do you remember about

1 how many there were?

2 A. I want to say four or five. Three, four or five in
3 that area. I don't know. Somewhere in there.

4 Q. But you were going across the street to the store?

5 A. Yeah.

6 Q. Did you see anybody else with a gun that night?

7 A. No.

8 Q. Other than the police?

9 A. The officer had a gun and that was about it.

10 Q. Okay. Please answer any question Mr. Rogers has.

11 MR. ROGERS: I don't have any questions of

12 Mr. Tresdale.

13 MR. HALES: We ask that Mr. Tresdale be excused.

14 MR. ROGERS: No objection.

15 THE COURT: Witness is excused.

16 MR. HALES: State calls Larry Brown.

17 LARRY BROWN, after being duly sworn, testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. HALES:

21 Q. Please state your name?

22 A. Larry Brown.

23 Q. Mr. Brown, what to you do?

24 A. I'm a police in Pageland.

25 Q. What's your official job title?

1 A. At the time of this incident, investigator. I still
2 do investigating, too, but I'm Assistant Chief at this
3 time.

4 Q. So, now, you're Assistant Chief. Back then you were
5 titled an investigator?

6 A. Detective Brown.

7 Q. How long have you been in law enforcement?

8 A. October 31st will be 22 years.

9 Q. How many of those years you been in Pageland, you
10 remember?

11 A. All except for about two.

12 Q. All but two?

13 A. Yeah.

14 Q. You married?

15 A. Yes, sir.

16 Q. When you get married?

17 A. June 23rd.

18 Q. Congratulations?

19 A. Thank you.

20 Q. You remember the night of November 28th 2004?

21 A. Yes, I do.

22 Q. What were you doing that night?

23 A. I was working security for the Matrix.

24 Q. Okay. Were you there as a private security person or
25 were you there as a person with the Pageland Police

1 Department?

2 A. Private. Law enforcement are asked to do security
3 throughout the State really for trouble nights spots for
4 security purposes.

5 Q. Okay. All right. And tell me about that night. If
6 you could speak up so you can make sure I can hear you?

7 A. Excuse me, jury. I have a sinus infection. The
8 night in question, November 28th, a Saturday afternoon --
9 Saturday night and it wasn't that cold and mild night. I
10 seen the white Bonneville pulled up. I was out in the
11 parking lot. Four males was in it, and it got my
12 attorney, the guys in the car that was loud talking, loud.

13 And then I went in the club. Shortly after them and
14 Michael told me that one of guys was his cousin. Michael
15 McManus was one of his cousins and he was from Lancaster.
16 And I recognized Lamont. I knew Lamont from dating
17 Chrystal Jones.

18 Q. Who's Lamont. I don't mean to interrupt you, but who
19 is Lamont?

20 A. Lamont Watts.

21 Q. Okay. Also known as Michael Watts?

22 A. Michael Watts, yes, sir.

23 Q. Okay. You can continue.

24 A. I met him probably -- I don't know maybe a year prior
25 to that. I'm not sure of the exact month. He come to Oak

1 Terrace Apartments. He was date Chrystal Jones who lived
2 with her sister at the time and that's how I knew Michael.

3 Q. So you actually knew him before this happened?

4 A. I knew him. I only recognized him when he pulled out
5 the Bonneville.

6 Q. Okay. Okay.

7 A. I knew him before it happened.

8 Q. Right?

9 A. And that's probably around 12:00, maybe when he got
10 there. Close to twelve o'clock. Sometime after
11 one o'clock I noticed the bar is still open because the
12 bar closes at 2:00. So it has to be before two o'clock
13 when this incident happened.

14 I was talking to the DJ about something at this time
15 and looked around on the dance floor. There was a
16 commotion on the dance floor, and you know sometimes you
17 think something is going on because of these hype songs.
18 It looks like you're fighting but you're really dancing.
19 And now they were fighting so we rushed over there, but by
20 the time security got there before I got there to separate
21 the guys.

22 Q. Now, when you say security you're talking about the
23 security that hired by the Matrix, not you or anybody that
24 works in your department?

25 A. They had other security personnel. And they grabbed

1 some guys, and I know a couple of the boys involved and I
2 know Michael was there. The other guy I didn't know the
3 other dark skinned male that was involved with Michael.
4 And I can't remember his name. I think his name was Shawn
5 Demorris and a Rashad. Either one. Ricky Simpson, the
6 big guy about 6'7" or 300-pounds.

7 Q. So he's a big guy?

8 A. Yes. So my attention focused on him cause I knew if
9 anybody got lost really control and cause us to have a
10 hard time getting him under control. So I told some of
11 Michael's security to get those guys out the way. So I
12 know David Evans wasn't there. He told me earlier in the
13 night that he wasn't working. That was his birthday week,
14 so I told David to ---

15 Q. Who was that?

16 A. David Evans.

17 Q. David Evans?

18 A. He worked security at the Matrix that night, too, at
19 the time, but that night he wasn't working. I remember
20 telling him get one of those guys and hold him until we
21 get back. And I grabbed Ricky.

22 Q. The big guy?

23 A. Yeah, and me and Michael was escorted him to the door
24 so cause Michael and I were outside talking to him cause
25 security had that fight under control. And I saw Michael

1 was telling him that he needed to get his guys and leave
2 because he don't want any problems with the club. Had
3 problems in the past while I was -- people coming in my
4 club fighting. At that time we were talking to Ricky
5 outside. At that time we were outside the front door of
6 the Matrix at this time at the main entrance.

7 Q. That the -- is that what everybody is calling the
8 front door?

9 A. That's the front door.

10 Q. Not the middle door?

11 A. The front door on the west side of the building.

12 Q. Okay.

13 A. Facing south.

14 Q. Okay.

15 A. And we were talking to Ricky the big guy outside the
16 door, and Michael tells him what we needed to do. And by
17 this time Michael Tresdale -- Michael Watts came out the
18 door and I know Angelo was behind him coming out that
19 door.

20 Q. You say him come out the door?

21 A. He came out the door.

22 Q. What he was wearing? Do you remember?

23 A. I know he had a green jacket on. I know he had a
24 green jacket on.

25 Q. Okay.

1 A. So he came out the door in a rush, and so I was
2 assuming that he was going to cool off cause he went
3 straight out the door.

4 Q. Was he involved in that fight?

5 A. Yes.

6 Q. Okay.

7 A. He came out the door cause we usually try to make
8 people leave at that time so to avoid them going to jail
9 was to get them out of the club and tell them don't come
10 back. So Michael came out the door. Michael Watts came
11 out the door. He rushed by us and he got into this white
12 Bonneville. It was unlocked. And he sat in the passenger
13 side back seat.

14 Q. He got in the car?

15 A. He got in the car and closed the door. I'm thinking
16 with law enforcement out there he's going to cool off. I
17 guess and I waited for the guys to come out the building,
18 and so less than two minutes later, might have been a
19 minute, he came out the car and I thought he was going to
20 get some fresh air. I still didn't think he would nothing
21 crazy. He came out of the car and I could see his --
22 cause he was right handed at the time. And he walked
23 towards the east of the building.

24 Q. When you say, 'east of the building', what's that?

25 A. Towards the middle door.

1 Q. The middle door, okay?

2 A. And he got to the door. He opened the door and I
3 heard, 'click, click' is what I heard. And then I said,
4 "Michael, he got a gun. Michael Tresdale, he got a gun,"
5 and Michael, I don't know, he just took off. So I
6 immediately got on my radio and called for back up. At
7 that time some people were already outside cause the fight
8 had broke out. Some people were outside standing around
9 until it was safe to go back in.

10 Q. So they came back outside because of the earlier
11 fight?

12 A. Yeah, they were -- some people runned out the club
13 when the fight started to keep from getting hurt. So they
14 ran out the club because the fight broke out. Some people
15 was still pulling up to go to the club cause it was still
16 early cause a lot of time people don't get to the club
17 until two o'clock.

18 And so this is what I thought he was going to do.
19 But then he went, click, click into the club, and I told
20 Michael that he got a gun. And Michael took off and I
21 called for back up, and some people I said I know how the
22 club is made. There are people in there. I said I had to
23 make a quick decision. If I go in the club now I'm going
24 to have to shoot more than him probably because he got a
25 gun and there are a lot of people in there running all

1 over him.

2 Take a shot at him, I'm probably going to shoot
3 somebody. Miss him -- so I called for back up. I said to
4 myself I said, "somebody -- excuse me. Somebody's child
5 is going to die tonight."

6 Q. Take your time.

7 A. A few minutes later my back up arrived. I was on the
8 corner of the building, and I was on the corner of the
9 building. Everybody was running out of the club. I told
10 them to get down. I tell them to get down. Get between
11 the cars. Get down. And then it wasn't a minute later,
12 two minutes later, he came out of the club.

13 My back up was there by then. He came out of the
14 club. He came out of the club and people were running all
15 around him and we couldn't take a shot at him. He was
16 swinging that gun in the air and shooting. Just shooting.
17 Just shooting.

18 Q. He was still shooting when he came out. Do you
19 remember what door he came out of?

20 A. He came out the same door he went in. The side door.
21 That middle door. He was just shooting, and we couldn't
22 get a shot at him, me and Eric Brown, where we was. And
23 we kept telling them to get down. Drop the gun. He
24 ignored us, and he kept shooting and kept shooting and he
25 shot about four times.

1 And I remember the glass breaking on that main door.
2 And I thought he had hit the glass, and I didn't know he
3 hit David and Jeffrey Crowder. I thought he hit the glass
4 and then he notice his gun was empty cause it went back
5 and all the bullets was out of it. And then we tried to
6 get him to get down and he still wouldn't get down. His
7 friend tried to cover him up. Two friends covered ---

8 Q. What do you mean cover him up?

9 A. Try to protect him so we couldn't get to him.

10 Q. So they were getting in between you and the
11 defendant?

12 A. Right. Then he made it to the car. He got in the
13 front seat of the car.

14 Q. What car?

15 A. The white Bonneville. He made it back to the car.
16 And then he had to get them under control, his two friends
17 under control before we could get him. And, finally, we
18 got them all in the car and put him on the ground and got
19 him handcuffed. And I got the gun out the Bonneville. He
20 stucked it between the passenger seat. We pat him down.
21 The gun was stuck between the passenger front seat and the
22 console.

23 And then somebody yelled, "Somebody's shooting.
24 Somebody's shooting." I think they were nervous when they
25 saw that our law enforcement went in the club. We didn't

1 see nothing about no shooting incident. That's when we
2 found Mr. Funderburk lying on the floor.

3 Q. Now, you said somebody said there was shooting?

4 A. Somebody yelled.

5 Q. Did you hear any shots?

6 A. No.

7 Q. Okay. Did you find anybody else with a gun?

8 A. No, sir. And so we found Mr. Funderburk on the
9 floor. He was between the dance floor and the bar halfway
10 around. I felt his neck and I didn't feel a pulse. He --
11 E.M.S. came and they told us he might not make it.
12 Probably won't make it, and they took him off. And
13 everybody was under control.

14 We put everybody in the car. We arrested his two
15 friends for interfering and all kinds -- some other
16 charges. But we got everybody under control, and we
17 started collecting evidence before people trample all over
18 everything.

19 Q. You said you got everyone under control. What do you
20 mean by that?

21 A. Got the crowd away from the club. Got everybody in
22 handcuffs. EMS were transporting him and David Evans.

23 Q. Did you have a hard time getting people in handcuffs?

24 A. Yeah, somewhat. But they were trying to resist
25 arrest.

1 Q. You say you stared collecting evidence?

2 A. Yes.

3 Q. What all did you get?

4 A. Got several live cases outside the building where he
5 was standing shooting at. Got four live cases. When he
6 came out the door four in the area there. Four cases they
7 were shooting at. Four or five cases when we got right
8 behind the middle door the time you walk in the door of
9 the club. They were on the floor there and the rack, it
10 was already one in the clamber. He racked it out. You
11 got that one.

12 Q. That would be ---

13 MR. ROGERS: Your Honor, I'm sorry. I'm having
14 difficulty hearing him. Would you ask him to speak up.

15 BY MR. HALES:

16 Q. When you say a full round you mean a bullet still in
17 the casing?

18 A. Not shoot.

19 Q. Not fired?

20 A. We started to walk to the middle door in the hallway.
21 It was on the floor area. We found one casing inside the
22 club not too far from the victim's body. We found a spent
23 round in front of the victim body on the floor. It went
24 through him. And we took them all to the police station,
25 and I talked with Mr. Watts and read him his rights and

1 asked him did he want to give me a statement.

2 And he told me, no, he didn't want to give me a
3 statement. So he said, "I remember getting the gun, going
4 in to get my boys, but I don't remember shooting anybody.
5 I thought I was shooting in the air."

6 Q. But you actually saw him shoot?

7 A. Yes.

8 Q. I'm going to show you what's been marked as State's
9 Exhibits 19 through 23. You take a look at those. You
10 recognize those?

11 A. Yes, sir.

12 Q. What are those?

13 A. Their live casings -- I mean the spent casings that I
14 found on the scene, crime scene, that night.

15 Q. Okay. And you say you found four by the door; is
16 that right?

17 A. Four by the door between the middle door and the main
18 entrance.

19 Q. Like they were in the front of the building?

20 A. Yes.

21 Q. And you found one were else?

22 A. Inside the club near the victim's body.

23 Q. Did you personally collect those?

24 A. Yes.

25 Q. What did you do with them when you collected them?

1 A. I put them in this bag and sent them to S.L.E.D.

2 Q. You personally took them to S.L.E.D?

3 A. Yes, sir.

4 Q. They were at S.L.E.D. Who brought them back from
5 S.L.E.D.?

6 A. I did.

7 Q. You personally brought them back from S.L.E.D? Have
8 they been in your possession or under your control since
9 you got them back from S.L.E.D?

10 A. In the evidence locker.

11 Q. You has the key to the evidence locker?

12 A. Larry Leary.

13 Q. At this time I'd ask that these be entered in
14 evidence pending chain of custody.

15 MR. ROGERS: No objection. Pending.

16 MR. HALES: Correct. Yes, sir.

17 (WHEREUPON, State's Exhibit Nos. 19 through 23 were
18 admitted into evidence pending chain of custody.)

19 BY MR. HALES:

20 Q. And you say you found one shell casing and the bullet
21 still intact? Hadn't been fired; is that right?

22 A. Right.

23 Q. Where did you find that?

24 A. Inside the hallway of the middle door of the club.

25 Q. About how far did you go in, do you remember?

1 A. Two feet, three feet.

2 Q. Okay. So right when you get in the doorway is what
3 you're saying?

4 A. Yes.

5 Q. I'm showing you what's been marked as State's Exhibit

6 17. You recognize that?

7 A. Yes, sir.

8 Q. And what's that?

9 A. It's the bullet I found the night of the shooting
10 inside the club.

11 Q. Okay. You found that?

12 A. Yes.

13 Q. What did you do when you found it?

14 A. Place it in an evidence bag.

15 Q. Okay. And then what did you do after you put it in
16 an evidence bag?

17 A. Took it to S.L.E.D.

18 Q. Took it to S.L.E.D.?

19 A. Yes.

20 Q. Okay, and who brought it back from S.L.E.D.?

21 A. I did.

22 Q. Had it been in your control since you got it back
23 from S.L.E.D.?

24 A. In evidence.

25 Q. So it's been in evidence?

1 A. Um hum.

2 MR. ROGERS: No objection.

3 MR. HALES: At this time I ask that State's Exhibit
4 17 be enter in evidence pending chain of custody?

5 MR. ROGERS: No objection, subject to chain of
6 custody.

7 THE COURT: All right.

8 (WHEREUPON, State's Exhibit No. 17 was admitted into
9 evidence pending chain of custody.)

10 BY MR. HALES:

11 Q. And you say found ---

12 MR. ROGERS: Excuse me a second.

13 BY MR. HALES:

14 Q. You say you found one fired projectile?

15 A. Right.

16 Q. Where did you find that?

17 A. Inside the club. Probably about 5 feet from the
18 victim's body.

19 Q. Okay. And you collected that?

20 A. Yes.

21 Q. Okay. Showing you State's Exhibit 18. Do you
22 recognize that?

23 A. Yes.

24 Q. What is that?

25 A. It's the spent round from the -- exit bullet. Exited

1 the gun.

2 Q. Okay. And you collected that?

3 A. Yes.

4 Q. What did you do with it?

5 A. Placed it in evidence also.

6 Q. That get sent to S.L.E.D.?

7 A. Yes.

8 Q. What took it to S.L.E.D.?

9 A. I did.

10 Q. And who brought it back from S.L.E.D.?

11 A. I did.

12 Q. Been in evidence ever since?

13 A. Yes, sir.

14 Q. Ask that State's 18 be entered in evidence pending
15 change of custody?

16 MR. ROGERS: No objection.

17 THE COURT: Go ahead.

18 (WHEREUPON, State's Exhibit No. 18 was admitted into
19 evidence pending chain of custody.)

20 BY MR. HALES:

21 Q. You said he was wearing a green Army field jacket
22 that night?

23 A. It was a green jacket.

24 Q. Military-type coat? You don't know if it was an Army
25 jacket or not?

1 A. Right.

2 Q. Were you able to collect that jacket?

3 A. Yes.

4 Q. Okay. And what did you do with that jacket?

5 A. I put it in evidence.

6 Q. Okay. Did that get sent the S.L.E.D.?

7 A. Yes.

8 Q. Who took that?

9 A. I did.

10 Q. Who brought it back?

11 A. I did.

12 Q. Has it been in evidence ever since?

13 A. Yes.

14 Q. I'm showing you State's Four. Do you recognize that?

15 A. Yes.

16 Q. And what is that?

17 A. Green jacket that night of the incident Mr. Watts was
18 wearing.

19 MR. HALES: Okay. Move State's Four be moved be
20 entered in evidence pending chain of custody?

21 THE COURT: All right.

22 (WHEREUPON, State's Exhibit No. 4 was admitted into
23 evidence pending chain of custody.)

24 BY MR. HALES:

25 Q. You say you were able to collect the gun, is that

1 right?

2 A. Yes.

3 Q. Where did you find that gun?

4 A. It was in the Bonneville. It was on the passenger
5 side seat between the seat and the console.

6 Q. Okay. Between the passenger seat and the console?

7 A. Yes.

8 Q. How was it in there?

9 A. It was stuck between the seat back of the seat right
10 here in the console.

11 Q. Okay. Did you take any photographs of that car, the
12 scene, anything like that?

13 A. Yes.

14 Q. I'm showing you State's 39. You recognize that?

15 A. Um hum. Yes.

16 Q. What is that?

17 A. It's inside of that Bonneville they were driving that
18 night.

19 Q. Sir?

20 A. Inside the white Bonneville they were driving that
21 night.

22 Q. Okay. And you took that photograph?

23 A. Yes, sir.

24 Q. Does that accurately reflect the inside of that
25 Bonneville?

1 A. Yes.

2 MR. HALES: With the Court's permission I would have
3 you come down and point where you found that gun. Is that
4 okay?

5 THE COURT: Fine.

6 (WHEREUPON, the witness steps down from the witness
7 stand.)

8 BY MR. HALES:

9 Q. Make sure you speak loud?

10 A. The gun was found right here.

11 (WHEREUPON, the witness returns to the witness
12 stand.)

13 BY MR. HALES:

14 Q. And you actually saw him get in that car, correct?

15 A. Yes.

16 Q. At this time I would ask that State's Exhibit 39 be
17 entered in evidence?

18 THE COURT: Photograph?

19 MR. ROGERS: Same thing. No objection, Your Honor.

20 THE COURT: Okay.

21 (WHEREUPON, State's Exhibit No. 39 was admitted into
22 evidence.)

23 Q. You saw him actually in that passenger seat?

24 A. Yes, sir.

25 Q. And you found that gun stuck right there?

- 1 A. Yes, sir.
- 2 Q. What was the condition of the gun when you found it?
- 3 Was it loaded? Empty?
- 4 A. It was still cocked back.
- 5 Q. Cocked back like all the rounds had been fired?
- 6 A. Yes.
- 7 Q. This is State's Exhibit Three and 13. I ask you to
- 8 take a look at those and see if you recognize those?
- 9 A. Yes.
- 10 Q. What is that?
- 11 A. It's a .45 Springfield.
- 12 Q. Where you recognize that gun from?
- 13 A. The night of the shooting.
- 14 Q. Okay. Is that gun you found?
- 15 A. Yes, sir.
- 16 Q. Stuck between the console and the passenger seat?
- 17 A. Yes, sir.
- 18 Q. You actually the person that found that gun?
- 19 A. Yes.
- 20 Q. And what did you do when you found that gun?
- 21 A. Put it in evidence.
- 22 Q. Okay. Did it get sent to S.L.E.D.?
- 23 A. Yes.
- 24 Q. Did you take it?
- 25 A. Yes.

1 Q. Did you bring it back?

2 A. Yes, sir.

3 Q. Okay. And has it been in evidence ever since?

4 A. That's how I found it.

5 Q. So when you found it it was actually pulled back like
6 this?

7 A. Yes, that automatic weapon pulls back the bullet.
8 Does shoot until it runs out of bullets.

9 Q. Make sure you speak up so everybody can hear what
10 you're saying. And this is State's 13, and do you
11 recognize that?

12 A. Yes.

13 Q. What is that?

14 A. A clip that holds the ammunition for the weapon.

15 Q. Okay. So when you found it was that clip inside the
16 gun?

17 A. Yes, sir.

18 Q. Okay.

19 MR. HALES: At this time, pending chain of custody
20 State's Exhibits Three around 13 be entered in evidence?

21 MR. ROGERS: No objection.

22 (WHEREUPON, State's Exhibit Nos. 3 and 13 were
23 admitted into evidence pending chain of custody.)

24 BY MR. HALES:

25 Q. Do you know Eric Brown?

- 1 A. Yes, sir.
- 2 Q. How do you know him?
- 3 A. He was a police officer at that time.
- 4 Q. Police officer with the Pageland Police Department?
- 5 A. At the time.
- 6 Q. Did you see him that night?
- 7 A. Yes, he was my first back up.
- 8 Q. He was your first back up?
- 9 A. Yes.
- 10 Q. So when you radioed in he's the one that arrived at
- 11 the scene?
- 12 A. He arrived first.
- 13 Q. Was he in a Pageland Police Department vehicle?
- 14 A. Yes, sir.
- 15 Q. Are those vehicles equipped with video recorders?
- 16 A. Yes, sir. He came in and Sergeant Mackey came.
- 17 Q. Okay. With those video recorders, how are they
- 18 activated?
- 19 A. By blue lights.
- 20 Q. Blue lights?
- 21 A. Yeah, we can turn them on, too, but normally we
- 22 activated by blue lights.
- 23 Q. So you can either manually turn on to record or if
- 24 you turn your blue lights on it automatically comes on?
- 25 A. Right.

1 Q. Okay. Showing you State's Exhibit Number 16. Take a
2 look at that. You recognize that?

3 A. Yes, sir.

4 Q. What is that?

5 A. Videotape from the car, Unit 29.

6 Q. Sir?

7 A. Videotape from Patrol Car 29.

8 Q. Okay. And what is that mean, 'Patrol Car 29'?

9 A. The car is assigned to a certain officer and tape is
10 changed out every -- changed ever shift. They change the
11 tape to make sure it's working to record activities.

12 Q. Okay. And that tape is a Pageland Police Department
13 tape?

14 A. Yes, sir.

15 Q. Does it have any other information on the label?

16 A. Excuse me.

17 Q. Does it have any other information on the label of
18 that tape?

19 A. Date the tape was started.

20 Q. Okay, and what does that say?

21 A. 11/27/04 and ends 11/20/04.

22 Q. Does it have any other information on there?

23 A. Matrix Shooting. Matrix Shooting Audio.

24 Q. Okay. When that tape is removed what happens to it?

25 A. When this tape was removed?

1 Q. Yeah, when that tape is removed from the car what
2 happens to it?

3 A. Placed in evidence.

4 Q. That one was placed in evidence?

5 A. Yes.

6 Q. Are all tapes placed in evidence?

7 A. No, sir.

8 Q. Only ones that are involved in some sort of crime?

9 A. Criminal activity, D.U.I, something of that nature.

10 Q. Okay. Who -- that was Larry Brown's tape, right?

11 A. Eric Brown or Dean Mackey's.

12 Q. Okay. Who gave you that tape?

13 A. I think Dean gave me this one.

14 Q. Okay. And once it was given to you what happened to
15 it?

16 A. I took that tape.

17 Q. So that tape has been in evidence ever since it was
18 given to you?

19 A. Right.

20 Q. Mr. Brown, were you able to take any other
21 photographs of the scene? Anything like that?

22 A. I took one of the floor where Mr. Funderburk was
23 laying at.

24 Q. Okay. Did you take any at a later date?

25 A. Yes, I did. The Matrix itself.

1 Q. Okay. I'm showing you State's Exhibits 24 through 38
2 and just take a look at all of those. Did you recognize
3 all these photographs?

4 A. Yes, sir.

5 Q. Who took these photographs?

6 A. I did.

7 Q. And do they accurately represent the Matrix Night
8 Club?

9 A. Yes, sir.

10 MR. HALES: At this time I'd ask that these exhibits
11 be entered in evidence?

12 MR. ROGERS: No objection.

13 (WHEREUPON, State's Exhibit Nos. 24 through 38 were
14 admitted into evidence.)

15 BY MR. HALES:

16 Q. Mr. Brown, did you find anyone else that night that
17 had a weapon?

18 A. No, sir.

19 Q. Other than you police officers?

20 A. No, sir.

21 Q. Nobody else in the club had a weapon?

22 A. No, sir.

23 Q. Please answer any questions Mr. Rogers may have.

24 CROSS-EXAMINATION

25 BY MR. ROGERS:

1 Q. Morning, Detective Brown. You're the main case
2 investigator in this case, aren't you?

3 A. Yes, sir.

4 Q. And as such you're responsible for marshalling all
5 the evidence?

6 A. Yes, sir.

7 Q. Reviewing all the statements and all the reports?

8 A. Yes, sir.

9 Q. Sending things off to S.L.E.D? You're to head
10 honcho, aren't you?

11 A. Investigation Department.

12 Q. Right. And on this case?

13 A. Right.

14 Q. And it was fortunate that you happen to actually be
15 on the scene at the time this event occurred?

16 A. Yes, sir.

17 Q. Correct. Now, your testimony was that you saw
18 Michael going back into the club with the gun?

19 A. Yes, sir.

20 Q. Did you hear a shoot fired inside the club?

21 A. No, sir.

22 Q. So you don't know how many shoots were fired inside
23 the club?

24 A. No, sir.

25 Q. And then you saw him come back out and your testimony

1 was that he fired at least four shots there?

2 A. Yes.

3 Q. And from what you could observe he was firing at the
4 building? He wasn't firing at anyone particular person?

5 A. Well, whatever was it, was a man with a gun, Michael
6 Watts, acting like a wild state, shooting.

7 Q. Well, you did not observe him shooting at someone.
8 You observed him firing?

9 A. Well, people was coming out the club so he bound to
10 hit somebody. He was shooting four times at a particular
11 door.

12 Q. Well, I understand that, but he wasn't firing at
13 anyone, correct?

14 A. He gun was pointing towards the door.

15 MR. HALES: Objection, Your Honor. He's asking him
16 to speculate as to who Mr. Watts was firing at.

17 BY MR. ROGERS:

18 Q. You wrote up notes about this event in March of 2005,
19 correct?

20 A. Wrote notes in March 2005?

21 Q. Yes, sir. You don't have your notes with you? Cause
22 I can show you what I have if you don't?

23 A. Yeah.

24 Q. I mean it's not a big point, but these are your
25 notes, correct?

1 A. Yes.

2 Q. Okay. And you say in March that Watts fired at least
3 four to five shots in front of the club?

4 A. In front of the club.

5 Q. Okay. The shoots struck David Evans and Jeffrey
6 Crowder?

7 A. Okay.

8 Q. You didn't say Michael Watts fired at the people
9 coming out of the club or fired at David Crowder or -- I
10 mean David Evans or Jeffrey Crowder? You didn't say that,
11 did you? You said he fired at the club?

12 A. At the club. The door of the club.

13 Q. So these people were struck but not intentionally by
14 him, correct, or you put this in your report that Michael
15 Watts fired at X, Y and Z and they were shot?

16 A. I couldn't tell you who he was trying to shoot, but I
17 know who he shot.

18 Q. So it is your conclusion today that he was firing at
19 those individuals or not? Or you don't know?

20 A. I think he was firing at anybody. I don't know who
21 he was firing at. He was just firing the gun at people
22 coming out the club and people running everywhere around
23 him. And we couldn't get a shot off at him. Some people
24 didn't know who actually had the gun cause they were
25 running around him trying to get out the club. They were

1 that frantic.

2 Q. So your testimony today is that he was shooting at
3 people?

4 A. Yes.

5 Q. Okay. Now, a part of your investigation was to
6 review the other statements and reports given by other
7 individuals, correct?

8 A. Yes, sir.

9 Q. You've gone to the Academy? You know how to conduct
10 an investigation?

11 A. Yes, sir.

12 Q. You know the importance of taking notes, right?

13 A. Yes.

14 Q. You know how important it is because you can't be
15 expected to remember minute details of every case over
16 months and in this case over years?

17 A. Almost three years now.

18 Q. Right. Did you make any notes with this case? I see
19 your notes from March 7th. Did you make any notes
20 contemporaneous with November 28th?

21 A. I don't recall.

22 Q. Okay. So these notes that you have from March 7th
23 are your independent recollection of what happened that
24 night, November 28th?

25 A. Right.

1 Q. Without the aid of some other hand written notes to
2 help you?

3 A. Right.

4 Q. Okay. And you were aware in reviewing the reports in
5 this case that at the time that Michael Watts was
6 handcuffed on the ground there were shots coming from the
7 club, were you not?

8 A. What people told us.

9 Q. So you had that information that people told you that
10 there were shoots that had been fired from the club while
11 Michael was in handcuffs on the ground outside?

12 A. Right.

13 Q. Who fired those shots?

14 A. I think nobody did because I went inside the club and
15 checked on that. It was only like five or six people in
16 the club and they said that they didn't hear any shots.

17 Q. So what? There were no shots fired?

18 A. We didn't find any or find anybody with a gun or hear
19 any shots that anybody would verify that didn't.

20 Q. Your report just said, "Shots were being fired from
21 inside the club at that time." You didn't find anybody,
22 correct?

23 A. I testified earlier that people had Michael Watts on
24 the ground. People said shots fired.

25 Q. And people ran out the club?

1 A. People were still running out the club.

2 Q. So people that could have been?

3 THE COURT: Whoa, one at a time.

4 MR. ROGERS: I'm sorry, Your Honor.

5 THE WITNESS: Like I told counselor earlier I think
6 people were to me frantic and they think they heard things
7 that they didn't hear nothing.

8 Q. But you put -- he put this in his report?

9 A. Excuse me.

10 Q. Eric Brown put in his report that there were shots
11 coming from the club; that he was told that by people?

12 A. Um hum. Yes.

13 Q. Okay, and you disregarded that?

14 A. Eric Brown and I went in the club together.

15 Q. Okay. So isn't it possible that the people who had
16 fired the shots in the club at the time Michael Watts was
17 on the ground outside ran outside and you never got them?

18 MR. HALES: Objection, Your Honor. He's asking
19 Mr. Brown to speculate on that.

20 THE COURT: He said that somebody said shots were
21 being fired in the club and they all ran in to check it
22 out. They heard no shots. Now, what else do with need to
23 dwell on about this?

24 MR. ROGERS: Your Honor, I think I can develop that
25 actually occurred and the people that fired those shots

1 had left the club.

2 THE COURT: What else can he say if he said he heard
3 no shots fired after somebody claimed they were fired. We
4 are sit here and argue about that for four hours, but go
5 ahead.

6 MR. ROGERS: Very well, Your Honor.

7 BY MR. ROGERS:

8 Q. Did you search anyone?

9 A. The ones got arrested.

10 Q. Did you search any of the patrons of the club?

11 A. No, sir. Most of them were running for their lives.

12 Q. So you didn't get a chance to search them?

13 A. No, I didn't see a need to search them. They run for
14 their lives. Most people were going to their car. Crank
15 their cars up, you hear the gas pipes popping, and he was
16 running out the club. It's a lot of noise.

17 Q. Did you see a need to secure to scene? The crime
18 scene?

19 A. Yes.

20 Q. And when did you do that?

21 A. After everybody got arrested.

22 Q. I'm sorry?

23 A. I said after everybody got arrested.

24 Q. When everybody got arrested?

25 A. Got arrested and cleared the parking lot. We had to

1 secure the parking lot.

2 Q. I'm sorry. I didn't understand?

3 A. We had to clear the place before we could secure the
4 place.

5 Q. Did you take any pictures of where you found the
6 shell casings?

7 A. No, I didn't.

8 Q. Why not? Isn't that proper procedure to take a
9 picture of where you found the shell casings?

10 A. That's normal procedure.

11 Q. Isn't it normal procedure to do a trajectory of where
12 the shot that may have been fired, where you drawn a line
13 from the person to where that bullet ended up, isn't that
14 normal police procedure?

15 A. Repeat that question.

16 Q. You draw a line from where the shoot was fired to
17 where it ultimately ended up so you will know the relative
18 positions of the person that shot and the person that was
19 shot?

20 A. That's normal procedure.

21 Q. And that wasn't done?

22 A. No.

23 Q. Was the building checked for any other weapons? I
24 mean any other bullets in the walls?

25 A. Yes, it was.

1 Q. Where is that in your notes?

2 A. It's not in my notes.

3 Q. Who did it?

4 A. Who did what?

5 Q. Who checked this wall for bullets?

6 A. I did.

7 Q. You had any training in forensics?

8 A. Very little because ---

9 Q. Why wouldn't you just secure the scene and call in a
10 forensic team from S.L.E.D. or from anywhere?

11 A. Because I was on the scene.

12 Q. But you're not trained in forensics?

13 THE COURT: Let him answer the question.

14 MR. ROGERS: I apologize, Your Honor. Please forgive
15 me, Detective Brown.

16 THE COURT: He's testifying. Let him.

17 MR. ROGERS: Yes, sir.

18 THE WITNESS: I was on the scene from beginning to
19 the end. Only seen one gun. Only one person shooting all
20 the ammunition was .45 automatic.

21 Q. And -- I'm sorry.

22 A. And the unspent shells he racked in the chamber came
23 out the chamber was the same casing that we found
24 elsewhere in the building.

25 Q. How many people were in the club?

1 A. About 130 to 150.

2 Q. 150 people?

3 A. Probably. Over a hundred. And I know I'm saying
4 before the fight started. When the fight broke out some
5 people left.

6 Q. So you didn't think it was possible after there had
7 been reports that there had been another gun fired; that
8 somebody had fired a gun and left. You didn't think that
9 was possible at all in your investigation?

10 MR. HALES: Judge, I think we've been through this
11 several times.

12 THE COURT: No, that's a different question.

13 MR. HALES: Okay.

14 THE WITNESS: No. Because somebody said --
15 somebody -- I don't know if someone in the club said it or
16 not. I overheard shoots being fired, but I'm not sure
17 they heard a car backfiring. I'm not sure cause the club
18 was empty by then and the shooting was all over by that
19 time. The shooting was all over.

20 Q. Did you stop them and detain them and ask them?

21 A. No. We looked for somebody shooting, firing shots if
22 that was such a thing.

23 Q. So that the people who said they heard the gun fire
24 shooting who you now think may have heard that it was a
25 car backfiring you don't know cause you didn't talk to

1 them?

2 A. No, cause they said they heard shots. People hear a
3 lot of things that sound like shots, and as far as I'm
4 concerned the bullets that they heard were outside.

5 Q. What about the witnesses who said somebody brought a
6 shotgun in the club? That didn't cause you any concern
7 that there may have been other weapons fired in the club?

8 A. Well, the individual who made a statement said
9 possibility to the gun. He was talking about Mr. Ricky
10 Simpson who he pointed out was the big guy. That's what
11 he said to me and Ricky Simpson never went back in the
12 club.

13 Q. So then what he was lying about that?

14 MR. HALES: Objection. He's try to pit the witnesses
15 against each other?

16 THE COURT: Sustained.

17 BY MR. ROGERS:

18 Q. That witness said they saw Michael Watts come in with
19 a weapon and a Michael MacElwane come a shotgun, correct?

20 A. He didn't say that.

21 Q. What did he say?

22 A. I don't think he called any names.

23 MR. ROGERS: Court's indulgence just a moment. I'll
24 move on to something else.

25 BY MR. ROGERS:

1 Q. Why didn't you take -- why didn't you do a
2 photographic line up for these witnesses?

3 A. Photographic line up of those witnesses. Number One,
4 I stated earlier I was there from the beginning to the
5 end. They identified him as -- some of them knew him as
6 Lamont. Some didn't know him. They just said black male
7 involved in a fight wearing a green jacket. That night
8 out of a hundred something people he was the only one
9 wearing a green jacket. Most people at night didn't have
10 on jackets cause it was warm. Probably like 60 something
11 degrees.

12 Q. Detective Brown, didn't you hear all the witnesses
13 who identified Michael say they have never seen him
14 before?

15 A. Some of them did say they saw him before.

16 THE COURT: Ladies and gentlemen step back to your
17 room for just a minute, please.

18 (WHEREUPON, the jury panel was excused from the
19 courtroom at at 12:39 p.m.)

20 THE COURT: Counsel, time and time in these trials
21 I've seen tactics that have been successful at times and
22 abusive sometimes about line ups, forensic evidence,
23 C.S.I. programs on t.v. I don't understand the relevance
24 of this about a line up when the man was arrested at the
25 scene. Now, you tell me how any of all this

1 cross-examination concerns a line up has any relevancy in
2 this case?

3 MR. ROGERS: Well, Your Honor, I'm attempting to the
4 that the normal police procedure was not followed.
5 Normally in a case where you have a suspect that suspect
6 is either been described by the potential witnesses in
7 some regard and then based on that description the
8 photographic line up or live line up is made so that that
9 witness can verify to the officers that he has identified
10 the person that has been arrested.

11 That's part of the probable cause. None of these
12 guys knew Michael Watts before this. The officers were
13 not -- this officer certainly was not in the club when the
14 shooting took place. He is relying on these witnesses to
15 say this is the fellow that did the shooting. And for him
16 not to have ---

17 THE COURT: Where have I been? The man testified
18 that he saw the man shooting in the door at people coming
19 out. The man was arrested on the scene and put inside the
20 squad car. What does a line up have to do with what we're
21 doing here?

22 MR. ROGERS: Your Honor.

23 THE COURT: You're trying to put the hog in the
24 creek. Now, I don't want to hear anything else about a
25 line up unless you can convince me it has some relevance.

1 MR. ROGERS: Yes, Your Honor. Very well.

2 THE COURT: All right. Bring them back.

3 (WHEREUPON, the jury panel enters the courtroom at
4 12:41 p.m.)

5 BY MR. ROGERS:

6 Q. Detective Brown, referring to State's Exhibit 18.

7 This is an unfired shell casing?

8 A. Exhibit 17.

9 Q. Seventeen. I'm sorry. That's the unfired shell
10 casing?

11 A. Yes, sir.

12 Q. And where was that found?

13 A. Inside the middle doorway of the Matrix.

14 Q. And is that where -- near where you saw Michael rack
15 the weapon and that bullet popped out?

16 A. Yes, sir.

17 Q. Did you see the bullet pop out?

18 A. No, sir.

19 Q. But it was near where you found it? And Exhibit 18,
20 State's Exhibit 18, that's the projectile that was found
21 in the club?

22 A. Yes.

23 Q. Where?

24 A. About 5 feet from the victim's body.

25 Q. Did you testify earlier that there was blood on

1 there?

2 A. No, I did not.

3 Q. Okay, you didn't. This projectile seems to be pretty
4 clean, doesn't it?

5 A. Yes.

6 Q. Do you know from what position that projectile was
7 fired and what direction?

8 A. What direction?

9 Q. Yes, sir.

10 A. I think it was fired towards the bar area from the
11 dance floor.

12 Q. How do you know that? How could you possibly know
13 that?

14 A. Because the bullet entered his back.

15 Q. The question was from what direction did that bullet
16 come from? From the front of the club? From the back of
17 the club? From the dance floor? Do you have any idea is
18 the question? I know where it was found?

19 MR. HALES: Your Honor, he's asking him the
20 speculate. I would object, and he's already testified he
21 was not inside the club.

22 THE COURT: The question posed takes his information
23 from everything he gathered from other people. He can
24 make a guess as to where the shot came from if he can.

25 MR. ROGERS: No, Your Honor. I don't want him to

1 guess. I want him to know based on his investigation what
2 his conclusion is.

3 THE WITNESS: I think I answered the question
4 already.

5 BY MR. ROGERS:

6 Q. And what was the answer again?

7 A. I said it was fired from towards the dance floor
8 towards the bar area.

9 Q. And how do you know that? What are you basing that
10 conclusion on? The witnesses' statements or forensic
11 evidence?

12 A. Cause Mr. Funderburk was running from the dance floor
13 area like from the dance floor area where he got shot
14 from, and the bullet entered in his back and exited his
15 front.

16 Q. You don't have any idea what angle, do you?

17 A. Not angle. No specific angle.

18 Q. So the angle would tell you from what direction that
19 bullet came, correct?

20 A. What do you want to know?

21 Q. I want to know if you know where that shoot was fired
22 from?

23 A. I done told you where I thought it was fired from.

24 Q. And that's a guess?

25 A. I'm not an expert, sir. I'm ---

1 Q. So tell this jury what you're basing that conclusion
2 on?

3 A. One witness said he was running out the club and he
4 was running out the club from the dance floor area towards
5 the bar area and he fell cause he was right behind. He
6 couldn't have been shot from the front cause his friend
7 was in front of him walking.

8 MR. ROGERS: Court's indulgence just one moment.

9 BY MR. ROGERS:

10 Q. Thank you.

11 MR. HALES: Just briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. HALES:

14 Q. What do you do with a body that's a possible
15 homicide -- involving a possible homicide? What to you
16 generally do to that body?

17 A. Send it to autopsy, normally, in Newberry.

18 Q. And that pathologist would run tests to find out
19 angles, bullet entry, that sort of thing?

20 A. Right.

21 Q. Okay. Did you find any other kind of shell casings
22 other than the .45 automatic?

23 A. No, sir.

24 Q. Did you look for others?

25 A. Yes, sir.

1 Q. And you say you looked in the club to see if there
2 were any bullet holes in the walls?

3 A. Yes, sir.

4 Q. Did you find any?

5 A. None except what he fired at the front door and the
6 mirror behind the pay booth was hit.

7 Q. Okay. And you didn't take any notes but did you do
8 an incident report? Was an incident report done?

9 A. Yes, sir.

10 Q. Thank you very much.

11 THE COURT: Any recross?

12 MR. ROGERS: Nothing further.

13 THE COURT: You may step down. It's getting close to
14 one o'clock and I propose let's break for lunch.

15 MR. JOYNER: Judge, that's fine, and I can get with
16 you about witness line up after the jury leaves.

17 THE COURT: Now, how much time you need for lunch to
18 get through?

19 MR. JOYNER: Oh, maybe if we came back at 2:00 that
20 would be plenty time.

21 THE COURT: Mr. Rogers, is that pose any problem?

22 MR. ROGERS: No, Your Honor.

23 THE COURT: Ladies and gentlemen of the jury, we will
24 recess until 2:00 for lunch. I've arrange for the County
25 to provide lunch. The Sheriff's Department will provide

1 transportation unless you just particularly want to drive
2 your vehicle. I will not announce where you will be
3 eating in open court. We will inform you where to go
4 should you desire to drive your own vehicle. I would
5 prefer it, if you don't mind, you stay together and let
6 the sheriff transport you.

7 Now, counsel, you want me to put the bailiff staff
8 and the deputies involved in this under oath or do you
9 waive that?

10 MR. JOYNER: Judge, I have no problem.

11 MR. ROGERS: I waive that, Judge.

12 THE COURT: All right. I will turn you over to Madam
13 Clerk and the bailiff staff will direct you where you go.
14 Everyone else remain seated until they escort the jury
15 out.

16 (WHEREUPON, the jury panel was excused from the
17 courtroom at 12:49 p.m.)

18 (WHEREUPON, Court was in recess at 12:49 p.m. and
19 reconvenes at 2:17 p.m.)

20 THE COURT: Okay, we're ready for the jury.

21 (WHEREUPON, the jury panel enters the courtroom at
22 2:18 p.m.)

23 THE COURT: All right. Ladies and gentlemen of the
24 jury, at this time I want to take a moment to discuss with
25 you an issue that has been raised in the testimony by

1 Assistant Chief Brown. I instruct you now that the
2 defendant in not giving a statement is not a factor to be
3 considered by you in any way in your deliberations and in
4 your consideration on the question of the guilt or
5 innocence of the accused.

6 Do not or to elect not to give a statement is a
7 constitutional right under our United States Constitution.
8 And once again I instruct you it's not to be considered in
9 any way in your deliberations as to the question of guilt
10 or innocence. Is that sufficient, Mr. Rogers?

11 MR. ROGERS: Yes, Your Honor.

12 THE COURT: Now, we're going to do something just a
13 little out of the ordinary, but it's necessary whenever we
14 need to do this. We are going to recall a witness who has
15 already testified for the purpose of continuance of
16 cross-examination. Is that our ---

17 MR. HALES: Yes, Your Honor.

18 MR. ROGERS: Yes, Your Honor.

19 THE COURT: And I believe that witness was Tyrone
20 Miller?

21 MR. HALES: That's correct.

22 THE COURT: All right. Is he available? Mr. Miller,
23 if you will come back around. I asked you be recalled for
24 the purpose of the Defense to continue cross-examination.
25 So you're still under oath. If you would just return to

1 the witness stand.

2 TYRONE MILLER, after previously being duly
3 sworn, testified as follows:

4 MR. ROGERS: May it please the Court.

5 CROSS-EXAMINATION

6 BY MR. ROGERS:

7 Q. Mr. Miller, I just have a couple of questions for
8 you. In the statement that you give to Detective Anderson
9 from S.L.E.D. on December 6th of 2004 you never mentioned
10 Michael Watts' name, did you?

11 A. No, sir.

12 Q. In fact you did not know what his name was then, did
13 you?

14 A. No, sir.

15 Q. And you testified -- you were beginning to testify
16 the other day about the time Mr. Joyner came and showed
17 you one photograph. And that was a photograph that you
18 could not identify?

19 A. No, I told you it was more than one picture and
20 pointed him out.

21 Q. You pointed him out?

22 A. Yes, sir, I did.

23 Q. Do you know was were there six -- how many pictures
24 were there?

25 A. I think maybe three. I don't think -- it was nowhere

1 near six. It was only like three pictures.

2 Q. And were you shown one at a time or were there three
3 laid out before you or how did that go?

4 A. They was like, basically, like one at the time and
5 when he got to him, I knew what he looked like from the
6 night I seen him. I pointed dead at him.

7 Q. So you did made an identification then?

8 A. Yes, sir, I did.

9 Q. Okay. Finally, you pled guilty in Federal Court or
10 did you have a trial?

11 A. I pled guilty.

12 Q. You had a plea agreement?

13 A. Yes, sir, I did.

14 Q. And in your plea agreement it had language that
15 allowed you to get a reduction in your sentence for
16 helping in prosecutions?

17 A. It didn't say anything about State. It was supposed
18 to have been as far as I know was Federal. It didn't say
19 anything about State. Just asked me did I know anything
20 about murderers and money laundering and stuff like that.

21 Q. So you don't hope to get a sentence reduction as a
22 result of your testimony?

23 A. That's not why I'm here.

24 Q. Is that a possibility?

25 A. Not that I know of, sir.

1 Q. Have you talked to your attorney about that?

2 A. No, sir, I haven't.

3 Q. Okay. Thank you, Mr. Miller. That's all I have.

4 THE COURT: Solicitor, you got any?

5 MR. HALES: No, sir, Your Honor.

6 THE COURT: Thank you, sir.

7 MR. HALES: May he be excused?

8 MR. ROGERS: No objection.

9 COLLOQUY

10 THE COURT: Excused without objection. Back to your
11 normal calling.

12 MR. JOYNER: Judge, they're not here yet.

13 THE COURT: Their supposed to be here at 2:30.

14 MR. JOYNER: Yes, sir.

15 THE COURT: Ladies and gentlemen, we had an arranged
16 time. We're running ahead of time. Relax a few minutes
17 in the jury room. Soon as our next witness gets here we
18 will resume.

19 (WHEREUPON, the jury panel was excused from the
20 courtroom at at 2:25 p.m.)

21 THE COURT: All right. While the jury is out the
22 courthouse and courthouse grounds are under my direct
23 control. Anybody that misbehaves, causes a problem is
24 subject to contempt. Now, I know emotions are running
25 high in this case because of the mere nature of the case.

1 It's a tragic incident, and I understand human emotion.
2 But I am not going to tolerate any misbehavior, and I'm
3 not going to tolerate any threats or ridicule to any
4 witness or anybody involved in this case whether it be the
5 defendant or whether it be the victim's family or whether
6 it be a witness. .

7 I best not get a report from anybody opening their
8 mouth to ridicule or threaten anybody else or somebody is
9 heading to the slammer. So take that as a word of
10 warning. If you're going to run your mouth about
11 something you better go over there by Thompson Creek
12 somewhere and yell it back cause any officer in this Court
13 hear anything you are to be brought directly in front of
14 me and I'll deal with you at that time.

15 And I can assure you that a jury will not be able to
16 help you. Okay. We're in a mode of standing at ease and
17 I'm going to step to the Probation Office and meet with
18 them just a moment. And, hopefully, the next witness will
19 be here.

20 (WHEREUPON, Court is in recess at 2:27 p.m. and
21 reconvened at 3:04 p.m.)

22 (WHEREUPON, the jury panel enters the courtroom at
23 3:04 p.m.)

24 THE COURT: Thank you for your patience. We've got
25 the witness here now. We're going to be ready to go.

1 I'll go ahead and tell you when we finish with these
2 witnesses we're going to stop a little early today cause
3 we can't get the next witness here until in the tomorrow.
4 We won't be working real late today.

5 JENNIFER STONER, after being duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. HALES:

9 Q. Please state your name?

10 A. Jennifer Stoner.

11 Q. Miss Stoner, what do you do?

12 A. I'm employed by the South Carolina Law Enforcement
13 Division in the Trace Evidence Division.

14 Q. How long have you been there?

15 A. I've been there -- it will be ten years in September.

16 Q. And you have any law enforcement background before
17 that?

18 A. No.

19 Q. Okay. What kind of special training did you get in
20 order to be work at Trace Evidence?

21 A. I received a chemistry -- B.S. in chemistry from
22 California University in Pennsylvania in 1997. Upon
23 completion of my degree I did an internship at S.L.E.D. in
24 Trace Evidence Lab to see if that was the career path I
25 wanted to take. Upon completion of that internship I was

1 hired in drug analysis where I spent a year. I went
2 through the police academy ---

3 Q. Just speak up a little bit.

4 A. I was in drug I.D. for about a year.

5 MR. ROGERS: Your Honor, we'll stipulate to her
6 qualifications as an expert in the area of forensic trace
7 evidence.

8 THE COURT: Thank you very much.

9 BY MR. HALES:

10 Q. Okay. All right. Please tell us a little bit about
11 trace evidence?

12 A. Trace evidence encompasses a lot of different
13 examinations. We perform gunshot residue examinations
14 which is a test perform to see if someone possibly fired a
15 weapon or was near a weapon when it was fired. We perform
16 a muzzle to target distance determination on clothing to
17 determine if possible how far a victim was from a gun when
18 they were shot.

19 We perform paint comparison and analysis and hit and
20 run accidents or in breaking and entering in burglaries.
21 We also perform fiber examinations. We perform explosive
22 analysis. We perform accelerant analysis. If there is a
23 suspected arson we look at evidence to see if an
24 accelerant was used to start the fire. We also perform
25 glass analysis and comparison and trace other examination.

1 Q. Okay. With respect to gunshot residue would you go a
2 little bit more in depth as to what gunshot residue is?

3 A. Gunshot residue is a term that describes the residue
4 that leaves a gun when it's fired. Basically, whenever
5 you fire a weapon a small explosion takes place. You have
6 your bullet which has a primer. There are three
7 components in the primer lead stifinate, antineum sulfide
8 and barium nitrate.

9 These three components are needed for an explosion.
10 Whenever you fire a gun the firing pin will hit the primer
11 composition. Since lead stifinate is considered an
12 initiating explosive it goes off with a bang or a tap. So
13 the firing pin when it hits that, taps it and ignites it.

14 The whole purpose of the primer is to ignite your
15 smokeless powder within the base of your cartridge. The
16 smokeless powder will burn and as it burns it builds in
17 heat and pressure. And this is what projects the bullet
18 out of the weapon.

19 Along with the bullet coming out of the gun you're
20 going to have all the particles that were formed in that
21 heat and pressure which includes your barium, your
22 antimony and your lead. And this is what we look for in
23 gunshot residue. It will exit the gun in a cloud and
24 deposit on anything in that area.

25 So if I had my hands up and I'm firing it will, of

1 course, go towards the victim. It will come back on me on
2 my arms. Possibly on my clothing and on my hands.

3 Q. This is State's Exhibit Three. If you were to fire a
4 gun like this powder would go this way and back?

5 A. It will exit any opening of the gun.

6 Q. Any opening?

7 A. Any opening. The trigger guard, the slide. If it's
8 a resolver it will come out the cylinder gap and, of
9 course, the barrel of the gun.

10 Q. Okay. Once that cloud comes out and it lands
11 somewhere are there any circumstances where particles make
12 be knocked off or anything like that?

13 A. It can. When you fire a weapon six hours after you
14 fire that weapon we don't expect to find anything on your
15 hands. And that's due to if you wash your hands you will
16 completely remove that residue. If you sweat the residue
17 can be removed. If you brush your hands, put them in your
18 pockets, anything you do will remove it.

19 I kind of liken it to if you're baking and you get
20 flour on your hands. You can see the flour, but you can't
21 see the gunshot residue, but anything you do will take
22 that flour off. The same thing with gunshot residue. And
23 after six hours there is no reasonable examination to find
24 it on your hands.

25 Q. What about on the clothing?

1 A. On clothing or any inadament object it will stay
2 until it is removed by some outside force. If I fire the
3 gun with this jacket on it will stay in this jacket until
4 I wash it or you shake it or put it in water.

5 Q. If you shook it out it might fall out?

6 A. It could.

7 Q. Tell me about the collection of gunshot residue?

8 A. There are several ways to collect it. We provide a
9 kit which is called a Gunshot Residue Collection Kit. It
10 consists of two parts: Particle lift and Swabs. They
11 collect the kit from the hands. They will take the right
12 palm, right back, left palm, left back.

13 Q. When you say back you mean the back of the hands?

14 A. The back of the hands. You do the palms and the
15 back. They also will collect a control which we use when
16 we do our analysis.

17 Q. And where would they get that control?

18 A. Normally, they need to take it from an area that has
19 not been exposed to the gunshot residue. If they have on
20 long pants it can be under their sock, behind their knee.

21 Q. What about wooden swabs?

22 A. We do not perform analysis on wooden swabs due to
23 contamination issues from the wood itself.

24 Q. Would you explain that a little more?

25 A. The elements that we look for are common. You can

1 find lead. You could find antimony. You can find barium
2 in general. Well, when trees grow they will leech things
3 out of the soil. We don't know what was in the swab to
4 begin with if it was a wooden swab.

5 Q. So if an agency performed a G.S.R. kit on an
6 individual with wooden swabs your lab wouldn't even test
7 that?

8 A. That is correct.

9 Q. Okay. You have your report from this case?

10 A. I do.

11 Q. Would you please let us know what it says?

12 A. Excuse me?

13 Q. Would you please let us know what you found?

14 A. Okay. Do you want the supplemental or the original
15 report? I have two reports.

16 Q. Just tell us what you found?

17 A. Okay. On Item 15 was a G.S.R. kit from Michael Watts
18 and no analysis was performed on it because the samples
19 were collected on wooden swabs.

20 Item 18 was a green jacket. I collected particle
21 lifts off this jacket which means that I took a sticky
22 substance and went over different areas of the jacket to
23 collect evidence from it. I then analyzed it and in the
24 samples that I collected from the jacket I found round
25 lead particles on the left sleeve and on the chest region.

1 Round lead particles is one of the components of
2 gunshot residue. I also found non-round particles
3 containing barium, antimony, and lead which are the three
4 components on the primer composition in the bullet on the
5 right and left sleeves and these particles can be
6 associated with the gunshot residue.

7 Q. You actually received the jacket?

8 A. Yes, sir.

9 Q. I'm showing you State's Exhibit Four. Do you
10 recognize that jacket?

11 A. Do you have the box from it?

12 Q. The box, yes.

13 A. I mark the box and the jacket. And here is the lab
14 number, my item number and my initials when I performed
15 the examination.

16 Q. Okay. And that would tell you that you did an
17 examination on this jacket?

18 A. That is correct.

19 Q. In this case?

20 A. Yes.

21 Q. Okay.

22 MR. HALES: At this time I believe the chain of
23 custody is complete for the jacket?

24 MR. ROGERS: No objection.

25 THE COURT: In without objection.

1 (WHEREUPON, State's Exhibit No. 4 was admitted into
2 evidence.)

3 MR. HALES: One moment, Your Honor.

4 BY MR. HALES:

5 Q. Finally, Agent Stoner, the particles that you found
6 on that jacket were consistent with gunshot residue?

7 A. They are consistent with gunshot residue, yes.

8 Q. Okay. Thank you. Please answer any questions Mr.
9 Rogers may have. Thank you.

10 CROSS-EXAMINATION

11 BY MR. ROGERS:

12 Q. Miss Stoner, in this case because Mr. Watts was
13 swabbed with a wooden swab S.L.E.D. did not conduct an
14 analysis?

15 A. That is correct.

16 Q. And with respect to gunshot residue the absence of
17 gunshot residue on the body of the person that was shot
18 would indicate that the gunshot came from some distance
19 away, correct?

20 A. It can depend. That's one scenario or they could
21 have been shot through an intervening object which would
22 have taken all the gunshot residue and deposited it on
23 that object rather than on the victim. But that's one
24 scenario. They could have been too far away to have
25 gunshot residue deposited on them or the bullet could have

1 passed through something else before it hit them.

2 Q. And depending on what that material was that the
3 bullet passed through before it hit the body there would
4 be a possibility that there still would be gunshot residue
5 on the body?

6 A. If you're talking about a window screen, you can get
7 gunshot residue pass through that, but pillows, wood,
8 anything hard will take -- because you're looking at the
9 barrel of the gun and that stuff comes out the barrel of
10 the gun. If it hits something else it's not going to go
11 to the victim.

12 Q. What about a shirt or a sweater?

13 A. I will be deposited on that outer garment first.

14 Q. Even if the bullet went through this garment and into
15 the skin, it would not get any powder?

16 A. It depends. If it's a hard contact shot, close shot,
17 those particles can be pushed through that garment. But
18 if it's a decently close shot it may not come through.

19 Q. So the absence of gunshot residue could tell you that
20 the shot came from a distance if you know all the factors
21 about the clothes?

22 A. It would.

23 Q. Were you given clothing in this case to test for
24 gunshot residue?

25 A. I was not.

1 Q. Okay.

2 MR. HALES: Briefly, your Honor.

3 REDIRECT EXAMINATION

4 BY MR. HALES:

5 Q. You were given clothing other than the green jacket?

6 A. I was not given the victim's clothing.

7 Q. Okay.

8 MR. HALES: Thank you, Your Honor.

9 THE COURT: That it?

10 MR. ROGERS: Yes, sir.

11 THE COURT: May this witness be excused?

12 MR. HALES: Yes, Your Honor.

13 MR. ROGERS: Yes, sir.

14 THE COURT: Thank you.

15 MR. JOYNER: State calls Dan Defreese.

16 DAN DEFREESE, after being duly sworn, testified
17 as follows:

18 DIRECT EXAMINATION

19 BY MR. JOYNER:

20 Q. Afternoon, Mr. Defreese?

21 A. Good afternoon.

22 Q. Please state your name for the Court?

23 A. My name is Frank Dan Defreese, D-E-F-R-E-E-S-E.

24 Q. Thank you. Mr. Defreese, where are you from?

25 A. I'm from Little Mountain, South Carolina. I'm

1 employed by the South Carolina Law Enforcement Division in
2 the Forensic Services Laboratory in Columbia.

3 Q. And how long have you been involved with law
4 enforcement?

5 A. Forty years.

6 Q. How long you been a firearms identification expert?

7 A. For about 37 of the 40. Actually, I began my
8 instruction in firearm and tool mark identification when I
9 was employed with S.L.E.D. which was in 1967. About the
10 first two and a half years of that employment was studying
11 the techniques of firearms and tool mark identification.
12 And after that time I began testifying on my own as to my
13 results. I've been doing that since 1969?

14 MR. ROGERS: Your Honor, I know Mr. Defreese, and I
15 will stipulate to his qualifications as an expert in
16 firearms analysis.

17 THE COURT: Thank you, sir.

18 MR. JOYNER: Well, Judge, with that being said I
19 would move that Mr. Defreese be declared an expert in
20 field of firearms identification and analysis, please.

21 THE COURT: So be it.

22 BY MR. JOYNER:

23 Q. Mr. Defreese, I show you what's been marked as
24 State's Exhibit Three and State's Exhibit 13 and ask do
25 you recognize those?

1 A. Yes, I do.

2 Q. And what are those?

3 A. Pardon?

4 Q. What are those?

5 A. State's Exhibit Three is a Springfield Armory Brand
6 1911A1 Model 45 Auto-Caliber Pistol. State's Exhibit 13
7 is a magazine assembly that fits this pistol.

8 Q. Okay. And I am now going to show you what has been
9 marked as State's Exhibits 17, 18, 19, 21, 20, 22, and 23.
10 And I would ask have you seen those before?

11 A. Yes, sir, I have.

12 Q. Okay. How did you gain possession of those items?

13 A. These were brought to S.L.E.D. by Larry Brown of the
14 Pageland Police Department and subsequently came into my
15 possession thereafter.

16 Q. Okay. How are you able to identify that those are
17 the particular items that you have on that day?

18 A. We receive evidence in a sealed container and
19 immediately after opening a container I start collecting
20 information about the evidence inside. And as part of my
21 examination I engrave, where possible, the case number,
22 our assigned item number and my initials on the item of
23 evidence and in this case I was able to do this with all
24 these evidence items.

25 Q. Okay. And you were able to examine each of those

1 items?

2 A. I was.

3 Q. Before I go any further we all recognize that you're
4 an expert in this field. Would you describe for the jury
5 what makes these identifications possible as far as
6 firearms identification goes with bullets and with
7 casings?

8 A. Certainly. Firearms identification, generally, is a
9 special -- a subspecialty of tool mark identification. In
10 this case the tool is the firearm itself, and the object
11 that it leaves the markings on are either bullets or
12 cartridge cases.

13 When we have a rifled firearm such as what we have
14 with State's Exhibit Three inside the barrel, the inside
15 surface of the barrel is what we call the bore. The bore
16 of a firearm has a series of spiraling grooves that are
17 there for the purpose of gripping the bullet as the bullet
18 is being propelled out of the bore, out of the gun.

19 The grooves grip the bullet and they spin the bullet
20 either to the left or to the right. They spin it one
21 direction or the other. This is done in much the same way
22 as a quarterback puts a spin on a football as he's
23 releasing it so that the football spirals and doesn't
24 tumble end over end in flight.

25 So the reason the rifling is there is to improve the

1 accuracy of the bullets fired from the guns. But putting
2 rifling in a barrel requires many different machining
3 operations each of which can leave unique marks in the
4 barrel. These marks are transferred to the bullets that
5 are fired in that barrel. And it's possible to identify,
6 where a bullet is not too badly damaged, the particular
7 bullet back to the gun barrel in which it was fired based
8 on the markings that the inside surface of the bore leaves
9 on the bullets as they a pass down the barrel.

10 Also in the case of firearms of this type there is --
11 they have a breach face surface where my finger is. The
12 breach face is that portion of the slide that closes the
13 back of the barrel. It's what holds the cartridge in the
14 enlarged area at the rear of the barrel we call the
15 chamber.

16 It is from the breach face that the firing pin
17 emerges at the time of firing. During the firing sequence
18 when burning is initiated in the cartridge pressure builds
19 up inside the cartridge. It's that pressure which
20 ultimately will drive the bullet down the bore and out of
21 the gun. That pressure causes the walls and the back of
22 the cartridge case to be very firmly pressed against the
23 breach face so that any markings that might be present on
24 the beach face left over as a result of it's manufacturer
25 are transferred to the cartridge case.

1 Similarly, any imperfections that might be on the
2 firing pin can be transferred to the cartridge case that
3 the firing pin strikes. There are certain other surfaces
4 that can come into contact with a cartridge that may also
5 be suitable for identification. But principally, what we
6 are looking for are the transfer of breach face
7 impressions from the gun to the cartridge case or firing
8 pin impressions from the firing pin to the cartridge case
9 and then the transfer of striated markings, scratches,
10 from the barrel to the bullet.

11 Q. Thank you, Doctor. Would you describe the
12 examination you used in this particular case?

13 A. What I'll do first is I'll obtain test bullets that I
14 know this gun fired because my examination consists of a
15 side by side microscopic comparison of test bullets or
16 test cartridge cases that I know Item Three for instance
17 fired versus the questioned specimens versus the submitted
18 evidence.

19 I do this under a microscope that permits me to look
20 at portions of two objects at the same time. And I can
21 move the images of those objects in any orientation that
22 I wish. What I'm looking for are matching breach face
23 impressions and matching individual striation on the
24 bullet, on the test bullet, and on the evidence bullet
25 that I have.

1 And in this case for instance with Item 18 with the
2 bullet I found matching individual striated markings on
3 this bullet and on test bullets fired by State's Exhibit
4 Three from which I was able to conclude that State's
5 Exhibit 18 was fired by State's Exhibit Three.

6 Q. Okay. Thank you. What can you tell us about the
7 casings that you have?

8 A. I performed a similar side by side microscopic
9 comparison of test cartridge cases fired by the gun,
10 State's Exhibit Three with the cartridge casings in
11 State's Exhibits 19, 20, 21, 22 and 23.

12 And in the case of all five of the fired cartridge
13 cases I found matching breach face impressions on these
14 cartridge cases and on test cartridge cases that I fired
15 in the Item Three Pistol. And from that I was able to
16 conclude that all of those cartridge cases were fired by
17 that pistol.

18 Q. I see.

19 A. I also inspected the unfired cartridge in State's
20 Exhibit 17 but was unable to identify it because, of
21 course, it was never fired and didn't build the pressure
22 necessary to transfer the markings and the bullet was
23 never expended from it.

24 Q. I see. Because the bullet was never shot there was
25 never enough energy to produce a mark on the bullet?

1 A. Correct. The bullet never really came in contact
2 with the bore in a way that would leave identifiable
3 markings. Sometimes it's possible to identify an unfired
4 cartridge when it's loaded into a gun because sometimes
5 other surfaces in the gun, such as the extractor or
6 ejector or the loading ramp, there are some other areas of
7 contact that I eluded to before that could potentially
8 mark a cartridge in some circumstances. I did not find
9 sufficient markings to identify it in this case.

10 Q. All right. Thank you, sir.

11 (WHEREUPON, State's Exhibit No. 41 was marked for
12 identification only.)

13 BY MR. JOYNER:

14 Q. Doctor, were you able to produce a report of these
15 findings that you just explained to the jury?

16 A. Yes, I did.

17 Q. Okay. I'm showing you what's been marked for
18 identification purposes as State's Exhibit 41 and ask do
19 you recognize that?

20 A. Yes, I do.

21 Q. What is it?

22 A. This is a faxed copy of the report which I issued in
23 this case.

24 Q. Is that a fair and accurate representation of your
25 report?

1 A. It is.

2 Q. Okay.

3 MR. JOYNER: Judge, I would move that State's
4 Exhibits 41, 3, 18, 13, 17, 19, 20, 21, 22, and 23 be
5 entered in evidence at this time?

6 MR. ROGERS: No objection.

7 THE COURT: In without objection.

8 (WHEREUPON, State's Exhibit Nos. 3, 13, 17, 18, 19,
9 20, 21, 22, 23, and 41 were admitted into evidence.)

10 BY MR. JOYNER:

11 Q. All right. Thank you so much, Mr. Defreese.

12 MR. ROGERS: May it please the Court.

13 CROSS-EXAMINATION

14 BY MR. ROGERS:

15 Q. Agent Defreese, how many rounds does that weapon
16 hold?

17 A. This magazine, Item 13, will hold as many as eight
18 rounds.

19 Q. Okay.

20 A. So that you could put as many as nine shots in the
21 weapon before needing to reload it.

22 Q. Eight in the cartridge and one in the chamber?

23 A. Eight in the magazine. One in the chamber.

24 Q. All right. You've had experience analyzing bullets.
25 You know that where a casings -- a spent casing shell is

1 found has some significance to where the person was that
2 shot the weapon. Isn't that true?

3 A. It can, yes, when we know certain information.

4 Q. With other information ---

5 A. Yeah.

6 Q. --- but if you had a picture or an idea of why a
7 casing was found in a location that could give you some
8 idea of where the person was when they fired the weapon?

9 MR. JOYNER: Judge, I'm going to object. This is out
10 of his expertise. He's actually a tool markings expert
11 and he's asking about projectory and bodies.

12 MR. ROGERS: Well, the reason ---

13 THE COURT: I'm going to give him latitude cause I
14 know Agent Defreese and if he hits on something he's not
15 qualified to talk about he'll let us know.

16 MR. JOYNER: Okay.

17 THE COURT: Go ahead, Mr. Rogers. Sorry.

18 MR. ROGERS: Yes.

19 BY MR. ROGERS:

20 Q. That could give you some idea generally of where the
21 person was when the shot was fired?

22 A. It can in certain -- when there is certain
23 information available to us, the placement of the
24 cartridge case can indicate or tend to indicate where the
25 shooter was.

1 Q. And in this case several of the cartridge casings
2 were found on the outside of the club. So that would
3 clearly indicate that the person that shot was outside of
4 the club?

5 A. It would tend to indicate that. That's not the only
6 explanation for it but it is certainly one explanation.

7 Q. And certainly if you had other evidence, other
8 witnesses or anyone that could place a person in an exact
9 spot where they were when the shot was fired then that
10 would be more evidence that would -- you can base your
11 conclusion on where the shoot was fired from?

12 A. It could be.

13 Q. State's Exhibit 18. Did you examine that exhibit for
14 blood tissue, D.N.A, bone, anything like that?

15 A. I examined it but I found no trace materials. That
16 is there are no obvious blood or any other foreign
17 materials noted.

18 Q. In fact Exhibit 18 is rather pristine, isn't it?

19 A. It's not very badly damaged and it's not badly
20 deformed.

21 Q. Looks like it's even been fired?

22 A. Oh, it has been fired. It has rifling impressions on
23 it.

24 Q. Thank you, Agent.

25 MR. JOYNER: No further questions.

1 THE COURT: May he be excused?

2 MR. JOYNER: Yes, sir.

3 THE COURT: Anything else?

4 MR. JOYNER: No, sir. We've just got Dr. Ross in the
5 morning.

6 THE COURT: Y'all approach, please.

7 (WHEREUPON, a bench conference was held off record
8 jury present.

9 COLLOQUY

10 THE COURT: All right. We've got another expert
11 witness that can't be here until 9:00. There is a
12 possibly that we could reconvene later tonight but it's
13 going to be better to stop now and just start at 9:00
14 rather than taking a two or three hours break.

15 So with that said remember my instructions about any
16 contact. We need you back here at 9:00 in the morning so
17 we can work that witness in and is on a very tight
18 schedule with the hospital. So please try to be here
19 promptly and we'll try to stay on schedule.

20 Everybody else remain seated while the jury departs
21 for the evening. Y'all have a good night.

22 (WHEREUPON, the jury panel was excused from the
23 courtroom at 3:38 p.m.)

24 THE COURT: Jury out? You might be interested to
25 know that Dr. Sexton called back. She will be here at

1 9:00.

2 THE WITNESS: Dr. Ross you mean.

3 THE COURT: Dr. Ross will be here at 9:00. His
4 parting shot at y'all was that if you could have contacted
5 him sooner you could have worked all this out.

6 THE WITNESS: Without me having to be here.

7 THE COURT: Without her having to be here.

8 MR. JOYNER: Judge, I'll send her -- I'll get a trial
9 list for '08 and get subpoenas out to her.

10 THE COURT: Solicitor, I don't think you're going to
11 be getting any Christmas bonus from Newberry. All right.
12 I think everything is ready to stop for the day. We'll
13 reconvene at 9:00 in the morning.

14 MR. JOYNER: Thank you, Judge.

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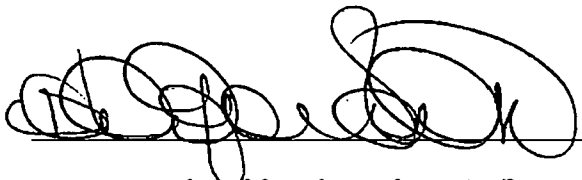
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Chesterfield County, South Carolina, on the 31st day of
July, 2007.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

January 22, 2008

A handwritten signature in black ink, appearing to read 'Hattie O. Gordon', written over a horizontal line.

HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
<u>COUNTY OF CHESTERFIELD</u>	)	05-GS-13-0471
		05-GS-13-0473
		05-GS-13-0476
		05-GS-13-0474
		05-GS-13-0475
		05-GS-13-0477
		06-GS-13-0499

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
MICHAEL L. WATTS	)	
<u>DEFENDANT</u>	)	

July 30th - August 1st , 2007
 Chesterfield, South Carolina
 Volume Number 03 of 03

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE; and a jury.

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

FRANKLYN JOYNER, ASSISTANT SOLICITOR
 Attorney for the State

KEVIN HALES, ASSISTANT SOLICITOR
 Attorney for the State

JIMMY ROGERS, ESQ.
 Attorney for the Defendant

DAVID EVANS,
 LATOYA MILLER,
 TYRONE MILLER,
 CHARLES MILLER,

KEVIN JOHNSON,
DEWAYNE MILLER,
ANGELO MASON,
TAMEKA AUSTIN,
DANNY BENNETT,
MIKE TRESDALE,
LARRY BROWN,
JENNIFER STONER,
DAN DEFREESE,
JANICE ROSS,
CRYSTAL JONES,
FERMAN MACKEY,

HATTIE O. GORDON
Circuit Court Reporter

1 (WHEREUPON, State's Exhibit Nos. 42 THROUGH 46 were
2 marked for identification only.)

3 THE COURT: All right. Y'all ready?

4 MR. JOYNER: Yes.

5 MR. ROGERS: Just one minute please, Your Honor.

6 Yes, sir.

7 (WHEREUPON, the jury panel enters the courtroom at
8 9:10 a.m.)

9 POLLING OF THE JURY

10 THE COURT: Good morning. We need -- how about
11 polling the jury. Any desire?

12 MR. ROGERS: Yes, Your Honor, I request that.

13 THE COURT: Madam Clerk, poll the jury, please. As
14 to any contact or if they read it in the newspaper or
15 heard any news account.

16 CLERK OF COURT: Have y'all had any contact amongst
17 yourself or read the newspaper or read anything in the
18 local newspapers reflecting anything to do with this case?
19 If you have please indicate by yes. If you have not
20 please indicate by no. Lance Abernathy?

21 JUROR: No.

22 CLERK OF COURT: Christy Woodward.

23 THE WITNESS: No.

24 CLERK OF COURT: Penny Koyne.

25 JUROR: No.

1 CLERK OF COURT: Threadgill Redfearn.
2 JUROR: No.
3 CLERK OF COURT: Kathy Huggins.
4 JUROR: No.
5 CLERK OF COURT: Bryan Starling.
6 JUROR: No.
7 CLERK OF COURT: Bryan McManus.
8 JUROR: No.
9 CLERK OF COURT: Tony Melton.
10 JUROR: No.
11 CLERK OF COURT: Jonathan Hudley.
12 JUROR: No.
13 CLERK OF COURT: Jeffrey Watson.
14 JUROR: No.
15 CLERK OF COURT: Steven Douglas.
16 JUROR: No.
17 CLERK OF COURT: Sherry Hancock.
18 JUROR: No.
19 CLERK OF COURT: William Smallwood.
20 JUROR: No.
21 CLERK OF COURT: Lorine Sutton.
22 JUROR: No.
23 CLERK OF COURT: Thank you.
24 MR. JOYNER: Judge, the State would call Dr. Ross to
25 the stand.

1 JANICE ROSS, after being duly sworn, testified
2 as follows:

3 DIRECT EXAMINATION

4 BY MR. JOYNER:

5 Q. Morning, Dr. Ross?

6 A. Good morning.

7 Q. Would you please state your name for the jury?

8 A. Janice Edwards Ross.

9 Q. And where you from, Dr. Ross?

10 A. Newberry, South Carolina. I work for Newberry
11 Pathology Associates.

12 Q. What is your occupation?

13 A. Forensic pathologist.

14 Q. And are you licensed physician and surgeon?

15 A. Yes.

16 Q. And in what states are you licensed?

17 A. South Carolina, Georgia and New York.

18 Q. How long have you been licensed as a physician?

19 A. Thirty-one years.

20 Q. And are you currently practicing?

21 A. Yes.

22 Q. And where did you receive your training in pathology?

23 A. At Upstate Medical Center in Syracuse, New York.

24 Q. Is conducting autopsies a part of your job?

25 A. Yes.

1 Q. And, Doctor, earlier you said that you were a
2 forensic pathology. What exactly is that? What does that
3 involve?

4 A. Pathologist, I have an M.D. degree and train in
5 pathology. The word pathology means the study of disease.
6 So we learn as a hospital pathologist we learn how to look
7 at tissues from you from surgery and identify cancers,
8 identify infections, meaning look at blood cells and
9 identify things like leukemia.

10 The word forensic means legal. So we use our
11 pathology knowledge, knowledge of how to do an autopsy on
12 legal matters such as homicides, suicides, accidents, even
13 rapes.

14 Forensic pathologist then is to do an autopsy on an
15 unexpected or tragic death, traumatic death, and identify
16 cause of death and the manner of death.

17 Q. What is the American Board of Pathologists?

18 A. It's our group that certifies through examination and
19 pathologist after proper training.

20 Q. Doctor, before that board certifies a person as a
21 diplomate what must be done?

22 A. You need to accomplish certain criteria including
23 education, a number of years in the field. Educational
24 criteria in order to be able to take the test. When you
25 accomplish that then you take a test and have to pass

1 that.

2 Q. Have you been certified as a diplomate?

3 A. Yes.

4 Q. Doctor, what are some of the papers or articles that
5 you've written concerning pathology?

6 A. I have written a couple of articles on surgical
7 pathology concerning tumors of the intestine and of the
8 skin.

9 Q. Okay. And is your certification as a diplomate, is
10 that over and above any type of medical license you might
11 need in South Carolina to practice as a doctor?

12 A. Yes, you get your basic license first and then you
13 have to accomplish training in order to get certification
14 in a field such as pathology.

15 MR. ROGERS: Your Honor, I stipulate to Dr. Ross as
16 an expert in the area of forensic pathology.

17 THE COURT: Thank you.

18 MR. JOYNER: Judge, with that being said I move that
19 Dr. Ross be declared an expert in the field of forensic
20 pathology.

21 THE COURT: Along with stipulation she's so
22 qualified.

23 BY MR. JOYNER:

24 Q. Doctor, how many autopsies have you performed?

25 A. Over 4,000.

1 Q. Over \$4,000?

2 A. Yes.

3 Q. And how many times in those autopsies you performed,
4 approximately how much times has cause of death been
5 gunshot wound?

6 A. Oh, it's hard to say. It's more so in the last seven
7 years since I've been in South Carolina. Probably
8 between -- over a hundred.

9 Q. Okay. Doctor, were you working on November 29th of
10 2004?

11 A. Yes.

12 Q. And where were you working?

13 A. At Newberry.

14 Q. Did you perform an autopsy that day on Clifton
15 Funderburk?

16 A. Yes, Dr. Sexton and I performed the autopsy together.

17 Q. Okay. Doctor, I'm showing you what's been marked as
18 State's Exhibit 46. Do you recognize that person?

19 A. Yes.

20 Q. Who is that?

21 A. That's the person that's identified by the coroner as
22 being Clifton Funderburk, Jr. from Chesterfield County.

23 Q. Okay. Did you perform an autopsy on that individual?

24 A. Yes.

25 MR. JOYNER: Judge, I would move that State's Exhibit

1 46 be entered in evidence?

2 MR. ROGERS: No objection.

3 THE COURT: Okay. In without objection.

4 MR. JOYNER: Thank you, Judge.

5 (WHEREUPON, State Exhibit No. 46 was admitted into
6 evidence.)

7 BY MR. JOYNER:

8 Q. Doctor, when was the first time you saw Clifton
9 Funderburk?

10 A. On that day, November 29th. We started the autopsy
11 at about 2:30 p.m.

12 Q. Okay, approximately how long did the autopsy last?

13 A. Hour and a half, two hours.

14 Q. And where did it take place?

15 A. In the Newberry County Memorial Hospital Morgue.

16 Q. Could you just briefly describe what you did in this
17 case as far as the autopsy goes. Your examination?

18 A. We examined the victim's clothes, identified the
19 clothing, inventoried it and then we take it and take
20 pictures and take pictures again of the body without the
21 clothes, front and back. And we further identify any
22 injuries externally before we go internally.

23 Q. Doctor, did you form an opinion as to what the cause
24 of death was in this case?

25 A. Yes.

1 Q. What was that opinion?

2 A. It was exsanguination which is bleeding out due to
3 perforation of the gunshot wound of the part and also hit
4 the kidney due to gunshot wound of the chest.

5 Q. Okay. Doctor, did you prepare a report ---

6 A. Yes.

7 Q. --- of your findings?

8 A. Yes.

9 Q. I'm showing you what has been marked as State's
10 Exhibit 42. Do you recognize that?

11 A. Yes, this is our autopsy report on Clifton Funderburk
12 from November 29th 2004.

13 Q. Okay. Thank you.

14 MR. JOYNER: Judge, I would move that State's Exhibit
15 42 be entered in evidence.

16 MR. ROGERS: No objection.

17 THE COURT: In without objection.

18 (WHEREUPON, State's Exhibit No. 42 was admitted into
19 evidence.)

20 BY MR. JOYNER:

21 Q. And, Doctor, you can refer to this if you'd like to.
22 Doctor, if you wouldn't mind step up, with the Judge's
23 permission, and show the ladies and gentlemen of the jury
24 the entry and exit positions of the bullets in the body?

25 A. Yes.

1 (WHEREUPON, the witness steps down from the witness
2 stand.)

3 Q. And you can actually point out on me if you'd like
4 to.

5 A. All right. The entrance wound was in the left chest
6 between the nipple and middle of the body. It was going
7 downwards slightly towards the midline and backwards. So
8 the entrance wound was measured a little bit oval .45 by
9 .46 inches. It went down, went through the lung. Well,
10 it contused the left lung, went through the heart, through
11 the left kidney, and it came out the left side of the back
12 just a little bit closer to the midline than the front.
13 Going slightly towards the right.

14 Q. Okay. Thank you, Doctor. You can have your seat
15 again.

16 (WHEREUPON, the witness returns to the witness
17 stand.)

18 MR. JOYNER: Doctor, could you state for the jury the
19 size of the injury and exit wounds in the body?

20 A. The entrance wound was .45 by .46 because it went
21 into the skin a little bit at an angle. The exit wound,
22 let me make sure I have it correct, was .4 inches by
23 .65 inches.

24 Q. All right. Thank you so much.

25 MR. JOYNER: No further questions.

CROSS-EXAMINATION

BY MR. ROGERS:

Q. Dr. Ross, based on your external examination Mr. Funderburk was approximately 210-pounds?

A. That's an estimate. Yes.

Q. And approximately 5 feet, 11 and a half inches?

A. Correct.

Q. You said that this cause of death was exsanguination which means bleeding out?

A. Yes.

Q. Based on your examination would you have expected to find a lot of blood in the area where you would find the body laying for some period of time?

A. It could be some, yes. The bullet holes are -- well, you could have some leaking from the bullet if he's laying there for some time.

Q. Base on your testimony you said the bullet passed through the heart?

A. Yes.

Q. Correct? Went through the diagram?

A. Yes.

Q. Through there stomach and the pole of the left kidney?

A. Yes.

Q. You can't give an opinion, can you, Doctor, as to the

1 caliber of the bullet that made that wound?

2 A. All I can say it was a large caliber consistent with
3 a .45 caliber.

4 Q. And it could be consistent with a .40 or .42 based on
5 the elasticity of the body?

6 A. Yes.

7 Q. And the fact that -- and it's clear that the entrance
8 wound was from the front and slightly on an angle?

9 A. Yes. The bullet ---

10 Q. I'm sorry?

11 A. The bullets go straight so the gun would be somewhat
12 above and in front of the victim.

13 Q. So it was clear that Mr. Funderburk was not shot in
14 the back based on your examination?

15 A. Yes.

16 Q. And finally, Doctor, you can't give an opinion based
17 on your examination whether this gunshot wound was
18 intentional or accidental, can you?

19 A. No, I can't.

20 Q. Thank you, Doctor Ross.

21 MR. JOYNER: Nothing further from the State.

22 THE COURT: Thank you, Doctor. Can the witness be
23 excused?

24 MR. JOYNER: Yes, sir.

25 MR. ROGERS: Yes, Your Honor.

COLLOQUY

MR. JOYNER: Judge, State would rest it's case.

MR. ROGERS: I have several matters of law.

THE COURT: Ladies and gentlemen of the jury, if you will step back to your jury room. I Have got to take up some matters of law. Y'all relax back there a few minutes.

(WHEREUPON, the jury panel was excused from the courtroom at 9:25 a.m.)

THE COURT: Your Honor, first, I would make a motion to strike the testimony -- the identification testimony of Tyrone Miller. If you will recall he was the individual that I called back for the further cross-examination. His testimony first day was that he was shown one photograph and that he couldn't identify it as recall the testimony.

And then yesterday when I cross-examined him his said he was shown three photographs which he couldn't identify. It is our position, Your Honor, that had we known of those facts we would have made a motion under Neal v. Baker for an in camera hearing to determine whether or not that procedure would impermissibly taint the in Court identification.

Since that was not done we've learned after the fact that out of Court identification procedure had taken place, and it's on that basis that I ask that his

1 identification testimony be stricken from the record.

2 MR. JOYNER: Judge, first, it was work product. I
3 was meeting with the witness, investigating the case for
4 my preparation purposes. Number Two, his testimony was to
5 the fact that the photo that we showed at the time he had
6 a different haircut. He said, "That's the person. Just
7 his hair is different." That's what he testified to, and
8 also I don't think it should be struck. If he wants to
9 impeach him on cross-examination he had two chances to
10 cross-examine him.

11 I think it's an issue for the jury to decide the
12 credibility they want to give that witness rather than us
13 just striking it because the jury already heard it. And
14 as fact finders I think it's their job. They can find as
15 much credibility as they would like to based on his two
16 cross-examinations. He had two chances, and that would be
17 the position of the State.

18 THE COURT: Let me think about that a minute.

19 MR. ROGERS: Your Honor, the only response I would
20 make, of course, Mr. Miller did make an identification of
21 Mr. Watts inside the club. It was not an outside
22 identification. And further as the Court is aware you
23 have to make as a matter of law whether or not that
24 procedure resulted in tainting his in Court identification
25 so if we had gone through that process I never would have

1 gotten to my cross-examination.

2 There could have been a possibly that the Court could
3 have found that that procedure was unduly suggestive.
4 Further, Your Honor, I would make a motion for directed
5 verdict taking all the evidence in the light most
6 favorable to the Government. Specifically with respect to
7 the A.B.W.I.K. regarding Jeffrey Crowder. There was no
8 testimony. Mr. Crowder didn't testify. There was no
9 testimony in the record, anything about Mr. Crowder being
10 shot. Mr. Crowder didn't testify.

11 And for that reason I'd ask that that indictment be
12 granted a directed verdict.

13 MR. JOYNER: I agree, Judge. I have no objection to
14 the A.B.W.I.K. on Mr. Crowder. I think that is indictment
15 number ---

16 MR. ROGERS: I think it's the top one you have.

17 THE COURT: 474.

18 MR. JOYNER: I believe it is 05-GS-13-0474.

19 MR. ROGERS: With represent to the escape, same
20 motion, Your Honor. There was no testimony of any attempt
21 I've heard in the testimony with regard to any attempt of
22 Michael Watts to escape. The testimony was he was laying
23 on the ground in handcuffs. Nobody said anything about
24 his trying to run at that time. So for that reason I
25 would ask that you direct a verdict on the charge of

1 escape?

2 MR. JOYNER: Judge, I would disagree with that.
3 David Evans said himself that after he was handcuffed they
4 went Officers Eric Brown and Larry Brown both went inside
5 the club to secure the area, and he got up and ran and
6 that he had to actually tackle him to get him from
7 escaping when he was in custody because he did have
8 handcuffs on at this time. We had two people testify.

9 MR. ROGERS: Well, I'm sorry.

10 THE COURT: Yes, sir.

11 MR. ROGERS: Well, I think even if you take that
12 testimony there was testimony at that time from those
13 witnesses that I brought out on cross-examination that
14 there were other shots being fired. So the jury could not
15 conclude beyond a reasonable doubt on that evidence that
16 Mr. Watts wasn't attempting to run from the shots that he
17 heard.

18 In fact I believe the testimony was the shoots were
19 heard. They left Mr. Watts on the ground to go and
20 investigate in the club what those shots were. So I don't
21 think a jury would reasonably conclude that if shots were
22 being fired at that time everybody else was running. Why
23 Michael wouldn't run as well, and would not be an escape
24 attempt under the statute.

25 MR. JOYNER: Judge, I believe a more accurate

1 statement of the facts would be that individuals who were
2 filing out of the club after Mr. Watts finished his
3 shooting outside and was quickly arrested said that there
4 was someone shooting in the club. They said that. None
5 of the two individuals that testified to him escaping ever
6 said there was any secondary shooting other than
7 Mr. Watts.

8 Also I think it's much like the cross-examination
9 issue that I first spoke about. I think it's an issue of
10 credibility for the jury to decide. We definitely have
11 testimony of his escape. I think at that point it's
12 entirely up to the jury to decide how much credibility to
13 give to those two individuals that testified to those
14 facts.

15 THE COURT: Okay. I think what I need to do to catch
16 up so I won't get lost in the proceedings over a different
17 indictment. On that 474, assault and battery with intent
18 to kill, motion for directed verdict, granted. On the
19 escape, I'll let y'all argue that out with the jury. I'll
20 deny on that one. Now, we're caught up. Anything
21 further?

22 MR. ROGERS: No, Your Honor.

23 THE COURT: Give me just a second. On 475, in review
24 of the evidence, it's a technicality, but Mr. Rogers, I
25 think it's a fatal technicality in your favor cause I have

1 reviewed the statute on 04-475, firearms in a public
2 building. This is not a public building. I suspect this
3 is an error on the issue of the warrant. Probably meant
4 to issue it on a firearms in a building licensed to serve
5 alcohol?

6 MR. JOYNER: Yes, sir.

7 THE COURT: But it was inadvertently put as a public
8 building and quoted that statute, and I just don't see how
9 you can correct it. So I think it's fatal.

10 MR. JOYNER: I understand, Judge.

11 THE COURT: Okay. Need a little bit or we're ready?

12 MR. ROGERS: Well, Your Honor, I'm ready with one
13 witness and I'm waiting for Mr. Matthews to arrive.

14 THE COURT: Probably take him 30 or 40 minutes. It's
15 already probably been 10 or 15. He should be here. He's
16 got to travel half way across the county, right?

17 MR. ROGERS: I apologize to the Court for the delay.
18 I would have tried to have him hear earlier.

19 THE COURT: No problem. We'll cross that bridge when
20 we get to it.

21 MR. ROGERS: I don't know if you want to use that
22 time to take up jury instructions or charges at this point
23 or do you want to do it later?

24 THE COURT: We can. You got some you want me to look
25 at or tell me what you want to request and we'll talk

1 about it.

2 MR. JOYNER: Yeah, Judge, I want to talk about it.
3 We want to request, obviously, murder, depraved heart
4 charge. We would request assault and battery with intent
5 to kill. And we would request standard charges on the
6 remainder of the indictments?

7 THE COURT: Okay.

8 MR. ROGERS: Your Honor, we would request a specific
9 charge on the use of impeachable offence by other witness.
10 I believe Mr. Miller did have a possession with intent to
11 distribute cocaine, and I believe the jury needs to be
12 instructed if they can use that conviction on the issue of
13 credibility of that witness.

14 We are also requesting, Your Honor, an instruction on
15 voluntary -- involuntary manslaughter. There was
16 testimony in the record by some of the witnesses, at least
17 one, that Michael came into the club and just kind of
18 fired in circles. Although that evidence isn't supported
19 by forensic evidence I believe what a jury could find that
20 Mr. Watts did come in, fire the weapon.

21 And if they found that that shot was the shot that
22 hit Mr. Funderburk that they could find he was performing
23 an act of shooting the weapon but didn't negligently.
24 There was no intention to hit Mr. Funderburk.
25 Mr. Funderburk was not a part of the previous altercation.

1 Was not involved in the fight with Michael Watts. It's
2 almost like he was and innocent bystander so to speak.

3 So that I believe that from the state of the evidence
4 that the jury could infer that Michael Watts came in,
5 fired a weapon, not intentionally attempting to hit
6 anyone, and that shot hit Mr. Funderburk. That that was a
7 negligent act and that would support the involuntary
8 manslaughter verdict.

9 MR. JOYNER: Judge, as to the conviction he brought
10 the conviction out in his cross-examination from
11 Mr. Miller. I don't believe we need to highlight that
12 matter. I think he can highlight it in his closing if he
13 wants to, but I don't think in your instructions you need
14 the highlight the fact that so and so witness has a
15 conviction and you can give him less credit as a result of
16 that.

17 They can take that into consideration when you simply
18 say to them that they can place as much or as little
19 credibility as they like to with a particular witness.
20 Again, they are fact finders as far as that goes.

21 And as to the involuntary manslaughter the
22 difficulty, Judge, with an involuntary manslaughter charge
23 in this case is by nature it has to be something
24 involuntary. For example, Judge, if he -- I can
25 understand if he went into the club and had a spasm and

1 his finger got caught in the trigger and he fell down and
2 started foaming at the mouth and suffered some type of a
3 seizure.

4 I can understand if was driving a car and did
5 something careless and ran over Clifton Funderburk. I can
6 understand the involuntary manslaughter, Judge, but I
7 cannot understand how a person is in an altercation,
8 intentionally goes out of the club, intentionally goes to
9 a location where they know is a loaded weapon,
10 intentionally takes the gun.

11 Intentionally walks back in the club, and
12 intentionally pulls the trigger seven times, intentionally
13 racks the slide, he went back out and intentionally shot a
14 person. And then he intentionally fought back and
15 intentionally tried to resist. I mean all of his acts are
16 intentional. There is no evidence of any involuntary
17 action.

18 There was no evidence whatsoever. There is nothing.
19 I just don't think it's possible, Judge. And the other
20 thing, Judge, is our Supreme Court is held in 1999 that
21 involuntary manslaughter is defined when the killing of
22 another without malice and unintentionally. But it must
23 be done while one is acting lawfully with reckless
24 disregard for the safety of others.

25 It was in no way lawful for him to have that weapon

1 out in the public and carry it into a gun -- excuse me.
2 Carry it into a building where guns are not allowed and to
3 fire it out in a crowded area. I mean there is in no way,
4 shape or form anything lawful, and because of that it
5 doesn't meet what our Supreme Court has said in State v.
6 Burris in 1999. That's a requirement. I just don't think
7 he meets the involuntary charge.

8 THE COURT: All right. Not to cut you off. We'll
9 revisit it, but right now it would be premature to rule on
10 it. We have other evidence.

11 MR. ROGERS: I kind of want to give the Court a heads
12 up as to what we were requesting. I might say there was
13 no evidence that Mr. Watts came in intentionally pointed
14 at anyone. Especially, pointed at Mr. Funderburk. So
15 that argument I think is out of the window. All of these
16 witnesses said his came in and fired. Nobody said his
17 came in, saw Mr. Funderburk, pointed it at him, and shot.
18 So it was not an intentional act.

19 Moreover, Your Honor, by Mr. Joyner's analogy the
20 fact that he was using the weapon and that was an illegal
21 act that would mean that we would never be able to have a
22 reckless homicide situation because let's say a person
23 drove a car through the stop sign. That's a violation of
24 the law. It's reckless driving.

25 So he would be doing an unlawful act at the time he

1 was recklessly driving, but he did it with the reckless
2 disregard for the safety of others and that's what makes
3 it involuntary manslaughter or reckless homicide. So to
4 say his act just because he fired a weapon and that was an
5 illegal act that you can't charge involuntary manslaughter
6 doesn't make any sense because in many involuntary
7 manslaughter reckless homicide cases the act that's being
8 done is an illegal act.

9 MR. JOYNER: Judge, to answer that involuntary
10 manslaughter is defined as the killing of another without
11 malice and unintentionally, but while one is engaged in
12 the commission of some unlawful act not amounting to a
13 felony and not naturally tending to cause death or great
14 bodily harm.

15 Judge, shooting a .45 automatic in a crowded building
16 will naturally cause death. Those -- I mean it just
17 didn't meet involuntary manslaughter, and it amounts to a
18 felony. Firing a gun off in a crowded room amounts to a
19 felony. Assault with intent to kill is a felony.

20 Also and that's one reason it doesn't go, and the
21 second and not naturally tending to cause death. Driving
22 a car doesn't naturally tend to cause death, and I
23 understand that. Driving a car down the road and running
24 a stop sign, just the mere act of driving a car doesn't
25 cause death.

1 But the act of shooting a gun into a crowded room
2 does tend to cause death. That's what it does and I just
3 don't think that involuntary manslaughter is an
4 appropriate charge.

5 THE COURT: All right. I'm not going to rule on that
6 until I hear everything, but correct me if I'm wrong, now.
7 I believe possibly the first witness. Didn't Mr. Evans
8 testify that he saw him point the gun and fire and he saw
9 Mr. Funderburk fall against the wall and slide down?

10 MR. JOYNER: Yes, sir.

11 THE COURT: That's what I thought. Just want to make
12 sure that's what I heard.

13 MR. JOYNER: Exactly, Judge. He also said that he
14 pointed at him and he shot at him, and as he ran, tried to
15 run back in, that he shot through the door cause the door
16 was open so he could go back in through the door and hit
17 him in the leg. I mean they are two intentional acts.

18 THE COURT: All right. Anyway, I want to hear
19 everything before I finally rule on it. We should be
20 getting close, Mr. Rogers. Let's go ahead and may be.

21 MR. ROGERS: We can call the first witness, Your
22 Honor.

23 (WHEREUPON, the jury panel enters the courtroom at
24 9:45 a.m.)

25 THE COURT: Counsel, will y'all approach just a

1 minute.

2 (WHEREUPON, a bench conference was held off the
3 record in the presence of the jury, but out of the
4 hearing of the jury.)

5 THE COURT: We all agree that he can take a picture
6 as long as he doesn't get the jury. Okay, Mr. Rogers.

7 MR. ROGERS: Your Honor, the Defendant calls Crystal
8 Jones

9 CRYSTAL JONES, after being duly sworn, testified
10 as follows:

11 THE COURT: Ladies and gentlemen of the jury, I
12 apologize. We've got an issue that we've got to take up
13 outside the presence of the jury, but I've got to talk to
14 counsel outside y'all presence.

15 (WHEREUPON, the jury panel was excused from the
16 courtroom at 9:52 a.m.)

17 THE COURT: We're not going to have any other
18 evidence the jury needs to have observation all. Isn't it
19 a matter of witnesses? I want to move Mr. Abernathy back
20 here instead of running him back and forth.

21 MR. ROGERS: That's fine.

22 THE COURT: You don't have anything coming that he
23 would need to be out there, do we?

24 MR. ROGERS: No, sir.

25 MR. HALES: No, sir, we have nothing else.

1 THE COURT: Okay. Let's pull that chair. Put it
2 here and let him take your seat, Madam Bailiff. Y'all
3 state the issue we have before the Court that we need to
4 resolve.

5 MR. HALES: Your Honor, really a criminal history of
6 Miss Jones. The state has come across an issue by another
7 name, Sandra Jones, that gets a hit with the same Social
8 Security Number and date of birth as Crystal Jones. The
9 offense in question would be a drug conviction from 2005
10 for which Miss Jones received a six month sentence.

11 THE COURT: Where was it?

12 MR. HALES: It was in York County, South Carolina.

13 THE COURT: She's already under oath?

14 CLERK OF COURT: Yes, sir.

15 THE COURT: Miss Jones, you know anything about that?

16 MS. JONES: It wasn't me.

17 THE COURT: Have you ever lived in York County?

18 MS. JONES: No, Pageland.

19 THE COURT: You're from Pageland?

20 MS. JONES: Yes, sir.

21 THE COURT: And you've never been convicted of
22 anything in York County?

23 MS. JONES: No, sir.

24 THE COURT: You understand the consequences of any
25 misrepresentation?

1 MS. JONES: Yes, sir.

2 THE COURT: All right. On this specific issue,
3 counsel got any questions?

4 MR. HALES: No, sir.

5 MR. ROGERS: No, Your Honor. My position is that in
6 order for them to attempt to use that as an impeachable
7 offense they need to get the Court records that would have
8 her signature and the sentencing sheet. I mean she says
9 that's not her. I don't know if somebody used her name
10 and got that sentence. I just don't know how to explain
11 it. It's a different name, it's not her name, Sandra.
12 Her name is Crystal. I just don't see how they can use
13 that.

14 THE COURT: I agree.

15 (WHEREUPON, State's Exhibit No. 47 was marked for
16 identification only.)

17 THE COURT: All right. Bring them back in.

18 (WHEREUPON, the jury panel enters the courtroom at
19 9:57 a.m.)

20 THE COURT: Mr. Rogers.

21 MR. ROGERS: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. ROGERS:

24 Q. State your name for the record, please?

25 A. Crystal Jones.

- 1 Q. Miss Jones, where do you live?
- 2 A. Lancaster.
- 3 Q. And how old are you?
- 4 A. Twenty.
- 5 Q. And are you employed?
- 6 A. No, sir.
- 7 Q. Okay. Do you know Michael Watts?
- 8 A. Yes.
- 9 Q. How do you know him?
- 10 A. Boyfriend.
- 11 Q. Were you with him on November of 2004?
- 12 A. Yes, sir.
- 13 Q. At the Matrix Club?
- 14 A. Yes.
- 15 Q. Tell the jury about that?
- 16 A. Well, I was planning to go out and have fun and not
- 17 get in any trouble.
- 18 Q. You need the 'speak up?
- 19 A. So we ended up at Club Matrix. We met at Club Matrix
- 20 and me and Watts was on the floor dancing.
- 21 Q. All right. I'm sorry. You need to slow down cause
- 22 she's taking down everything you're saying?
- 23 A. We met at Club Matrix.
- 24 Q. Okay?
- 25 A. And me and Watts was on the floor dancing.

1 Q. Who went to the club?

2 A. Me, my cousin.

3 Q. What's his name?

4 A. Me, Keisha, and Tony and MacElwane, Mont, Robinson
5 and Ricky.

6 Q. When you say Mont you mean Michael Lamont?

7 A. Yes.

8 Q. And you called the name MacElwane?

9 A. Yes.

10 Q. Did you ride in that car with them or did they meet
11 you at the club.

12 A. They met at the club.

13 Q. After they were in the club what happened?

14 A. Me and Mont were on the floor dancing and MacElwane
15 and Miller, Charles Miller, was on the floor arguing about
16 a belt.

17 Q. Did you know Charles Miller before that night?

18 A. Yes.

19 Q. How did you know him?

20 A. He used to talk to my sister, Tanesha.

21 Q. So you've seen him before?

22 A. Yes.

23 Q. So what happened next?

24 A. I told Mont to go over there and see what was going
25 on and stop it because we came to have a good time. So he

1 went over there and next thing I know Charles Miller hit
2 him and Fuzz came over and jumped on him.

3 Q. Where were you standing when you saw this happen?

4 A. Right there.

5 Q. On the dance floor?

6 A. On the dance floor.

7 Q. So y'all were dancing and he left you and you stood
8 right there?

9 A. Yes.

10 Q. Where did the fight take place? Was it on the floor?

11 A. On the dance floor.

12 Q. It was on the dance floor, okay. So then after
13 Michael did you see him swing at anybody?

14 A. No, sir.

15 Q. After Michael got hit and who hit him? Did you see?

16 A. Charles Miller hit him first.

17 Q. Was he hit more than once?

18 A. Yes.

19 Q. And what happened then?

20 A. Then Buzz jumped in it and they jumped on him.

21 Q. All right. Who is Buzz?

22 A. Their cousin.

23 Q. Do you know his real name?

24 A. Uh uh.

25 Q. Did there come a time you saw Michael leave?

1 A. No, sir.

2 Q. You never saw him leave the club?

3 A. No.

4 Q. Okay. What happened next?

5 A. There was then they stopped by themselves. Wasn't
6 nobody stopping them. So then I seen Michael go over
7 there to my sister, Tanesha, and began looking for my
8 cousin, Keisha. And then by that time I heard gunshots.

9 Q. How long a period had elapsed when you went to look
10 for your cousin? Five minutes? Ten minutes? How long
11 would you say that was?

12 A. I don't remember how long.

13 Q. Would it have been time enough for Michael to go to
14 the car and come back?

15 MR. HALES: Objection, Your Honor. That's leading.

16 THE COURT: Just a second.

17 THE WITNESS: I don't know. I don't remember.

18 THE COURT: Hold up. That question doesn't
19 suggest -- I'll overrule that, Mr. Rogers. Go ahead.

20 BY MR. ROGERS:

21 Q. Was there time enough for him to go to the car and
22 come back that you thought?

23 A. Not as I thought.

24 Q. So what was the next thing you saw or heard?

25 A. I heard gunshots.

1 Q. How many?

2 A. I don't remember how many.

3 Q. Okay?

4 A. But I ran by the speakers.

5 Q. Did you see Michael?

6 A. I didn't, no.

7 Q. Did you see any of the other people that were in the

8 fight with him?

9 A. No, sir.

10 Q. Okay. So then after you heard gunshots, and you

11 don't know how many, then what happened?

12 A. I ran to the speakers.

13 Q. The speakers that -- at the club?

14 A. In the club on the dance floor.

15 Q. Okay. And why did you do that?

16 A. Cause I didn't know who was shooting, what was going

17 on.

18 Q. Okay. And then what happened after that?

19 A. Okay. Then after that I seen everybody running

20 outside and I ran outside, too. And MacElwane and

21 Robinson was at the door in handcuffs and I seen Lamont in

22 the parking lot in handcuffs. But then I heard more

23 shooting when he was on the ground in handcuffs.

24 Q. Okay. Could you tell where those shots were coming

25 from? Were you outside then?

1 A. Yes, sir.

2 Q. Okay. Could you tell if the shots were coming from
3 outside or inside?

4 A. No, I couldn't tell, but it sounded like inside.

5 Q. Okay. Do you remember how many shots you heard?

6 A. No.

7 Q. Okay. Thank you.

8 MR. ROGERS: Court's indulgence just one moment. No
9 further questions.

10 CROSS EXAMINATION

11 BY MR. HALES:

12 Q. Miss Jones, you're 20 years-old?

13 A. Yes, sir.

14 Q. How long been dating Mr. Watts?

15 A. About three years.

16 Q. About three years. So when this happened you were
17 dating him?

18 A. Yes, sir.

19 Q. That would put you at 17 then?

20 A. Yes, sir.

21 Q. And what time did you get to the Matrix?

22 A. What time?

23 Q. Um hum.

24 A. I don't know what time we got there.

25 Q. Okay. What time did you leave?

1 A. I don't remember what time we left there.

2 Q. Okay. You say you planned to have fun and not get in
3 any trouble?

4 A. Yes, sir.

5 Q. You had to plan that? Why did you have to plan not
6 to get in trouble?

7 A. We had planned to go out and have a good time. That
8 was our plan.

9 Q. Okay. And you were standing on the dance floor and
10 you saw everything about the fight that happened?

11 A. Yes, sir.

12 Q. You didn't see Michael swing?

13 A. No, sir.

14 Q. You saw some other guy jump on him and they just
15 stopped fighting on their own?

16 A. Yes.

17 Q. Okay. But Michael never swung. They just gave up?

18 A. He couldn't do nothing.

19 Q. Okay. And you say you don't remember how long it was
20 between the fight and the shot?

21 A. Yes, sir.

22 Q. Okay. You don't remember the number of shots?

23 A. No, sir.

24 Q. Okay. You said you came out the club and you heard
25 some more shots?

1 A. When he was in handcuffs, yes.

2 Q. When he was in handcuffs. But you couldn't tell
3 where they were coming from?

4 A. But it was like they were coming from the club. The
5 inside of the club.

6 Q. What did you do then?

7 A. I jumped.

8 Q. Jumped?

9 A. Yes.

10 Q. Okay. How long after you walked out of the club did
11 you hear the shots?

12 A. You say how long ---

13 Q. I mean how many seconds was it?

14 A. --- when I walked out? I don't remember how much
15 seconds.

16 Q. Okay. You saw -- you know Charles Miller?

17 A. Yes, sir.

18 Q. Okay. I'm showing you State's Exhibit 47. You
19 recognize that picture?

20 A. Yes, that's him.

21 Q. That's him?

22 A. Yes.

23 Q. You sure?

24 A. That's him.

25 Q. That's definitely him?

1 A. That's him.

2 MR. HALES: At this time we move that State's Exhibit
3 47 be admitted in evidence?

4 MR. ROGERS: No objection.

5 (WHEREUPON, State's Exhibit No. 47 was admitted into
6 evidence.)

7 BY MR. HALES:

8 Q. Were you and Michael in love?

9 A. Yes.

10 Q. Y'all been dating three years. Y'all still dating?

11 A. Yes.

12 MR. HALES: Court indulgence. Nothing further.

13 MR. ROGERS: Nothing further. Can this witness be
14 excused?

15 MR. HALES: No objection.

16 THE COURT: Witness is excused.

17 MR. ROGERS: Judge, may we approach?

18 (WHEREUPON, a bench conference was held off the
19 record in the presence of the jury, but out of the
20 hearing of the jury.)

21 MR. ROGERS: Defense calls Ferman Mackey.

22 FERMAN MACKEY, after being duly sworn, testified
23 as follows:

24 DIRECT EXAMINATION

25 BY MR. ROGERS:

1 Q. Would you state your name for the record?

2 A. My full name is Ferman Dean Mackey.

3 Q. And, Officer Mackey, by whom are you employed?

4 A. Town of Pageland.

5 Q. In what capacity?

6 A. I'm a patrol sergeant.

7 Q. And were you a patrol sergeant last November, I'm
8 sorry. November 2004?

9 A. I was, sir.

10 Q. Did you have the occasion on the 28th of November to
11 go to the Matrix Club?

12 A. I did, sir.

13 Q. Were you called there as a result of shots being
14 fired?

15 A. Yes.

16 Q. When you arrived did you -- what did you observe?

17 A. There were, when I arrived on the scene, having been
18 called there by officers who were already on the scene, I
19 pulled in the parking lot of Jim's Variety, which is on
20 the west side. It also faces McGregor Street as does the
21 Matrix Club.

22 I saw a large number of black males and females.

23 Best way to describe it is running in all directions away
24 from the building and away from the parking lot. I
25 initially could not see my officers, Sergeant Brown or

1 Officer Brown. Exited my vehicle, approached it. At one
2 point a black male pointed at a subject and said, "That's
3 the one."

4 Well, I was the last one there, and I had to assume
5 he was pointing at the gentlemen that had been doing the
6 shooting. I drew my service weapon and had him get down
7 on the ground. I was in the middle of handcuffing him
8 when the pretty big crowd of people, men and women, began
9 to approach me where I had him down on the ground.

10 And I felt like they were going to assault me and
11 take my prisoner or one or the other. So there was a
12 gentlemen from Pageland. I don't recall his name, but
13 he's a local man. I asked him to help me finish
14 handcuffing him while I warded the crowds off.

15 Q. The person you were handcuffing, was it Michael
16 Watts?

17 A. No, sir.

18 Q. All right. Continue.

19 A. Anyway, I could hear Officer Brown and Sergeant Brown
20 on the radio calling for help, and as ---

21 Q. Excuse me. I don't mean to interrupt you. Is
22 Officer Brown Eric Brown?

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

24 Q. Okay?

25 A. Lost my train of thought there.

1 Q. I'm sorry?

2 A. They were calling for help, and it was also about
3 that same time I found out over the radio that Sergeant --
4 excuse me. Officer Brown had a suspect -- actually, two
5 suspects in custody at the time.

6 Q. Did you see that yourself?

7 A. At that particular moment?

8 Q. Yes, sir.

9 A. No, sir.

10 Q. Okay.

11 A. I was trying to figure out what was going on as far
12 as with Officer Brown and Sergeant Brown.

13 Q. But you learned that Detective Larry Brown had the
14 other two in custody?

15 A. Officer Eric Brown ---

16 Q. Eric Brown.

17 A. --- had already taken two people in custody before I
18 put my rather large man down on the ground.

19 Q. Okay. Did you -- what did you do next?

20 A. Once I had the large man handcuffed I called Pageland
21 P.D. for assistance, more assistance, and the deputies
22 were sent to the scene. The gentlemen I had was about
23 6'7". Probably weighed about 300 pounds at the time. And
24 I turned him over to the deputies while I went out looking
25 for my officers. In other words, Sergeant Brown and Eric

1 Brown -- Officer Brown. I did find them. They did have
2 two gentlemen in custody including the defendant at that
3 time.

4 Q. Okay. After that time did you hear any more gun
5 fire?

6 A. It was after Sergeant Brown and officer Brown had
7 identified the fact that they had people in custody I
8 heard probably a total of four small pops. There was a
9 pause and then four small pops, which at the time I
10 assumed was small caliber handgun rounds.

11 Q. And you estimated that to be a .22 or a .25?

12 A. Yes, sir.

13 Q. And that was clear and then did you hear anyone said
14 anything?

15 A. Oh, yes, sir, there was probably a half dozen people
16 to my left which would put them on to my north, "They're
17 shooting again," words to that effect.

18 Q. And what?

19 A. People were still in the parking lot. Pardon the
20 expression, they cut a trail. They left.

21 Q. Thank you, Officer Mackey.

22 CROSS-EXAMINATION

23 BY MR. HALES:

24 Q. You didn't know what was going on?

25 A. No, sir.

1 Q. Sort of chaotic scene?

2 A. Pretty much so.

3 Q. Okay. Was it loud?

4 A. Very much so, sir.

5 Q. Really loud? People screaming and running around?

6 A. Yes, sir.

7 Q. Was it hard to hear?

8 A. Yeah, yes, sir. I could not have heard the
9 conversation we're having right now over that
10 conversation.

11 Q. All right. You say you heard four small pops?

12 A. Yes, sir. After Sergeant Brown and after Officer
13 Brown had identify the fact that they had two people in
14 custody.

15 Q. Could you tell where they were coming from?

16 A. It would have been the east. In other words, this
17 side, the Chesterfield side of the Matrix, is where I
18 think they came from.

19 Q. And they were definitely outside?

20 A. I believe they were, yes, sir.

21 Q. Okay. Did you see any muzzle flash?

22 A. Absolutely not.

23 Q. Did you see a gun?

24 A. No, sir.

25 Q. Did you find any shell casings.

1 A. No, sir, but we walked that parking lot over several
2 times.

3 Q. So it's possible that wasn't a gun?

4 A. Very possible.

5 Q. Very possible. Did you know the victim that was
6 killed?

7 A. No, sir.

8 Q. You didn't know him? Did you get a good look at him?

9 A. Yes, sir, I did.

10 (WHEREUPON, State's Exhibit No. 48 was marked for
11 identification only.)

12 BY MR. HALES:

13 Q. So you get a look at the deceased victim?

14 A. Yes, sir.

15 Q. I'm showing you State's Exhibit 48. Do you recognize
16 that at all?

17 A. That's Mr. Funderburk. That's the decedent.

18 Q. Thank you.

19 MR. HALES: At this time I ask that State's Exhibit
20 48 be entered in evidence.

21 MR. ROGERS: No objection.

22 (WHEREUPON, State's Exhibit No. 48 was admitted into
23 evidence.)

24 THE COURT: All right.

25 BY MR. HALES:

1 Q. Thank you, Sergeant Mackey.

2 REDIRECT EXAMINATION

3 BY MR. ROGERS:

4 Q. Sergeant Mackey, you're familiar with firearms,
5 aren't you?

6 A. Very much so, yes, sir.

7 Q. And .22 or .25 revolver wouldn't leave shell casings,
8 would it?

9 A. No, sir, it wouldn't.

10 Q. Thank you.

11 MR. ROGERS: That's all.

12 MR. HALES: Nothing further.

13 THE COURT: Thank you very much.

14 MR. ROGERS: May he be excused?

15 MR. HALES: No objection.

16 THE COURT: You may be excused.

17 COLLOQUY

18 MR. ROGERS: Court's indulgence. Your Honor, we're
19 ready to call the Defendant.

20 THE COURT: Ladies and gentlemen of the jury, if you
21 would step back to your room for a minute or two, please.

22 (WHEREUPON, the jury panel was excused from the
23 courtroom at at 10:18 a.m.)

24 THE COURT: All right. Back on the record.

25 Mr. Watts, I need to speak with you just a few minutes

1 here about your constitutional right. Specifically, those
2 of the Fifth Amendment of the Constitution of the United
3 States that concerns whether you desire to testify or not.
4 I advise that you have a right to invoke the protection
5 given to you by the Fifth Amendment of the Constitution of
6 the United States and similar counterpart provision of the
7 Constitution of the State of South Carolina.

8 The Fifth Amendment of the Constitution of the United
9 States provides part that no person shall be compelled in
10 any criminal case to be a witness against himself. The
11 provision of this constitutional law means that you cannot
12 be compelled or required to testify in this case.

13 This is a right and a privilege which the law extends
14 to you. You have a right not to testify, but you also
15 have a right to testify. I will grant you the right to
16 consult your attorney before you make a final decision in
17 this regard.

18 If you elect not to testify this cannot be used by
19 the State as an inference of guilt and your election to
20 not testify cannot be considered by the jury in its
21 deliberations.

22 If you elect to testify and waive the privileges
23 extended to you by the Fifth Amendment of the Constitution
24 of the United States I advise you now that you will then
25 assume the role of a witness in this case and you will

1 then waive or give up your constitutional privilege
2 against several incrimination. This means that if you
3 voluntary take the witness stand and testify you will then
4 subject yourself to the rules that govern other witnesses
5 and you may be examined and cross-examined on any relevant
6 issue in this case. And you may be impeached to the same
7 extent as any other witness all which is subject, however,
8 to the rules of evidence and procedure.

9 I further advise you that if you elect to take the
10 witness stand and testify this decision on your part must
11 be made freely and voluntarily, intelligently and with the
12 knowledge of the protections given to you by the Fifth
13 Amendment of the Constitution of the United States and
14 with knowledge of the consequences of your election to
15 testify.

16 I ask you now do you wish to consult with your
17 attorney in regards to this instruction?

18 MR. WATTS: No, sir.

19 THE COURT: Have you discussed with your attorney
20 whether you should or should not testify?

21 MR. WATTS: Yes, sir.

22 THE COURT: Do you understand everything that he has
23 explained to you?

24 MR. WATTS: Yes, sir.

25 THE COURT: Do you understand everything that I have

1 just gone over with you?

2 MR. WATTS: Yes, sir.

3 THE COURT: You have any questions whatsoever?

4 MR. WATTS: No, sir.

5 THE COURT: Do you wish to testify?

6 MR. WATTS: Yes, sir.

7 THE COURT: Okay, very good. Let's all take about
8 three minutes and come back.

9 (WHEREUPON, Court is in recess at 10:23 a.m. and
10 reconvened at 10:31 a.m.)

11 THE COURT: Okay. I think we're ready.

12 MR. ROGERS: Judge, impeachable offenses.

13 MR. JOYNER: Oh, I'm not going to use any.

14 (WHEREUPON, the jury panel enters the courtroom at
15 10:34 a.m.)

16 THE COURT: All right. Call your next witness.

17 MR. ROGERS: May it please the Court, Your Honor,
18 Defense calls Michael Watts.

19 MICHAEL WATTS, after being duly sworn, testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. ROGERS:

23 Q. Would you state your name for the record?

24 A. Michael Lamont Watts.

25 Q. Okay. You're going to have to keep you voice up so

1 the jury can hear everything that you have to say.

2 A. Michael Lamont Watts.

3 Q. How old are you, Michael?

4 A. Twenty-four.

5 Q. And where do you live?

6 A. Lancaster, South Carolina.

7 Q. And how far did you go in school?

8 A. To the tenth grade.

9 Q. Back in November were you working?

10 A. Yes.

11 Q. Where at?

12 A. At Black and Decker in Charlotte, North Carolina.

13 Q. And how long have you been working there?

14 A. About six months.

15 Q. Did you have a job before that?

16 A. Yes, sir.

17 Q. Doing what?

18 A. I was working at the Target Store located in
19 Charlotte, North Carolina. I was the overnight stocker.

20 Q. Make sure you slow down so she can take down
21 everything that you say. So have you always worked since
22 you left school?

23 A. Yes, sir.

24 Q. Is your family in Court with you today?

25 A. Yes, sir.

- 1 Q. And have they been here all week?
- 2 A. Yes, sir.
- 3 Q. Who is here with you?
- 4 A. My grandmother, my mother and my aunt and a lot of my
- 5 cousins, my father.
- 6 Q. Let he direct your attention to this day. I'm sure
- 7 you remember?
- 8 A. Yes, sir.
- 9 Q. Are you nervous?
- 10 A. No, sir.
- 11 Q. What time, if you recall, did you arrive at the Club
- 12 Matrix?
- 13 A. I would say approximate his twelve o'clock a.m.
- 14 Q. And how did you get there?
- 15 A. I rode with one of my friends Ricky Simpson.
- 16 Q. And was there anyone else with you?
- 17 A. Yes, sir.
- 18 Q. Who?
- 19 A. Jamarcus MacElwane and Shawn Robinson.
- 20 Q. So there were four people in the car?
- 21 A. Yes, sir.
- 22 Q. And what was -- were you planning to meet Crystal?
- 23 A. Yes, sir.
- 24 Q. Okay. Before you got to the Matrix had you had
- 25 anything to drink?

1 A. Yes, sir, I had a couple of beers.

2 Q. And do you remember about what time that was?

3 A. No, sir. It was before we left -- before we left.

4 Q. To go to the club?

5 A. Yes, sir.

6 Q. How long does it take to get from Lancaster to
7 Pageland?

8 A. Probably 15 minutes.

9 Q. So when you arrived at the club what happened then?

10 A. We went inside the night club. All four of us. I
11 met up Crystal. Her sister and them already inside the
12 club. Tanesha was at the bar. That's Crystal's sister.

13 Q. Who drove?

14 A. Ricky Simpson.

15 Q. And whose car was it?

16 A. It was somebody they knew from Carolina Court, which
17 was related to MacElwane but I didn't know that at the
18 time.

19 Q. So it was MacElwane?

20 A. It was MacElwane, but Ricky Simpson had possession of
21 the car.

22 Q. So when you got into the club how long were you in
23 the club before the altercation occurred?

24 A. It wasn't long. It had to be I'd say about 20
25 minutes because I had been at the bar with Tanesha. We

1 had been at the bar. He had brought me a drink at the bar
2 previous to this.

3 Q. So Charles Miller actually brought you a drink?

4 A. Yes.

5 Q. Do you remember what it was?

6 A. A cup of Hennesey.

7 Q. I'm sorry?

8 A. A cup of Hennesey.

9 Q. Was that the only thing you had to drink at the club?

10 A. Yes, sir.

11 Q. So what happened after that?

12 .

13 888

14 A. Well, me and my girlfriend were in the back corner of
15 the club. There is a set of speakers in the back of the
16 club. It's one on the left side on the right side right
17 by the stairs. We were dancing on the side, by the right
18 side of the club. She had her back to me dancing against
19 me, and she turned around to me and she said, "Stop
20 Briston." That's Michael MacElwane's nickname on the
21 street.

22 Q. What did you say?

23 A. She said, "Stop Briston."

24 Q. Briston?

25 A. Briston.

1 Q. Okay.

2 A. That's his nickname from the street.

3 Q. Okay.

4 A. Okay. At that time I look over towards the door of
5 the club were you're against the dance floor. I see him
6 in an argument, but at the time I didn't know he was
7 arguing with Mr. Miller. But from where I'm standing I
8 can tell Mr. Miller's friends are crowding around Mr.
9 Miller and standing behind him but they're still bouncing
10 around as if they're dancing.

11

12 Q. Okay.

13 A. So I didn't -- I don't think he had any idea of how
14 many people were with Mr. Miller at the time. I walked up
15 to my friend, Mr. MacElwane, and turned him around so we
16 faced each other. They're right here like they're
17 sitting. I'm like this. MacElwane was this way facing ne
18 like this right here. I asked him what's going on. He
19 trying to explain to me what's going on, but the music is
20 so loud from this side and all these people screaming from
21 this side so I can't understand what he's saying.

22 Q. Slow down.

23 A. Continue?

24 Q. Yes.

25 A. Okay. So I asked him again, I'm like what's going

1 on, and at that time he's still trying to explain, but I
2 can't understand. So I turned to the guy that's saying
3 something in my ear which just happen to be Mr. Miller or
4 Charles Miller, but I'm not sure so I'm not going to say
5 either one. But he saying something in my ear. I'm
6 asking him what's going on. I'm thinking that he's -- I'm
7 thinking it that he's taking it as if I'm asking ---

8 Q. You need to try to slow down because she's having a
9 little difficulty keeping up with you. Just take a deep
10 breath. Before we go on with what happened do you think
11 you could draw us a little diagram on that board of the
12 Matrix? The front entrance? The bar?

13 A. I can draw just ---

14 Q. I understand. I can't draw either, but try to give
15 some idea of what the club looked like.

16 A. This is the front of the club right here. This is
17 basically the front of the club right here. Okay. Right
18 here in the area right here you have a door on the dance
19 floor. This leads from outside. The outside.

20 Say this is the parking lot. Say this is the parking
21 lot right here. This door right here leads to the dance
22 floor area.

23 Q. Is that the front door or side door?

24 A. No, sir. This is the third.

25 Q. Show me. Which is the front door?

1 A. This is the main entrance to the club right here.

2 The door that everybody had to pay at when they come.

3 Okay. It's a section like this right here that divides
4 the front door from the part that takes you in the bar
5 area. You go in this way and pay.

6 Q. Turn right?

7 A. Yes, sir. Okay. It's a bar area right in here, you
8 understand?

9 Q. Yep.

10 A. Okay. From the bar area you have the dance floor
11 which at the time -- but I think now it's reconstructed.

12 I'm not sure. It was another door that would take you
13 into the bar area. I mean into the dance floor area.

14 Q. So what you have drawn at these last two lines is
15 that a little wall dividing the ---

16 A. Right here?

17 Q. Yes, sir. Behind the dance floor from the bar?

18 A. Yes, sir.

19 Q. Okay?

20 A. From here through you can see straight to the bar.

21 Q. There is no door there? It's an open doorway?

22 A. Yes, sir.

23 Q. Okay.

24 A. Okay. The side door.

25 THE COURT: Wait a second.

1 MR. ROGERS: I'm sorry.

2 THE COURT: One at the time. Take your time now,
3 okay.

4 BY MR. ROGERS:

5 Q. Okay. So now is there anything else you want to put
6 in?

7 A. Yes, sir.

8 Q. Okay.

9 A. It's a side door to the club, too. This is the other
10 door. That's approximate more or less here somewhere. So
11 this is the front door, the main entrance to the club.
12 This the side door that they spoke of and this is the
13 third door to the club. Okay?

14 Q. All right.

15 A. All right.

16 Q. All right. So where were you on the dance floor?

17 A. We were over here.

18 Q. Approximately?

19 A. Say these are the speakers right here. Say this is a
20 speaker over here. A speaker over here. This is the
21 dance floor area. We were over here.

22 Q. Where is the DJ booth?

23 A. I'm thinking that the DJ is located on the stage.

24 Q. Okay. And so y'all were where you drew that little
25 circle?

1 A. Right here.

2 Q. Okay?

3 A. In this area dancing.

4 Q. Where did the altercation occur?

5 A. It's more to this by the door. This is where --

6 okay, here you go. This is where the guy that's arguing.

7 These are the guys behind him. This is where my friend is
8 right here.

9 Q. All right?

10 A. So they facing each other, but his back is to the
11 stage, and the guy he's arguing is facing towards the
12 stage area.

13 Q. Tell us what happened when you went up to the
14 altercation?

15 A. Okay. So I can walk from here to here in this
16 direction right here. I turned my friend around towards
17 me which left me right here and him right here. So the
18 guy still right here and all of his crowd is right here.
19 I asked him what's going on. I'm asking the guy what's
20 going on that's with him.

21 He says something in my ear but I can't understand
22 him so I asked him again, "What you mean? What's going
23 on," but I can't hear also because of the music. So the
24 guys that's standing beside me they're saying stuff, too.
25 So I'm asking them, I'm like what's going on.

1 And I'm thinking he took it as a gesture as I was
2 trying to say what's going on as far as I was challenging
3 him to a fight or something. I can't say that's what he
4 was thinking, but that's what I feel he was thinking. At
5 that time me and these guys that standing right here end
6 up having a few words just as far as ain't nobody going to
7 do nothing to anybody, take words.

8 The whole time I'm thinking the argument is over my
9 friend was probably jumping around the club and he knocked
10 the guy's drink out of his hand or visa versa. I could
11 have bought the guy a drink. That's the way I was feeling
12 about the situation.

13 Q. Did you ever swing first?

14 A. No, sir.

15 Q. What happened then?

16 A. Whatever guy was standing right here when I was
17 turned around, I don't know for sure, but I was told from
18 somebody at the club that Mr. Jones was ---

19 Q. You can't say what somebody else said.

20 A. Somebody -- I was grabbed by my arm. I landed like
21 this right here on the top of my head. The guy's right
22 here. Somebody comes up behind me this way and grabs this
23 arm, my left arm. When they grab my arm they spin me
24 around. So soon as I spin around I get hit in my right
25 eye.

1 Q. Okay. Then what happened?

2 A. Soon as I'm hit I start to fall backwards. As I'm
3 falling backwards I get hit in my jaw, on the left side of
4 my jaw.

5 Q. So you were struck twice?

6 A. Yes, sir, by two different people.

7 Q. What did you do then?

8 A. I slid back on my back. When I slid back on my back
9 I started to cover up, but the way I was covering up like
10 this right here the two guys that had hit me initially
11 before I fell to the floor were still engaged in hitting
12 me. Also there were some more people around. I don't
13 know for sure if they were hitting me cause at that time I
14 had covered myself up.

15 Q. Okay. Did there eventually come a time that you made
16 it outside the club?

17 A. Yes, sir.

18 Q. How did that happen?

19 A. Well, after the fight had ensued after they jumped on
20 my they stopped. I don't know what stopped them but they
21 just stopped. At this time my girlfriend's sister came,
22 and she helped me up off the floor. She said, "What's
23 wrong?" I'm still like this right here. I'm like, man,
24 they jumped on me.

25 She was like, who. I was like those boys, but at the

1 time I didn't know who myself. So she's walking me off
2 the dance floor area which would have been here. She
3 walked me from here, and I'm here right here, and after
4 this is all over, she's like what's going on.

5 Q. You need to slow it down a little bit.

6 A. She walked me off the bar area. She's asking me
7 what's on going. That's when I told her than I had been
8 jumped on. So after we walked out of the bar area, out on
9 the dance floor towards the bar area one of my friends
10 that was also on the dance floor, Shawn Robinson, was
11 standing over here by the bar, okay.

12 He was standing by the bar. He was walking back and
13 forth like he had too much to drink. I didn't know at the
14 time that he had been jumped on. But at that time
15 somebody standing at the bar struck him again causing him
16 to fall. When he fell he fell as if he was already
17 knocked out because he fell face first.

18 I'm still half dazed because I just got jumped on.
19 My girlfriend's sisters got separated from me. I didn't
20 know at that time that her cousin had grabbed her and took
21 her back in the club. Okay, so as I reach down to pick
22 him up I get pushed down the first time.

23 Q. Who pushed you down, do you know?

24 A. I don't know. One of the guys that was standing
25 right here when I got hit.

1 Q. Okay.

2 A. So I reached down again to pick him up. When I
3 picked him up I couldn't get him right to his feet cause
4 he's still unconscious or he's just coming back into
5 consciousness.

6 Q. What's his name, Shawn?

7 A. And as I picked him up and started to pull him, I
8 started to go towards this door, the side door.

9 Q. Rashawn Robinson?

10 A. Yes, sir.

11 Q. Okay.

12 A. I started to go towards this door, the side door with
13 him. As I'm pulling him towards the side door like this
14 right here. One of these guys that's at the bar hits me
15 in the back of my head. So when I get hit in the back of
16 my head caused me to drop to the floor. That's when I
17 exited the club.

18 Q. Okay. The last person that hit you was he involved
19 in the original altercation?

20 A. I didn't know.

21 Q. Do you know?

22 A. I don't honestly know. I can't say it wasn't.

23 Q. Okay. So after you were hit that third time what did
24 you do?

25 A. Well, I wasn't going to get hit the third time.

1 Q. Oh, I'm sorry.

2 A. When I was hit I dropped him and I started to fall.
3 When I started to fall and dropped to my feet that's when
4 he ran out the club.

5 Q. Okay. You can sit back down. When you ran out of
6 the club what door did you go out of?

7 A. The side door to the club.

8 Q. And where did you do?

9 A. To my car where -- the car I was in.

10 Q. Had you seen Detective Brown at the club?

11 A. I had seen my earlier that night when I arrived.

12 Q. Did you think to go get him?

13 A. No, because in Lancaster County in our clubs officers
14 are not security guards. So you don't catch officers
15 provide security. Security is hired by the club so I had
16 no way of knowing that he was a security guard at the club
17 that night, and the actual security guards that were
18 supposed to be security guards don't have on security
19 shirts.

20 Q. Who security was?

21 A. No, sir, I had no way of knowing.

22 Q. Why didn't you just -- okay, so you just went back to
23 the car?

24 A. Yes, sir.

25 Q. And what did you do?

1 A. I got the gun out the back seat of the car.

2 Q. Why didn't you just leave?

3 A. I was the driver of the car.

4 Q. Who had the keys?

5 A. Mr. Simpson.

6 Q. So what did you do?

7 A. When I got the gun out the back seat of the car I
8 started going back towards the same building I exited.

9 Q. Why did you get the gun, Michael?

10 A. Because I was going back in the club to get my
11 friends out, but at the same time I didn't want them to
12 assault me any further.

13 Q. And you didn't think about trying to go get some
14 authorities to help you with this situation?

15 A. I had no way of knowing who the authorities were at
16 that time.

17 Q. Could you have -- did you have a cell phone such that
18 you could have called ---

19 A. No, sir.

20 Q. --- your girlfriend to come out to the car?

21 A. No, sir.

22 Q. So what did you do then after you got the weapon? By
23 the way, whose gun was it?

24 A. It was Mr. Simpson's gun to my knowledge because he
25 was the one who has the gun in the car.

1 Q. You had seen it inside the car earlier?

2 A. Yes, sir.

3 Q. Okay. Did you sit in the car any period of time or
4 did you jump in the car and jump right back out?

5 A. When I exited the club and went to my car?

6 Q. Yes.

7 A. I opened the car and grabbed the gun off the
8 floorboard up under the front seat and I came right back
9 in.

10 Q. And what door did you enter when you came back in?

11 A. The side door to the club.

12 Q. The same door you came out of?

13 A. Yes, sir, the second door.

14 Q. What happened next?

15 A. As I was walking to the club back in the side door of
16 the club I racked the chamber of the gun. When I racked
17 the chamber I racked it for attention if these guys
18 standing behind the bar attempted to jump on me again I'd
19 fire a shot. That will back them away from me, but the
20 whole time that I had the gun pointed upward so that's how
21 they saw the gun.

22 Q. Did you make any attempt -- oh, by the way, what were
23 your wearing?

24 A. Green Army field jacket.

25 Q. You've seen what's been marked as this exhibit?

1 A. Yes, sir.

2 Q. Is this your jacket?

3 A. Yes, sir.

4 Q. And, State's Exhibit Three, is this the gun you got?

5 A. It looks like it.

6 Q. Okay. Was that the first time you've seen this gun
7 or the gun that night?

8 A. Yes, sir.

9 Q. Okay. So did you make any attempt to conceal the
10 weapon?

11 A. No, sir.

12 Q. Why not?

13 A. Because I feel like if I had made an attempt to
14 conceal the weapon that those guys that jumped on me and
15 my friend I would have given them the option to come back
16 and get me again.

17 Q. By the way do you know where your other two friends
18 were at this time?

19 A. Which one, Simpson?

20 Q. The ones that were in the -- yeah?

21 A. No, sir.

22 Q. So you went back in the club?

23 A. Yes, sir.

24 Q. And what happened?

25 A. When I walked back I was walking through the door. I

1 racked the chamber just for the fact if those guys were
2 going to attempt to jump me again I was going to fire a
3 shot just to get them away from me. But as I walked in
4 the door I went to the dance floor area. So the guys that
5 were by the bar, what have you, that's why I was hit last
6 by the bar but I went straight back to the dance floor
7 area.

8 Q. And you went to the dance floor for what purpose?

9 A. Because that's the last dance. My girlfriend was on
10 the dance floor in the corner.

11 Q. What did you do then?

12 A. As I walked in the dance floor I walk inside the door
13 of the dance floor. I looked in the corner where I was
14 dancing with my girlfriend. I didn't see her. She had on
15 all orange and white that night. So I looked to the left
16 side of the club and I started to look to the right side
17 of the club. As I was looking to the right side of the
18 club I seen something with a very shiny effect which I
19 feel was a handgun. I still to this day feel it was a
20 handgun being raised in my correction.

21 Q. Okay. Put a mark on the diagram, please, as to where
22 you were standing when you think you made that
23 observation.

24 A. All right. If this is the door right here back to
25 the dance floor I came right inside the dance floor right

1 here. I came directly inside the dance floor just enough
2 to be inside the dance floor.

3 Q. Okay. And you racked the weapon?

4 A. I had racked the weapon previously.

5 Q. Then what happened?

6 A. When I walked on the dance floor I looked in the
7 corner to see if I could find my girlfriend. I didn't see
8 her. I looked to the left side of the club. As I was
9 looking to the right side of the club I catch out the
10 corner of my eye what I think to be a firearm cause like I
11 said it had a very shiny effect.

12 Q. Okay. That would have been towards the bar or
13 somewhere on the dance floor?

14 A. No, this is on the dance floor.

15 Q. On the dance floor?

16 A. It would be right here in this area.

17 Q. Okay?

18 A. Okay. The club, the cups that they serve in the
19 Matrix Night Club are red. Small, red styrofoam cups, so
20 it wouldn't be any reason for me to fear because it was a
21 cup being raised. You understand? As if somebody is
22 taking a sip from their drink.

23 Q. So once you saw what you thought was a gun what did
24 you do?

25 A. I fired a shot.

1 Q. And where were you standing when you fired that
2 shot? Right where you put that dot?

3 A. Yes, sir, in the same place.

4 Q. And do you remember or do you know what direction you
5 were in? What direction you fired the shot?

6 A. I fired at a right angle but upwards because I'm
7 thinking that a gun coming up at me, so I'm firing and
8 flinching at the same time, understand, expecting to get
9 hit myself. I was thinking at that time I could get hit
10 myself.

11 Q. Did you say firing and flinching?

12 A. Like hunching, just ---

13 Q. All right.

14 A. But I shot in the right side upward corner.

15 Q. How many times did you fire?

16 A. Once.

17 Q. And what happened after that?

18 A. Soon as I fired I turned and ran. Ran back out the
19 same door I came in the club.

20 Q. Why didn't you look for your girlfriend or your
21 friends?

22 A. Because I'm thinking that this guy has a gun.

23 Q. So which door do you go out of?

24 A. The same door that I said I came back in. The side
25 door to the club.

1 Q. And once you got outside what happened?

2 A. No, as I was coming out.

3 Q. As you were coming out?

4 A. As I was coming out the side door I started firing
5 shots towards the ground cause evidentially the person
6 that I thought had fired in the club had a firearm inside
7 that club because I heard shots being fired from behind me
8 so I'm thinking that this guy is coming up behind me with
9 his gun.

10 Q. Okay. Let me stop you right there. As you were
11 coming out the club, going out of the side door, you hear
12 shots?

13 A. Yes, sir. I hear shots. It's like as soon as --
14 soon as I fired I turned around this way. I'm like this
15 right here. I fired this way. When I fired and turned
16 this way and run, while I'm running I'm guessing them
17 people behind me are running, too. You understand what
18 I'm saying?

19 Q. Yeah.

20 A. So I run out this way. I never came up this way. I
21 came out this door right here. The closest door to the
22 club. As I was exiting through this door right here --
23 when I'm in this area right here that's where you could
24 hear the other shots being fired from the dance floor.

25 I don't know if it was somebody coming from that area

1 shooting a gun or if somebody was standing in that area
2 shooting a gun, but I did hear the shots being fired.

3 Q. So you went out that door and not the door that you
4 went in?

5 A. No, sir. Our car was parked over here. This is
6 where our car was parked at. It's several cars in the
7 parking lot. All over the parking lot.

8 Q. Okay. Do you remember how many shots you think you
9 heard?

10 A. I say probably two to four shots.

11 Q. Okay. And what did you do?

12 A. I started firing.

13 Q. I'm sorry?

14 A. I started firing as I was walking out the door.

15 Q. How many shots did you fire?

16 A. Four.

17 Q. You sure about that?

18 A. Yes, sir.

19 Q. And, again, what direction were you firing those
20 shots?

21 A. I was firing at a downwards angle towards the ground.

22 Q. And why were you firing those shots?

23 A. Because somebody was on the dance floor firing shots
24 so I was firing shots to keep whoever was in the club from
25 coming outside shooting at me. I'm assuming that whoever

1 is in this club with a gun, if they hear me firing shots,
2 that would keep them away from me.

3 Q. Okay. And what did you do then?

4 A. I went to my car.

5 Q. And eventually you were apprehended by the police?

6 A. No, what happened was I got inside my car. The
7 passenger seat of my car. At that time Simpson must have
8 been inside the club because he made his way out the club
9 to the driver's side of the car. I'm ducking down in the
10 seat like this right here. He ain't going. He ain't
11 moving or nothing. He's just sitting there still. I
12 looked to my right. That's when I see Eric Brown --
13 Officer Brown.

14 Q. And then what?

15 A. He had a gun pointed towards me telling me to put my
16 hands up so I put my hands up in the air.

17 Q. And you were apprehended then?

18 A. Not right then because someone stepped in between
19 when I was trying to get out the car.

20 Q. Do you know who that was?

21 A. They said it was MacElwane, but I can't say it was
22 MacElwane.

23 Q. Were people -- what did you observe if you observed
24 anything about the people who had been in the club?

25 A. As far as what?

1 Q. What they were doing at this time?

2 A. I have no idea. They probably was running or
3 whatever they were doing.

4 Q. They were what?

5 A. They were probably out there running. I have no
6 idea.

7 Q. But you weren't focused on that?

8 A. No, sir.

9 Q. So you were eventually handcuffed?

10 A. Yes, sir.

11 Q. By who?

12 A. I thought that it was Eric Brown, but they said it
13 was Larry Brown.

14 Q. Okay. And where were you placed after you were
15 placed in handcuffs?

16 A. On the ground in front of my car.

17 Q. Did there come a time after you were in handcuffs
18 that you heard more shots?

19 A. I didn't actually hear more shots fired. I was
20 laying on the ground in handcuffs. The Officer that was
21 arresting me was kneeling down on my back. Everybody
22 started exiting the club stating that more shots were
23 being fired so the officer ran back in along with the
24 other officers.

25 So, naturally, if everybody's running from the club

1 saying shots being fired and I'm lying on the ground in
2 handcuffs and they left me I'm going to run, too. It's
3 just a natural.

4 Q. And you ran because of what?

5 A. Because everybody running saying shots are still
6 being fired.

7 Q. Did you hear any shots?

8 A. No, sir.

9 Q. How far did you get?

10 A. Probably ten, 15 feet.

11 Q. Did you run in an attempt to escape custody?

12 A. No, sir.

13 Q. Did you intentionally shoot Mr. Funderburk?

14 A. I didn't shoot Mr. Funderburk at all, sir.

15 Q. Do you think your bullet could have struck him
16 accidentally?

17 A. No, sir, I don't.

18 Q. And what about the person that was shot on the
19 outside; that was grazed in the leg; that was shot in the
20 leg? Did you intentionally shoot him?

21 A. Honestly, I've heard from their statements and the
22 other statements that have been given several different
23 ways he was shot. He said he came -- I don't recall him
24 being shot. I don't know which story is actually the true
25 story of him being shot, so I don't know him being shot.

1 I don't recall him being shot.

2 Q. Did you intend to shoot anybody when you were on the
3 outside?

4 A. No, sir.

5 Q. Your purpose for shooting was what?

6 A. Because somebody was firing shots in the club as I
7 was coming out the door.

8 Q. Is there anything else that you want to the jury to
9 know about what happened that night?

10 A. I don't honestly know what happened that night. I
11 don't really understand most of the things that happened
12 that night. It seems that as if we came to the club in an
13 attempt to have a good time, but we were out of town. We
14 got jumped on the inside of this club. Nobody else was
15 ever escorted or arrested or whatever at this club, and
16 the same people that was testifying against my are the
17 same people that jumped on me.

18 Q. But it is clear that you did not got back in that
19 club to shoot Mr. Funderburk?

20 A. Honestly, if I was going back in that club with an
21 attempt to seek revenge it would have made more sense to
22 shoot somebody at the bar because that's where I was hit
23 at least.

24 Q. Did you even see the people that you were -- had the
25 altercation with?

1 A. I didn't know the people. I didn't even ---

2 Q. Oh, I'm sorry. When you went back in with the gun
3 did you even see the people you had just had a fight with?

4 A. I didn't see the people that I had just had a fight
5 with on the dance floor, but the people that was standing
6 by the bar no longer than it took for me to go out this
7 door and come back in they were still standing in this
8 same position. That's the reason for me cocking the gun
9 in case they came from that bar area and wanted to jump on
10 me again.

11 MR. ROGERS: Court's indulgence one minute, please.

12 BY MR. ROGERS:

13 Q. Do you even know where Mr. Funderburk was in the
14 club?

15 A. No, sir.

16 Q. Okay. Do you know Mr. Funderburk?

17 A. No, sir.

18 Q. Okay. Answer any questions Mr. Joyner may have for
19 you.

20 CROSS-EXAMINATION

21 BY MR. JOYNER:

22 Q. Mr. Watts, you came ready to shoot that night,
23 didn't you?

24 A. No, sir.

25 Q. You didn't come ready to shoot?

- 1 A. No, sir.
- 2 Q. You came to have been a good time?
- 3 A. Yes, sir.
- 4 Q. But you bought a gun with you?
- 5 A. I didn't bring it with me. The gun was in the car.
- 6 Q. You were handling the gun on the way down there?
- 7 A. No, sir.
- 8 Q. You weren't handling this gun?
- 9 A. The gun was handed to me. I put the gun under the
- 10 seat of the car.
- 11 Q. This gun?
- 12 A. That appears to be the gun.
- 13 Q. So you was holding the gun on the way down there?
- 14 A. I can't say it more simpler, sir. I put the gun
- 15 under the seat of the car.
- 16 Q. But you were in the car?
- 17 A. Yes, sir.
- 18 Q. And you had this gun at some time in your possession?
- 19 A. That appears to be the gun.
- 20 Q. You had a gun in your possession at some time?
- 21 A. Yes, sir.
- 22 Q. Go into the club?
- 23 A. Yes, sir.
- 24 Q. Go into the club that you just said that you were
- 25 going to have a good time at?

1 A. Yes, sir.

2 Q. Does taking guns -- is that your idea of a good time?

3 A. I didn't take a gun to the club.

4 Q. You just said you were handling it in the car?

5 A. If you heard me I said that Mr. Simpson was driving
6 the car. The gun was in the car. The gun was handed to
7 me in the car. I never said I was handling the gun inside
8 the car.

9 Q. Okay. Okay. You had on this green jacket, right?

10 A. Yes.

11 Q. And you were wearing this jacket when you shot the
12 gun in the clip, right?

13 A. Yes.

14 Q. Let's talk about the altercation a little bit. You
15 had been drinking some that night?

16 A. I had drunk probably a couple of beers before we left
17 and I had a cup of Hennesey inside the club.

18 Q. Okay. Now, you got in an altercation with Charles
19 Miller, right?

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

21 Q. Who did you ---

22 A. MacElwane got into an altercation with Charles
23 Miller.

24 Q. I thought you just said that Charles Miller hit you?

25 A. He did, but I didn't get into the altercation with

1 Charles Miller. The altercation was between my friend and
2 Charles Miller.

3 Q. But Charles Miller hit you at some time? That's what
4 you said, right?

5 A. Yes, sir. I never said Charles Miller ---

6 Q. Did he hit you hard?

7 A. --- hit me. I said that the guy that was standing
8 there arguing with Charles -- with my friend who I later
9 found out to be Charles Miller and his cousin.

10 Q. Did he hit you hard.

11 A. Yes, sir.

12 Q. How hard?

13 A. I fell to the floor.

14 Q. Didn't leave a mark? A bruise?

15 A. Over my right eye.

16 Q. He didn't hit you on the left side?

17 A. No, sir.

18 MR. JOYNER: Judge, may I approach just one second?

19 THE COURT: Sure.

20 (WHEREUPON, a bench conference was held off the
21 record in the presence of the jury, but out of the
22 hearing of the jury.)

23 (WHEREUPON, State's Exhibit No. 49 was marked for
24 identification only.)

25 BY MR. JOYNER:

1 Q. All right. Mr. Watts, I'm showing you State's
2 Exhibit 49. Who's that in that photograph right there?

3 A. That's me.

4 Q. And what date was this photograph taken?

5 A. November 2nd 2004.

6 Q. How many days after this altercation occurred?

7 A. Four.

8 Q. Four days. Do this. How about come and show the
9 jury where that big bruise is on your right eye?

10 A. I never said it was a big bruise on my right eye, but
11 you can clearly see right here in this picture that my
12 left eye -- I'll show it to the jury.

13 Q. Show it. Yes, please.

14 A. You can clearly see in this picture. This is my
15 right eye. This is my left eye. You can see my left eye
16 is fully open. You can see that my right eye is not fully
17 open up here on this area.

18 MR. JOYNER: Judge, I would move that State's Exhibit
19 Number 49 be entered into evidence at this time, please?

20 MR. ROGERS: No objection.

21 THE COURT: Without objection.

22 (WHEREUPON, State's Exhibit No. 49 was admitted into
23 evidence.)

24 MR. JOYNER: Thank you, Judge.

25 BY MR. JOYNER:

1 Q. So you got hit? You got a bruise over your right eye
2 and then you say as you were falling back you got hit
3 again?

4 A. I got hit in my jaw.

5 Q. Right jaw?

6 A. Left jaw.

7 Q. Left jaw?

8 A. Yes, sir.

9 Q. So it was like a combination? You got hit ---

10 A. No, it was like he hit me in my right eye, and
11 somebody on my left side hit me on this side of my jaw.

12 Q. Okay. You fell down? Got back up?

13 A. No, I fell down. When I was down they were still
14 hitting me. I covered myself up.

15 Q. At some point you got back up?

16 A. Yes, sir.

17 Q. And you grabbed somebody and was trying to take them
18 out of the club, right?

19 A. No.

20 Q. One of your friends?

21 A. No. Tanesha Robinson was the one that helped me off
22 the floor or are you just skipping all that part?

23 Q. No, I'm saying once you got up you tried to get out?

24 A. Yeah.

25 Q. And as you were going out didn't you try to help

1 somebody else?

2 A. Yeah, I think by the bar.

3 Q. Okay. And that's when somebody hit you in the back
4 of your head?

5 A. While I was trying to take him out the door.

6 Q. While you were trying to take him out the door?

7 A. Yes, sir.

8 Q. All right. So once you make it outside you got to
9 your car?

10 A. Yes, sir.

11 Q. And how long were you out there in the car?

12 A. Not long. Just long enough to walk outside and come
13 back.

14 Q. The car was unlocked?

15 A. Yes, sir.

16 Q. And you went and you got this gun, the gun that you
17 handled on the way down there?

18 A. Yes, sir.

19 Q. You didn't start this fight, did you?

20 A. No, sir.

21 Q. You weren't involved at all?

22 A. No, sir.

23 Q. So you were the victim of that fight?

24 A. Yes.

25 Q. But you didn't call the police?

1 A. How was I supposed to call the police?

2 Q. Just asking. You didn't call the police, did you?

3 A. It wasn't possible for me to call the police.

4 Q. When you got outside across the street there is a
5 store. You didn't go over to the store, did you?

6 A. My girlfriend was still inside the club.

7 Q. I'm just asking. Just answer yes or no. Did you go
8 in the store?

9 A. No, sir.

10 Q. Okay. And, now, right up here there is another
11 store. You didn't go to that store either, did you?

12 A. No, sir.

13 Q. Instead you took the gun and went back into where you
14 were just in a fight?

15 A. Yes, sir.

16 Q. You did not go away from the fight? You went back
17 into where you were just fighting, right, or where you
18 were being hit?

19 A. No, I got hit by the bar. What I want back to was
20 the dance floor.

21 Q. But you went back in a building where you were just
22 in a fight?

23 A. Yes, sir.

24 Q. With a gun?

25 A. Um hum. Yes, sir.

1 Q. And you were ready to shoot the gun, too, weren't
2 you?

3 A. I was going to fire my gun as a warning if somebody
4 had tried to come and jump on me.

5 Q. You agree if the chamber is in you got to pull the
6 slide back to put a gun in the chamber, right?

7 A. A bullet in the chamber?

8 Q. A bullet in the chamber? Excuse me.

9 A. Yes, sir, that would be.

10 Q. And that makes it ready to shoot?

11 A. Yes, sir it does?

12 Q. So you went back into the club with the intent to
13 shoot?

14 A. I went back in the club with the intent to go make
15 sure my girlfriend was already and my friends already and
16 get them out that club and intent not to be any further
17 assaulted.

18 Q. You would not have put a bullet in the chamber if you
19 were not intending to shoot, am I right?

20 A. Okay, I'm not denying that I had no intention to
21 shoot. What I said is if I was put in a position where I
22 would have had to fire the gun I was going to fire a gun
23 in the ceiling. That is why I had my gun pointed at the
24 ceiling when I walked in the club.

25 Q. Mr. Watts, yes or no. You went into the club with a

1 gun ready to shoot?

2 A. Yes, sir.

3 Q. The gun was ready to shoot?

4 A. Yes, sir.

5 Q. The gun was ready to shoot?

6 A. Yes, sir.

7 Q. Okay. Then you went in, fired the gun out of the
8 dance floor, right?

9 A. Yes, sir.

10 Q. Bunch of people out on the dance floor?

11 A. I never fired in no one's direction. No, sir.

12 Q. After you shoot the gun in the club in the -- at the
13 dance floor you turned around and get out, right?

14 A.. Yes, sir.

15 Q. After you get outside you shoot more?

16 A. Yes, sir.

17 Q. In fact you shot more than two people, didn't you?

18 A. No, sir.

19 MR. ROGERS: Objection. May we approach?

20 (WHEREUPON, a bench conference was held off the
21 record in the presence of the jury, but out of the
22 hearing of the jury.)

23 BY MR. JOYNER:

24 Q. So outside you shot some more people and it was
25 chaotic?

1 A. First of all you couldn't say that I shot at more
2 people outside. I said that I shot at the ground. The
3 reason for me shooting at the ground is because somebody
4 inside the club was firing shots.

5 Q. Okay. Let he get this thing right. You turned and
6 you were going away from the club?

7 A. I'm running out the door.

8 Q. Out the door. So your back is to the club?

9 A. Yes, sir. I'm still inside the club. My back is to
10 the dance floor, but I'm still inside the bar area.

11 Q. Okay. Once you get outside you shoot more. You
12 said you shot about four or five times, right?

13 A. Yeah, when I was coming out the door.

14 Q. Okay, outside the door. And you shot like this?

15 A. I shot downwards like this.

16 Q. You shot ---

17 A. I'm shooting like this coming out the door.

18 Q. Beside you?

19 A. Yes, sir and downwards.

20 Q. This is my question. If this so called person is
21 behind you on the dance floor shooting at you and you're
22 shooting back ---

23 A. No, no, no.

24 Q. --- to stop them why did you shoot right here?
25 Doesn't make any sense?

1 A. First of all I didn't say I was shooting at the
2 person. I said I was firing to keep the person inside the
3 club from coming outside and shooting me. I'm just saying
4 that if you were inside this jury box right here and you
5 hear shots being fired you ain't going to come out here
6 where the shots are being fired. You understand what I'm
7 saying now?

8 Q. Well, I'm not going in there where I've just been
9 beat anyway. My -- this is what I want you to explain.
10 If a person is shooting at you from the back and you're
11 running what good does it do to shoot the gun down by the
12 side?

13 A. Okay, first of all I never said a person was shooting
14 at me because, naturally, if I'm coming out of the door I
15 can't see where this person shooting at. All I know was
16 that this person was raising a gun at me on this dance
17 floor and when I shot and I ran I heard more shots fired.

18 The point of shooting more shots is because this guys
19 in the club if he's going to make an attempt to come out
20 behind me with his gun and shoot me in my back by me
21 shooting shots and he hear that I'm firing it's going to
22 cause him from coming out the club.

23 Q. While you were in the club that shot you fired; that
24 shot killed Clifton Funderburk, right?

25 A. Well, if I'm correct the S.L.E.D. agent yesterday

1 said that there was nothing found on that bullet to say
2 that bullet killed Clifton Funderburk.

3 Q. That's not what I asked.

4 A. Well, then I can't answer that question, can I?

5 Q. I asked you if you killed him?

6 A. No, I didn't.

7 Q. Well, it's just funny how this bullet was found by
8 Cliff's body. This bullet matches this gun that you had
9 that you shot in the club. It's funny how the casing that
10 was found beside Cliff's body matches the gun that you had
11 that you shot while you were inside the club.

12 MR. JOYNER: Judge, no further questions.

13 MR. ROGERS: I don't believe I have any further
14 questions.

15 THE COURT: You may step down. Thank you.

16 MR. ROGERS: That's the Defense's case, Your Honor.

17 MR. JOYNER: Your Honor, we don't have any reply
18 witnesses.

19 THE COURT: Okay, prepared to move on to closing
20 arguments?

21 MR. JOYNER: Yes, sir. I'm ready, Judge.

22 MR. ROGERS: Judge, can we have about five minutes?

23 THE COURT: Yes, sir. Ladies and gentlemen of the
24 jury step back and give us about five minutes.

25 (WHEREUPON, the jury panel was excused from the

1 courtroom at 1:11:26 a.m.

2 (WHEREUPON, Court was in recess at 11:26 a.m. and

3 reconvened at 11:28 a.m.)

4 (WHEREUPON, the jury panel enters the courtroom at

5 11:29 a.m.)

6 THE COURT: Mr. Rogers, you want the State to open or
7 you want to waive that? What's y'all desire?

8 CLOSING STATEMENT BY MR. JOYNER

9 MR. JOYNER: Ladies and gentlemen, I'm going to talk
10 to you first and I'm going to sit back down and Mr. Rogers
11 will come up argue to you then and I get to come back and
12 argue to you. What I'm going to do is just talk to you
13 briefly about the law. The law in this case for murder is
14 three key elements that you need remember.

15 In order for there to be a murder, Number One, you
16 have to have a killing and to have a killing just means
17 that an individual has the die. The second element you
18 have to have is a killing of another person. You can't
19 shoot an animal or a cat or a dog and that be murder. It
20 has to be a human being that was killed. And the third
21 element is that that killing must be done with malice
22 aforethought. And malice is nothing more than an
23 intentional act done without just cause.

24 It's an intentional act done without just cause. A
25 forethought is the time that that intentional act was

1 done. Malice must exist at the time, and if malice can
2 exist -- in order for there to be a forethought a split
3 second, a split second can occur. I can say I want to
4 kill you and that's all the time it takes. Malice was
5 just in my heart, split second. So it's a killing of
6 another person with malice aforethought. Malice, again,
7 exists at the time that the fatal blow is struck is what
8 the law says.

9 And if you find these elements, those are the
10 elements of murder. Okay. The other main charge we have
11 is assault and battery with intent to kill. Assault and
12 battery with intent to kill has four elements..

13 Now the four elements in those are, Number One, you
14 have to have an unlawful act. The person who commits the
15 assault must be doing something unlawful at the time.

16 The second element is violent injury. The injury
17 that the victim sustains must be a violent injury.
18 Couldn't just easily punch somebody on the shoulder and
19 are a bruise. And that be a violent injury.

20 The third element, to another person. It's much like
21 our murder when we say the killing of another person.
22 Assault and battery with intent to kill, you have to have
23 an unlawful act of violent injury to another person.
24 Can't A.B.W.I.K. yourself. Can't assault and battery
25 yourself with intent to kill.

1 And the final element of assault and battery with
2 intent to kill is malice. And malice is very similar to
3 the way I explained on murder. Malice is nothing more
4 than a wrongful act done without just cause. Those are
5 the four elements of A.B.W.I.K. You have an unlawful act
6 of violent injury to another person and that act is done
7 with malice. And on our murder we have the willful
8 killing of another person with malice aforethought. Thank
9 you.

10 CLOSING STATEMENT BY MR. ROGERS

11 MR. ROGERS: May it please the Court. Ladies and
12 gentlemen of the jury, I want to thank you for your
13 attention you've shown in these last three days. This is
14 an important day for Michael Watts and his family as well
15 as an important date for the Funderburk Family. So I
16 again I just want to thank you for the attention and time
17 that you've paid in this case.

18 As I told you in the opening statement the State has
19 the burden of proving to you beyond a reasonable doubt
20 that Michael Watts did what he's charged with. He doesn't
21 have to prove anything but you did hear his side of the
22 story. Unlike a civil case and I don't know how many of
23 you may have sat on a civil jury the burden of proof in a
24 civil case is a preponderance of the evidence. Generally
25 we refer to a scale and if you tip the scale ever so

1 slightly or if it's 51 percent then that satisfies the
2 preponderance of the evidence burden.

3 But in a criminal case, of course, it's a heavier
4 burden. It's a higher burden and the burden is beyond a
5 reasonable doubt and that makes sense because a person's
6 liberty is at stake in a criminal case as opposed to
7 dollars in a civil case.

8 Based on the state of this evidence if you think that
9 the State has proven beyond a reasonable doubt that
10 Michael Watts killed Mr. Funderburk intentionally then you
11 have to return a verdict of guilty. There is no option.
12 You have no other choice.

13 But if you're not sure what happened or how it
14 happened or if you think this was an accident; that it was
15 no intent to kill Mr. Funderburk His Honor will charge you
16 the law that's applicable to the case and I suggest to you
17 that if you find those to be the facts then you will have
18 to return a verdict or not guilty.

19 Now, before I get into the details let's just talk
20 about the overview of what the State's evidence was.
21 Without belaboring the point. We've gone over it many
22 times. Said there was a fight in the Matrix Club that
23 night about a belt. Michael was not involved initially in
24 that fight. He came up to see what was going on. And
25 some question about whether he swung first or he was hit

1 first.

2 He testifies he was hit first. Hit twice. And that
3 Mr. Funderburk was not involved in that altercation. That
4 he ran outside got his gun and came back into the car and
5 shot. The State will have you believe that was the shot
6 that killed Mr. Funderburk.

7 I believe that's open to question, but again, you're
8 the judges of the facts. You're the tryers of the facts,
9 and you have to determine if you believe that -- if that
10 shot, Number One, was intentional and, Number Two, that
11 was the shot that killed Mr. Funderburk.

12 The officers then saw him come out of the club. He
13 was shooting. Person or persons were injured. And then
14 they caught him. They went back inside and they found Mr.
15 Funderburk. That's basically what you have. A man
16 shooting. There was testimony that there was other
17 shooting, but that's the state of the evidence the State's
18 case against Mr. Watts.

19 But I ask you to think about this for a moment and to
20 use your common sense. Why would Michael shoot Mr.
21 Funderburk if Mr. Funderburk wasn't involved in the
22 altercation at all? Now, I believe the State is going to
23 argue to you that there is something in the law called
24 transferred intent meaning that if I intend to shoot you
25 and shoot you it's still a murder against you even though

1 I intended to shoot you because I still had the intent to
2 kill someone.

3 It was just transferred to the ultimate person that
4 was shot. But I don't that's even what you have in this
5 case. You heard Michael Watts testify that he went back
6 into the club, the reasons why he went back into the club
7 and what he did when he was in the club. And I'll talk to
8 you later on about how I think the objective evidence that
9 you have in this case supports his version as opposed to
10 what you heard from the State's witnesses.

11 So, Number One, why would he shoot Mr. Funderburk if
12 Mr. Funderburk wasn't involved? Why would he shoot at
13 anyone when no one was threatening him? The State would
14 have you to believe, I guess, that he went back in with
15 the weapon and cold bloodily attempt to look for the
16 people that he had a fight with.

17 Well, I don't think the evidence supports that. Or
18 at least it supports two conclusions. The testimony of
19 the State's witnesses was that he came back in and was
20 looking around. Well, of course, the State will have you
21 believe he was looking around for someone to shoot other,
22 either Mr. Funderburk or the people that he had an
23 altercation with.

24 He testified that he was looking around for his
25 girlfriend and his friends. The reasonable conclusion.

1 And then why would he run out of the club after he fired
2 the one shot? He hadn't found his girlfriend. He hadn't
3 found his friend, and according to the State's version if
4 there were -- there was nobody else in the club with a
5 gun. Then he was the only one with the gun. Why would he
6 run? He wouldn't have no reason to run. He could have
7 walked around the club like this looking for his
8 girlfriend, calling out her name. He didn't do that.

9 What his actions were consistent with what he told
10 you he did. But it's consistent with someone else's
11 shooting. He fired once. It's testimony from many people
12 that there was other gunfire. That's why he ran. That
13 makes sense. And then, again, why would he shoot outside?
14 According to the State's theory he's just a cold blooded
15 killer that went back into the club to shoot whoever, and
16 then he comes back outside the club.

17 Who is he shooting at then? Nobody was outside the
18 club. You heard testimony about that was involved in the
19 altercation. He's just going to shoot anybody he sees?
20 So I suggest to you that the State's version of events and
21 what they want you to collude from that version just
22 doesn't make sense. What does make sense is what Michael
23 told you.

24 He went outside. He ran outside because he heard
25 gunfire. He fired. He says down, and we'll talk about

1 that in a minute, too, but he says down to keep the people
2 that were firing from the club off of him or from coming
3 after him. There would be no reason for him to shoot
4 David Evans. David Evans wasn't involved in this, and
5 even David Evans himself, in the medical records to the
6 doctors the next day or that night when he was treated
7 said, "I was hit by a stray bullet." A stray bullet. He
8 didn't say somebody was shooting at me and the bullet
9 grazed me. He said to the doctor and he confirmed that,
10 "I was hit by a stray bullet."

11 So the State's version just doesn't make sense. Now,
12 you heard Michael testify. He didn't have any obligation
13 to get on the stand and say anything because it's the
14 State's burden of proof, but I wanted you to see him. I
15 wanted you to judge his demeanor, his credibility, his
16 believability.

17 Did what he say -- what he said make sense? And I
18 suggest to you that it does. He acted maybe irrationally.
19 He maybe acted immaturely, but he certainly didn't act
20 with an intentional malice, with intentional wickedness
21 and evil heart when he fired that shot.

22 And he told Detective Bennett -- if you remember
23 Danny Bennett, testified that same thing a few days later.
24 It was an altercation. I went back in the club to get my
25 girlfriend and friends. So that was not a story concocted

1 later. He told that to the authorities the day they came
2 and talked to him.

3 Now, let's talk a minute about their witnesses. You
4 know people think that eyewitness testimony is the most
5 reliability testimony that we have in Court, but sometimes
6 it can be the most unreliable. People don't understand
7 but you can use your common sense. A person's mind isn't
8 like a video camera. You don't perceive an event and at
9 some point later be able to play back that event in exact
10 detail.

11 Many factors, and use your common sense, effect a
12 person's ability to first observe the event and then to
13 later recall the event. Factors like the time the event
14 took place. Was it a split second or was it five to ten
15 minutes? The lighting inside the club. The lighting in
16 the place where the event took place. That would affect a
17 person's ability to perceive what they say they
18 perceiving.

19 The distance they are from the event. The amount of
20 time that lapsed between the event and the time that they
21 are later called on to make an identification or recall
22 what happened in those events. And there is something
23 called weapon focus. When a person has a weapon that kind
24 of the distracts people. People kind of focus on the
25 weapon. They really don't see the other things going on

1 around them.

2 And then you can consider the circumstances of when
3 the person does make the actual ID of the suspect. So
4 those are all factors that go into what we call eyewitness
5 identification. And so because eyewitness identification
6 can sometimes be so inherently unreliable you have to look
7 to other what I call objective facts to see if those facts
8 support the eyewitness identification or to support the
9 suggestive -- what I call suggestive evidence.

10 Normally, what you have in a case is a witness
11 describes a suspect: Black male, 6'2", 150, 200-pounds,
12 facial hair, short cut hair, brown eyes, mustache,
13 something and then an investigator or an officer will
14 either conduct a live lineup with six live bodies or put a
15 photographic spread together using the description that
16 was given to them by the witness and then show that to the
17 witness.

18 And then if the witness picks out somebody then their
19 observations are somehow corroborated because we do have
20 somebody in the photographic spread or the lineup; the six
21 foot, 250 pounds, facial hair. You can test that. You
22 can test the reliability of that identification. We don't
23 have that here. We have the State's witnesses and I ask
24 you to recall, you are the judges of the facts, the
25 inconsistencies between their own witnesses.

1 And we'll just take the number of shots fired. I
2 believe, and please you remember the facts as you believe
3 them, but I believe that David Evans said he was shot
4 once. Latoya Miller said -- he heard one shot, excuse me.
5 Latoya Miller said they were shooting around. She do not
6 know how many shots were fired. Tyrone Miller said he
7 heard one or two shots then ran into the bathroom and
8 heard two or three more shots. Charles Miller said he
9 heard one shot then others. Kevin Johnson said man came
10 in shooting.

11 Dwayne Miller said he heard three shots. Angelo
12 Mason said that he heard one shot. Then he heard more
13 shots as Michael was coming out the front door and the gun
14 was fired until it emptied. So all of those are
15 inconsistent with each other.

16 We don't have one person telling one consistent story
17 about the number of shots heard. But again I ask you to
18 use your remembrance of the facts on that issue. So I
19 won't go into all of the other inconsistencies like where
20 Michael was or where Mr. Funderburk was when the shootings
21 occurred. All of that was kind of convoluted. All of
22 that was inconsistent with each other, and these are
23 things I think that you as the jury need to analyze to
24 consider whether what those witnesses said was accurate or
25 not.

1 Remember, we're in a dark club. A small club. Shots
2 are fired. Chaos is breaking out. People are running in
3 every direction so I don't know how people are expected to
4 remember the details of that would support the testimony
5 that you heard from the State witnesses. Remember even
6 Tyrone said they Michael put a gun to his head. Tyrone
7 Miller said that Michael put a gun to his head. Nobody
8 else said that. Nobody else said they saw that.

9 So we have inconsistencies between these witnesses.
10 That in and of itself could give you a reason to doubt. A
11 reason to hesitate about what actually happened that night
12 in this club. You weren't there. I wasn't there. Mr.
13 Joyner wasn't there. So we have to reconstruct it from
14 the facts or from the testimony that we hear from this
15 witness stand.

16 And so what we have heard from those witnesses is
17 what I call subjective evidence. Evidence that is capable
18 of being open to interpretation. Evidence that's capable
19 of being challenged. Evidence that might be influenced by
20 somebody's motive or bias to get a deal, to get their
21 sentence reduced, or to reward a friend or to help out a
22 cousin. That's what subjective evidence is.

23 But what's missing in this case is the objective
24 evidence that supports a conviction of murder. Absolutely
25 no evidence that would support what those witnesses said.

1 Objective evidence by example would be something like
2 finger prints, a D.N.A. test results, a photograph. With
3 today's technology you can fiddle with photographs now, so
4 I don't know how objective a photograph can be, and
5 matching bullet to a weapon. That's done on a scientific
6 basis by people who are trained in their field to conduct
7 those scientific tests and observations and then to make
8 conclusions.

9 And I want to be point out to you the objective
10 evidence in this case supports what Michael says. There
11 were one .44 shell casings found in the Club Matrix, and
12 there were four shells found outside. That objectively
13 supports what he says. Now, there is this business about
14 the other shots. Well, again, I wasn't there. You
15 weren't there. I don't know what to tell you about the
16 other shots.

17 But we know that many of the witnesses said they
18 heard more than one shot in the club. And some of the
19 police officers, and we'll talk about that in a minute,
20 said they heard other shots. So if there were other
21 shooting in the club it's a possibility -- it has to be a
22 possibility that one of those bullets hit Mr. Funderburk.

23 I told you at the beginning in my opening statement
24 that this was a tragedy for the Funderburks and their
25 family, but what has developed as a tragedy in this case

1 is the investigation that was done. With all due respect
2 to Detective Brown and the Pageland Police Department they
3 did absolutely nothing. And I know the State is going to
4 get up here and say, "Well, you know this is Defense
5 attorney trick when you don't have the defense or you
6 don't have the facts on our side blame the investigation."

7 Well, that's not what I'm trying to do. I'm trying
8 to have you consider objective facts that you can analyze
9 to support their version that Michael did the killing, and
10 we don't have anything. He did nothing. And I can kind
11 of understand why I think it happened is because they
12 thought, well, we've got a guy outside that was shooting.
13 We've got a guy that's dead inside that was shot. Case
14 closed. We don't have to do any more.

15 And in fact what else did they do? He didn't call in
16 any forensic team. They didn't even take pictures of the
17 inside. And, now, they did introduce some pictures of the
18 club, but, I don't know what you can tell from these other
19 than the club is dark. But nothing, no diagram, no
20 picture, to tell you where the people were at the relevant
21 times of this case.

22 When Mr. Funderburk was shot where was Michael?
23 Where was Michael when he fired the weapon and where was
24 Mr. Funderburk? No scientific. Nothing objective. No
25 exhibits. No diagrams. No photos. They've got one

1 photograph where you see a little bit of blood on the
2 floor. I don't know why that's there, but I guess they're
3 going to try to say -- I don't know. I don't know. I
4 guess you have to wait for Mr. Joyner to tell you what
5 Exhibit 25 means.

6 And then what's most puzzling about this case is the
7 fact that we do have testimony we do have evidence that
8 there were shots fired when Michael was in handcuffs.
9 Several people said that. Michael said that. His
10 girlfriend said that. It was in one of the police reports
11 or in two of the police reports.

12 That's why I called Detective Ferman -- I'm sorry,
13 Mackey, this morning because he had it in his report that
14 he had been told that after -- or observed that after
15 Michael was on the ground in handcuffs he heard four shots
16 then four more shots. Now, in my opinion that supports
17 what Michael says about that there were other shots being
18 fired and that's why he was shooting.

19 And what did Detective Brown say? Well, it must have
20 been car backfires cause I didn't find another weapon.
21 Well, that's not logical because, obviously, if there were
22 other people shooting in the club and they ran out with
23 their weapons then you wouldn't find a weapon. And the
24 State is going to say where is the evidence of those other
25 firings? Well, it's not my job to bring it to you.

1 Their witnesses said there were other firings --
2 other shots. What did they bring. Somebody said, I can't
3 remember who it was right now, that you can go to the club
4 right now and see the bullet holes in the wall. You
5 recall that testimony? You can go there -- he was kind of
6 flip about it. You can go there now and see the bullet
7 holes in the wall. Well, why didn't we see the bullet
8 holes in the wall? What are those bullets of? Are they
9 .44s? I mean .45s? Are they .24s? .22s? What are they.
10 We don't know because nobody did any other investigation.

11 Forensics wasn't called. No pictures taken of the
12 scene. Nothing that you would expect in a murder case.
13 Detective Brown never talked to any witnesses, any of
14 them. All of the statements that you saw that were given
15 to this Detective Anderson from S.L.E.D. So when
16 Detective Brown got those statements and was able to make
17 a conclusion about what went on, I'm just not sure.

18 And the circumstance of taking those statements.
19 I've never -- well, to have a witness come in and have the
20 person -- the officer tell the witness who the suspect is
21 I just think it's incredible, and I suggest to you that
22 that supports the kind of investigation that was not done
23 in this case. The witness says, "Oh, I didn't know who it
24 was, but when I came in to write my statement they told me
25 it was Lamont or Michael. So that's how that name got in

1 my statement."

2 And one person even said, "I typed my own statement
3 and brought it in and gave it to Anderson." And did
4 Anderson ask him any questions about the statement? Was
5 there anything in the statement that was not consistent
6 with any other facts in the case? Well, they're going to
7 say, well, what about this. What about there's been some
8 evidence that other people heard shots. What do you think
9 about that? No question. Nothing. They just took it
10 because they knew they had a shooter. They knew he had
11 fired in the club and they knew Mr. Funderburk was dead.

12 I suggest to you that as consistent with the evidence
13 in the case there were other shots in that club, and one
14 of those shots may have possible been the shot that hit
15 Mr. Funderburk. Well, the coroner testified this morning
16 that the entrance wound and the exit wound was
17 approximately .44 inches or centimeters which would be
18 consistent with a .45 or consistent with a smaller
19 caliber.

20 So that if there was another gun in the club, if
21 there were other bullet holes in the walls that we will
22 never know about and those were different calibers and
23 that's what killed Mr. Funderburk then Michael's shot
24 didn't do it. Some other shot did, but then they want you
25 to think Exhibit 18 is the fatal shot. Now, I don't

1 handle firearms. I've never shot a gun in my life, but I
2 don't see, and I suggest to you, that this could not be
3 the bullet that -- the shell that penetrated the organs
4 that you heard testified to this morning.

5 It would have been some blood, some tissue. The
6 bullet might have even been deformed or mashed in in some
7 regard. We don't know, and we don't even know where this
8 bullet was found. There was no picture taken of it. Was
9 it found near the body? Well, they say it was, but how do
10 you know? Just cause they say it was.

11 Where was the shell casing that was found in the
12 club? Was it anywhere near where Michael was standing or
13 was it over someplace else? I have no idea, and the
14 testimony on that is -- I don't think anybody told you
15 where. And these are all the things I suggest you need to
16 have in order to support these witnesses who say, yeah,
17 Michael came in and shot and murdered him with malice.

18 I don't think we have that. Detective Brown never
19 went back to the Matrix and I think it was fortunate in a
20 way he happened to be there part time working. You know,
21 moonlighting. I think it was fortunate that he was there
22 on the scene, but he didn't do anything after that. He's
23 not a forensic expert. He wouldn't know how to secure a
24 crime scene. He wouldn't know what to tell the officers
25 to do.

1 And by way of photograph, by way of collecting
2 evidence, by way of looking for evidence, he didn't
3 testify that he had any training in that area. He just
4 happened to be there and because he was there it looks
5 like it became his show. So the absence of that type of
6 investigation, the absence of that objective evidence I
7 suggest to you could give you a reason to hesitate. A
8 reason to doubt about what happened in this case.

9 There is just no know way I suggest that you can from
10 the state of this evidence that -- what they want you to
11 think. What they asking you to conclude from that
12 evidence. And I asked Detective Brown about these other
13 bullet holes in the wall that one of their witnesses
14 testified to, and his response was, "I looked, but I
15 didn't see." Nowhere in his notes. Nowhere in his
16 incident report, and no pictures to support that.

17 And, again, they're just asking you believe me
18 because I'm a police officer. That's all I'm asking you
19 to do. I'm telling you that that's what I found. I think
20 Detective Brown concluded, rightly or wrongly, I think
21 erroneously, that Michael did this killing because of
22 those circumstances. Because he was found with a weapon.
23 Because he in fact admitted to shooting in the club. He
24 never denied that.

25 And where are their other witnesses? Where is Eric

1 Brown who was out there who claimed he heard the shots?
2 Where is Mike Anderson who took the statements? You know
3 the State can call who they want to call to make their
4 case. That's their prerogative, but I think you should be
5 asking yourselves, here we have another officer who was
6 there on the scene that they didn't call. Why didn't
7 they? I leave that up to your determination. There were
8 no powder burns on the body.

9 The clothes were not even submitted to see if the
10 clothes had soot or powder burns or gunshot residue. You
11 know the evidence that would have supported Michael firing
12 the weapon, again, the objective evidence, the gunshot
13 residue kit, they didn't even get that right. They took
14 it with the wrong kind of swabs so that S.L.E.D. couldn't
15 do the test. Again, I'm not trying to criticize the
16 police department. I'm just saying these are all things
17 that could have been done to support what they're telling
18 you what happened.

19 And without that I don't understand -- I don't see
20 how you could possibly reach a conclusion because there
21 are too many other inconsistencies. You know people
22 running around in that club. This shell could have been
23 kicked from one location to another. We don't know that.
24 Any of these shells could be. We don't know where they
25 were found.

1 So I suggest to you that the absence of that type of
2 objective evidence puts you in a difficult situation as
3 the jury. As the persons who have taken an oath to find
4 the facts in this case. They have given you half a case.
5 They have given you lay witnesses who have been
6 inconsistent with each other on the facts that they
7 observed that night. Understandably so, but none the less
8 inconsistent with nothing objective to support it. You
9 have the task of determining whether Michael is guilty of
10 murder.

11 Assault and battery with intent to kill and escape.
12 And by the way on the escape he told you what happened
13 there. That he heard shots after he had been subdued and
14 was on the ground in handcuffs and was left, left on the
15 ground. So now they want to say, "Well, we left him on
16 the ground because there were cars back firing.
17 Obviously, they thought they heard gunfire or they
18 wouldn't leave a handcuffed suspect alone there on the
19 ground to go back in the club to investigate.

20 So that's the evidence on the escape, and I suggest
21 to you that Michael is not guilty of escape because he
22 told you he was just getting away a few feet from whatever
23 danger that may be coming to him. That's not an intent to
24 escape from lawful custody. The assault and battery with
25 intent to kill, you're going to have to find that when he

1 shot on the outside that he shot those people
2 intentionally; that that was his plan.

3 And there is nothing in the state of this evidence
4 that supports any reason whatsoever for Michael to have
5 shot those people. He told you why he fired those four
6 shots which is supported by the casings outside. And,
7 again, we don't know directions. We don't have anything
8 from outside to show where are those bullet fragments
9 went.

10 I believe there was somebody that testified that a
11 bullet fragment lodged in the door where the glass had
12 broken out. Again, use your memory on the facts, but this
13 then where is that bullet? That bullet's not here. What
14 caliber was that? I think you have a difficult job. The
15 State is going to say, "It's easy. It's open and shut.
16 Michael was in there shooting. Mr. Funderburk is dead.
17 Caliber is consistent."

18 But you heard other things from the witnesses.
19 You've seen what else could have been done by way of
20 objective evidence to support that, and that is not before
21 you. I think that once you sift through the facts you
22 will have to return a verdict of not guilty because either
23 you will have to think that this bullet was not the bullet
24 or you just can't figure out what happened. I can't
25 figure out what happened.

1 And I suggest to you that that's where you're going
2 to be found. Thank you very much.

3 CLOSING STATEMENT BY MR. JOYNER

4 MR. JOYNER: Ladies and gentlemen, thank you so much
5 for being attentive throughout this trial. I appreciate
6 it, and Mr. Hales appreciates it and the State of South
7 Carolina whom we represent appreciates it. A lot of was
8 said by Mr. Rogers about your deliberation and I lot was
9 said about what you look at and how you decide and so
10 forth. Well, I'm going to tell you. It's easy to make a
11 decision because the way you make your decision is you
12 make your decision based on what you find credible.

13 You base all of your credibility -- base all of your
14 decisions on credibility because you see in every case we
15 try, every case that a decision is made it all comes down
16 to one question, just one. And that is who do you
17 believe. It all comes down to the single question: Who
18 do you believe. And you believe who you find credibility
19 in, and you might ask, 'this is my first time serving on a
20 jury. How do I find credibility'?

21 Well, there are two ways: Number One, you find
22 credibility through corroboration: And what corroboration
23 means is that more than one person says the same thing and
24 I mean what those people say is backed up by somebody else
25 saying the same thing. For example, if one or two people

1 say the same thing there is not much corroboration. There
2 is not much credibility, but if four or five or eight or
3 ten people say the same thing you can believe them. There
4 is ten people saying it. There is a lot of corroboration,
5 therefore, there is a lot of credibility, and you can
6 believe what they say.

7 The second a way you decide who you can believe is
8 expert testimony. Experts are professionals. They're
9 trained. They've been doing this for a long time. They
10 know what they're talking about. That's why the Court
11 allows them to make opinions because they're so smart on a
12 particular subject. You can find credibility in what an
13 expert says, therefore, you can believe what an expert
14 says.

15 So as you deliberate think about those two things.
16 Think about corroboration. Think about what everybody is
17 saying, and think about credibility through expert
18 testimony. Those two things.

19 One thing that I noticed before I really get into my
20 closing is Mr. Rogers did his job as a defense lawyer. He
21 got up here and all he said was what was not present.
22 That's the only thing he said. Oh, don't look at anything
23 up here. Don't even think about what the people said.
24 Don't think about the items up here. Don't think about
25 anything. Just think about what wasn't here.

1 Somebody from S.L.E.D. didn't come. All he did was
2 tell you think about this. It's not here. But did it
3 ever occur to you that he doesn't like what he is hearing.
4 Ladies and gentlemen, he doesn't like the evidence that
5 we've put on because it hurts him. It proves that his
6 client murdered Cliff Funderburk. That's why he didn't
7 talk about it. That's why he talked about other things
8 because this evidence is so clear and so convincing.

9 The two things that he said they I want to talk about
10 first. Number one, is when Michael Watts was on the
11 ground handcuffed and somebody came out of the club and
12 soon has he got handcuffed and said, "Somebody was in
13 there shooting. Somebody is in the club shooting." Well,
14 one of the witnesses when asked how big the Matrix was
15 they said it was about as big as this Court area, and the
16 dance floor as Watts himself testified is up in the
17 corner.

18 The door is way down at the bottom. So think about
19 this. If the door is right here. This is the threshold.
20 I'm outside, and now I'm inside. If he shoots inside and
21 then his runs straight to the door and he gets outside and
22 he does his other shooting. By the time the people back
23 here in this corner start rushing and then the club is
24 full. I mean it's packed.

25 By the time all of these people push and bussle and

1 get their way out of there a minute or two are going to
2 pass. When those people get to the door and get outside
3 they're going to say, "Oh, there is a police officer.
4 Somebody was in there shooting." Well, of course,
5 somebody was in there shooting. It was Michael Watts. He
6 was standing right beside the door when he fired those
7 shots. They're going to say that it was Michael Watts
8 they were talking about that was in there shooting there
9 was no other person. There was no other person.

10 By the time they made it out Michael Watts had
11 already been handcuffed and it was just confusion because
12 they said someone else got shot and the officers thought
13 somebody else could possibly be in there. That's why they
14 left. That's when he got up to run away.

15 The other thing he said is that there is a bullet
16 hole in the wall somewhere. There was no pictures of it.
17 There was never any testimony there was a bullet hole in
18 the wall. David Evans was shot through the door. David
19 Evans, the door was open and David Evans was running. He
20 shot one, two, three, and when David Evans got to this
21 side of the door he shot through the door and it hit David
22 Evans in his shin.

23 Well, it's a whole in the door. That's what David
24 Evans said. That same door is still the front door and
25 there is still a bullet hole in the metal of that door

1 where the bullet went straight through it. That's what
2 David Evans said. .

3 Now, I want to get to my eye witnesses. We had ten
4 eyewitnesses. We didn't have two. We had ten people.
5 First was David Evans, and David Evans said that there was
6 no doubt it was Michael Watts because he said I came face
7 to face with Michael Watts. I saw him put the gun up and
8 shot, and when he shot he said, "I saw him shoot Cliff
9 Funderburk." He said then he turned around to go out and
10 he started shooting at me.

11 He said I saw him cause I was running from him.
12 That's how I know he was shooting at me because I came
13 face to face with him. He even showed a scar on his leg
14 where he was shot. There was no doubt who shot David
15 Evans. It was Michael Watts, and David Evans said Michael
16 Watts came in with the big gun with the green jacket on
17 and he was shooting. That's what David Evans said.

18 Now, let's go to our second witness we presented was
19 Latoya Miller, and she said that she knew that it was
20 Watts because she said when he was shooting, just as he
21 was shooting, Cliff fell. Right after the shot went off
22 Cliff fell and grabbed her belt hook. He fell down cause
23 he had just been shot. That's how she knew it was Watts,
24 and she said that Michael Watts was in the club shooting
25 with a big gun with a green jacket. That's what she said. .

1 Next, was Tameka Austin. She knew Michael Watts
2 before this incident so she could easily identify him
3 because she had seen him before and knew who he was. And
4 what did Tameka Austin say? She said that Michael Watts
5 was in the club shooting a big gun with a green jacket on.

6 Next was Kevin Johnson. Kevin Johnson was standing
7 by the door and he watched Michael Watts go to the car and
8 get the gun out the car. He said he watched him go in and
9 he watched him start shooting. And the thing that he
10 said, he said that Michael Watts was shooting in the club
11 with a big gun with a green jacket on.

12 Next was Tyrone Miller, and Tyrone Miller had
13 absolutely no doubt in his mind that it was Michael Watts
14 because he said Michael Watts came up and put the gun to
15 my face. He said Michael Watts thought I hit him. I
16 didn't do anything, but he said he put the gun to his
17 face. That's how he knew it was Michael Watts, and he
18 said, ladies and gentlemen, that Michael Watts was
19 shooting this gun with this green jacket on.

20 Next was Charles Miller. Charles Miller saw the
21 conflict on the floor when Michael Watts was fighting. He
22 said he watched him go out and come back in. When he came
23 in he was shooting a big gun with a green jacket on.

24 Next was Dwayne Miller. Dwayne Miller was in the
25 club at the time it happened. He said that he identified

1 Michael Watts come in the club shooting a big gun with a
2 green jacket on. That's what he said.

3 Then Angelo Mason, who was working at the Matrix that
4 night. Angelo Mason said that Watts went out of the club.
5 He said because after we broke up the altercation, they
6 were fighting, we escorted Watts out of the club and said
7 when he came back in he came back in firing a big gun with
8 a green jacket on.

9 Then Michael Tresdale, who is the owner of the
10 Matrix. He said he was standing outside because they had
11 escorted the people in the altercation outside. He said
12 he was standing right there when Michael Watts got the gun
13 out the car, racked the slide, and the bullet full down on
14 the ground. He said what I remember about that he said I
15 started running, but I saw Michael Watts. He had this gun
16 with a green jacket on. That's what he said.

17 Then our tenth eyewitness, Detective Larry Brown, who
18 is Assistant Chief Larry Brown. He was working security
19 that night at the Matrix. He saw Watts with the gun. He
20 was standing outside because he had just escorted some of
21 these people outside that were in this altercation.

22 He saw Watts rack the slide just like Watts testified
23 to. He racked the slide to put a bullet in the chamber to
24 ready it to shoot. He watched him do that. He said
25 people were running everywhere and Michael Watts was out

1 with his hand cocked at the side just shooting, just
2 shooting. People running everywhere.

3 He said through all his investigation he found no
4 evidence that there was another gun there. No evidence
5 whatsoever. What he did find was shell casings of all the
6 shells that Michael Watts shot. He found these. In fact
7 he found one of these beside Cliff's body. He found a
8 fired .45 caliber bullet beside Cliff's body. He was able
9 to apprehend Michael Watts and get in .45 caliber gun.
10 The same gun that Michael Watts used in the shooting.

11 He was able to apprehend Michael Watts and take this
12 green jacket from him which totally matches and totally
13 corroborates everything else all the other eyewitnesses
14 said in this case.

15 He said he never saw another person with a gun.
16 Never saw another person. Now, of all of these ten
17 witnesses the things that they said that corroborate each
18 other they said we all identified Michael Watts. We
19 identified this big, dark colored gun he had, and we
20 identified this green jacket he had on.

21 This is all evidence that we are showing you that he
22 stayed away from in his closing because this is clear and
23 convincing evidence. That's why he didn't talk about it.
24 That's why he wanted to lead you to think about something
25 else. Now, this is something to think about, too.

1 Crystal Jones, one of the witnesses for Mr. Watts.
2 His girlfriend of three years. Girlfriend at the time
3 this happened. Girlfriend how today. She said that she
4 knew Charles Miller. She had met him before. In fact she
5 identified this picture of Charles Miller. She said
6 Charles Miller was in the altercation with Michael Watts
7 with her boyfriend. Well, Michael Watts went outside to
8 get a gun after the altercation because he was coming back
9 to find Charles Miller.

10 Charles Miller, he was wearing a light colored shirt
11 that night. What's funny is that Cliff Funderburk also
12 had on a light colored shirt that night. If it's dark,
13 ladies and gentlemen, in a club it can be hard to identify
14 ---

15 MR. ROGERS: Your Honor, I'm sorry. I hate to
16 interrupt, but I'm not sure that was the testimony about
17 what they were wearing that night. I just ask the jury to
18 remember that as they will. I don't recall testimony
19 about what Mr. Funderburk was wearing.

20 THE COURT: In regard to that you have to recall the
21 testimony as you remember it as stated.

22 MR. JOYNER: Thank you, Judge. It was dark. It was
23 hard to see someone, and although these two gentlemen
24 don't look exactly alike when you go back, these are in
25 evidence. You can examine them. Look at their hairline,

1 they sort of have the same hairline. They have the same
2 face shape. Their ears are both sort of back. They have
3 the same -- they're straps down to their shoulders are the
4 same, and if they were dressed similarly it would be easy
5 to mistake Cliff Funderburk, who is no way at all involved
6 in this situation with Charles Miller, who Michael Watts
7 says swung at him. It would be easy to mean to shoot this
8 person, but in reality shoot this person.

9 Now, I want to move on to talk about expert
10 testimony. We had three experts come and testify. One
11 was Jennifer Stoner. She is a forensic chemist. She
12 tested this jacket for gunshot residue. Gunshot residue
13 was found on this jacket, and we had to bring her in to
14 prove the case, but everything she said was obviously and
15 clearly corroborated because Michael Watts himself said,
16 "I shot this gun a bunch of times while I had this jacket
17 on."

18 Next, we had Dan Defreese testify who you heard has
19 been doing this for over 30 years now. When Dan Defreese
20 testified he testified that all of those cartridges and
21 this bullet, this bullet matches this gun that Michael
22 Watts had. It was an exact match. This gun fired this
23 bullet.

24 These shell casings, the firing pin and the receiver
25 made marks on those bullets which meant that it proved

1 that this gun fired these bullets, these casings. That is
2 what the expert said, and that is again corroborated
3 because Michael Watts had this gun and he fired those
4 shots.

5 Finally, our final expert was Doctor Janice Ross, our
6 forensic pathologist who was here earlier today, and she
7 said that the cause of death in this case was a gunshot
8 wound. A gunshot wound that entered in the chest, went
9 through the heart, through part of the lung and out the
10 back. It went straight through and different hit any
11 bones.

12 She, when I asked her, "How big was the hole? How
13 big was the bullet hole," she said, "It was .45.
14 Forty-five. She said it was consistent with the person
15 being shot with a .45 caliber bullet. Ladies and
16 gentlemen, in this case it is not a coincidence that a .45
17 caliber bullet was found on the ground. It's not a
18 coincidence that a fired bullet was found next to Cliff's
19 body.

20 It is not a coincidence that a fired shell casing was
21 found next to Cliff's body. It is not a coincidence that
22 these shell casings and these bullets that were found next
23 to Cliff's body were fired by this gun which is a .45
24 which Michael Watts testified to having and firing. And
25 it's not a coincidence that the hole in Cliff's body are

1 .45 size holes. It's not a coincidence because Michael
2 Watts murdered Cliff Funderburk.

3 Michael Watts took this gun and fired it at Cliff
4 Funderburk and hit him in his chest and it went through
5 his heart and it killed him. And he's a murderer as a
6 result of the that. It was his decision to make and you
7 cannot overcome this evidence. It's entirely too much to
8 be coincidence. He was the killer, ladies and gentlemen.
9 Michael Watts is.

10 Now, I want to go through quickly and apply the facts
11 that we have just gone through to the law to the element
12 of the case. As I spoke to you earlier I told you that
13 murder was the killing of another person with malice
14 aforethought. Number One, killing. Cliff Funderburk was
15 killed by a .45 caliber bullet to his chest. That element
16 is easily met of another person. Cliff was another
17 person. He didn't kill himself.

18 And, finally, with malice aforethought. Malice is a
19 wrongful act done without just cause. There is a wrongful
20 act because it is wrong to take a loaded weapon back into
21 a place you already know to be hostile with the intent to
22 shoot somebody. That's wrong.

23 Next, without just cause. There was no cause to
24 shoot Cliff Funderburk, and do you want to know why there
25 was to cause to shoot Cliff Funderburk? Because, ladies

1 and gentlemen, he was totally and 100 percent innocent. A
2 lot of times we try murder cases up here and somebody was
3 shooting at somebody else and they were shooting back and
4 forth. People were peeling and they were high on cocaine,
5 and there is always something that just makes it not just
6 a hundred percent clean.

7 Just something ain't a hundred percent right. But,
8 ladies and gentlemen, in this case Cliff Funderburk was
9 absolutely, 100 percent innocent. He was 100 percent
10 innocent and that means zero fault in this case.

11 Murder has been proved, ladies and gentlemen. It is
12 - it's been proven. If you want to know about
13 aforethought, did malice exist. Malice obviously existed
14 because he thought about it. He went to his car and got
15 the gun and thought about it and got the gun and went back
16 in. He thought about it when he cocked the slide and
17 pulled a bullet up in the clamber and readied the gun to
18 shoot.

19 He thought about it when he went in and capped off
20 some rounds. Malice existed at the time he had to think
21 about all this. It's clearly existed.

22 Next, I want to talk about the assault and battery
23 with intent to kill on David Evans. There has to be an
24 unlawful act. Again, it's unlawful to shoot at man that's
25 unarmed and running away from you. That's unlawful.

1 Next, it has to be a violent injury. Can't just be a
2 punch where you get a little bruise. It has to be a
3 violent injury. David showed you the big scar he had on
4 his leg where he was shot with this .45 automatic. And
5 there has to be malice. It has to be wrongful and done
6 intentionally without just cause. It was a wrongful
7 shooting. He intentionally did it, and it was without
8 just cause. There was no cause to because David Evans
9 didn't have a gun. David Evans was running away from him.

10 There was no reason whatsoever, and he again, not
11 only is guilty of murder but he's guilty of assault and
12 battery with intent to kill.

13 Now, while the Defendant, Mr. Watts, testified he
14 said some things. And I wrote those things down what he
15 said. Some of the quotes that he gave. In his own
16 statement he wrote, he said, "I went into the club with a
17 gun." He said it himself. That is not a question. He
18 said it himself. Went in the club with a gun. He said,
19 "I cocked the gun to get it ready to shoot."

20 I asked him that on cross-examination. I said, "Yes,
21 that's right." He said, "I cocked the gun to make it
22 ready. Ready to fire." That's not in question. He said,
23 "I fired the gun in the club." That's not in question.
24 He fired the gun in the club. And he said, "I fired the
25 gun outside four or five times." He admit to everything.

1 Now, there were questions posed by Kevin in his
2 opening statement. He said think about these questions.
3 Think about who had a gun and think about how many time
4 each person was shot. Who had a gun? Michael Watts had a
5 gun. There is nobody else had a gun. There is no
6 evidence. There is no bullet holes. No casings. There
7 is -- nobody can I.D. a person. You know both of his
8 witnesses say, "Well, I heard gunfire, but I never saw
9 it." If they -- where is the person that was shooting?
10 Michael Watts was the only person with a gun.

11 The second question to think about is how many times
12 was each person shot. David Evans was shot in the shin,
13 in the leg with a .45, and you saw the big scar that he
14 has. Cliff Funderburk was shoot through the chest and
15 lost his life. Where was Mr. Watts shot? If it was so
16 dangerous for him that he had to shoot a gun where was he
17 shot?

18 Does he have a big scar on his leg from where he was
19 shot? Was he body in the morgue like Cliff Funderburk?
20 Were they having a wake for Mr. Watts where he was shot in
21 the chest like Cliff Funderburk? No, because he was not
22 shot. Because nobody else had a gun.

23 He went into that club and he stamped out a life,
24 ladies and gentlemen, and if he had it his way more than
25 just one person would have died. And in closing I want

1 you to remember when you go back to deliberate as a unit,
2 all 12 of you have to agree on the decision. You can't
3 have 11 saying one thing and one person saying not.
4 That's not how it works. All of you have to be unanimous.

5 And unlike when you go home, take your jacket off or
6 your hat and you hang it at the door and go on in the
7 house, you don't do that with common sense, ladies and
8 gentlemen. You don't do it with common sense. You keep
9 it with you at all times. And as you deliberate you use
10 your common sense and you think logically about how this
11 happened and how it went down.

12 And to talk about a reasonable doubt. He talked
13 about all this stuff that wasn't here, and he said that
14 the can lead to a reasonable doubt. But you remember
15 this. Your job when you go in there as a unit and when
16 you go in and you deliberate your job in no way, shape or
17 form to search for reasonable doubt. That is not what
18 you're supposed to do.

19 You all are supposed to go in as a unit and search
20 for the truth. You go in and you search for the truth.
21 And the truth in this case is that Michael Watts murdered
22 Cliff Funderburk. I thank you for your time.

23 CHARGE OF THE COURT

24 THE COURT: Ladies and gentlemen of the jury, all
25 right, that phase of the trial is now completed. The next

1 phase will be the charge which will take some time. It is
2 way into the normal lunch hour. We will stop at this
3 time. I'm arranging lunch for you. Do not discuss this
4 case amongst yourselves and remember my warnings about
5 that to anybody approach you.

6 I am going to ask y'all to step back to the jury room
7 and relax a minute and let me get the transportation lined
8 up for you so we can go get lunch. We'll come back at two
9 o'clock. We'll start the charge, and after that is
10 completed we'll put y'all to work, okay. So if y'all will
11 give me a minute or two let me get the vehicles lined up.

12 All right. Court is still in session. I've got a
13 matter I'm going to try to take care of immediately. The
14 jury is not going anywhere until I complete that.
15 However, I don't want anybody within 30 yards of this jury
16 as they leave. So those of you that are concerned with
17 this case, unless you've got something pending in the
18 courtroom, you need to go on to lunch and come back at
19 2:00.

20 Cause I don't want any instances, okay. Everybody on
21 this case go ahead and take a lunch break. We will resume
22 at two o'clock. Counsel, I do need to get on the record,
23 though, if y'all will inform me if you will waive any oath
24 of the bailiffs and security.

25 MR. JOYNER: That's fine, judge.

1 MR. ROGERS: Okay.

2 THE COURT: Thank you, gentlemen. All right.

3 Anybody that needs to leave, please, go on and part cause
4 we're going straight into another hearing on another
5 matter.

6 (WHEREUPON, other Court-related business was
7 conducted on the record but not related to the trial
8 of this case and not included in this transcript of
9 record.)

10 (WHEREUPON, Court reconvened at 2:09 p.m.)

11 THE COURT: Let's get everybody in that wants in.
12 Everybody ready to go?

13 MR. ROGERS: Yes, sir.

14 THE COURT: Bring them in.

15 (WHEREUPON, the jury panel enters the courtroom at
16 1:12 p.m.)

17 THE COURT: Sheriff, y'all secure the doors. I don't
18 want any traffic in and out. Ladies and gentlemen of the
19 jury, if I could have your attention. It now becomes my
20 duty to charge s you the law of the case. It is your duty
21 as jurors to accept and apply the law as the Court now
22 states it to you. As jurors it's your exclusive duty to
23 decide all the issues of fact in this case and for that
24 purpose to determine the affect, the value, the weight and
25 the truth of the evidence.

1 But the State and the Defendant have a right to
2 expect you will consciously consider and evaluate the
3 evidence and apply the law of the case thereto to the end
4 that both the State and the Defendant will receive and
5 obtain a fair and impartial trial in this case.

6 When I use the word, 'defendant' I'm referring to
7 Mr. Michael L. Watts. State of South Carolina by the
8 bills of indictment in this case charges the Defendant
9 with the offenses of murder, assault and battery with
10 intent to kill, escape, discharging a firearm into an
11 occupied dwelling, and possession of firearm in the
12 commission of a felony.

13 To these charges and to the indictment the Defendant
14 has entered a plea of not guilty. The plea of not guilty
15 by the Defendant places the burden of proof on the State
16 to prove by the evidence the guilt of the Defendant beyond
17 a reasonable doubt before you the jury can find the
18 Defendant guilty.

19 A Defendant is presumed in law innocent of the charge
20 contained in an indictment. It is a cardinal and
21 fundamental rule of the law of evidence that a Defendant
22 irrespective of the charge against him will always be
23 presumed innocent of the crime for which he was indicted
24 unless and until the guilt of the Defendant has been
25 proved by evidence that satisfies you the jury of his

1 guilt beyond a reasonable doubt.

2 The presumption of innocence is not a mere legal
3 theory, and it is not just a legal phrase. The
4 presumption of innocence is a substantial right to which
5 every accused is entitled to. Our Supreme Court has
6 declared that the presumption of innocence is like a robe
7 of righteousness placed about the shoulders of the
8 Defendant and it remain with him and assigns him to that
9 class of innocent until that presumptive robe of
10 righteousness has been stripped from his person by
11 evidence satisfying you the jury of the guilt of the
12 Defendant beyond a reasonable doubt.

13 The presumption of innocence accompanies a Defendant
14 from the time of his arraignment and appearance in Court
15 and continues with the Defendant throughout every stage of
16 the trial. And continues with the Defendant after you
17 retire to the jury room to deliberate your verdict. The
18 presumption of innocence continues in existence to the
19 benefit of the Defendant until you the jury reach the
20 conclusion that the State has proved the guilt of the
21 Defendant beyond a reasonable doubt.

22 Ladies and gentlemen, the State is not required to
23 prove the guilt of a Defendant beyond all doubt or beyond
24 every doubt but beyond a reasonable doubt. Some of you
25 may have served as jurors in civil cases where you were

1 told that it is only necessary to prove that a fact is
2 more likely true than not true.

3 In criminal cases the government's proof must be more
4 powerful than that. It must be beyond a reasonable doubt.
5 Proof beyond a reasonable doubt is proof that leaves you
6 firmly convinced of the Defendant's guilt. There are very
7 few things in this world that we know with absolute
8 certainty, and in criminal cases the law does not require
9 proof that overcomes every possible doubt.

10 If based on your consideration of the evidence you
11 are firmly convinced that the Defendant is guilty of the
12 crime charged you must find him guilty.

13 If on the other hand you think there is a real
14 possibility that he's not guilty you must give him the
15 benefit of the doubt and find him not guilty. If upon any
16 issue of fact that's central to conviction and a verdict
17 of guilty you have a reasonable doubt as how that issue
18 should be resolved it would be your duty to resolve that
19 reasonable doubt in favor of the Defendant.

20 Defendants, ladies and gentlemen, are not required to
21 prove their innocence, but the State is required by law to
22 prove every essential element of the offense charged
23 against the Defendant by evidence which satisfies you the
24 jury of the guilt of the defendant beyond a reasonable
25 doubt before you could convict the Defendant and find him

1 guilty.

2 If then upon the whole case you have a reasonable
3 doubt as to the guilt or the innocence of the Defendant he
4 is entitled to that reasonable doubt and would be entitled
5 to an acquittal and a verdict of not guilty. But on the
6 other hand if based upon the whole case you find that the
7 State has proved by evidence that satisfies you the jury
8 of the guilt of the Defendant beyond a reasonable doubt
9 then in such circumstance it would equally be your duty to
10 convict the Defendant and find him guilty.

11 Now, when I use the term, 'whole case', keep in mind,
12 now, you've got to deliberate and reach a verdict and
13 apply these principals of law, apply these principals of
14 reasonable doubt that I have just talked to you about on
15 each of those indictments that you will be deliberating.

16 Okay. Now, you heard me use the word, 'indictment'.
17 An indictment is not evidence and cannot be considered by
18 the jury as evidence in the case. An indictment is simply
19 the formal written instrument which contains the charge
20 against the Defendant and it serves as a formal document
21 by which this case is processed into the Court.

22 During this trial each of us, you and I, have certain
23 duties to perform. As the trial judge it is my
24 responsibility to preside over the trial of the case and I
25 also have the duty to rule upon or pass upon the

1 admissibility of the evidence offered during the progress
2 of this trial. You are to consider only the competent
3 evidence before you, and you are to disregard and disabuse
4 from your mind any testimony ordered stricken from the
5 record of this case during the progress of the trial if
6 there be any.

7 And you are to consider only the testimony which has
8 been presented from this witness stand together with any
9 exhibits admitted into the record of this case. And any
10 stipulations of counsel made in the record if there be
11 any.

12 I have the additional duty to charge you the
13 applicable law of the case. As the presiding judge I am
14 the sole judge of the law of the case, and it is your duty
15 to accept and apply the law as I now state it to you. If
16 you have a preconceived idea as to what the law is or what
17 the law ought to be in this case and it should not agree
18 with what I tell you the law is you are obligated under
19 your oath to abandon this preconception on your part
20 because you are sworn to accept the law precisely as I now
21 state it to you.

22 In every case tried in this Court before a jury the
23 jury becomes the sole and exclusive judge of the facts of
24 the case. You the jury are the judge of the facts of this
25 case. The Court is the judge of the law in the case. The

1 constitution of this state has declared that a trial judge
2 shall not intimate, state, comment upon, or make any
3 statement to a trial jury about the facts in the case.
4 Since you are the sole judge of the facts you are not to
5 infer from anything that I have said during the progress
6 of this trial in ruling upon the admissibility of evidence
7 or otherwise or anything I said during the course of this
8 charge to you that I have any opinion about the facts in
9 this case.

10 The law does not permit me to have an opinion about
11 the facts. That's a matter solely for you the jury to
12 determine. So as I said the jury is the finder of the
13 facts in the case, and you are the sole finders of the
14 facts. As jurors it's your duty to determine as I stated
15 to you the affect, the value, the weight, and the truth of
16 the evidence presented during the course of this trial.

17 Necessarily then, you must assess the credibility of
18 the witnesses who have testified in this case.
19 Credibility is simply a legalistic term which means
20 believability. It becomes your duty then to analyze and
21 evaluate the evidence and determine that evidence which
22 convinces you of it's truth.

23 I charge you that in determining the question of
24 credibility or believability of the witnesses you may
25 believe one witness against as several witnesses or

1 several witnesses as against one witness. You may believe
2 a part of the testimony of a witness and reject the
3 remaining part of the testimony of that same witness. You
4 may believe the testimony of a witness in it's entirety or
5 reject the testimony of a witness in it's entirety. You
6 may consider whether any witness has exhibited any
7 interest, any bias or any prejudice in the case.

8 In other words you can consider what reasons or what
9 factors would anybody have in stating an untruth or what
10 factors they would have in stating the truth to you. In
11 other words, why would somebody mislead you or lie to you
12 or why would somebody have the credibility to be telling
13 you the truth. All that is within your power as the jury
14 to consider the believability and the credibility of the
15 witnesses and the evidence that's before you.

16 You may even consider the demeanor of the witness and
17 appearance of the witness from the witness stand. And you
18 may consider the opportunity for knowledge concerning
19 those things about which a witness testified. And in
20 doing so, in exercising your mental processes and
21 determining what you consider to be true, the law simply
22 requires that you exercise your good judgment, your common
23 sense and your sense of logic and reason and your
24 experiences in life.

25 In other words, you have to determine this case based

1 on the evidence, the proper evidence that's before you in
2 this case. You're not to decide this case based on
3 something you may have been improperly told or that you
4 have seen on television or at a movie or theatrical
5 performance. And you are not to decide this case based on
6 what the attorneys may have said to you. You base it on
7 the evidence that's before you. The attorneys do not
8 provide the evidence to you. . . .

9 It all comes from the witness stand and the exhibit.
10 The attorneys may repeat evidence or compare the evidence
11 or cite it to you as they remember it, but the source of
12 the evidence does not come from anyone except the
13 witnesses from this witness stand and the exhibits that
14 are before you that are in the record. .

15 Now, in speaking of common sense it's often said that
16 you do not leave your common sense at the courthouse door.
17 Use your common sense in deliberating this case. You
18 apply all these attributes of ability that you have, and
19 you determine what you consider to be the truthful
20 evidence. And to those true stated facts as determined by
21 you the jury you take and apply the law as I stated it to
22 you and thus arrive at a true verdict in the case.

23 Now, I'm getting into the specific alleged crimes and
24 give you the statutes and the explanation and element of
25 those cases. However, before I get into that there is one

1 matter I do need to go ahead and cover with you before I
2 go into the specific charges. And that is I need to
3 instruct you at this time to disregard from your mind and
4 strike from the record, what I'm going to do at this time,
5 any testimony offered by Tyrone Miller as to
6 identification.

7 And I'm doing that based on the testimony that there
8 is a question of suggestiveness. Some photos that were
9 shown and I'm stepping un on that issue at this time and
10 instructing you the jury to disregard any evidence or
11 testimony from Tyrone Miller that involves identification
12 of the perpetrator in this case.

13 Now, that only applies to Tyrone Miller. Now, to the
14 specific charges. Indictment 50-0471 is for murder. I'm
15 going to read to you Section 16-310 of the Code of Laws of
16 South Carolina as amended. It states, "Murder is the
17 killing of any person with malice aforethought either
18 expressed or implied. And I point out to you implied
19 means the same thing as inferred.

20 Murder is the unlawful killing of any person with
21 malice aforethought. Either express or inferred or as I
22 said you may use the word, 'implied'. Hence, in other
23 words to convict one of murder the State must not only
24 prove from killing of the deceased by the Defendant but
25 that it was done with malice aforethought. And such proof

1 must be beyond a reasonable doubt. Malice aforethought is
2 an essential element in the crime of murder.

3 What is malice? Malice is defined in the law of
4 homicide as a term of art. Malice does not necessarily
5 mean an actual intent to kill. It is a technical term
6 importing wickedness, and excluding just cause or legal
7 excuse. It is something which springs from wickedness,
8 from depravity, from a depraved spirit, from a heart
9 depraved of social duty and fatally bent on mischief.

10 The words, 'expressed or inferred malice' do not mean
11 different kinds of malice but merely the manner in which
12 the only kind of malice known to the law maybe shown to
13 exist. That is to say either by direct evidence or
14 inference. Malice may be expressed as where previous
15 threats of vengeance or lying in wait or other
16 circumstances show directly that an intent to kill was
17 entertained.

18 Malice may be inferred where though no express intent
19 to kill is proved by direct evidence it maybe inferred
20 from the facts and circumstances which are proved. Malice
21 maybe inferred from the willful, deliberate and
22 intentional doing of an unlawful act without just cause or
23 legal excuse.

24 In other words, in it's general signification malice
25 means the doing of a wrongful act intentionally without

1 justification or legal excuse. Now, if facts proved are
2 sufficient to raise an inference of malice this inference
3 would be simply an evidentiary fact to be taken into
4 consideration by you the jury along with all the other
5 evidence in the case. And you may give it such weight as
6 you determine it should received as to whether or not
7 malice had been proved beyond a reasonable doubt.

8 Now, while malice maybe inferred by the use of a
9 deadly weapon where the circumstance relating to the
10 homicide are brought out in the evidence this inference
11 vanishes and the burden is on the State to prove malice by
12 evidence that satisfies the jury beyond a reasonable
13 doubt.

14 And it will be observed, ladies and gentlemen, that
15 there must be malice aforethought, and while to law does
16 not require that malice shall exist for any particular
17 length of time before the commission of the act it must be
18 a forethought. There must be a combination of the
19 previous evil intent and the act producing the fatal
20 result. I charge you the State is not required to prove a
21 motive for a homicide.

22 I also charge you that malice as and essential
23 ingredient of murder does not necessarily import ill will
24 toward the individual that is injured, but instead
25 signifies a malignment, recklessness of the lives and

1 safety of others or a condition of the mind which shows a
2 heart fatally bent on mischief.

3 I further charge you that under the law of South
4 Carolina that a person need not have any specific intent
5 to kill or jury another person to be guilty of murder
6 where there is evidence of such recklessness and
7 wantonness as to indicate a depravity of mind and
8 disregard for human life from which malice maybe inferred.

9 Now, I'm going to talk with you about transferred
10 intent resulting in death. A person with malice
11 aforethought attempts to unlawfully kill a certain other
12 person but by mistake or misadventure in such attempt
13 kills a different person from the one who he intended to
14 kill the law nevertheless holds the assailant responsible
15 for his felonious intent merely transferring it's
16 direction from the original object of the attempt to the
17 person killed the homicide so committed is murder.

18 The degree of guilt is the same as it would have been
19 if the attempt had resulted in the death of the person at
20 whom it was aimed.

21 Indictment 05-473 is for assault and battery with
22 intent to kill. The alleged victim being David Ricky
23 Evans. Assault and battery with intent to kill is an
24 unlawful act of violent nature to the person of another
25 with malice aforethought either express or implied. Thus,

1 assault and battery with intent to kill contains all the
2 elements of murder accept the actual death of the person
3 assaulted, and there must be not simply intent to kill for
4 it may be present in the case of manslaughter, but intent
5 to kill accompanied with malice aforethought. The same
6 distinguishing element between murder and manslaughter.

7 The intent to kill is the gist of the offense of
8 assault and battery with intent to kill and it must also
9 be present, so before the accused can be convicted of this
10 charge you must be satisfied beyond a reasonable doubt
11 from the evidence that if the party assaulted had died as
12 a result of the injury the Defendant would have been
13 guilty of murder.

14 Indictment 06-499, possession of firearm during
15 collision of a violent crime. Section 16-23-490 of our
16 Code of Laws makes it illegal to possess a firearm or
17 visibly display what appeared to be a firearm during the
18 commission of a violent crime.

19 Section 16-160 provides that a violent crime includes
20 the offenses of murder, criminal sexual conduct in the
21 first and second degree, criminal sexual conduct with
22 minors, assault with intent to commit criminal sexual
23 conduct, assault and battery with intent to kill,
24 kidnapping, voluntary manslaughter, armed robbery. Drug
25 trafficking is defined in Section 44-53-370(e)10, arson in

1 the first degree, burglary in the first degree and
2 burglary in the second degree under Section 16-11-312(b).

3 For you to find the Defendant guilty of this separate
4 statutory offense of possession of a firearm during a
5 violent crime you must first find the Defendant guilty of
6 a violent crime. If you find the Defendant guilty, of in
7 this case, murder or the assault and battery with intent
8 to kill or both, then you must determine whether the State
9 has proved beyond a reasonable doubt that the Defendant
10 was in possession of a firearm or visibly displayed what
11 appeared to be a firearm during the commission of the
12 violent crime.

13 As used in Section 16-23-490 of the South Carolina
14 Code a firearm is defined as any machine gun, automatic
15 rifle, revolver, pistol or any weapon which will or is
16 designed to or may be readily converted to expel a
17 projectile.

18 Indictment 05-476, discharging a firearm into an
19 occupied building. I charge you from 16-23-440 of our
20 Code of Laws of South Carolina it is unlawful for a person
21 to discharge or cause to be discharged unlawfully firearms
22 at or into a dwelling house other building, structure or
23 enclosed regularly occupied -- I'm sorry. Or enclosure
24 regularly occupied by persons.

25 Let me read that again to you since I misspoke. It

1 is unlawful for a person to discharge or cause to be
2 discharged unlawfully firearms at or into a dwelling
3 house, other building, structure or enclosure regularly
4 occupied by persons. All right.

5 Indictment 05-477, is for common law escape. This is
6 under our common law. Has not been cotified or put in
7 statutory form. The indictment alleges that in
8 Chesterfield County on or about November 28th 2004 after
9 having been arrested and placed in handcuffs without use
10 of force the Defendant sought to gain his liberty in that
11 he did run from the officers from the scene of a crime in
12 violation of the common law of the State of South
13 Carolina.

14 I charge you that an escape is defined as follows:
15 When one arrested gains his liberty before he was
16 delivered in due course of law and as the departure of a
17 person from custody. Escape is fleeing, getting away to
18 avoid arrest.

19 I think I have covered all of the specific alleged
20 charges. Let me double check. Ladies and gentlemen, you
21 are not partisans or advocates for the State of South
22 Carolina or the Defendant. You do not serve as jurors to
23 reward friends or punish enemies. Obviously, such a
24 perverted system of justice would be intolerable in our
25 society.

1 You have been selected by both the State and the
2 Defendant to be fair and impartial jurors. It is your
3 duty then by you joint deliberations to determine the
4 truth in this case giving to the Defendant the benefit of
5 each and every reasonable doubt on each and every issue.
6 Then to the facts that you determine to be true you then
7 take and apply the law which has been given to you by the
8 Court and thus arrive at a verdict which does speak the
9 truth of the case.

10 As I told you earlier the word, 'verdict' is a Latin
11 derivative word which means in essence a true saying. And
12 when you have accomplished these responsibilities you will
13 have satisfied you're oath as jurors, and you will have
14 discharged your duty to the Court.

15 I'm now going to speak with you about the forms of
16 the verdict in this case. If the State has failed to
17 prove the guilt of the Defendant on the particular
18 indictment that you take up to deliberate on beyond a
19 reasonable doubt -- in other words, if the State failed to
20 prove the guilt of the Defendant beyond a reasonable doubt
21 on that particular crime your verdict would be two words,
22 'not guilty'. If the State has proved the guilt of the
23 Defendant beyond a reasonable doubt your verdict would be
24 one word, 'guilty'.

25 The verdict that you render in this case on each

1 indictment must be the verdict of each and every juror.
2 In other words, your verdict will have to be a unanimous
3 verdict. All 12 jurors must agree on the verdict which
4 you authorize the foreperson to write for the jury. Madam
5 Forelady, it will be your duty to fill in the appropriate
6 verdict. On the back of these indictments there is a
7 little area called, 'verdict'. It will be your duty to
8 write in the appropriate verdict, sign your name and
9 date -- put the date that the verdict is reached.

10 That will be your duty to do that on each of these
11 indictments, okay. But as I said you've got to take up
12 each indictment, deliberate and reach a verdict. That,
13 Madam Forelady, fill in the appropriate verdict and sign
14 it. On each of these indictment, as I said, it's got to
15 be a unanimous verdict. After you have deliberated and
16 reached verdicts you will knock on the door and let us
17 know and we will prepare the Court to receive the verdict.

18 Should you need any assistance of any type, please
19 knock on the door. There will be a bailiff posted close
20 by where we can take care of any needs you may have.

21 Now, if someone needs to go to the restroom, take a
22 cigarette break or has to leave the deliberations
23 momentarily, Madam Forelady, cease your deliberations
24 until all 12 deliberating jurors are back in place. Okay.
25 All 12 have got to be in place so if somebody wants to

1 take a break, step outside, take a cigarette break, stop
2 your deliberations at that point and just resume when
3 you've got them all back.

4 JURY FOREPERSON: Yes, sir.

5 THE COURT: I think I've covered everything I want to
6 cover with you. I've got to check in one last time with
7 counsel. And I may have to bring you back out to adjust
8 if need be, but I think I've covered all the essential
9 items I wanted to cover with you. So at this time I'm
10 going to ask you to step back. Do not begin your
11 deliberations, however, until I have counsel check off all
12 these exhibits and Madam Clerk brings the entire slate of
13 exhibits back to you along with these verdict forms.

14 Once you have all of them in place you may begin your
15 deliberations, but do not start until we get those back to
16 you. It's hot in here. At least it is to me and I will
17 try to get the temperature down a little bit. I hate to
18 even think what you're faced with back there cause my
19 chambers over here has no air conditioning in it
20 whatsoever. So I can sympathize with you. May step back.

21 (WHEREUPON, the jury panel was excused from the
22 courtroom at 2:44 p.m.)

23 THE COURT: Mr. Bailiff, we need them if they would
24 just relax in another room for a few minutes.

25 MR. JOYNER: Nothing from the State, Judge.

1 MR. ROGERS: Judge, I thought you had said you were
2 going to charge the affect of a prior conviction involving
3 moral turpitude?

4 THE COURT: You got one?

5 MR. ROGERS: I don't have one, Judge. I'm sorry.

6 MR. JOYNER: Judge, I don't know that anybody had a
7 prior conviction.

8 MR. ROGERS: Tyrone Miller.

9 MR. JOYNER: It's not moral turpitude.

10 THE COURT: What was it?

11 MR. JOYNER: A drug charge possession with intent to
12 distribute is crime a of moral turpitude.

13 THE COURT: Let me find the charge and read it.

14 MR. ROGERS: I thought it was.

15 THE COURT: Evidence of conviction of a crime can be
16 used by you in determining whether the witness is truthful
17 or worthy ---

18 MR. ROGERS: You said that, Judge?

19 THE COURT: No, I didn't say that, but that's what I
20 got.

21 MR. JOYNER: Judge, my only thing is that Rule 609
22 talks about what is admissible and the crime of moral
23 turpitude is the -- he fits in under the first element of
24 Subsection One which it talks about any crime that you can
25 get a year or more for -- more than a year, but under the

1 second section says, 'evidence that any witness has been
2 convicted of a crime shall be admitted if it involves
3 dishonesty or fault statements regardless of punishment.
4 It has to be those. He was convicted of possession with
5 intent to distribute. That's not a crime of moral
6 turpitude.

7 MR. ROGERS: That's apples and oranges, Judge. He's
8 reading impeachment by evidence of conviction of a crime.
9 Well, I'm asking you to charge them is that they're
10 entitled to use the evidence of the prior crime to
11 determine credibility. That doesn't fall under this.

12 THE COURT: I'm not going to mention moral turpitude.

13 MR. JOYNER: That's what he said earlier.

14 MR. ROGERS: I'm sorry. I thought they were the
15 same.

16 THE COURT: Well, to tell you the truth there is
17 another once that I need to add. That's expert witness
18 testimony. I need the two alternates back, Sheriff.

19 (WHEREUPON, the jury panel enters the courtroom at
20 2:51 p.m.)

21 THE COURT: Ladies and gentlemen of the jury, I
22 apologize to you. I left out two short charges that I
23 needed to give you. Take me just a minute or two to
24 cover. First one I want to cover concerns opinion
25 evidence of expert witnesses, sometimes said.

1 You have heard testimony from persons described as
2 experts. Persons who by education, experience, have
3 become expert in some field may state their opinion on
4 that field and may also state their reason for the
5 opinion. Expert opinion testimony should be judged just
6 like any other testimony.

7 You may accept it or reject it and give it as much
8 weight as you think it deserves considering the witness's
9 education and experience, the reasons given for the
10 opinion, and all the other evidence in the case. I also
11 charge you that evidence of conviction of a crime can be
12 considered by you in determining whether a witness is
13 truthful or worthy of belief or credibility as I spoke
14 with you about earlier. Okay.

15 All right. Y'all step back. Twelve of you, the two
16 of you, and we've got to check this exhibit list off, and
17 we'll have it back to you, hopefully, in two or three
18 minutes.

19 (WHEREUPON, the jury panel was excused from the
20 courtroom at 2:53 p.m.)

21 THE COURT: All right. Okay, gentlemen, y'all check
22 off the exhibits.

23 (WHEREUPON, the jury panel was excused from the
24 courtroom to begin deliberations at 2:57 p.m.)
25

1 (WHEREUPON, other Court-related business was
2 conducted on the record but not related to the trial
3 of this case and not included in this transcript of
4 record.)

5 QUESTION FROM THE JURY

6 THE COURT: Need everybody back in. Mr. Rogers, back
7 in. Okay, we're back on the record of State v. Watts.
8 I've got three inquiries from the jury. I'm going to
9 publish them at this time. I've already decided how I'm
10 going to handle them because their similar to ones I had
11 in the past.

12 Number One, on time for murder 05-GS-13-0471, states
13 that Michael Watts is charged with shooting a firearm at
14 Cliff Funderburk in the back. An autopsy states shot in
15 the chest.

16 Number Two, do we have to stick to the charge against
17 Michael Watts or can they be lessor charges.

18 Number Three, where is the rest of the evidence?
19 I.e. specifically, the videotape, etc. Can we see these?
20 All right. I'm going to make this a Court's exhibit and
21 going to do the best I can to it and then I'll send the
22 jury back. Got any exceptions to it we'll note it, Okay.
23 Bring them in.

24 (WHEREUPON, the jury panel enters the courtroom at
25 4:21 p.m.)

1 (WHEREUPON, Court's Exhibit No. 1 was marked for
2 identification and received into evidence.)

3 THE COURT: Madam Forelady and ladies and gentlemen
4 of the jury, I'm in receipt of your inquiry and I have
5 recorded them on the record. Now, I'm going to go over
6 them and respond to them the best I can, okay..

7 Number One, on indictment of murder, 05-GS-13-0471,
8 states that Michael Watts is charged with shooting a
9 firearm at Cliff Funderburk in the back. The autopsy
10 states shot in the chest. The indictment which is
11 prepared by the Solicitor's Office and presented to the
12 grand jury is based on the information that's provided in
13 the original arrest warrant.

14 The indictment, of course, once it is true billed by
15 the grand jury, remains in that state that it was
16 originally drawn. Now, what the Court has to do as the
17 case is presented you have to conform that indictment as
18 to the evidence that's presented in Court. In other words
19 in many cases an indictment is drawn to the best
20 information available to the State at the time that it is
21 drawn.

22 For instance, you may have an autopsy report that
23 comes to the information of the State some months after
24 the indictment has been issued. So to make sure I'm
25 technically correct on this as long as the State meets the

1 proof as I told you earlier in my charge about the
2 elements, the initial elements of the offense, the Court
3 and that includes the jury may conform the facts to see if
4 those essential elements are met.

5 Hope I'm being clear on that because the State, see
6 once that indictment is issued, they based what they had
7 as information at the time the indictment was issued. As
8 I said the Court may conform the evidence to see if they
9 meet the elements of the charge as I gave them to you in
10 the charge earlier today.

11 That's about best I can answer that because I cannot
12 comment upon the facts. I'm not permitted to do that. I
13 don't have any opinion about the facts.

14 Second question, do we have to stick to the charges
15 against Michael Watts or can they be lesser charges. In
16 this case there is no charge to you of any possible lesser
17 included offenses. You have to base your decision on the
18 charge before you and on the evidence that has been
19 presented to you in Court.

20 Three, where is the rest of the evidence? I.e.
21 videotape, etc. Can we see these? No. You can't see
22 that cause it is not in evidence. If I recollect the
23 facts correctly there was some mention in the testimony
24 concerning the video -- there was some mention in the
25 testimony concerning an audio portion of a videotape but

1 it was not introduced into evidence. So therefore you
2 cannot see those to answer you question directly.

3 Okay, I think I have answered that to the best of my
4 ability. If you have any further questions, Madam
5 Forelady, if you will once again write the question down
6 and I'll try to address it the best I can under the law,
7 Okay. All right.

8 Y'all did the right thing in writing them down and
9 you continue to follow that procedure if you have any
10 more.

11 (WHEREUPON, the jury panel was excused from the
12 courtroom at to continue deliberations at 4:26 p.m.)

13 THE COURT: All right. Anything from the State?

14 MR. JOYNER: No, sir?

15 THE COURT: From the Defense?

16 MR. ROGERS: Yes, sir, Your Honor. With all due
17 respect on the first answer to the jurors questions I
18 think you gave a correct statement of law regarding that
19 the jury could find the evidence and conform that to the
20 parameters of the indictment. But I would also request
21 that you instruct the jury as a matter of law that the
22 Solicitor did have the legal right to go back to the grand
23 jury and amend that indictment.

24 And the reason I say that is because I think one of
25 the problems the jury is having, and a factual problem we

1 cannot comment on, is that Detective Brown did himself
2 testify that Mr. Funderburk was shot in the back. So I
3 think they're having problems resolving that testimony
4 along with the indictment.

5 And I think if you tell them that what you said
6 initially was correct, but in addition the Solicitors have
7 the authority and right to amend an indictment at any time
8 prior to trial.

9 THE COURT: You're exactly right, and I'm going to
10 tell you right ahead of time. I sort of regret sending
11 the indictments back. I wish we would have just done some
12 verdict forms because this kind of thing has happened
13 before.

14 MR. ROGERS: I thought that was the way y'all did it
15 up here, Judge. I didn't want to question it.

16 MR. HALES: Judge, if you do say that I also ask that
17 you reiterate the fact that the indictment itself is not
18 evidence in the case.

19 THE COURT: Be glad to. Bring them back.

20 (WHEREUPON, the jury panel enters the courtroom at
21 4:28 p.m.)

22 THE COURT: Ladies and gentlemen of the jury, with
23 the help of counsel I want to further clarify my response
24 to you considering the first question on the indictment
25 for murder. Everything that I stated to you, please, keep

1 in mind. Remember what I stated to you earlier concerning
2 that question, but I also need to add to that where there
3 won't be any confusion.

4 The State does have the right to come back at any
5 time and amend an indictment and carry it back before the
6 grand jury. They have that right. Also, now, I've
7 already charged you on this, but I charge you once again.
8 An indictment is not evidence in the case. Okay. With
9 that said you may return to your jury room.

10 (WHEREUPON, the jury panel was excused from the
11 courtroom to begin deliberations at 4:30 p.m.)

12 THE COURT: All right. Okay.

13 MR. ROGERS: And for the record I have no exception
14 to the other two questions.

15 THE COURT: State?

16 MR. HALES: No, sir.

17 THE COURT: Thank you, gentlemen. That's a Court's
18 exhibit.

19 COLLOQUY

20 MR. ROGERS: Judge, you still plan to keep the
21 alternates around?

22 THE COURT: I think we can turn them allose. Let's
23 go get them and bring them around and thank them for their
24 service and then I'll release them. Okay. To the
25 alternates, we want to take time to thank y'all for your

1 service in this case. I want to especially thank you for
2 your patience with the Court. Kept you awhile to make
3 sure that we proceeded with the deliberations and the jury
4 is indeed deliberating. And I've decided at this point in
5 time it will be no need to keep y'all any longer.

6 As you know an alternate sits in case one of the
7 regular jurors gets incapacitated, and that has not
8 happened in this case. Looks like we had a close call
9 last night. He was able to come back. I understand he's
10 probably going to have to have some surgery. Wish him the
11 best on that.

12 Good news. It's double good news. You're through
13 for the week and this case and you're going to get paid.
14 Please, don't open that paycheck until you get out the
15 door cause I don't want you grimacing and cussing and
16 fussing with us because we can't control that. You've got
17 to talk to your county councilman about that. Okay. It
18 is indeed an embarrassment ment to the Court to have the
19 knowledge to know what you're going to be paid, and I
20 apologize for it.

21 If I could control it and Miss Faye could control it
22 we would do better. Unfortunately, we don't.

23 (WHEREUPON, the jury alternated were excused from the
24 courtroom at 4:33 p.m.)

25 THE COURT: And, y'all, and I haven't done it so far.

1 I was going to do it later, but since we had to
2 interrupted other proceedings here I want to thank counsel
3 for their presentation in the case and their courtesy and
4 patience with the Court. I appreciate all three of y'all
5 in your demeanor and working with each other as well as
6 the Court staff.

7 MR. HALES: Thank you, Judge.

8 THE COURT: Jurors are dismissed. All right.

9 (WHEREUPON, other Court-related business was
10 conducted on the record but not related to the trial
11 of this case and not included in this transcript of
12 record.)

13 VERDICT OF THE JURY

14 (WHEREUPON, the jury panel enters the courtroom at
15 7:15 p.m.)

16 THE COURT: All right. All jurors are accounted for,
17 Madam Clerk.

18 CLERK OF COURT: Madam Forelady, have you reached a
19 verdict?

20 JURY FOREPERSON: We have.

21 CLERK OF COURT: If you will pass it to the bailiff,
22 please.

23 THE COURT: Thank you. All right. All forms are
24 signed and dated. Madam Clerk, you may publish the
25 verdicts.

1 CLERK OF COURT: Okay. Docket Number 2005-GS-13-477.
2 State of South Carolina, County of Chesterfield, and the
3 Court of General Sessions. The State v. Michael L. Watts.
4 Indictment for escape. We the jury find the Defendant
5 guilty.

6 Docket Number 2005-GS-13-476. State of South
7 Carolina, County of Chesterfield. The State v. Michael L.
8 Watts, indictment for weapons, discharging firearms into
9 an occupied building. We the jury find the Defendant
10 guilty.

11 Docket Number 2005-GS-13-473. The State of South
12 Carolina, County of Chesterfield and the Court of General
13 Sessions. State v. Michael L. Watts. Indictment for
14 assault and battery with intent to kill. We the jury find
15 the Defendant guilty.

16 Docket Number 2005-GS-13-471. State of South
17 Carolina, County of Chesterfield, in the Court of General
18 Sessions. The State v. Michael Watts. Indictment for
19 murder. We the jury find the Defendant guilty.

20 Docket Number 2006-GS-13-499. The State of South
21 Carolina, County of Chesterfield, Court of General
22 Sessions. The State v. Michael L. Watts. Indictment for
23 possession of a weapon during the commission of certain
24 crimes. With the jury find the Defendant guilty.

25 Madam Forelady, is this still your verdict.

1 JURY FOREPERSON: Yes.

2 CLERK OF COURT: If so would the 12 of you please
3 raise your right hand.

4 THE COURT: Anything further of the jury from the
5 State?

6 MR. JOYNER: No, sir. Not from the State.

7 THE COURT: From the Defense?

8 MR. ROGERS: No, Your Honor.

9 COLLOQUY

10 THE COURT: Ladies and gentlemen of the jury, I want
11 to take just a brief moment here to thank you for your
12 service on this case and your service this week. Jury
13 service is a constitutional duty as well as a right and
14 privilege, and we appreciate y'all taking part in the
15 process. We will not have any more jury trials this week.
16 We will be back tomorrow to handle matters that we do not
17 need a jury panel present for. So your service will end
18 tonight.

19 We appreciate your patience with the Court cause I
20 know we kept you back in the jury room for extended
21 periods of time, and that is key on the fact what I told
22 you about you are the finders of the facts and the Court's
23 the judge of the law. I have to handle matters of law
24 outside your presence sometimes and that's when we have to
25 send you back and keep you back there in the room.

1 We apologize for the facilities. I am proud to tell
2 you that the Council, the County Council, is working on
3 that and they have plans to get all there corrected. So,
4 hopefully, if you're drawn on to serve on a jury in the
5 future you will have a better facility to work with. Now,
6 Madam Clerk, I think has you paychecks ready as well as
7 employment slips if they need them. All right.

8 The next the phase of this case will be what we call
9 mitigation and sentencing. We will move on to that in a
10 few minutes. If you would like to stay and watch that you
11 may do so. You can keep your seat where you are or retire
12 back to one of the front benches and relax there. You do
13 not have to say. I'll leave that totally up to you.

14 If you would like to go ahead and leave I'll ask
15 Madam Clerk to step over behind the bailiffs and meet you
16 at that door as you depart and you can obtain your check
17 and your slip at that time. Now, I do not want anybody
18 leaving the courtroom until the jurors that desire to
19 leave have left. Also ask that the a contingent with the
20 Sheriff's Department make sure that the jury panel is
21 safely escorted to the parking lot. Okay. All right.
22 Jury is dismissed.

23 (WHEREUPON, the jury panel was excused from the
24 courtroom at 7:22 p.m.)

25 THE COURT: Counsel, y'all approach just a minute.

1 (WHEREUPON, a bench conference was held off the
2 record, but out of the presence of the jury.)

3 SENTENCE OF THE COURT

4 THE COURT: Okay, State.

5 MR. JOYNER: Judge, I mean you heard the facts, and
6 you know it was clear what the State's position was and
7 has been along, what we were going to ask for. I spoke
8 with Cliff's parents and know they would like to speak.
9 Judge, I think our -- their problem, obviously, their son
10 has died and is gone now. And my problem, Judge, is that
11 I believe in my heart that if Mr. Watts had it his way
12 that maybe three people would be dead now instead of just
13 one.

14 And he took one life but I mean I just thank the Lord
15 intervened on the other two. When you're shooting a gun
16 the big in a crowd like that, Judge, it's just I don't
17 know. The State's position is life without parole on the
18 murder and maximum on all the other convictions. That's
19 been our position all along and that's still our position
20 now. And that's all I have to say, Judge. I know the
21 parents would like to speak at the appropriate time?

22 THE COURT: All right.

23 MRS. FUNDERBURK: Thank God. I don't think Michael
24 Watts should be on the streets because he was a danger.
25 He took my son's life, and I don't see why he should be.

1 He may take somebody else's. He should be put away for
2 life without parole.

3 MR. FUNDERBURK, SR.: What she said. Me, too.

4 MR. JOYNER: That's it, Judge.

5 THE COURT: Want the take just the minute to thank
6 everybody involved on all sides of this case for your
7 demeanor. I know I had a little problem yesterday from a
8 report I had outside, but other than that I want to thank
9 everybody for their demeanor and behavior within the
10 courtroom. I want the thank the family of the deceased
11 for their patience. I know it has been an eternity, at
12 least it feels like its been for the system to move along.

13 Just keep in mind in the future that the criminal
14 justice system the way it is based on our constitution is
15 not meant to move too quickly. Yes, it can move faster,
16 but it is not to be something taken likely and rushed
17 through. Anything else from the State?

18 MR. JOYNER: No, sir.

19 THE COURT: Mr. Rogers.

20 MR. JOYNER: May it please the Court. Your Honor,
21 you heard that Michael is 25 years-old. He completed the
22 tenth grade. He was working ever since he left school.
23 He had one child six years old. He has no prior record
24 other than a disorderly on his rap sheet. It's not a
25 whole lot more I can say. Of course, Michael maintains

1 his position about what happened, and I'd ask you to
2 consider something less than the statutory maximum.

3 THE COURT: I thank you for taking the case and
4 enably presenting the defense side of the case and getting
5 the case to the jury. Mr. Watts, anything you like to
6 say?

7 MR. WATTS: No, sir.

8 THE COURT: 05-471, whereby the State v. Michael
9 Watts, whereby the jury has reached a verdict of guilty.
10 The sentence of the Court is that Michael Watts be
11 confined in the State Department of Corrections for a
12 period of his natural life.

13 On the assault and battery with intent to kill on
14 05-473, whereby the jury has reached a verdict of guilty.
15 As to that indicted charge the sentence of the Court is 20
16 years. That will be concurrent, of course, to that life
17 sentence because it is life, natural life without parole.

18 On the possession of a weapon during the commission
19 of a crime the sentence of the Court is five years. That
20 is consecutive to the indictment of assault and battery
21 with intent to kill on -473, but is concurrent to the life
22 sentence.

23 On 05-476, discharging a firearm into an occupied
24 building the sentence of the Court is 10 years,
25 concurrent.

1 And on -477, for the escape, 05-477 for escape, the
2 sentence is one year, concurrent.

3 Mr. Watts, I need to advice you at this time as your
4 attorney will speak with you about. Certainly, you have a
5 right to appeal. Appeal rights work this way. You need
6 to file a notice of appeal within ten days of today.
7 Otherwise, you would lose your right to appeal. Anything
8 further?

9 MR. JOYNER: No, sir, not from the State.

10 THE COURT: All right. This court in recess until
11 9:30 in the morning.

12 MR. JOYNER: Thank you, Judge.

13 MR. HALES: Thank you.

14 MR. ROGERS: Judge, I will renew my motions for
15 directed verdict based on my earlier objections.

16 THE COURT: Thank you, Mr. Rogers.

17 END OF TRANSCRIPT OF RECORD

18

19

20

21

22

23

24

25

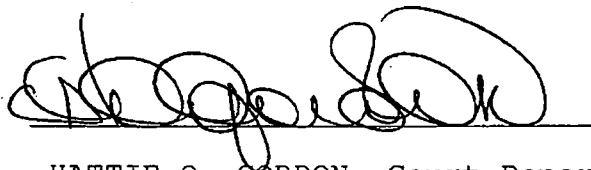
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Chesterfield County, South Carolina, on the 1st day of
August, 2007.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

February 8, 2008

A handwritten signature in black ink, appearing to read 'Hattie O. Gordon', is written over a horizontal line.

HATTIE O. GORDON, Court Reporter.

FORM 5

STATE OF SOUTH CAROLINA)

County of Chesterfield)Michael L. Watts #323225)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

10/13 - 000255
IN THE COURT OF COMMON PLEAS)CLERK OF COURT
CHESTERFIELD COUNTY, S.C.
2010 JUL 2 AM 11 25
APPLICATION FOR)

POST-CONVICTION RELIEF)

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution
990 Wisacky Highway, Bishopville S.C. 29010
2. Name and location of Court which imposed sentence Judge Paul M. Burch
Chesterfield County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) #:05GS13-0471 murder

- (b) #105GS13-0473 Assault and battery w/Intent to Kill
 (c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) August 1, 2007 Life imprisonment for murder
 (b) 20 years for Assault and battery w/Intent to Kill
 (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
 (b) ☒ after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered Ayes@ to (7), list:

- (a) the name of each Court to which you appealed:

- i. The South Carolina of Appeals
 ii. _____
 iii. _____

- (b) the result in each such Court to which you appealed:

- i. Appeal was Dismissed
 ii. _____
 iii. _____

- (c) the date of each such result:

- i. January 25, 2010
 ii. _____
 iii. _____

- (d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. unpublished opinion no. 2010-up-019
 ii. _____
 iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) _____

2010 JUL 2 AM 11 24
 FALCON
 CLERK OF COURT
 CHESTERFIELD COUNTY S.C.

CLERK OF COURT
 CHESTERFIELD COUNTY S.C.

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Attache
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attache
- (b) See Attache
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

2010 JUL 2 AM 11 24
FEDERAL
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Grounds not arguable on direct Appeal
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. James P. Rogers 1728 main street, Suite 106
Columbia, South Carolina 29201
 ii. Robert M. Dudek Post Office Box 11589
Columbia, South Carolina 29211-1589
 iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trial in Chesterfield County - James Rogers
 ii. The Court of Appeals - Robert Dudek
 iii. _____

19. State clearly the relief you seek in filing this application:

Reverse and Remand for a new trial or vacate
Sentence

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Michael Watts

SWORN to and subscribed before me this
day of July 9, 2010.

[Signature] (L.S.)
Notary Public

My Commission Expires: 5-16-11

2010 JUL 2 AM 11 24
FAT... CLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

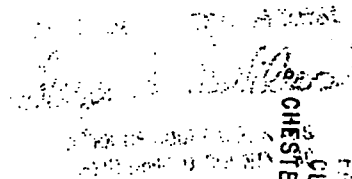
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Michael Watt
Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, 2010.

Notary Public

My Commission Expires: 5-15-17



2010 JUL 2 AM 11 24
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

10.

(A) Counsel was Ineffective for failure to object to prosecutorial misconduct.

(B) Counsel was Ineffective for failure to present effective trial strategy.

(C) Counsel was Ineffective for failure to call defense witness.

(D) Counsel was Ineffective for failure to request Curative Instruction.

(E) Counsel was Ineffective for failure to Conduct Re-trial Investigation

2010 JUL 2 AM 11 24
FBI
CLERK
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

11.

(A) Counsel was Ineffective for failing to object to false allegations by prosecutor when prosecutor went outside the record in closing Argument.

(B) Counsel was Ineffective for failing to request mistrial after investigating officer gave unprofessional testimony.

(C) Counsel was Ineffective for failing to call favorable witness to the defense.

(D) Counsel was Ineffective for failing to request Curative Instruction where Judge sustained objection for speculation

(E) Counsel was Ineffective for failing to Conduct Re-trial Investigation which would have brought forth procedure errors.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2010-CP-13-0255
COUNTY OF CHESTERFIELD	)	
	)	
Michael Lamont Watts,	)	
S.C.D.C. No. 323225,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed July 2, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Chesterfield County Clerk of Court's orders of commitment. The Chesterfield County Grand Jury indicted the Applicant at the May 2005 term of General Sessions for murder (2005-GS-13-0471), assault and battery with intent to kill (ABIK) (2005-GS-13-0473, -0474), possession of a firearm in a public building (2005-GS-13-0475), discharging a firearm into an occupied building (2005-GS-13-0476), and escape (2005-GS-13-0477) and at the April 2006 term for possession of a weapon during commission of a violent crime (2006-GS-13-0499). James P. Rogers, Esquire represented the Applicant.

The State called the case to trial before the Honorable Paul M. Burch. Judge Burch granted counsel's motion for a directed verdict as to possession of a firearm in a public building and one of the ABIK charges (2005-GS-13-0474). The jury convicted the Applicant of the remaining charges. On August 1, 2007, Judge Burch sentenced the Applicant to concurrent

terms of life imprisonment for murder, twenty (20) years for ABIK, ten (10) years for discharging a firearm into an occupied building, and one (1) year for escape. On the charge of possession of a weapon during commission of a violent crime, Judge Burch levied a five (5) year sentence that was to be concurrent to the murder sentence but consecutive to the ABIK sentence.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Watts, Op. No. 2010-UP-019 (S.C. Ct. App. filed January 25, 2010).

Attached herewith and incorporated herein by reference are the records of the Chesterfield County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

- I. Ineffective assistance of counsel;
 - a. Failed to object to prosecutorial misconduct.
 - b. Failed to present effective trial strategy.
 - c. Failed to call defense witness.
 - d. Failed to request curative instruction.
 - e. Failed to conduct pre-trial investigation.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

well within the standard of “reasonableness within professional norms” for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v.

Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

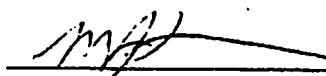
HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 

Attorneys for Respondent

September 28, 2010

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTERFIELD	)	
	)	
	)	2010-CP-13-0255
	)	
MICHAEL LAMONT WATTS, 323225	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Michael Lamont Watts, 323225
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

DATED this 28th day of September, 2010.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

COURT OF COMMON PLEAS

MICHAEL L. WATTS)
323225

PETITIONER,)

v.)

TRANSCRIPT OF RECORD
10-CP-13-0255

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

July 16, 2013
Darlington, South Carolina

B E F O R E :

THE HONORABLE R. FERRELL COTHRAN, JR., JUDGE

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

TARA D. SHURLING, ESQ.
Attorney for the Petitioner

KAREN C. RATIGAN, ESQ.
Attorney for Respondent

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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EXHIBITS**PLAINTIFF'S:**

No.	Description	I.D./EVD.
1	Statement of Tekesha Raley	38/38
2	Statement of Rashard Robinson	60/60
3	Statement of Jamarcus Jamine Mcilwain	60/60
4	Statement of Ricky Simpson	69/69

1 MS. RATIGAN: May it please the Court,
2 this is the case of Michael Watts versus the State
3 of South Carolina. The docket number is
4 2010-CP-13-255. Mr. Watts was indicted for murder,
5 two counts of assault and battery with intent to
6 kill, possession of a firearm in a public building,
7 discharging a firearm into a building, escape, and
8 possession of a weapon during the commission of a
9 violent crime. He was represented on these charges
10 by Mr. Rogers. The case went to trial before Judge
11 Burch. Directed verdict was granted on the
12 possession of a firearm in a public building charge
13 and one of the counts of assault and battery with
14 intent to kill. Mr. Watts was convicted on all of
15 the other charges and was sentenced on August 1st of
16 2007. He received concurrent sentences of life for
17 murder, 20 for assault and battery with intent to
18 kill, 10 years for discharging a firearm into a
19 building, and one year for escape. He received a
20 five year sentence on possession of a weapon during
21 the commission of a violent crime; however, that was
22 concurrent to the murder, went consecutive to the
23 ABWIK. The case was appealed. It was perfected in
24 the nature of a Anders brief. That appeal was
25 dismissed in January of 2010 and the State is ready

1 to proceed.

2 THE COURT: Okay. Yes, ma'am.

3 MS. SHURLING: Thank you, Your Honor. For
4 the record I'm Tara Shurling, and I am representing
5 Mr. Watts. Mr. Watts in his pro se pleadings has
6 alleged generally that he received ineffective
7 assistance of counsel prior to and during his trial.
8 He has, Your Honor, alleged of failure of counsel to
9 develop an effective trial strategy for failing to
10 call defense witnesses, for failing to request a
11 timely curative instruction at one point during the
12 trial, and failure to conduct an adequate pretrial
13 investigation. There are numerous -- well,
14 actually, five specific allegations concerning each
15 of those allegations contained in the pro se
16 pleadings. Present today with me in the courtroom,
17 of course, is my client as well as trial counsel
18 Mr. Jimmy Rogers; and through the testimony of these
19 two witnesses, we will develop several other
20 specific allegations of Sixth Amendment violation.

21 Your Honor, I'd like to note for the
22 record, as I always do with my clients when there's
23 an Anders brief situation, early on I explained to
24 Mr. Watts that technically in a post-conviction
25 relief case one of the issues you have a right to

1 raise is a claim of ineffective assistance of
2 appellate counsel. However, I also explain to them
3 that where counsel has filed an Anders brief, that
4 under the landmark case of Anders versus California
5 that shifts the burden to the reviewing appellate
6 court to review the entire trial transcript from
7 cover to cover and ascertain whether or not the
8 court concurs in appellate counsel's view that there
9 are no meritorious issues preserved for appellate
10 review before they grant the accompanying petition
11 to be relieved as counsel. As a consequence of
12 that, as I've explained to Mr. Watts, if you raise a
13 claim of ineffective assistance of appellate counsel
14 in a circuit court PCR proceeding, you are forced to
15 be in the position of effectively arguing that the
16 appellate court missed an issue, not just that the
17 appellate lawyer missed an issue that had briefed --
18 didn't brief what he should have briefed, but that
19 in conducting the mandatory review required by
20 Anders that the appellate court did as well a
21 situation when makes it virtually impossible to win
22 a claim of ineffective assistance of appellate
23 counsel where an Anders brief was filed because a
24 circuit court judge is most certainly not going to
25 find that a panel of appellate court judges missed

PW - J. ROGERS - DIRECT

1 an appellate issue. So for that reason I have
2 explained to Mr. Watts that I felt he had no chance
3 of prevailing on any potential claims of ineffective
4 assistance of appellate counsel and will be
5 proceeding only on claims with regard to trial
6 counsel.

7 Your Honor, my first witness at this time
8 would be trial counsel Mr. James Rogers.

9 THE COURT: Okay.

10 WHEREUPON,

11 **JAMES B. ROGERS,**

12 having been duly sworn by the Clerk of Court,
13 testified as follows:

14 MS. SHURLING: Your Honor, my hearing is
15 not the best in the world sometimes, and I'm moving
16 to this location so that I can hear Mr. Rogers more
17 clearly. I hope that's okay.

18 THE COURT: Sure.

19 MS. SHURLING: Thank you.

20 BY MS. SHURLING:

21 Q Mr. Rogers, would you state your full name for
22 the record?

23 A James B. Rogers.

24 Q And where are you currently employed?

25 A The office of the federal public defender in

PW - J. ROGERS - DIRECT

1 Columbia.

2 Q And how long have you been there?

3 A Almost six years.

4 Q Almost six years?

5 A Yes.

6 Q So back in July and August of 2007 would that
7 have been nearing the end of your term as a private
8 practitioner?

9 A That's correct.

10 Q Okay. And were you court appointed or retained
11 in this case?

12 A I was retained.

13 Q Retained? And by whom were you retained, by the
14 client or his family?

15 A His family.

16 Q Okay. In 2007 can you share with us
17 approximately how long you'd been practicing law?

18 A I passed the bar in 1977. I had been in the
19 Richland County Public Defender's office for 7
20 years, and my private practice lasted 15 so about
21 this time would have been about 12 or 13 years I
22 would have been on my own.

23 Q And obviously when you were at the P.D.'s office
24 your practice would have been one hundred percent
25 criminal defense, right?

PW - J. ROGERS - DIRECT

1 A Yes.

2 Q How about in private practice, what percentage of
3 your practice was devoted to criminal defense
4 matters?

5 A 95 percent.

6 Q 95 percent?

7 A Yes.

8 Q Okay. Do you recall representing Mr. Watts?

9 A Yes, I do.

10 Q Now I believe some members of his family called
11 him Lamonte and other people called him Michael.
12 What did you call him?

13 A I called him Michael.

14 Q Michael, okay. Were there any plea offers in
15 this case at all?

16 A Yes, there was an offer initially for a plea for
17 30 years to murder, to murder I believe.

18 Q And was that plea accepted by your client?

19 A Eventually he agreed to enter a plea for the 30
20 years.

21 Q And for what reason did that plea not go forward?
22 This was a jury trial as we know so ---

23 A Yes. The day that the plea was scheduled Michael
24 didn't come to court.

25 Q Okay.

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1 A A bench warrant was issued and he was picked up
2 many, many months later.

3 Q Okay. How many months later?

4 A Many.

5 Q Many? Okay. Now you say he didn't come to
6 court. That to my mind would mean he was out on
7 bond?

8 A He was.

9 Q On a murder charge?

10 A Yes, he had -- when I first began representing
11 him he was in jail. I believe we did a bond
12 reduction motion and the family was able to post the
13 bond.

14 Q Okay. When he was picked up on the bench warrant
15 how long was it between when he was picked up on the
16 bench warrant and when you went to trial in July of
17 '07?

18 A I don't remember.

19 Q Can you give us an estimate? Was it a matter of
20 weeks, months?

21 A It was months.

22 Q Months.

23 A I believe it was months.

24 Q So he was in detention for ---

25 A A couple of months before we went to trial.

PW - J. ROGERS - DIRECT

1 Q Right, okay. Moving along, this was a case
2 involving a shooting at a nightclub?

3 A Yes.

4 Q And your client was, as we've heard, accused of
5 killing one person and injuring a couple of others?

6 A Yes.

7 Q In addition to a handful of weapons charges?

8 A Yes.

9 Q There are a number of witnesses in this case that
10 all have the last name Miller. Is it fair to say
11 that a good number of the witnesses in this case
12 were related to one another?

13 A Yes.

14 Q And were their stories concerning what had
15 happened that evening consistent with one another?

16 A Inconsistent.

17 Q The testimony of the witnesses in general in this
18 case were -- were the various stories told by the
19 parties involved at the club that night, were their
20 stories consistent with one another?

21 A No.

22 Q Were there a lot of inconsistencies?

23 A There were inconsistencies enough that I thought
24 that we could raise reasonable doubt.

25 Q Okay. Now there had been, according to the

PW - J. ROGERS - DIRECT

1 testimony, an altercation earlier in the evening
2 where there was an argument about a belt buckle on
3 the dance floor; is that correct?

4 A That's correct.

5 Q Was your client alleged to have been initially
6 involved in that dispute?

7 A No. There had been an argument about the belt
8 buckle. Michael went up to the people to see what
9 was going on or to try to intervene, and I believe
10 he was struck first.

11 Q Okay.

12 A Either one or two times.

13 Q And as a result of that altercation was Michael
14 put out of the club?

15 A Yes.

16 Q Was anyone else put out of the club?

17 A Not that I recall.

18 Q Okay. And the testimony of the parties was that
19 he came back in armed?

20 A That's correct.

21 Q Okay. Now at one juncture during the trial --
22 well, let me back up for a second. There's one main
23 witness in this case, Larry Brown, who was working
24 security at the club that evening?

25 A Yes.

PW - J. ROGERS - DIRECT

1 Q Is that correct?

2 A Yes.

3 Q But he was also law enforcement officer; was he
4 not?

5 A That's correct. He was moonlighting as a
6 bouncer.

7 Q And did he ultimately become actively involved in
8 the investigation of this homicide?

9 A He did.

10 Q Can you explain what his involvement was?

11 A That night he became, I believe, the main case
12 investigator on the scene.

13 Q Who collected the evidence ---

14 A Either he did ---

15 Q ---at the scene?

16 A ---or at his instruction.

17 Q Pardon?

18 A Either he did or someone did at his instruction.

19 Q So he didn't wait for any other law enforcement
20 agency representatives to get there. He took it
21 upon himself to collect evidence?

22 A Yes.

23 Q And did a number of people leave the scene
24 following the shooting?

25 A Yes.

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1 Q And did he attempt to stop anyone from leaving in
2 order to preserve the opportunity for law
3 enforcement to interview those people?

4 A No.

5 Q Did he take photographs of where various evidence
6 was found at the scene before collecting it?

7 A No.

8 Q Did he admit that that was contrary to standard
9 police procedure?

10 A He did.

11 Q There was testimony from one witness, I believe,
12 that he had seen someone else with a gun at the
13 scene. Do you recall that, the testimony of Charles
14 Miller?

15 A I don't specifically recall, but I do recall that
16 the testimony was that there were other shots fired.

17 Q Well, do you have your transcript up there?

18 A I do.

19 Q Let's look at page 107 if my notes are right.

20 A Yes, that's correct. There was some testimony
21 that there was somebody else seen with a gun.

22 Q And Mr. Miller indicated that -- admitted that he
23 told the police that he'd seen another man with a
24 shotgun, correct?

25 A Yeah, yes.

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1 Q And then he said that other people say it was a
2 bat. Did you consider objecting to that as hearsay?

3 A I did not.

4 Q Would it be hearsay?

5 A Yes, it would.

6 Q But in any event he ultimately admits if it was a
7 gun it was a shotgun?

8 A Yes, that's what he said.

9 Q And that he had told the police that this other
10 person had a gun?

11 A Yes.

12 Q Okay. Now a shotgun would be a long gun, right?

13 A Yes.

14 Q Would it be less likely for someone to secret in
15 or, you know, conceal and carry in a club a long gun
16 than it would a handgun?

17 A Yes.

18 Q So would a fair inference from there being a long
19 gun inside the club be that it had to have been in
20 the possession of somebody that was an employee of
21 the bar?

22 A I would not make that assumption but I guess you
23 could make that conclusion.

24 Q Okay. And did you consider questioning
25 Mr. Miller as to whether when he said it was a

PW - J. ROGERS - DIRECT

1 shotgun whether he was sure whether it was a shotgun
2 per se or whether he simply meant that it was a long
3 gun?

4 A I did not.

5 Q Did you consider questioning him as to whether or
6 not the person he saw with the gun was someone he
7 recognized to be an employee of the bar versus a
8 patron?

9 A I did not.

10 Q Did you ever consider raising or suggesting that
11 Mr. Brown may have had what conflicts of interest in
12 the manner in which he handled this investigation
13 due to his employment by the bar?

14 A No, I didn't.

15 Q Do you see that as something that potentially
16 could have been raised as an inference that would
17 have operated to your client's advantage?

18 A Yes.

19 Q Moving on to another part of Mr. Brown's
20 testimony for a moment. During his testimony -- and
21 I'll direct your attention to page 195. Sorry, I've
22 got the wrong page. Nope, I've got the right one.
23 Page 195, line 2 through 3. "And he told me, no, he
24 didn't want to give me a statement." Do you see
25 that?

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1 A Yes.

2 Q Okay. And that is followed by what? What else
3 does he say? Immediately thereafter, let's read 3
4 through 6, 3 through 5, pardon me.

5 A So he said I remember getting the gun going in to
6 get my boys, but I don't remember shooting anybody.
7 I thought I was shooting in the air.

8 Q Okay. So although he claims that your client
9 said he didn't want to give him a statement, he goes
10 on to say that he did give him a statement and that
11 statement was that he remembered getting the gun and
12 going in to get my boys.

13 A Yes.

14 Q All right. Now earlier did another officer
15 testify to receiving a statement from your client?

16 A Yes.

17 MS. SHURLING: And Your Honor, to the
18 extent I'm leading I am only doing so on matters
19 that the record will reflect clearly to save time.
20 On page ---

21 THE COURT: You can lead as long as they
22 don't object.

23 MS. SHURLING: Thank you.

24 BY MS. SHURLING:

25 Q On page 175 during the testimony of Officer Danny

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1 Bennett. Actually, starting on page 174, Officer
2 Bennett beginning at line 23 and going over on 175
3 relays the content of a statement he received from
4 the applicant, correct?

5 A Yes.

6 Q And if you would look specifically to lines 9
7 through 11, can you tell us what that portion of the
8 statement said?

9 A On page 174?

10 Q 175, lines 9 through 11.

11 A "After we got to the club and the fight took
12 place I went to the car and got the gun to get my
13 buddies out of the club."

14 Q So the statement given to Officer Bennett like
15 the one given to Officer Brown was that he got the
16 gun to get my buddies out of the club?

17 A Yes.

18 Q Okay. Now going back to the Larry Brown
19 statement for a moment on page 195 -- or Larry Brown
20 testimony, pardon me, later in the transcript.

21 MS. SHURLING: And Your Honor, I
22 apologize, my flag, as many flags as I have, that
23 one has fallen off and I'll have to find the page
24 cite.

25 BY MS. SHURLING:

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1 Q But at a later juncture in the trial His Honor
2 gave a curative instruction about the fact that your
3 client had a Fifth Amendment right not to
4 incriminate himself, that he didn't have anything to
5 prove, that he didn't have to give a statement?

6 A Yes.

7 Q And that they were to disregard any testimony to
8 the effect that he had not, or that he had declined
9 to give a statement. Do you recall that?

10 A Yes.

11 Q And the judge indicates at that time by turning
12 to you and saying, is that acceptable or is that
13 adequate, Mr. Rogers? That you had requested that
14 curative instruction, do you recall that?

15 A I believe so. That's correct.

16 Q Okay. Did you consider making a mistrial motion
17 at the time Officer Brown made the claim in the
18 presence of the jury that your client refused to
19 give a statement?

20 A No, I didn't.

21 Q Can you explain to us why not?

22 A Because I knew that he had made a statement that
23 the statement was coming in so any impact of the
24 officer saying that he wasn't giving him a statement
25 would have been offset by the fact that he did

PW - J. ROGERS - DIRECT

1 eventually give a statement.

2 Q Okay. Now a little point but one I feel like I
3 need to mention, throughout this trial various
4 witnesses have referred to a gun that they saw the
5 applicant with as an automatic weapon. Do you
6 recall that?

7 A Yes.

8 MS. SHURLING: Specifically, Your Honor,
9 one example is on page 217, line 19 through 20, but
10 it's virtually in percine throughout the record.

11 BY MS. SHURLING:

12 Q Automatic weapons are illegal; are they not?

13 A Yes.

14 Q What's the difference, do you know, between a
15 semi-- I know you're not much of a gun man, Jimmy,
16 but is there a difference between a semiautomatic
17 weapon and an automatic weapon?

18 A One is legal and one's not.

19 Q Okay. And an automatic weapon being illegal
20 there's a -- well, let me rephrase. There's a
21 difference between being unlawfully in possession of
22 a weapon and being in possession of an unlawful
23 weapon; is there not?

24 A That's correct.

25 Q Did you consider objecting to these numerous

PW - J. ROGERS - DIRECT

1 references to your client having had an automatic
2 weapon?

3 A I did not.

4 Q Moving along, there were various witnesses
5 testified to hearing gun fire after your client had
6 already been put on the ground and handcuffed,
7 correct?

8 A Yes.

9 Q And still others that, although they didn't
10 initially testify to that, ended up admitting they
11 had told police that?

12 A Yes.

13 Q And you highlighted that fact in your closing
14 argument?

15 A Yes.

16 Q Okay. Can you take a look with me at Larry
17 Brown's testimony on page 213.

18 A Okay.

19 Q Lines 14 through 16, would you publish that for
20 me?

21 A Answer, "I think nobody did because I went inside
22 the club and checked on that. It was only like five
23 to six people in the club, and they said they didn't
24 hear any shots."

25 Q Would Mr. Brown's testimony concerning what

PW - J. ROGERS - DIRECT

1 people inside the club supposedly said be hearsay?

2 A Yes.

3 Q Was there a strategic reason or tactical reason
4 why you didn't object to that?

5 A No, it slipped past me.

6 Q Was the assertion that additional shots were
7 fired after your client was already subdued and
8 cuffed important to your case?

9 A Yes.

10 Q Tell us generally what your theory of the defense
11 was in this case?

12 A The theory was that since the evidence indicated
13 that there were other shots and there was no one to
14 positively say that Michael shot Mr. Funderburk, our
15 argument was that other shots could have been the
16 shots that killed Mr. Funderburk.

17 Q Okay.

18 A And that Michael said he only fired in the air
19 —

20 Q All right.

21 A —or, and when he got outside on the ground.

22 Q Okay. So whether or not the people remaining
23 inside the club after your client had been subdued
24 and cuffed had heard further gun fire once it was no
25 longer possible for your client to be the one firing

PW - J. ROGERS - DIRECT

1 was critical to your case?

2 A Yes.

3 Q Okay.

4 A But let me just say that even though I should
5 have objected to the hearsay, it was undisputed the
6 people heard shots at that point in time.

7 Q I understand.

8 A Okay.

9 Q But if you read the balance of Mr. Brown's
10 testimony on page 213 beginning at line 14, he says,
11 I -- when you say who fired those shots, he
12 responds, "I think nobody did because I went inside
13 the club and checked on that. It was only like five
14 or six people in the club and they said they didn't
15 hear any shots."

16 A Yes, you're correct.

17 Q Okay.

18 A Yes.

19 Q So he used that hearsay testimony to bolster his
20 claim that he had totally discounted the claim that
21 there'd been any shots fired once your client was in
22 cuffs?

23 A Yes, that's true.

24 Q Okay. And that would be very harmful to your
25 case; would it not?

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1 A That's correct, yes.

2 Q Now your client, as we've said, was in an
3 altercation with I'm gonna call them the Miller
4 boys, and gets put out. And according to the two
5 pieces of his statement that we read from the two
6 officers, different accounts of statements he gave
7 them, he went and got the gun to go back in and get
8 his friends?

9 A Yes.

10 Q Okay. He claimed, did he not, that once he went
11 back inside the club to get his friends that someone
12 pointed a weapon at him?

13 A Yes, he did say that.

14 Q And that he fired toward the corner in a right
15 angle in response to seeing a gun being raised in
16 his direction.

17 MS. SHURLING: Your Honor, I'm looking at
18 page 320, lines 12 through 20. And Your Honor, this
19 is as good a place as any, I am a big fan of our
20 court reporters and I generally don't like to say
21 anything about records, but this record is bad.
22 There are quite a few places where there are obvious
23 typographical errors. There's one juncture in this
24 transcript where the reference is made to something
25 catching a witness' attention; and it says, and that

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1 got my attorney, as opposed to attention. If you
2 look at the portion I'm quoting just now it says ---

3 THE COURT: Wait a minute, you on page ---

4 MS. SHURLING: 320, lines 19 through 20.

5 THE COURT: Okay.

6 MS. SHURLING: It says, "I still to this
7 day feel it was a handgun being raised in my
8 correction" -- clearly an intent, I would submit, to
9 say direction, and it's transcribed as correction.
10 There are errors like that throughout this
11 transcript. I would infer that the court reporter
12 was using some sort of voice recognition
13 transcription and just bring to the Court's
14 attention that in reading this transcript you will
15 find multiple places where you have to stop and
16 think what word sounds like that that would be
17 appropriate. And I haven't raised any claim with
18 regard to that because I've been able to figure it
19 out, and I know the court will be too; but you do
20 have to be cautious about that.

21 BY MS. SHURLING:

22 Q Okay, so your client specifically claimed that he
23 saw something shiny that he thought was a handgun
24 that to -- that day in his trial testimony he still
25 believed it was a handgun being raised in his

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1 direction immediately before he fired, correct?

2 A Yes.

3 Q Did you request a jury instruction on
4 self-defense in this case?

5 A I did not.

6 Q Why not?

7 A Because I didn't think at that time self-defense
8 was appropriate because he had gone to the car,
9 gotten the gun, and came back inside.

10 Q Okay. Let me back up and do this piece meal. He
11 had an altercation, or a friend of his did, that he
12 got involved in ---

13 A Yes.

14 Q ---over a belt buckle?

15 A Yes.

16 Q And he got put out of the club?

17 A That's correct.

18 Q Okay. And then he gets the gun according to two
19 different statements to go back in and get his
20 friends, his buddies?

21 A Yes.

22 Q Okay. Once he's inside the bar, if someone
23 pointed a gun at him would that not be a separate
24 incident?

25 A That's one way of looking at it. I didn't

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1 perceive it that way at the time.

2 Q Okay. And if someone -- and disregarding for the
3 moment the question of whether or not he would be
4 illegally in possession of a weapon, I'm, that's a
5 separate issue?

6 A Yes.

7 Q But if you happen to have a gun on him and
8 somebody pointed a gun at him, would he not have the
9 right to defend himself?

10 A Yes.

11 Q And why would you not have asked for a
12 self-defense instruction?

13 A Because I perceived that it would not have
14 prevailed because it could have been argued that he
15 was at fault in bringing on the difficulty in as
16 much as he came back into the club with a weapon.
17 Even though he was coming back in to get his
18 friends, I didn't think self-defense was available.

19 Q Okay. What about manslaughter, did you request a
20 jury instruction on manslaughter?

21 A I don't recall if we did or not. I mean, the --

22 Q Well --

23 A The record reflects that we did not.

24 Q Okay.

25 A I don't recall why I didn't.

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1 Q You don't recall why you did not?

2 A Right.

3 Q Okay. There was testimony about -- and I'm sorry
4 to be redundant but just trying to make a clear
5 record, about an altercation of verbal fight over a
6 belt buckle that escalated into a fist fight?

7 A Yes.

8 Q And your client, according to his testimony, was
9 hit by not one, but two people --

10 A Yes.

11 Q ---in that altercation?

12 A That's correct.

13 Q He gets put out of the club, goes to the car and
14 gets a gun, and comes right back in and shots ensue
15 leading to these charges?

16 A Yes.

17 Q Did you consider the argument that there was no
18 substantial cooling off period between the time of
19 the initial fight and that there would be a basis
20 for requesting a charge predicated on the fact that
21 there were sudden heat of passion based upon
22 sufficient legal provocation?

23 A The only way I can answer that is, I would have
24 advised Michael that we should try to get a lesser
25 included. We did not. I do not remember the

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1 conversation that Michael and I had.

2 Q Okay.

3 A So I can't say why I didn't.

4 Q Okay.

5 A But I didn't.

6 Q And it's fair to say that there was testimony
7 that someone in the Miller group through the first
8 shot was the first one to throw a punch in that
9 fight?

10 A Yes.

11 Q Correct?

12 A That's correct.

13 MS. SHURLING: A moment's indulgence, Your
14 Honor. Your Honor, that would be page 135, lines 21
15 through 24 when witness Kevin Johnson said that his
16 cousin Duane landed the first lick. Okay.

17 BY MS. SHURLING:

18 Q So your client was without fault in bringing
19 about that particular difficulty, correct?

20 A That's correct.

21 Q All right. And in fact, the testimony was that
22 he was intervening in a fight in the bar, not
23 initially part of the fight?

24 A He -- yes, that's correct.

25 Q And in fact, his girlfriend Crystal testified

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1 that she had told him to go stop ---

2 A Yes.

3 Q ---what was going on?

4 A Yes.

5 Q And that that was why he went over to this bar
6 fight and got involved to begin with?

7 A That's right.

8 Q Leave it to a woman, get you involved in a fight,
9 right? All right, so the girlfriend sent him over
10 there to stop the fight. The jury actually came
11 back in this case and asked about a lesser included
12 offense; didn't they?

13 A Yes.

14 Q But because they had not been instructed on one
15 initially the court told them they couldn't consider
16 one?

17 A That's correct.

18 Q Now I never -- there was no discussion of this on
19 the record, but did you consider asking they be
20 charged on manslaughter at that point?

21 A Again, I don't remember what happened. And I can
22 tell you what I would normally do; but because I
23 don't remember, I can't tell you why I did not
24 request one.

25 Q Okay. Now the offer that you recall Mr. Watts

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1 getting for 30 years, are you sure that was 30 years
2 for murder as opposed to 30 years for manslaughter?

3 A I'm not.

4 Q You're not?

5 A It could have been for manslaughter.

6 Q Okay. Do you specifically recall any discussion
7 with your client about the distinction between the
8 penalties for murder versus voluntary manslaughter?

9 A Oh, yes.

10 Q And did you discuss with your client the
11 distinction in the amount of time that would be
12 received on such a penalty, and by that I'm
13 referencing the requirement of a day for day service
14 for a murder sentence versus 85 percent for
15 voluntary manslaughter?

16 A Yes, I did.

17 Q You covered that with him?

18 A I did.

19 Q Okay. Do you recall talking with him about the
20 direct appeal process?

21 A Yes.

22 Q Did you discuss direct appeals with him before
23 trial?

24 A That, I do not recall. I mean, I know I told him
25 what the process was, but I don't remember if it was

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1 before or after trial.

2 Q When you were discussing a potential guilty plea
3 did you tell him that if he took the deal and pled,
4 that one of the things he'd be waiving was an
5 opportunity for a direct appeal?

6 A I don't know that I would have told him like that
7 but that's possible. I would have said, you know,
8 you would be waiving your rights to appeal unless
9 the judge gave you an illegal sentence.

10 Q Okay. And that would be ---

11 A I mean, there would be nothing to appeal unless
12 the judge gave you an illegal sentence.

13 Q Okay. And that would be based on the fact that
14 he was accepting a concession to some sort of a
15 deal?

16 A Yes.

17 Q A plea?

18 A Well, I don't know that, the answer to that ---

19 Q Okay.

20 A ---I mean, it would be based on whether or not
21 the judge made an error.

22 Q And it would be based on the fact that he was
23 entering a plea?

24 A Yes, and not as opposed to having a trial. Of
25 course, right.

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1 Q Okay. Did you make certain your client
2 understood that the loss of the right to an appeal
3 would flow from the entry of a plea versus agreeing
4 to any kind of concession in exchange for the plea?

5 A Yes.

6 Q Do you understand my question?

7 A I think I do. I mean, he would have understood
8 that he would not -- he would still have a right to
9 appeal if he went to trial.

10 Q Okay.

11 A But that we would not have a -- we would have a
12 right to appeal if we pled guilty but only if the
13 judge committed an error so he would lose other
14 issues that could be raised on an appeal.

15 Q And that was based on the fact that he was
16 entering a plea?

17 A Entering a plea, yes.

18 Q Okay. This business about Tyrone Miller being
19 shown the photographic display by the solicitor, did
20 you -- you did not become aware of that until the
21 time of the trial?

22 A That's correct.

23 Q And you immediately following that the record
24 indicates that there was a bench conference. Did
25 you receive your motion for a mistrial at that bench

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1 conference?

2 A I did.

3 Q And you subsequently made a motion for a bench --

4 I mean, for a mistrial which was denied?

5 A Yes.

6 Q Okay. The judge says at the end of that that he

7 thinks he can fix it with an instruction and that he

8 will help you with an instruction ---

9 A Yes.

10 Q ---to address that situation. Remember that?

11 A Yes.

12 Q I'm gonna find the specific reference. And that

13 was what led to your eventually getting an

14 opportunity to re-cross Tyrone Miller later in the

15 trial?

16 A I believe so.

17 Q Okay. Did you ever get a curative instruction on

18 that issue?

19 A I don't recall. I mean, if the record doesn't

20 indicate that I did or I didn't.

21 Q Okay. And the judge indicated that he could

22 handle it with a curative charge and would help you

23 come up with an appropriate one, right?

24 A Yes.

25 Q If the record does not reflect that a curative

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1 charge specifically addressing that issue was ever
2 given, was there any strategic or tactical reason
3 for that?

4 A No, I would have just forgotten.

5 Q Okay. During the closing argument in the case --
6 one moment please. Looking, let's take a look at
7 page 372. I think that's where it is. 372, let's
8 take a look at lines 10 through 14. You interrupt
9 when the solicitor makes an argument about Charles
10 Miller wearing a light color shirt and the victim
11 Cliff Funderburk having on a white colored shirt.
12 Do you remember that?

13 A Yes.

14 Q Was there any testimony about what either the
15 victim Clifton Funderburk or Mr. Charles Miller was
16 wearing on the night in question?

17 A No, I don't think so. That's why I objected.

18 Q And there's also a reference in here, and I
19 apologize 'cause I don't see it. Going on the
20 bottom of the page, 372. Look at their hairline,
21 they sort of have the same hairline. They have the
22 same face shape. Their ears are both sort of back.
23 You see that?

24 A Yes.

25 Q What pictures did the jury have of

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1 Mr. Funderburk?

2 A None.

3 Q So how were they supposed to be comparing the
4 appearance of Charles Miller to the deceased?

5 A I don't know.

6 Q Is there any reason why you did not renew your
7 objection, the same one you made about the color of
8 the clothing?

9 A No.

10 Q And would that be an argument off record?

11 A Yes.

12 Q Should you have objected?

13 A I should have.

14 Q Okay. What was the purpose in your view of this
15 line of argument made by the prosecution?

16 A That because Mr. Funderburk may have looked
17 similar to the person he had altercation with, that
18 that was why he shot Mr. Funderburk.

19 Q So it was these ar-- these two arguments about
20 the color of the shirt and the hairline and all
21 that, that were used by the State to imply that the
22 victim was not accidentally shot or inadvertently
23 shot in the crowd, but that he was misidentified by
24 your client as the target?

25 A Yes.

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1 Q Okay. In that regard, would that have been a
2 powerful and persuasive, prejudicial argument for
3 the State?

4 A Yes.

5 Q Okay. Any reason why you made an objection and
6 not a motion for a mistrial?

7 A No, not that I can remember.

8 Q In retrospect, should you have made a motion for
9 mistrial on that?

10 A Yes.

11 Q Okay.

12 MS. SHURLING: A moment's indulgence, Your
13 Honor.

14 THE COURT: Okay.

15 BY MS. SHURLING:

16 Q Tekesha Raley gave a statement that was in the
17 discovery package that was sent to you. Do you
18 recall that?

19 A Yes.

20 MS. SHURLING: Your Honor, one moment's
21 indulgence. May I approach, Your Honor?

22 THE COURT: Yes, ma'am.

23 BY MS. SHURLING:

24 Q Can you identify this document for me,
25 Mr. Rogers?

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1 A Yes, that was the statement that was provided in
2 the discovery of Tekesha Raley.

3 Q And in that statement Tekesha Raley indicates
4 that the fight was between — she names virtually
5 all the Miller boys; doesn't she?

6 A Yes.

7 Q What else does she say? Who does she say was put
8 out of the club following the fight?

9 A I'm trying to find it.

10 Q About a third of the way down.

11 A Took Watts out and the Miller boys.

12 Q Took Watts out and the Miller boys?

13 A Yes.

14 Q And none of the Miller boys said anything about
15 having been put out of the bar after the fight, did
16 they?

17 A No.

18 Q Did you consider calling Tekesha Raley as a
19 witness for the defense?

20 A I did not.

21 Q Why not?

22 A I just didn't think that that was anything that I
23 should get into; but I see now that that was a
24 discrepancy in what the Millers had said, but I
25 didn't perceive the time that it was that big an

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1 issue.

2 Q In retrospect would that have been beneficial to
3 each, the credibility of all the Miller witnesses?

4 A Yes.

5 MS. SHURLING: Your Honor, this is a copy
6 of the discovery materials, the statement of, pardon
7 me, of Tekesha Raley. It has a short handwritten
8 note by my client up at the top that I will need to
9 whiteout or put a post-it over it, make a copy, but
10 I would move to introduce this as Applicant's 1.

11 MS. RATIGAN: I have no objection, Your
12 Honor.

13 THE COURT: Okay. Did she testify at
14 trial?

15 MS. SHURLING: No.

16 (WHEREUPON, Plaintiff's Exhibit No. 1 was
17 marked for identification and admitted
18 into evidence.)

19 BY MS. SHURLING:

20 Q And for the record, she did not testify at trial?

21 A No, she did not.

22 Q Okay. Now you presented three witnesses; didn't
23 you?

24 A Yes.

25 Q Who were they?

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1 A Michael, his girlfriend, and one of the bouncers.

2 Q So you did introduce testimony from one of the
3 bouncers?

4 A Yes.

5 Q And the purpose of putting him up was to
6 establish that there had been reports of shots fired
7 after your client was down and cuffed?

8 A Yes.

9 Q Okay. So even if Ms. Raley had been perceived as
10 a State witness, generically speaking, because she
11 gave testimony about your client being seen with a
12 gun, there was nothing inherently conflicting with
13 your strategy as far as his introducing somebody
14 that would ordinarily be thought of as a witness for
15 the other side?

16 A No.

17 Q 'Cause you were already doing that; weren't you?

18 A Yes.

19 Q Okay. There were three people in the car with
20 Mr. Watts when he arrived at this bar that night;
21 isn't that true?

22 A Yes.

23 Q Did any of them, Mr. Mcilwain, Mr. Ricky Simpson,
24 or Mr. Rashard Robinson testify at trial?

25 A No.

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1 Q Did you consider offering them as witnesses?

2 A I did not.

3 Q Why not?

4 A I didn't think they would add to what had
5 happened in the club.

6 Q Okay. And can you tell us what the basis of that
7 view was?

8 A I mean, their statements I didn't think would
9 have been helpful.

10 Q Well, their statements were not incriminating to
11 your client, were they?

12 A Right. And because they hadn't seen what was in,
13 what happened in the club, I didn't see the need to
14 call them.

15 Q Okay, I want to be real clear here. When I say
16 they didn't say anything that incriminated your
17 client ---

18 A Right.

19 Q ---so they wouldn't have been bad witnesses for
20 the defense, they just wouldn't have been helpful
21 you believe?

22 A I believe that they would not have added anything
23 to what I thought our defense was.

24 Q Okay. But the testimony the jury would hear was
25 that your client went to this club that night with

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1 three friends, right?

2 A Yes.

3 Q And they heard about Mr. Mcilwain getting in the
4 fight over the buckle. They heard about Ricky
5 Simpson and Rashard — I'm sorry, I apologize, hard
6 name to say, Rashard Robinson, correct?

7 A Okay.

8 Q And yet, they weren't presented by anybody as
9 witnesses at trial?

10 A No.

11 Q Did you consider that by not presenting these
12 people as witnesses for the defense that you were
13 creating an opportunity for the jury to infer that
14 these so called friends that your client were saying
15 he went in to save basically, would have hurt him
16 because they weren't there to help him?

17 A I didn't consider that.

18 Q In retrospect do you see the potential prejudice
19 arising from not calling them as witnesses?

20 A It's possible. I mean, I agree it's possible
21 that the jury could have inferred that. I didn't
22 think about that at the time.

23 Q But your client said the reason he went back in
24 with the gun was to get his buddies, right?

25 A Yes.

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1 Q So people that he was close enough to, to get a
2 gun and go back in to try to get them out of there,
3 right?

4 A Yes.

5 Q And yet, at trial they were nowhere in sight to
6 stick up for him or testify for him, right?

7 A Yes.

8 Q Okay.

9 MS. SHURLING: A moment's indulgence Your
10 Honor.

11 BY MS. SHURLING:

12 Q Does your client, my client the applicant, have a
13 prior criminal record?

14 A No. He may have had some magistrate level
15 offenses but no, nothing significant.

16 Q And he was only 22 years old, right?

17 A Yes.

18 Q Okay. An issue came up about a David Evans was
19 an individual who claimed to have been shot by your
20 client outside the bar, right?

21 A Yes.

22 Q And he claimed that as he was leaving a side door
23 he came face to face with your client who discharged
24 a few rounds in his direction, right?

25 A Yes. Yes.

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1 Q And that he was shot in the leg?

2 A Yes.

3 Q You cross-examined him about the fact that his
4 medical records indicated that he had told someone
5 that he had been inside the bar when shots were
6 fired and that he had been hit by a stray bullet,
7 remember that?

8 A Yes.

9 Q And he denied making that statement?

10 A Yes.

11 Q Your client testified that when he was outside
12 that he was firing off shots into the ground just
13 trying to keep people away from him as he was
14 getting away, right?

15 A Yes, that's correct.

16 Q Okay. So the man being struck in the leg by a
17 stray bullet when he was firing shots in the ground
18 would have been consistent with your client's
19 version of how Mr. Evans may have been injured?

20 A Well, we weren't conceding that fact. We weren't
21 conceding that the bullet that struck him was one of
22 the bullets that he fired when he was firing on the
23 ground. It was confusing enough that it could have
24 been a bullet that was being fired from inside the
25 club. So that was not anything, I don't recall that

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1 Michael conceded that it could have been one of his
2 shots that he hit him.

3 Q Well, I'm not suggesting that he could have or
4 should have conceded that point; but my point is,
5 your client was admitting discharging multiple
6 rounds in the direction of the ground outside?

7 A Yes.

8 Q Okay. And Mr. Evans was claiming that he got
9 shot in the leg when your client deliberately fired
10 in his direction?

11 A Yes. I mean, he said he got shot, he got grazed
12 by a stray bullet.

13 Q Okay. So my question is, did you consider
14 bringing anybody in from the hospital to establish
15 who made those triage notes to establish that the
16 man had, in fact, said he was hit by a stray bullet?

17 A No.

18 Q Okay.

19 A I mean, I impeached him with the record that
20 indicated that he said it was a stray bullet; but
21 no, I didn't contemplate bringing in a witness to
22 confirm that.

23 MS. SHURLING: Your Honor, may I have 30
24 seconds with my client?

25 THE COURT: Yes.

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1 MS. SHURLING: Thank you.

2 (Pause.)

3 MS. SHURLING: Your Honor, my client has
4 something I need to find in the record, I apologize.
5 Can we perhaps take maybe a five minute recess, Your
6 Honor.

7 MS. RATIGAN: Judge, if we could do that
8 we can work in that withdrawal. Mr. Harris's client
9 is here.

10 THE COURT: Okay.

11 MS. SHURLING: Thank you, Your Honor.

12 (WHEREUPON, a recess was taken from the
13 proceedings.)

14 BY MS. SHURLING:

15 Q Mr. Roger, you remember us talking a little while
16 ago about the fact that Mr. Brown had introduced
17 without objection hearsay testimony concerning what
18 the remaining people inside the bar had to say after
19 our client was handcuffed?

20 A Yes.

21 Q Okay. If you take a look at the closing argument
22 of the prosecutor for me please, starting at the
23 very bottom on page 366 and going over to the top of
24 367.

25 A Yes.

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1 Q The prosecutor, looking specifically at lines 7
2 through 9 says, "What those witnesses basically
3 would have said, they're going to say it was Michael
4 Watts they were talking about that was in there
5 shooting. There was no other person. There was no
6 other person."

7 A Yes.

8 Q You see that?

9 A Yes.

10 Q Those witnesses didn't testify, did they?

11 A That's correct.

12 Q As a matter of fact, did you consider pointing
13 out to the jury, or backtrack for a second, in your
14 own argument the fact that Larry Brown had hampered
15 the investigation by neglecting to preserve the
16 names of the individuals who said other shots were
17 fired once your client was in cuffs?

18 A Yes.

19 Q Did you argue that?

20 A No.

21 Q Okay. Should you have?

22 A I should have.

23 Q And ---

24 A And I should have objected to this.

25 Q And why is this objectionable?

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1 A Because he's saying what somebody said who
2 didn't testify.

3 Q Exactly. And someone who not only didn't testify
4 but whose identity was not even preserved so that
5 you could interview them, right?

6 A That's right.

7 Q And you say you should have objected. Should you
8 also have considered making a motion for mistrial?

9 A Yes.

10 MS. SHURLING: I have no further questions
11 of this witness. Thank you, Mr. Rogers.

12 **CROSS-EXAMINATION**

13 BY MS. RATIGAN:

14 Q I believe most of the points have already been
15 kind of covered so I'm gonna ask -- I have some very
16 general questions about your representation,
17 Mr. Rogers. Did you file the usual discovery
18 motions in this case?

19 A Yes.

20 Q Did you receive full discovery from the State do
21 you believe?

22 A I did.

23 Q Did you review that evidence both independently
24 and with Mr. Watts?

25 A Yes.

PW - J. ROGERS - CROSS

1 Q Did you review with him the elements of the
2 charges?

3 A Yes.

4 Q And the sentencing ranges for these charges?

5 A I did.

6 Q Did you talk with him about his version of what
7 had happened at the club that night?

8 A Yes, we did.

9 Q Okay. Did he give you the names of any witnesses
10 to contact?

11 A No other than the people that I knew who were
12 with him at the club and who he met with at the
13 club.

14 Q And did you talk to any of the witnesses who
15 ended up testifying at the trial?

16 A I talked to all of them.

17 Q And aside from reviewing the evidence, speaking
18 to your client and talking to witnesses, what
19 further investigation did you undertake?

20 A I believe that was it.

21 Q Was there any kind of forensic evidence linking
22 your client to the shooting or was it just basically
23 witness testimony?

24 A Witness testimony.

25 Q And you knew based on the witness statements that

PW - J. ROGERS - CROSS

1 speaking to the witnesses that there were lots of
2 inconsistencies?

3 A Yes.

4 Q And would it be fair to say that part of your
5 trial strategy would have been to highlight those
6 inconsistencies?

7 A That's what I thought I was, I did, but not good
8 enough.

9 Q Would it be fair to say the witnesses described
10 your client in a green coat shooting but just not
11 they actually saw him shoot the victim; would that
12 be fair to say?

13 A That's correct.

14 Q And your client never denied shooting. He just
15 denied that he shot the victim; is that correct?

16 A That's correct.

17 Q Okay. And did you discuss with Mr. Watts his
18 right to testify at the trial?

19 A Yes.

20 Q Was your advice for him to do so?

21 A I think it was.

22 Q Do you believe his testimony at the trial was
23 helpful to the case?

24 A Yes.

25 Q So at the end of the day basically be a swearing

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1 match between him and his girlfriend and the
2 bouncer, the defense witnesses, and State's
3 witnesses, would that be fair to say?

4 A Yes.

5 Q And therefore, it's kind of just the jury had to
6 determine who they believed to be more credible,
7 believable, would that be fair to say?

8 A Yes.

9 Q I know that these are all -- I mean, all the
10 questions you've gotten today are all kind of
11 hindsight, Monday morning quarterback type
12 questions, but can you think of anything else you
13 could have done prior to trial to prepare the case
14 for the trial?

15 A I can't think of anything.

16 Q And I think that you testified that you cannot
17 recall one way or the other why you didn't discuss
18 or request a voluntary manslaughter charge. Is it
19 possible that you would have decided just to go on
20 the murder? Is that something you maybe would have
21 considered at the time?

22 A That would not have been something I would have
23 considered. It's not my choice so I mean, I would
24 have, I just can't say anymore because I don't
25 remember the conversation that we had, but it would

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1 not have been my choice.

2 MS. RATIGAN: That's all I have, Your
3 Honor.

4 THE COURT: Okay.

5 **REDIRECT EXAMINATION.**

6 BY MS. SHURLING:

7 Q Just a couple of really quick things, Mr. Rogers.
8 To get a jury instruction on the lesser included
9 offense there has to be some evidence that would
10 support the lesser included instruction, right?

11 A Yes.

12 Q But that evidence doesn't even have to come from
13 the defense, does it?

14 A No.

15 Q In fact, there are cases where a defendant is
16 claiming he wasn't even at the scene, was claiming
17 alibi for example, and there were aspects of the
18 State's case that the court has found would warrant
19 a lesser included instruction even though the
20 defendant was claiming what would appear to be an
21 incompatible defense, right?

22 A That's possible.

23 Q Okay. So on the facts of this case did you
24 explain to your client or, if you remember -- if you
25 don't, you don't -- but did you explain to Mr. Watts

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1 that requesting a jury instruction on voluntary
2 manslaughter would not mean that he was admitting
3 that he deliberately shot anyone?

4 A I don't think I would have put it that way to
5 him. I mean, we -- if we discussed it, and again, I
6 don't remember the discussion, I don't think I would
7 have said that. I would have said here's an
8 opportunity for the jury to return a lesser included
9 verdict.

10 Q But would you have explained to him that
11 requesting such a charge would not be an admission
12 that he had intentionally shot ---

13 A Yes.

14 Q ---somebody?

15 A Yes, that's correct.

16 Q That is something you would have explained to
17 him?

18 A Yes. I mean, he would -- I would have hoped he
19 would have understood even if we had pled to the
20 lesser charge that would not have meant that he
21 intentionally shot somebody; that's correct.

22 Q What about if he requested a jury instruction on
23 a lesser charge?

24 A I thought that's what I said, I'm sorry.

25 Q You said pled.

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1 A I'm sorry, jury instruction, I'm sorry.

2 Q All right, great. Thank you. I don't have any
3 further questions. Thank you so much.

4 THE COURT: You may come down.

5 MS. RATIGAN: Nothing further, Your Honor.
6 We'd ask Mr. Rogers be excused.

7 THE COURT: Any objection?

8 THE DEFENSE: Absolutely. I mean, no
9 objections, Your Honor. Absolutely no objections.
10 Thank you, Mr. Rogers.

11 And Your Honor, I would call the
12 Applicant, Mr. Michael Lamont Watts.

13 THE COURT: Okay.

14 THE CLERK OF COURT: Place your left hand
15 on the Bible, raise your right.

16 WHEREUPON,

17 **MICHAEL L. WATTS,**
18 having been duly sworn by the Clerk of Court,
19 testified as follows:

20 **DIRECT EXAMINATION**

21 BY MS. SHURLING:

22 Q Mr. Watts?

23 A Yes, ma'am.

24 Q Prior to trial did your defense attorney go over
25 the discovery materials in this case with you?

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1 A Yes, ma'am.

2 Q And he gave you a copy of them as well?

3 A Yes, ma'am.

4 Q Okay. As the trial progressed -- well, let me
5 back up for a second. Your lawyer actually said in
6 his opening arguments that you were going to
7 testify, that the jury was gonna get to hear from
8 you; isn't that right?

9 A Yes, ma'am.

10 Q So y'all have decided before this trial ever took
11 place that you were gonna testify, right?

12 A Yes, ma'am.

13 Q Okay. As the testimony of the various witnesses
14 unfolded did your lawyer ever discuss with you the
15 possibility of requesting a jury charge on
16 self-defense?

17 A No, ma'am.

18 Q And you've heard us going over the testimony
19 earlier today, you testified, did you not, that
20 you -- the only time you fired the shot inside the
21 club was when you perceived that someone was
22 pointing a weapon at you?

23 A Yes, ma'am.

24 Q And that you were essentially defending yourself
25 against a gun that was being raised in your

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1 direction?

2 A Yes, ma'am.

3 Q Okay. You're gonna have to speak up, Michael.
4 You're real soft spoken but this nice lady sitting
5 in front of you is gonna write down every word you
6 say and if she can't hear you, she can't write it
7 down. Okay?

8 A All right.

9 Q What about voluntary manslaughter, did you have
10 any discussions with your lawyer about the charge of
11 voluntary manslaughter versus murder?

12 A As far as when?

13 Q Well, I mean, toward the end of the trial when
14 the court is talking about what kind of jury
15 instructions he's going to give, did your lawyer
16 ever discuss with you whether or not you should
17 request a jury instruction on voluntary
18 manslaughter?

19 A Oh, no, ma'am.

20 Q Did he discuss with you the relative advisability
21 of having a charge of voluntary manslaughter versus
22 going for broke for murder?

23 A No, ma'am.

24 Q I've gone over the law as it pertains to the
25 crime of voluntary manslaughter with you; haven't I?

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1 A Yes, ma'am.

2 Q Ad nauseam as they say; haven't I?

3 A Yes, ma'am.

4 Q And you understand now that voluntary
5 manslaughter is a lesser degree of homicide
6 involving sudden heat of passion upon sufficient
7 legal provocation?

8 A Yes, ma'am.

9 Q And you and I have discussed the various
10 testimony at this trial that could have been used to
11 argue that there was sudden heat of passion and
12 sufficient legal provocation; have we not?

13 A Yes, ma'am.

14 Q And we've also discussed the concept of a cooling
15 down period; haven't we?

16 A Yes, ma'am.

17 Q Okay. Now I understand it was your position
18 then -- and you can tell us if it still is -- that
19 you didn't deliberately shoot anybody; is that
20 correct?

21 A Yes, ma'am.

22 Q Okay. But did Mr. Rogers ever explain to you
23 that you could request a charge voluntary
24 manslaughter be given to the jury without that
25 meaning that you were admitting shooting anybody?

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1 A No, ma'am.

2 Q If you had understood that you would request a
3 charge of voluntary manslaughter based purely on the
4 fact that at least one reasonable interpretation of
5 the State's own evidence was that a -- was if any
6 form of homicide, voluntary manslaughter, would you
7 have wanted that jury instruction?

8 A Yes, ma'am.

9 Q Do you remember when the jury came back and asked
10 a question about a lesser included charge?

11 A Yes, ma'am.

12 Q Did you have any discussion with Mr. Rogers at
13 that time about lesser included offenses and,
14 frankly, why wasn't there a charge on a lesser
15 included? Was there any discussion about it at all?

16 A No, ma'am.

17 Q Did he ever give you a reason why self-defense
18 would not be an appropriate defense on the facts of
19 your case?

20 A No, ma'am, we didn't discuss it at all.

21 Q At all?

22 A No, we didn't discuss the offense at all.

23 Q Again, you and I have discussed the various
24 requirements for the defense of self-defense;
25 haven't we?

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1 A Yes, ma'am.

2 Q Had you understood the law as relates to the
3 defense of self-defense at the time of your trial
4 would you have asked your lawyer Mr. Rogers to
5 request a jury instruction on self-defense?

6 A Yes, ma'am.

7 Q You and I have gone over this record with each
8 other very carefully; haven't we?

9 A Yes, ma'am.

10 Q Have you had adequate time to spend with me
11 discussing this record prior to this hearing today?

12 A Yes, ma'am.

13 Q Ordinarily in a PCR I'm asking clients if they
14 understand that they can potentially get more time
15 if they prevail and win a new trial. In your case
16 you've got a life sentence, don't you?

17 A Yes, ma'am.

18 Q Did you have any prior criminal record at all?

19 A No, ma'am.

20 Q Nothing?

21 A No, ma'am.

22 Q And how old were you?

23 A 22.

24 Q 22 years old. Okay. When you reviewed the
25 discovery materials in your case did you see

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1 statements that were made by your friends that went
2 to the club with you that night?

3 A Yes, ma'am.

4 Q Did all three of them give statements or just a
5 couple of them?

6 A I think two. I think two of them.

7 Q Okay. And this would be Rashard Robinson and
8 Jamarcus Jamine ---

9 A Mcilwain.

10 Q Mcilwain.

11 A Yes, ma'am.

12 Q Okay.

13 MS. SHURLING: Moment's indulgence, Your
14 Honor.

15 (Documents were shown to Respondent.)

16 BY MS. SHURLING:

17 Q Did either of the individuals say anything that
18 was damaging to you in their statements?

19 A No, ma'am.

20 MS. SHURLING: May I approach, Your Honor?

21 THE COURT: Yes, ma'am.

22 BY MS. SHURLING:

23 Q Can you identify this document for me?

24 A Voluntary statement by Rashard Robinson.

25 Q Okay. And that was in the discovery materials

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1 that were provided to you by Mr. Jimmy Rogers?

2 A Yes, ma'am.

3 MS. SHURLING: Move to introduce

4 Applicant's 2, Your Honor?

5 MS. RATIGAN: No objection.

6 (WHEREUPON, Plaintiff Exhibit No. 2 was

7 marked for identification and admitted

8 into evidence.)

9 BY MS. SHURLING:

10 Q And likewise, can you identify that document?

11 A Yes, ma'am, voluntary statement by Jamarcus

12 Mcilwain.

13 Q Was there anything in Jamarcus Mcilwain's

14 statement that was damaging to you? -

15 A No, ma'am.

16 Q And was that statement in the discovery materials

17 which was provided to you by Mr. Rogers before your

18 trial?

19 A Yes, ma'am.

20 MS. SHURLING: Your Honor, I would move to

21 introduce this is Applicant's 3.

22 MS. RATIGAN: No objection.

23 THE COURT: In without objection.

24 (WHEREUPON, Plaintiff Exhibit No. 3 was

25 marked for identification and admitted

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1 into evidence.)

2 BY MS. SHURLING:

3 Q Did you discuss with your trial attorney,
4 Mr. Rogers, whether or not it would be viable to
5 call your friends as witnesses at your trial?

6 A No, ma'am.

7 Q Did he ever give you any reason why he thought it
8 was ill advised or unnecessary to call them as
9 witnesses?

10 A No, ma'am.

11 Q Barring some fairly unusual circumstances you are
12 not likely to ever have another PCR hearing, you
13 understand that?

14 A Yes, ma'am.

15 Q It's very important that we raise here today any
16 allegations that you wish to make concerning errors
17 and omissions of your trial attorney, anything that
18 he didn't do that he should have done, or anything
19 that he did do that he did incorrectly. Have I
20 covered for you here today all of the issues that
21 you want raised in your PCR case?

22 A Yes, ma'am.

23 Q Can you think of anything else that you want His
24 Honor to consider in deciding this post-conviction
25 relief case?

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1 A No, ma'am.

2 Q And again, you would have wanted a jury
3 instruction on voluntary manslaughter if it had been
4 explained to you, if that charge had been thoroughly
5 explained to you at the time of the charging
6 conference?

7 A Yes, ma'am.

8 Q And you would have also wanted a charge on the
9 defense of self-defense?

10 A Yes, ma'am.

11 Q Thank you. No further questions.

12 MS. SHURLING: Your Honor, I would note
13 Mr. Rogers lost his file. It's been misplaced in
14 storage. He's repeatedly tried to locate it, and he
15 advised Attorney General's Office of the same. I
16 was able to obtain a copy of the discovery materials
17 yesterday from my client that had been provided to
18 him by Mr. Rogers prior to trial. Quickly in the
19 time I've had I was only able to locate the
20 statement of Rashard Washington and Jamarcus
21 Mcilwain. I would ask that I be allowed to take —
22 I will do so during the hearing; but as quickly as I
23 can, to flip through and make sure that there was
24 not a written statement from the third friend. I
25 don't believe there was but I need to look and see.

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1 THE COURT: Okay.

2 MS. SHURLING: Thank you.

3 **CROSS-EXAMINATION**

4 BY MS. RATIGAN:

5 Q Mr. Watts, I believe Mr. Rogers testified your
6 family hired him; is that correct?

7 A Yes, ma'am.

8 Q All right. And how many times did you say you
9 met with him before going to trial, do you remember?

10 A No, I don't. It was quite a few.

11 Q Quite a few times?

12 A Yes, ma'am.

13 Q And did you tell Mr. Rogers what had happened at
14 the club that night?

15 A Yes, ma'am.

16 Q And did you review with him all of the evidence,
17 the discovery materials?

18 A Yes, ma'am.

19 Q And I believe both Ms. Shurling and Mr. Rogers
20 have said that he gave you a copy of that?

21 A Yes, ma'am.

22 Q Okay. And included in all these materials were
23 several statements from witnesses; is that correct?

24 A Yes, ma'am.

25 Q And did you review those with Mr. Rogers?

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1 A Yes, ma'am.

2 Q Okay. And did you talk about the fact that a lot
3 of the witnesses contradicted each other and were
4 inconsistent?

5 A Yes, ma'am.

6 Q And you had a, I believe Mr. Rogers testified you
7 had a plea offer in this case?

8 A Yes, ma'am.

9 Q And but you didn't show up to actually take the
10 plea; is that correct?

11 A Yes, ma'am.

12 Q Okay. Why did you not show up to take the plea?

13 A Because we hadn't really discussed adequate trial
14 strategy and at the time he was in disputes with
15 trying to get took off my case anyway, but the judge
16 had denied it. He didn't want to be a part of my
17 case no more at that time; he was trying to go get
18 off it but the judge we went in front of denied it.

19 Q So you were afraid that he wasn't gonna
20 adequately represent you, you just didn't go?

21 A Yes, ma'am.

22 Q Okay. Now when they picked you up on a bench
23 warrant later you knew at that point you were going
24 to go to trial?

25 A Yes, ma'am.

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1 Q All right. And did you talk with Mr. Rogers
2 before the trial about the kind of things he wanted
3 to argue for you at trial, the kind of strategy he
4 would go after?

5 A I don't think we talked about strategy.

6 Q Okay. Well, did you know that he was going to
7 argue that none of the witnesses actually saw you
8 shoot the victim? Did you know he was going to
9 highlight that to the jury?

10 A Yes.

11 Q Okay. And did you know that he was also going to
12 point out to the jury that these witnesses all kind
13 of contradicted each other?

14 A Yes, ma'am.

15 Q Okay. And you got a chance to testify at the
16 trial, correct?

17 A Yes, ma'am.

18 Q And did you get a chance to tell the jury your
19 version of what happened at the club that night?

20 A Yes, ma'am.

21 Q Just to make sure I have the facts correct, when
22 you are kicked out the club you went and got a
23 weapon, correct?

24 A Yes, ma'am.

25 Q All right. And then you came back into the club

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1 to get your friends?

2 A Yes, ma'am.

3 Q Now were you holding a weapon at that time when
4 you went back in the club?

5 A Was I holding it?

6 Q Yes, sir.

7 A Yes, ma'am.

8 Q So you went back in the club, you were holding a
9 weapon, and at that point you say someone -- you saw
10 someone point a handgun at you.

11 A When I was on the dance floor of the club.

12 Q Okay.

13 A Once I got -- you have to go through the bar area
14 to get to the dance floor.

15 Q Okay. So you came back in and you had your
16 weapon, you go on the dance floor to get your
17 friends. So by the time you got to the dance floor
18 someone else is pointing a weapon at you?

19 A When I got on the dance floor ---

20 Q Okay. And at that point that's when -- you kind
21 of shot into the crowd just to protect yourself?

22 A A shot reflected as I shot in the air like in the
23 right corner.

24 Q Okay. So you shot in the air, but you knew there
25 were people in that area. I mean, you shot into the

1 air just because you were trying to protect
2 yourself?

3 A Yes, ma'am.

4 Q Okay. And you're saying now that you wish that
5 Mr. Rogers had asked the judge to instruct the jury
6 about self-defense?

7 A Yes, ma'am.

8 Q Okay.

9 MS. RATIGAN: That's all I have, Your
10 Honor.

11 THE COURT: Okay. Anything further?

12 MS. SHURLING: Nothing further, Your
13 Honor.

14 THE COURT: Okay. You can step down.
15 Thank you, sir.

16 MS. SHURLING: Your Honor, I have thus far
17 been unable to locate the statement of Mr. Simmons
18 but I did find an interview sheet, pardon me, a part
19 of an incident report which on page 7 indicates that
20 on February 10th a handwritten statement was taken
21 from Ricky Simpson and that Ricky Simpson stated
22 that he left the club, went in the parking lot,
23 heard a couple of shots. Simpson further stated
24 that he did not see a pistol in the rental car that
25 he was driving.

1 Your Honor, I would need about five more
2 minutes to go back through the remainder of this
3 stuff to make sure there's not a statement from
4 Mr. Simmons before we close the record.

5 THE COURT: Okay.

6 MS. SHURLING: And if I can't locate the
7 statement then I would move to introduce the
8 incident report. I'll get that done as quickly as I
9 can. It will take about five minutes.

10 THE COURT: Okay.

11 MS. SHURLING: Thank you, Your Honor.

12 (Pause.)

13 MS. SHURLING: I found it, Your Honor.

14 THE COURT: What's the State's position?

15 MS. SHURLING: For the record, Your Honor,
16 I have now located the handwritten statement of
17 Ricky Simpson, the third of the companions that was
18 with the applicant on the night of the incident.
19 This is his handwritten statement dated
20 February 10th, 2007, and I would move to introduce
21 that as Applicant's 4.

22 MS. RATIGAN: I have no objection to that,
23 Your Honor.

24 THE COURT: Okay, it's in without
25 objection.

1 (WHEREUPON, Plaintiff Exhibit No. 4 was
2 marked and admitted into evidence.)

3 MS. SHURLING: Your Honor, in lieu of the
4 number of issues that were raised I would ask
5 whether the Court would perhaps permit us to submit
6 memorandums in support of the application in the
7 form of proposed orders in lieu of trying to
8 summarize everything in a closing argument.

9 THE COURT: You got any objection to that?

10 MS. RATIGAN: Whatever Your Honor would
11 prefer.

12 THE COURT: Okay.

13 MS. SHURLING: Thank you, Your Honor. And
14 as is my habit, when the Court receives proposed
15 orders whichever side doesn't have their order
16 adopted by the Court, if unfortunately Your Honor
17 decides to not to grant relief for my client I would
18 then file a copy of my proposed order in the form of
19 a memorandum with the Clerk of Court so that the
20 details of my arguments would be preserved for
21 appellate review.

22 THE COURT: Okay, no problem.

23 MS. SHURLING: Thank you. Thirty days,
24 Your Honor?

25 MS. RATIGAN: Again, whatever Your Honor