

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

JAN - 5 2015

JOHN J. MOORE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000786

APPENDIX

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF RICHLAND
4

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TRANSCRIPT OF RECORD

06-GS-40-2203

06-GS-40-11738

06-GS-40-11739

DEFENDANT.

JANUARY 28, 2008
COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE WILLIAM P. KEESLEY, JUDGE; AND A
JURY.

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

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JOANNA A. MCDUFFIE, ASSIST. SOLICITOR
ATTORNEYS FOR THE STATE

DOUGLAS S. STRICKLER, PUBLIC DEFENDER
GREGORY B. COLLINS, ASSIST. PUBLIC DEFENDER
ATTORNEYS FOR THE DEFENDANT

STACY L. SHEPPARD
CIRCUIT COURT REPORTER

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(COURT REPORTER NOTE: The Solicitor's
office premarked the exhibits and some exhibit
numbers were skipped.)

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Date: 1-28-08 11
County: Richland

VOIR DIRE

Case No: 06-95-40-2203 Judge: Heasley
State: - State: - Atty: John Meadows
Heather Woods, Mississippi
Plaintiff: John Joseph Moore Defense Atty: Greg Collins
Doug Strickler
Court Reporter: Stacy L. Sheppard

<u>For No.</u>	<u>Name</u>	<u>Sex</u>	<u>Race</u>	<u>Court</u>	<u>Stricken</u> <u>STATE</u>	<u>Defense</u>	<u>Accept</u>
198	Douglas Mount	M	W			1	
74	Thomas Efland	M	W		1		
288	Michael Weeks	M	B				1
37	Diane Bruce	F	W			2	
44	Steven Carter	M	B				2
21	Jacqueline Bomberg	F	B		2		
45	Alice Costley	F	W			3	
~~288~~ 45	Barbara Hooker	F	W			4	
117	Norvia Overstreet	F	W				3
211	Cherish Payton	F	B				4
291	Alonzo Wilder	M	B		3		
185	Cordyn McMillan	F	W			5	
94	Joye Gordon	F	B				5
268	Peggy Thompson	F	W			6	
70	Latoria Dukes	F	B		4		
78	Laveen Evans	F	B				6
102	James Hamner	M	W				7
235	Charles Ruff	M	W			7	

For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.

Dates 1-28-08County: RichlandVOIR DIRECase No: 06-MS-40-2203Judge: KearneyState: -State: -Atty: John MeadowsHatter Weiss, Donna McElfeeDefendant: John Joseph MooreDefense Atty: Greg CollinsDorey StricklandCourt Reporter: Stacy L. Sheppard

<u> juror No.</u>	<u>Name</u>	<u>Sex</u>	<u>Race</u>	<u>Court</u>	<u>Strikes</u> <u>STATE</u>	<u>Defense</u>	<u>Accept</u>
254	Victor Justin Smith	M	W			8	
106	James Harrington	M	W				8
264	Sidney Strickland	M	W				9
253	Sandra Smith	F	B				10
228	Timothy Pakers	M	W			9	
298	Cheryl Worrell	F	B				11
275	Seibonne Seiner	F	W				12
23	Ann Bennett	F	W			X	
75	Harold Egister	M	B				A
282	William Ward	M	W			X	
3	Andrew Adams	F	B			X	
139	Missy Kelly	F	B				A

For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.

1 (The following proceedings were held on
2 January 28, 2008.)

3 **THE COURT:** Are you ready for the jury?

4 **MS. WEISS:** The State's ready, Your Honor.

5 **THE COURT:** Defense ready?

6 **MR. COLLINS:** Yes, Your Honor.

7 **THE COURT:** All right. Send for the jury,
8 please.

9 (Jury panel enters the courtroom.)

10 **THE COURT:** Ladies and gentlemen of the jury
11 panel, my name is Billy Keesley. I'm a judge from
12 Edgefield and I'm a resident judge of the 11th
13 Judicial Circuit. My home circuit is Lexington,
14 Edgefield, McCormick and Saluda Counties.

15 In South Carolina, circuit judges travel
16 throughout the state. And it's been my pleasure to
17 be assigned by the Chief Justice to preside over
18 general sessions court, which is commonly called
19 criminal court, here in Richland County this week.

20 Now, you've been brought in this morning to
21 serve as potential jurors in a case which actually
22 is composed of three separate indictments which will
23 be tried together for purposes of convenience. I'm
24 going to read to you the charges in a moment and
25 then I'm going to ask you some questions. And I'll

1 explain that process to you as we go along.

2 Before I begin all of this, I want to make
3 absolutely certain that you're under oath. And
4 since I wasn't present when you were qualified in
5 general terms, I need for you to stand and raise
6 your right hand.

7 (Whereupon, the jury panel was sworn by the
8 Judge.)

9 **THE COURT:** Thanks very much. Have a seat,
10 please.

11 Is there any member of the jury panel who was
12 unable to take that oath for any reason? If so,
13 please stand.

14 No one stood.

15 All right. Ladies and gentlemen, I have in my
16 hand three indictments. One charges -- well, let me
17 tell you, all three are captioned State versus John
18 Moore. In one indictment, Mr. Moore is charged with
19 murder. It is alleged that John Moore did, in
20 Richland County, on or about October 17, 2004,
21 feloniously, willfully and with malice aforethought
22 kill one Stephanie Dover by means of shooting Ms.
23 Dover with a firearm and that she died as a
24 proximate result thereof. All of which is alleged
25 to be in violation of a code section cited in the

1 indictment.

2 Another indictment charges Mr. Moore with
3 unlawful possession of a pistol by a person under
4 the age of 21. That indictment charges that in
5 Richland County, on or about October the 17th, 2004,
6 that Mr. Moore unlawfully possessed a pistol in that
7 he was under the age of 21 and that is alleged to be
8 in violation of a code section cited in the
9 indictment.

10 And, finally, I have an indictment that charges
11 Mr. Moore with possession of a firearm during the
12 commission of a violent crime. And that indictment
13 alleges that John Moore did, in Richland County, on
14 or about October 17, 2004, possess or visibly
15 display a firearm during the commission or attempted
16 commission of a violent crime, which is alleged to
17 be murder. And that is alleged to be in violation
18 of a code section cited in the indictment.

19 Now, upon his arraignment on these charges,
20 Mr. Moore has entered pleas of not guilty. He is
21 presumed to be innocent. It is incumbent upon the
22 State of South Carolina having brought these charges
23 against Mr. Moore to prove every essential element
24 of each charge beyond a reasonable doubt.

25 Mr. Moore has no obligation to prove anything

1 at all. He is presumed to be innocent.

2 These indictments are not evidence. An
3 indictment has no evidentiary value. It is merely a
4 charging paper. It is the formal means by which
5 someone is charged and brought to trial.

6 I'm going to be asking you a series of
7 questions. And the purpose for these questions is
8 to obtain information from you about any possible
9 connection you may have with this case or any of the
10 people in it or the type of case it's alleged to be.

11 For example, if you have some relationship with
12 some of the people involved in the case or agencies
13 involved in the case, you'll need to disclose that
14 to us. If you or somebody very close to you has
15 ever been through something similar either by being
16 accused of some misconduct or being the victim of
17 some misconduct, those are the kinds of things we're
18 trying to elicit from you. Because the purpose of
19 all of this is for us to have a jury serving on this
20 case that is fair and impartial.

21 You should always err on the said of giving me
22 the information. Give us the information and let us
23 decide whether it's important or not, okay? So if
24 you have any doubt about whether any of these things
25 apply to you, you need to discuss it with me and let

1 me resolve the doubt.

2 If I ever ask you anything that you would
3 prefer to discuss more privately, you may let me
4 know that you want to come down front to talk about
5 this, that's fine, and we'll talk about it over here
6 on the side.

7 You do need to understand that this is a court
8 of record. Now, what that means is that Ms.
9 Sheppard over there takes down every single thing we
10 say. So if you're going to be speaking, the first
11 thing that I have to do is to identify who is
12 speaking by your juror number and we'll go from
13 there.

14 Remember, folks, that you're under oath.

15 Is John Moore in the courtroom today?
16 Mr. Moore, I need for you to please stand, turn
17 around and face the jury panel so they can see you.

18 Thank you very much, sir. You may be seated.

19 Is there any member of the jury panel who is
20 related by blood or marriage or connected by
21 employment with the defendant in the case, John
22 Moore? I also have his name listed as John Joseph
23 Moore. Any of you have any connection of any kind
24 with Mr. Moore; if so, please stand.

25 (There was no response.)

1 **THE COURT:** All right. Mr. Moore will be
2 represented by Mr. Greg Collins and by Mr. Doug
3 Strickler. Thank you, gentlemen.

4 The following persons have been identified as
5 potential witnesses in this case and I'm going to
6 read a list of names to you.

7 If any of these people happen to be present in
8 the courtroom at this time, I'm going to ask that
9 person to stand as his or her name is called and
10 face the jury.

11 Some of them may be behind you or to your side,
12 so if I see somebody stand, I'll call your attention
13 to the fact that somebody is standing out of your
14 line of sight so you can turn and see the person.

15 Grover Gene Derrick, Mr. Derrick's over here to
16 my right, thank you, sir; Zachary Derrick; John
17 Joseph Moore, Senior; Delia Nix; Kerwyn Phillips;
18 Officer Scobie who formerly worked with the Richland
19 County Sheriff's Department; Investigator Faust of
20 the Richland County Sheriff's Department;
21 Investigator Stan Richards of the Richland County
22 Sheriff's Department; Investigator Eric Barnes of
23 the Richland County Sheriff's Department, he's over
24 here to my right, thank you, sir; Investigator Tom
25 Amaro of the Richland County Sheriff's Department,

1 did I pronounce your name, correctly?

2 **INVESTIGATOR AMARO:** Yes, sir, that's correct.

3 **THE COURT:** Investigator K., the initial K.,
4 Isenhoward of the Richland County Sheriff's
5 Department; Anna Clemens of the Richland County
6 Sheriff's Department; Investigator J, that's the
7 initial J, Russell, is that Forest Acres?

8 **MR. MEADORS:** It is.

9 **THE COURT:** Of the Forest Acres Police
10 Department; Investigator Boland of the Richland
11 County Sheriff's Department; Chief Ewing of the
12 Bishopville Police Department; Captain Stan Smith of
13 the Richland County Sheriff's Department;
14 Investigator Bryan Jones of SLED; Investigator
15 McDonald of the Richland County Sheriff's
16 Department; Investigator Lancy Weeks of the Richland
17 County Sheriff's Department; Investigator Poole of
18 the Richland County Sheriff's Department;
19 Investigator Strange, Richland County Sheriff's
20 Department; Jeanie Shull, what agency is that?

21 **MS. WEISS:** Alvin S. Glenn Detention Center,
22 Your Honor.

23 **THE COURT:** Of the Alvin S. Glenn Detention
24 Center; Doctor Clay Nichols of the Richland
25 Coroner's Office; Doctor Collins of the Richland

1 County -- David Collins of the Richland County
2 Sheriff's Department; Zane Padgett, Richland County
3 Sheriff's Department; Charles Earles, Richland
4 County Sheriff's Department; Tena Goff, Richland
5 County Sheriff's Department; Joy Delatorre, Richland
6 County Sheriff's Department; Jennifer Stoner of
7 SLED; Hazella Baylor of SLED; Joseph Leatherman of
8 SLED; Trisha Collins of SLED; L.A. Jones of SLED;
9 Andy Jones, Richland County Sheriff's Department;
10 Beverly Crane, Richland County Sheriff's Department;
11 Investigator Talkish of the Richland County
12 Sheriff's Department; Deirdre Brown; Doctor Ford,
13 what is that? What is PRMH?

14 **MS. MCDUFFIE:** Palmetto Richland Memorial
15 Hospital.

16 **THE COURT:** Palmetto Richland Memorial
17 Hospital; Doctor Morrison of Palmetto Richland; Tina
18 Williams; Teresa Helmick, I got -- there's not two
19 Eric Barnes, are there?

20 **MR. MEADORS:** No, sir.

21 **THE COURT:** Deputy Scott of the Richland County
22 Sheriff's Department; and two people with EMS, I
23 only have last names, Innes, I-N-N-E-S, and Drew,
24 D-R-E-W.

25 Now, folks, I read to you a long list of names

1 and I've read to you some people just using their
2 last name or their title and last name. If you
3 think you may have some connection or be related to
4 some of these people and you're not really sure if
5 it's the same person, if you'll let me know, I'll
6 try to get more identifying information for you from
7 the attorneys.

8 But what I do need to know is if any of you are
9 related by blood or marriage or connected by
10 employment with any of these potential witnesses for
11 the State or if you have any doubt about that, you
12 need to stand and let me know.

13 (Jurors stand.)

14 **THE COURT:** Your name, sir?

15 **JUROR:** Charles Colbert.

16 **THE COURT:** He's juror number 53. What's your
17 situation, Mr. Colbert?

18 **JUROR:** Clay Nichols is my father-in-law.

19 **THE COURT:** I'm going to set you aside on this
20 case, Mr. Colbert. If you would, move back there to
21 the bailiff and have a seat on one of those back
22 rows for me.

23 Juror number 53, he's 15 on the list, is set
24 aside. He's related to a witness for the State.

25 Your name, please, ma'am.

1 **JUROR:** Johnte Williams.

2 **MR. MEADORS:** She's number eight on the short
3 list.

4 **THE COURT:** 294. What's your situation, Ms.
5 Williams?

6 **JUROR:** My father is an agent with one of the
7 agencies, a SLED agent.

8 **THE COURT:** Your father is a SLED agent?

9 **JUROR:** Yes.

10 **THE COURT:** Do you know what he does for SLED?

11 **JUROR:** I know it's public relations.

12 **THE COURT:** If y'all want to be heard, I'll
13 hear you. Otherwise, I intend to set her aside.

14 **MR. MEADORS:** If Your Honor's made his mind up,
15 yes, sir. Could we approach on another matter, too?

16 **THE COURT:** Sure.

17 Ms. Williams, you're set aside. Have a seat
18 back up there, please. She's related -- her father
19 works for one of the prosecuting agencies.

20 (Whereupon, a bench conference was held off
21 the record, in the presence of the jury panel, but
22 out of the hearing of the jury panel.)

23 **THE COURT:** Ladies and gentlemen, I've been
24 informed there's one other potential witness for the
25 State whose name I did not call. His name is

1 Jonathan Leader, L-E-A-D-E-R, who is with the
2 archeology department at the University of South
3 Carolina. Are any of you related by blood or
4 marriage or connected by employment with Mr. Leader;
5 if so, please stand?

6 (Juror stands.)

7 **JUROR:** I have a quick question.

8 **THE COURT:** What's your name, please.

9 **JUROR:** Barbara Koshar, 145.

10 **THE COURT:** Yes, ma'am.

11 **JUROR:** My soon to be daughter-in-law works for
12 Forest Acres Police Department and she's -- they're
13 getting married in May and I didn't know if that
14 would be a conflict.

15 **THE COURT:** What's her name?

16 **JUROR:** Her name is Brandy Richardson.

17 **THE COURT:** What does she do for them?

18 **JUROR:** She is a police officer.

19 **THE COURT:** What are the allegations about the
20 Forest Acres Police Department being in the case?

21 **MS. MCDUFFIE:** Your Honor, Investigator Russell
22 worked for Richland County at the time. He's now at
23 Forest Acres. Forest Acres was not an agency
24 involved in this.

25 **THE COURT:** Did you hear what she said, Ms.

1 Koshar?

2 **JUROR:** Yes, Your Honor.

3 **THE COURT:** Is there anything at all about your
4 relationship with your future daughter-in-law or
5 hers with that agency that would in any way affect
6 your ability to be fair and impartial?

7 **JUROR:** No, sir, I just wanted to make it
8 known.

9 **THE COURT:** You did the right thing. I just
10 have to ask these questions and just answer me
11 truthfully. Do you have any doubt about your
12 ability to be a fair and impartial juror in the
13 case?

14 **JUROR:** No, sir.

15 **THE COURT:** Thank you, ma'am.

16 Juror number 145, Ms. Koshar, is eligible to
17 serve.

18 Your name, sir?

19 **JUROR:** Michael Weeks.

20 **THE COURT:** What's your first name?

21 **JUROR:** Michael.

22 **MS. WEISS:** Number three on the short list,
23 Your Honor.

24 **THE COURT:** I'm sorry. What's your situation,
25 sir, Mr. Weeks?

1 **JUROR:** About a year and a half ago, maybe two
2 years, I was employed with the Richland County
3 Sheriff's Department.

4 **THE COURT:** With which agency?

5 **JUROR:** Richland County.

6 **THE COURT:** What did you do for them?

7 **JUROR:** I worked as a JSO.

8 **THE COURT:** Say that again for me.

9 **JUROR:** JSO.

10 **THE COURT:** What is that?

11 **JUROR:** Judicial security officer.

12 **THE COURT:** You worked up here?

13 **JUROR:** Yes, sir.

14 **THE COURT:** To the best of your knowledge, have
15 you ever had any involvement in this particular
16 case?

17 **JUROR:** No, sir.

18 **THE COURT:** Is there anything at all about your
19 relationship, experience or anything whatsoever
20 about your connection with or ceasing your
21 relationship with the Richland County Sheriff's
22 Department that would in any way affect your ability
23 to be fair and impartial as a juror in this case?

24 **JUROR:** No, sir.

25 **THE COURT:** Any doubt in your mind?

1 **JUROR:** No, sir.

2 **THE COURT:** Thank you very much.

3 Mr. Weeks is eligible to serve.

4 The State will be represented by Mr. John
5 Meadors, Ms. Heather Weiss and Ms. Joanna McDuffie.

6 Do any of you know anything at all about this
7 case? Do you have any knowledge whatsoever about
8 the allegations, about the underlying claims that
9 are being made? Have you heard, seen or read
10 anything about it to the best of your recollection
11 in the media? Do you know anything at all about
12 this matter other than what you've heard me read to
13 you from the allegations in the courtroom today? If
14 so, please stand.

15 (There was no response.)

16 **THE COURT:** Have any of you or any of your
17 immediate family members or any of your close,
18 personal friends ever been accused of committing a
19 crime of violence or the victim of a crime of
20 violence? If so, please stand. We're going to talk
21 about that up here.

22 (Jurors stand.)

23 **THE COURT:** If you all would form a line over
24 here with the bailiff for me, please. The attorneys
25 may join me on the side.

1 (Whereupon, the following bench conferences
2 were held on the record.)

3 **THE CLERK:** Judge, this is juror number 282,
4 William Ward.

5 **THE COURT:** If you'll come up here for me,
6 please.

7 Mr. Ward is 32 on the short list.

8 What's your situation, sir?

9 **JUROR:** My wife's purse was snatched and, you
10 know, they grabbed her purse. So I didn't know
11 whether that was violent or not.

12 **THE COURT:** You did the right thing by talking
13 to me. Is there anything at all about that
14 experience that affects your ability to be fair and
15 impartial in this case?

16 **JUROR:** No, sir.

17 **THE COURT:** Was that here in Richland County?

18 **JUROR:** That was at the Peak exit at I-26. I
19 don't think that's Richland County, is it?

20 **THE COURT:** No. Do you have any doubt about
21 your ability to be fair and impartial?

22 **JUROR:** No, sir.

23 **THE COURT:** Thank you very much.

24 Mr. Ward is juror number 282, he's eligible to
25 serve.

1 Yes, ma'am.

2 **THE CLERK:** Judge, Your Honor, number 216,
3 Sherlande Pierre.

4 **THE COURT:** What's your situation, Ms. Pierre?

5 **JUROR:** My brother was shot and killed in 2005.

6 **THE COURT:** Was that here in Richland County?

7 **JUROR:** No, that was in Miami, Florida.

8 **THE COURT:** You understand the allegations
9 here?

10 **JUROR:** Yes, sir.

11 **THE COURT:** Is there anything at all about your
12 experience with your brother's situation that
13 affects your ability to be fair and impartial in
14 this case?

15 **JUROR:** It may.

16 **THE COURT:** I'll set you aside on this case,
17 ma'am. Just have a seat in the back, okay.

18 Ms. Pierre is juror number 216. She's set
19 aside in the trial of this case.

20 Yes, ma'am.

21 **THE CLERK:** Number 185, Carolyn McMillan.

22 **THE COURT:** Ms. McMillan, what's your
23 situation, please?

24 **JUROR:** My uncle, Joseph McMillan, was killed a
25 few months ago in Myrtle Beach.

1 **THE COURT:** How was he killed?

2 **JUROR:** He was found in the trunk of a car.

3 **THE COURT:** Do you need a second?

4 **JUROR:** No.

5 **THE COURT:** Do you know if he'd been shot or --

6 **JUROR:** I think he was stabbed.

7 **THE COURT:** Have they arrested anybody on that?

8 **JUROR:** Yes, they have.

9 **THE COURT:** So the case is pending?

10 **JUROR:** Yes.

11 **THE COURT:** Are you a witness in any way in
12 that?

13 **JUROR:** No.

14 **THE COURT:** Is there anything at all about that
15 situation and your relationship with your uncle that
16 affects your ability to be fair and impartial in
17 this case?

18 **JUROR:** No.

19 **THE COURT:** Do you have any doubt in your mind?

20 **JUROR:** No.

21 **THE COURT:** Thank you very much.

22 Ms. McMillan is juror number 185. She's
23 eligible to serve.

24 Yes, ma'am.

25 **THE CLERK:** Number 268, Peggy Thompson.

1 **THE COURT:** Okay. Ms. Thompson.

2 **JUROR:** I used to live in Aiken for ten years.
3 I worked with the coalition to assist abused persons
4 as a volunteer. I saw quite a few women who had
5 been raped, beaten, assaulted, that sort of thing.

6 **THE COURT:** Is there anything about your
7 relationship with that organization, your
8 experiences there that would affect your ability to
9 be a fair and impartial juror in this case?

10 **JUROR:** I don't think so.

11 **THE COURT:** Do you have any doubt in your mind?

12 **JUROR:** No.

13 **THE COURT:** Thank you very much.

14 Ms. Thompson, juror number 268, she's eligible
15 to serve.

16 Yes, sir.

17 **THE CLERK:** Number 228, Timothy Rekers.

18 **THE COURT:** Okay. Mr. Rekers, go ahead.

19 **JUROR:** My brother was assaulted in a parking
20 lot. I think they called it a lynching.

21 **THE COURT:** Second degree lynching. Mob
22 violence, more than one guy?

23 **JUROR:** Yeah.

24 **THE COURT:** Was that in Richland County?

25 **JUROR:** Yes, sir.

1 **THE COURT:** How long ago are we talking about?

2 **JUROR:** I think it was more than five years
3 ago.

4 **THE COURT:** Did they arrest anybody?

5 **JUROR:** No, sir.

6 **THE COURT:** Is there anything at all about that
7 experience that affects your ability to be a fair
8 and impartial juror in this case?

9 **JUROR:** No, sir.

10 **THE COURT:** Any doubt in your mind?

11 **JUROR:** No.

12 **THE COURT:** Thank you very much.

13 Mr. Rekers is juror number 228. He's eligible
14 to serve.

15 (The bench conferences were concluded.)

16 **THE COURT:** If any of you have any connection
17 of any kind with any of the people in this case, any
18 of the entities or agencies involved in this case
19 that you haven't disclosed to us, you need to do
20 that.

21 So, for example, if you're a friend, if you're
22 a neighbor, if you attend the same church or civic
23 organizations, if you've ever been represented by
24 one of these attorneys or anyone with whom they're
25 affiliated, if you've ever been on the opposite side

1 of a case represented by one of these attorneys or
2 anyone with whom they're affiliated, those are the
3 kinds of things you need to disclose to us. So if
4 you've got any connection at all with any of these
5 people or any of these agencies, please stand and
6 let us know about it.

7 (Juror stands.)

8 **THE COURT:** Your name, please?

9 **JUROR:** Minda Miller, 187.

10 **THE COURT:** Go ahead.

11 **JUROR:** I personally know one of the attorneys
12 with the State.

13 **THE COURT:** Which one?

14 **JUROR:** Joanna.

15 **THE COURT:** And how would you describe your
16 relationship with Ms. McDuffie? Are you
17 acquaintances, friends or what?

18 **JUROR:** Very close with her family. My
19 children grew up with -- my son grew up with her
20 sister. I know her parents very well. And we go to
21 the same, you know, synagogue and community
22 activities.

23 **THE COURT:** Let me ask you then is there
24 anything at all about that relationship either with
25 the attorney or with anyone in her family that would

1 in any way affect your ability to be a fair and
2 impartial juror in the case?

3 **JUROR:** To be honest with you, it might.

4 **THE COURT:** That's all I need to hear. I'll
5 set you aside on this case.

6 Ms. Miller is 187. She's set aside. Have a
7 seat in the back please, ma'am.

8 Lady in the purple.

9 **JUROR:** Juror number 23, Ann Bennet.

10 **THE COURT:** Okay. 23 and 29 on the short list.
11 All right. What's your situation, Ms. Bennet?

12 **JUROR:** Just to let you know I'm a 32 year
13 employee of Palmetto Health Richland. And the names
14 that you mentioned from Palmetto Health Richland, I
15 just know those people because I've worked with them
16 in the past.

17 **THE COURT:** Ms. Bennet, if Doctor Ford or
18 Doctor Morrison testify in the case, would that in
19 any way affect your ability to be a fair and
20 impartial juror in the case?

21 **JUROR:** No, sir, it would not.

22 **THE COURT:** I'm going to ask you some
23 questions, I need you to answer yes or no. If you
24 need to go beyond that, I need you to come down
25 front to talk with me, okay?

1 **JUROR:** Okay.

2 **THE COURT:** Have you ever formed in your own
3 mind or have you ever expressed to anyone else an
4 opinion as to whether Doctor Ford or Doctor Morrison
5 is a believable person?

6 **JUROR:** No.

7 **THE COURT:** You can decide the case without
8 regard to what either of them may think of your
9 decision?

10 **JUROR:** Yes.

11 **THE COURT:** Do you have any doubt about any of
12 that?

13 **JUROR:** No.

14 **THE COURT:** Thank you, ma'am.

15 Ms. Bennet is eligible to serve. She's juror
16 number 23.

17 Yes, ma'am.

18 **JUROR:** Number 37. I know Joanna McDuffie.
19 Her sister and my daughter are friends.

20 **THE COURT:** You're Diane Bruce?

21 **JUROR:** Yes, sir.

22 **THE COURT:** Is there anything at all about your
23 relationship with any of those people, their
24 relationship with Ms. McDuffie, that in any way
25 affects your ability to be a fair and impartial

1 juror in this case?

2 JUROR: No, sir.

3 THE COURT: You can decide the case without
4 regard to what she may think of your decision?

5 JUROR: Yes, sir.

6 THE COURT: Are you sure?

7 JUROR: Yes, sir.

8 THE COURT: You can decide the case without
9 regard to what any of your family may think of your
10 decision?

11 JUROR: Yes, sir.

12 THE COURT: You're sure?

13 JUROR: Yes, sir.

14 THE COURT: So if you're on the jury, you won't
15 be thinking what will Ms. McDuffie or any of those
16 friends be thinking if I vote against her position?

17 JUROR: No, sir.

18 THE COURT: Any doubt about any of that?

19 JUROR: No, sir.

20 THE COURT: Thank you very much.

21 Ms. Bruce is juror number 37, eligible to
22 serve.

23 Yes, ma'am.

24 JUROR: Elizabeth Simmons, number 247.

25 THE COURT: She's from Edgefield.

1 Go ahead, Ms. Simmons.

2 **JUROR:** I know the Judge and the person sitting
3 beside him personally. I didn't know if it affected
4 anything.

5 **THE COURT:** Okay. For the record, her father
6 is an attorney and he is the first attorney with
7 whom I practiced. And my law clerk is also from
8 Edgefield.

9 Anything about any of that that affects your
10 ability to be fair and impartial in the case?

11 **JUROR:** No, sir, not at all.

12 **THE COURT:** Any doubt in your mind?

13 **JUROR:** No, sir.

14 **THE COURT:** Thank you, ma'am.

15 Ms. Simmons is eligible to serve. I don't have
16 a position in the case, folks.

17 But you did exactly what you're supposed to do
18 by disclosing that and I didn't see you sitting out
19 there or I would have already told them.

20 Are any of you members of or financial
21 contributors to any organization which has as one of
22 its primary purposes the enforcement of victim's
23 rights, the support of law enforcement, any
24 organization such as Mother's Against Drunk Driving,
25 Students Against Drunk Driving, Citizens Against

1 Violent Crime, any victim's rights organization or
2 anything like Sister Care or anything like that? If
3 you're a member of or a financial contributor and
4 you haven't already told me. Now, if you already
5 told me, you don't have to tell me again.

6 (Juror stands.)

7 **THE COURT:** Your name, please?

8 **JUROR:** I'm juror number 45. I'm Alice Caskey.

9 **THE COURT:** Hold on just a second, Ms. Caskey.
10 All right. She's seven on the short list.

11 What's your situation, ma'am?

12 **JUROR:** I've contributed to Sister Care through
13 the Junior League of Columbia and also a right to
14 life group.

15 **THE COURT:** Anything about any of that that
16 affects your ability to be a fair and impartial
17 juror in this case?

18 **JUROR:** No, sir.

19 **THE COURT:** Any doubt in your mind?

20 **JUROR:** No, sir.

21 **THE COURT:** Thank you very much.

22 Ms. Caskey's eligible to serve.

23 Have any of you formed or expressed any
24 opinions about the case; if so, please stand?

25 (There was no response.)

1 **THE COURT:** Are any of you aware of any
2 interest, bias or prejudice that you might have for
3 or against the State, for or against the defendant,
4 for or against anyone or any entity in the case; if
5 so, please stand?

6 (There was no response.)

7 **THE COURT:** Are any of you employed in any
8 capacity or have you ever been employed in any
9 capacity in the field of law enforcement or as a
10 prosecutor or as a defense attorney or with any
11 defense firm or agency? If you've already told me,
12 I had the gentleman who said he worked courthouse
13 security.

14 (Jurors stand.)

15 **THE COURT:** Your name, sir?

16 **JUROR:** Juror 74, Tom Efland. I'm an attorney.
17 Obviously, I've done some defense work. I would
18 also mention that two of my closest neighbors are
19 hierarchy in SLED. So I didn't recognize any of the
20 police names that you mentioned, but there's some
21 likelihood I have met some of them in the past.

22 **THE COURT:** Any of that affect your ability to
23 be fair and impartial as a juror in the case, Mr.
24 Efland?

25 **JUROR:** No, sir.

1 **THE COURT:** Any doubt about it?

2 **JUROR:** No, sir.

3 **THE COURT:** Thank you. Juror number 74,
4 Mr. Efland, is eligible.

5 Your name please, ma'am?

6 **JUROR:** Lavern Evans, juror number 78.

7 **THE COURT:** Go ahead, Ms. Evans.

8 **JUROR:** About ten years ago, I was employed at
9 Columbia Police Department.

10 **THE COURT:** What did you do there?

11 **JUROR:** I was a clerical worker.

12 **THE COURT:** Anything at all about that
13 experience or your relationship with the Columbia
14 Police Department that affects your ability to be
15 fair and impartial in the case?

16 **JUROR:** No.

17 **THE COURT:** Any doubt in your mind?

18 **JUROR:** No.

19 **THE COURT:** Thanks very much.

20 Ms. Evans is juror number 78 and eligible to
21 serve.

22 Are each of you able to give to both the State
23 and the defendant a fair and impartial trial? If
24 you know of any reason why you cannot, please stand
25 now.

1 (There was no response.)

2 **THE COURT:** Further questions from the State?

3 **MR. MEADORS:** Nothing from the State, Your
4 Honor.

5 **THE COURT:** Further questions from the defense?

6 **MR. COLLINS:** Nothing from the defense.

7 **THE COURT:** Thank you very much. The jury
8 panel is qualified.

9 All right. Ladies and gentlemen, each county
10 does these things a little bit differently. Some
11 are in some pilot programs and others are not.

12 So, Mr. Clerk, if I say something wrong, do not
13 hesitate to tell me I'm wrong, okay?

14 **THE CLERK:** Yes, sir, Your Honor.

15 **THE COURT:** My understanding is that they're
16 going to call you up one at a time and you will come
17 forward, you need to go to the closest aisle, come
18 around and come to the microphone over here to my
19 right. Can everybody see that microphone?

20 When you get up there, they want you to say
21 your name and where you're employed. And then the
22 clerk will ask questions of the State's attorney and
23 the defense attorney and based on the responses
24 given, you will be told whether to have a seat in
25 the jury box over there or return to a seat in the

1 rear of the courtroom. You need to bring your
2 personal belongings because your next stop may be
3 over here, so bring your personal belongings with
4 you.

5 The strikes are five for the State and ten for
6 the defense, I believe.

7 All right. Mr. Clerk, give us a jury, please.

8 **THE CLERK:** Yes, sir.

9 (During the jury selection process, the
10 jurors were called forward and peremptory strikes
11 were exercised as reflected by the attached voir
12 dire sheet made a part of this record at page 11.)

13 **THE CLERK:** First juror number 198, Douglas
14 Mount.

15 **JUROR:** My name is Doug Mount and I'm employed
16 at Bank of America.

17 **THE CLERK:** What says the State?

18 (Pause.)

19 **THE COURT:** Hold on one second. I didn't ask
20 one question. I apologize to you. I just think
21 this is important enough that I needed to stop. Did
22 any of you have any connection of any kind with the
23 decedent, Stephanie Dover, or her family; if so
24 please stand?

25 (There was no response.)

1 **THE COURT:** All right. Thank you. The jury
2 panel's qualified. I apologize. I should have
3 asked that earlier.

4 (Whereupon, the jury selection process was
5 continued.)

6 (The following occurred during the jury
7 selection process.)

8 **THE CLERK:** Number 3, Audrey Adams, 3.

9 **JUROR:** I'm Audrey Adams and I work for the
10 Department of Education.

11 **THE CLERK:** What says the State?

12 **JUROR:** Excuse me, I do need to say, I know Ms.
13 Dana Outing. I didn't recognize her earlier.

14 **THE COURT:** You know who?

15 **JUROR:** Dana Outing.

16 **THE CLERK:** A paralegal with the Solicitor's
17 office, Your Honor.

18 **MR. MEADORS:** Ms. Outing right here.

19 **THE COURT:** Ms. Adams, would that in any way
20 affect your ability to be a fair and impartial juror
21 in the case?

22 **JUROR:** No, sir.

23 **THE COURT:** You can decide the case without
24 regard to what that lady may think of your decision?

25 **JUROR:** Yes, sir.

1 **THE COURT:** Any doubt in your mind?

2 **JUROR:** No doubt.

3 **THE COURT:** Go ahead, Mr. Clerk, she's
4 qualified.

5 (Whereupon, the jury selection process was
6 continued and completed.)

7 **THE COURT:** Are there any matters to take up
8 including composition of the jury panel prior to the
9 jury being sworn from the State?

10 **MR. MEADORS:** Your Honor, give me one second,
11 please.

12 **THE COURT:** Yes.

13 (Pause.)

14 **MR. MEADORS:** Nothing from the State.

15 **THE COURT:** From the defense?

16 **MR. COLLINS:** Nothing from the defense.

17 **THE COURT:** Thank you very much.

18 Ladies and gentlemen, I'm going to need to ask
19 you to step into the jury room in just a moment. I
20 don't think you'll be back there very long. I need
21 to get my bearings from the attorneys as to how
22 we're going to proceed with the rest of the day.

23 My guess, at this point, is that we're probably
24 going to start with you folks tomorrow morning, that
25 we're going to stay here and work on some matters

1 that I have to deal with not just on this case, but
2 on other cases as well and that we will probably
3 start fresh with you all in the morning, but I don't
4 know that for certain. I, like you, will be hearing
5 all of this for the first time.

6 Now, when you do come back in, Mr. Carter,
7 you're going to be the foreman of the jury. I want
8 you to sit in the foreman seat. The bailiff will
9 tell you which one that is. I'm not sure if it's
10 the one to your right or to the left. And then the
11 two alternates, you'll need to sit on one of those
12 chairs in the back row. It doesn't matter which
13 one. The rest of you folks can sit anywhere you
14 like in those first three rows.

15 While you're back there, do not discuss this
16 case in any way, don't talk about the people
17 involved, don't talk about the type of case it's
18 alleged to be, don't talk about this case in any
19 manner at all. I'll get you back out here as
20 quickly as I can. Follow the bailiff, please.

21 (The jury retires to the jury room.)

22 **THE COURT:** Ladies and gentlemen, if you were
23 not selected on this jury, thank you very much for
24 your service here. I can't turn you loose. I have
25 to send you back from whence you came. You have to

1 go back down to the jury assembly room. They'll
2 give you instructions down there. Thank you.

3 (The remaining jury panel was excused.)

4 **THE COURT:** All right. You all want to start
5 in the morning; is that right?

6 **MR. MEADORS:** Yes, sir.

7 **THE COURT:** 9:30 okay?

8 **MR. MEADORS:** Yes, sir.

9 **THE COURT:** Can we do all of these pretrial
10 motions this afternoon?

11 **MR. MEADORS:** Yes, sir.

12 **THE COURT:** Any problem?

13 **MR. COLLINS:** No problem. What time this
14 afternoon?

15 **THE COURT:** Well, I'm trying to figure out how
16 I'm going to do all of these things they told me to
17 do. If you all will stick around, I'll give you a
18 better idea when I find out, okay?

19 Bring them back in if they're ready.

20 (The jury returns to the courtroom.)

21 **THE COURT:** All right. Ladies and gentlemen,
22 I'm not going to have you placed under your oath as
23 a trial jury today. We'll do that in the morning.
24 We are going to start or plan to start with you
25 folks in the morning at 9:30.

1 Now, the bailiffs will show you where to report
2 and how to report, but I need you to come directly
3 to the jury room, the place you just came from. I'm
4 going to ask you, when you come back tomorrow, if
5 you're one of those folks that gets here early,
6 please don't stand around in common areas or
7 anything like that, just come on back here. The
8 bailiffs will be here and they'll do their best to
9 see that you're comfortable and that you have what
10 you need.

11 I do need for you to be on time. So if you
12 have some true emergency that's going on in your
13 life, please have somebody call and make sure we
14 know what's going on. Otherwise, after a while,
15 I'll have to send people to find you and we don't
16 want that. So if something really urgent, really an
17 emergency comes up, let us know. And please make
18 sure that your definition of an emergency is likely
19 to meet the same as mine.

20 Now, you are not to discuss this case in any
21 way with anybody, don't talk about it with family
22 members, don't talk about it with friends, don't
23 talk about it with anybody at all. Now, you can
24 tell a spouse, for example, that you're on a jury,
25 but you cannot tell them what case it is or what

1 it's about, who's in it, can't discuss the case in
2 any way until the week is over and you've been
3 seated on any jury you might possibly be seated on.

4 Don't discuss the case among yourselves until I
5 tell you to, that will be at the very end of the
6 trial and you'll have no doubt about when that is.
7 So don't talk about it among yourselves, don't talk
8 about it with anybody else.

9 If anybody attempts to contact you and discuss
10 the case with you, you need to report that to me so
11 that I can deal with it. Give me the best
12 description of who it was and how it occurred and
13 when it occurred.

14 Also, if there is any media coverage of this
15 trial, get away from it and then at the first
16 opportunity you have, you need to tell me what you
17 saw, heard or read through the media. So just use
18 common sense with all this stuff, folks.

19 If you go home and -- I haven't been notified
20 the media is going to cover this trial, but I never
21 know unless they set up television cameras, then
22 it's a pretty good indication they're covering it,
23 but regardless, if you see something on the screen
24 at the six o'clock news, don't watch the seven
25 o'clock news and the 11 o'clock news, okay. Just

1 use common sense. Get away from whatever was
2 reported and then tell me about it first chance you
3 get.

4 I also need to tell you something that I've had
5 to add, particularly with the advent of the
6 Internet. You are not to do any independent
7 investigation of this case or anything related to
8 it. So once you find out where this is alleged to
9 have occurred, don't go out there and look around.
10 Don't go on the Internet and try to look up articles
11 that might have been written, if there were any,
12 about this situation, don't go on the Internet and
13 try to look up the law. My job is going to be to
14 tell you the law, you don't need to worry about
15 that. So don't do any independent investigation of
16 the case.

17 Now, folks, I want to thank you very much for
18 your service and I'll explain some things to you
19 tomorrow. You may have to wait on us. I can't
20 promise you that you won't have to wait, but I do
21 promise you that we'll be working really hard. And
22 I do need you here in the morning at 9:30 so we can
23 continue. Any questions about any of that?

24 (There was no response.)

25 **THE COURT:** Just plan to be here tomorrow at

1 9:30, folks, 9:30 in the morning in the jury room.
2 I hope you have a pleasant evening. Follow the
3 bailiff.

4 (The jury was excused for the day.)

5 **THE COURT:** All right. I've got another matter
6 at two o'clock. Nobody's told me how long it's
7 going to take.

8 **MR. MEADORS:** I know I've got a matter with you
9 about a case I'm doing next week. If that's it, I
10 don't think it will take any longer than 30 -- 40
11 minutes. I've been accused of underestimating, but
12 I don't think it will take any longer than that.

13 **THE COURT:** Y'all be back at 2:45. Everybody
14 in this case 2:45. Court's in recess until 2:05.
15 Thank you.

16 Folks, let me say something before we break.
17 Those of y'all in the audience, I don't know exactly
18 anybody's connection to anything yet. Be real
19 careful as you leave that you don't have any
20 conversations about the case or anybody in it that a
21 juror might overhear. Don't have any contact with
22 these jurors, please. If you do, it's going to shut
23 down the trial. It's a lengthy process I have to go
24 through. They might be in the same restaurants.
25 Presumably today they'll go home, but they might be

1 in the same common area so just be real careful,
2 okay. Thank you.

3 (Whereupon, there was a luncheon recess.)

4 **THE COURT:** All right. What motions do you
5 have?

6 **MR. COLLINS:** Your Honor, I believe that the
7 State would do a Denno hearing for a short verbal
8 statement that was allegedly given.

9 I have on my motions list a motion to suppress
10 an audio recording. I'm going to withdraw that
11 motion.

12 The first motion on the list is a renewal of
13 Rule Five and Brady motions, specifically regarding
14 a Crime Stopper tip. We addressed it in a previous
15 motion, I believe, that was two weeks ago or one
16 week ago, but it was in front of Your Honor. It was
17 indicated to the Court that it was an e-mail.

18 Upon further review of the discovery that has
19 been provided, specifically in Eric Barnes, the lead
20 investigator, case notes, he actually spoke with the
21 confidential informant. So at one point in time,
22 they did know who this informant was and we would
23 just like to know what, if any, information, if
24 there's anything else documented.

25 There's also numerous notes, as well as news

1 articles that said it was a phone call and not an
2 e-mail. We would just like to hash out and make
3 sure that we do have everything that they have
4 regarding this tip.

5 **THE COURT:** Ms. Weiss?

6 **MS. WEISS:** Thank you, Your Honor. I've gone
7 over this with Investigator Barnes. And everything
8 that we have, we've turned over to the defense.

9 **THE COURT:** So there's no notes. There's no
10 recordings. There's nothing that was done that
11 hasn't been provided to the defense?

12 **MS. WEISS:** That's correct, Your Honor.

13 **THE COURT:** All right.

14 **MR. COLLINS:** And then, Your Honor, we'd also
15 ask for the Court to sequester all witnesses
16 throughout the trial. Given the nature of -- that
17 this is an old case, specific facts could be
18 important as far as what is remembered.
19 Specifically regarding Mr. Grover Derrick in this
20 situation, we would like for the witnesses to be
21 sequestered so they can't hear details from the
22 other witnesses.

23 **THE COURT:** Do y'all want to be heard?

24 **MR. MEADORS:** Mr. Derrick is one of the -- the
25 fiancé, one of the --

1 **THE COURT:** Why is that lady standing up?

2 **MR. MEADORS:** That's our victim advocate,
3 Judge.

4 **THE COURT:** I just wanted to know if there was
5 a problem.

6 **MR. MEADORS:** I think she's trying to tell me
7 what to say, Judge.

8 **THE COURT:** Okay. Well, do you need to talk to
9 her?

10 **MR. MEADORS:** No, sir. I'm sure I can read her
11 mind.

12 He would be one of the victims in the case and
13 we would just ask that he be allowed to stay. And
14 the only other would be our chief investigating
15 officer, Eric Barnes. The rest of them, of course
16 -- well, one of these are the chief, I don't know
17 which one, but I assume Investigator Barnes, but
18 other than that, we certainly, if Your Honor ordered
19 us, we'll comply with sequestration.

20 **MR. COLLINS:** Your Honor, if I may, there's
21 only two fact witnesses in this case that observed
22 anything, one of them being Mr. Derrick. We would
23 just ask -- we realize he is part of the victim's
24 family. There's no charge directly against
25 Mr. Derrick in this case. We would just ask the

1 Court to consider sequestering him given the nature
2 of the age of this case and the attention to the
3 details of the recollection of this night are very
4 important.

5 It's Mr. Derrick and then there's also
6 Mr. Kerwyn Phillips, who I assume will be testifying
7 as far as the facts and the observations from the
8 night in question.

9 **THE COURT:** How is this gentleman related to
10 the decedent?

11 **MR. COLLINS:** He was her fiancé.

12 **MR. MEADORS:** And father of the child. They
13 were in the car together, Your Honor, and she's shot
14 and killed on I-20. The child also received some
15 injuries.

16 **THE COURT:** All right. The Court considers him
17 to be someone who falls within the victim's rights
18 act, the constitutional amendment and he can stay in
19 the courtroom.

20 **MR. COLLINS:** Thank you, Your Honor.

21 **THE COURT:** The chief investigating officer and
22 any victims can stay throughout the trial. Any
23 other witnesses are to be sequestered.

24 And I'm going to leave it to the attorneys to
25 explain to the witnesses what a sequestration order

1 means. Basically, they have to know they cannot
2 talk to each other about what happened in the
3 courtroom. And if they violate that order, it's
4 going to result, at least, in a mistrial and
5 possibly in worse. So make sure you talk to all of
6 the witnesses. I know you will. I just feel better
7 when I say it.

8 **MR. MEADORS:** Yes, sir. And my response is, I
9 think Mr. Collins said some of the folks on our
10 witness list may be his witness, so I mean we --
11 obviously, as long as that goes both ways. There
12 may be one or two of his family members we have on
13 there and -- anyway.

14 **THE COURT:** Well, the only ones that are
15 allowed to stay in the courtroom are the victims and
16 the chief investigating officer and obviously
17 whoever's testifying at that particular time.

18 What else?

19 **MR. COLLINS:** I believe the last one was just
20 the motion to settle the record. Ms. Weiss
21 indicates she's going to provide all of that
22 information in the morning. So other than the Denno
23 hearing, I believe that's everything from the
24 defense.

25 **MS. WEISS:** And, Your Honor, we do anticipate

1 introducing -- we anticipate introducing a statement
2 where Moore indicated, the defendant indicated, he
3 would not just shoot anyone just to shoot them, that
4 if he harmed anyone, it would be in a self-defense
5 type situation. He also gave a statement that he
6 was in bed that night, the night of the shooting.
7 Those are his statements.

8 And if the defense, I believe they have
9 indicated, but just for the record, if they plan to
10 challenge us in the voluntariness of those
11 statements, then we will proceed with the hearing at
12 this time.

13 **THE COURT:** All right. Call your witness.

14 **MS. WEISS:** Thank you, Your Honor. The State
15 calls Investigator Faust.

16 **THE COURT:** Come around, please, and be sworn.

17 STEVEN SCOTT FAUST,
18 having been duly sworn, testified as follows:

19 **THE CLERK:** Please have a seat there, sir.

20 State your full name for the record.

21 **THE WITNESS:** Steven Faust, F-A-U-S-T.

22 DIRECT EXAMINATION

23 BY MS. WEISS:

24 **Q** Investigator Faust, you're employed with the
25 Richland County Sheriff's Department?

1 **A** I am.

2 **Q** What's your position there?

3 **A** I'm a sergeant in investigations.

4 **Q** And back in 2005, specifically November 3rd of
5 2005, were you working that day?

6 **A** I was. I was in an on -- on-call investigator
7 working the evening shift.

8 **Q** And did you have an opportunity to come in
9 contact with John Moore at that time?

10 **A** I'm sorry. Back on November 3rd, 2005?

11 **Q** Yes.

12 **A** Yes. I was actually working day shift that
13 day. I was thinking the night of the incident.

14 **Q** Okay. And you were working day shift on
15 November 3rd of 2005?

16 **A** That's correct.

17 **Q** And at what point did you come in contact with
18 John Moore?

19 **A** That afternoon we executed a search warrant at
20 [REDACTED]. Upon entering the
21 residence, he was located.

22 **Q** Okay. And do you see him in the courtroom
23 today?

24 **A** I do.

25 **Q** Can you identify him for the record?

1 **A** The gentleman in the light blue shirt with a
2 dark blue jacket on.

3 **MS. WEISS:** Let the record reflect he's
4 identified the defendant in this case.

5 **THE COURT:** So noted.

6 **MS. WEISS:** Thank you.

7 BY MS. WEISS:

8 **Q** On -- you found him when you did the search
9 warrant, you located him in the residence. What did
10 you do next?

11 **A** I was asked to take him from the residence to
12 headquarters. At that time, I took custody of him,
13 went to my car. Once I got him in the car, I
14 explained who I was and advised him of his rights
15 from a card I keep.

16 **Q** Okay. Was anybody else in the car with you at
17 that time?

18 **A** At that time, no.

19 **Q** Was the defendant under arrest at that time?

20 **A** Yes. If I'm not mistaken, we did have arrest
21 warrants at that particular time.

22 **Q** Okay. And you said you had a card that you
23 kept in your pocket?

24 **A** I do.

25 **Q** And what did you do with that card?

1 **A** I read his rights from a card that I have. I
2 asked him, after I read them, if he understood what
3 I read and he indicated he did. I then went into
4 some basic questions, such as employment, education.

5 **Q** Okay. And in just observing him, did he appear
6 to be under the influence of any alcohol or drugs
7 that day?

8 **A** He did not. And based on the questions that I
9 asked him, he appeared to be intelligent and he
10 comprehended the questions that I asked him that are
11 basic in nature, such as education and employment.

12 **Q** And how old was he at that time?

13 **A** I don't have his arrest reports. My notes
14 don't reflect that. But without looking at a arrest
15 report or -- with some paperwork, I could give a
16 better answer.

17 **Q** Approximately 20 years old?

18 **A** He was young, yes.

19 **Q** Do you feel like he was old enough to
20 understand what was going on?

21 **A** Absolutely. He had graduated from high school.

22 **Q** Okay. And where did he tell you that he was
23 employed?

24 **A** He stated he was at Snelling, which, if I'm not
25 mistaken, it's a temporary employment agency, but

1 that's where he stated that he was currently.

2 **Q** How much education had he gotten?

3 **A** He stated he graduated from Keenan High School
4 and that he was thinking about getting into -- or
5 trying to get into Midland's Tech.

6 **Q** And, at this point, he was answering all of
7 your questions clearly?

8 **A** That's correct. We also talked about his
9 family and how many kids he had.

10 **Q** And did he have any trouble understanding your
11 questions?

12 **A** No.

13 **Q** Did your questioning continue at that point or
14 did you take him to another location?

15 **A** At that time as we were driving back, I -- we
16 were just asking basic questions and then I drove
17 him back to headquarters, which is our office on
18 5623 Two Notch Road. During that time from our
19 drive, there was some basic conversation going and
20 -- but, you know, again the meat of it was while we
21 were in the car. And then as I drove back, it was
22 less detailed in nature, but the gist of the
23 conversation happened while we were in the car
24 before I drove off.

25 **Q** Okay. And were you -- you were the one

1 driving. You were the only two in the car?

2 **A** That's correct. He was located in the back
3 seat.

4 **Q** Once you had talked to him about all of his
5 children, did you ask him anything about this case
6 in general?

7 **A** I did. I specifically -- I advised him that
8 Investigator Eric Barnes will be talking to him in
9 the near future and asked him if he knew what this
10 was about. He then indicated to me that Barnes had
11 read him the search warrant. I informed him that
12 there were three sides to every story and asked him
13 if he remembered that night. He indicated at that
14 time that he was in bed that night. Do you want me
15 to keep going?

16 **Q** Okay. And -- yes, keep going.

17 **A** At that time, I kind of felt that was kind of
18 ironic. You know, we were about a year and a half
19 later and for somebody to recall a specific night
20 being in bed, I kind of indicated at that point that
21 I didn't believe his statement and stated it would
22 be in his best interest to give his side of the
23 story because the victim's account of the situation
24 did not reflect too good on his regard.

25 I attempted to indicate that he seemed like a

1 respectable person and it did not fit his character
2 to harm anyone based off of my, you know, very brief
3 meeting with him. He was very respectful towards
4 me. And Moore then, at that time, stated he would
5 not just shoot anybody to just shoot them, that if
6 he harmed anyone it would be in a self-defense type
7 situation.

8 I asked Moore if the driver of the car that
9 night that he was passing threatened him or caused
10 him to fear for his safety in an attempt to get an
11 admission out of Moore, but Moore mumbled something
12 to the fact that he did not want to talk about it.
13 At that time, I reiterated that we needed to hear
14 his side of the story and that if it was a
15 self-defense type situation, he needed to let us
16 know.

17 **Q** Did he make anymore statements after that to
18 you?

19 **A** No, that was pretty much the last indication
20 that he gave to me about the specific incident.

21 **Q** Okay. And where did you go from there?

22 **A** At that time, I went to our headquarters. I
23 then had a complete background information sheet
24 completed on him and also had him fingerprinted.
25 And that was pretty much the -- I did ask him one

1 more question. I did say -- I asked Moore if
2 anything about that night bothered him or caused him
3 any grief and Moore did not answer. At this time,
4 Moore did not deny the allegations of the shooting
5 at I-20 that night. He didn't answer the question,
6 but he didn't deny doing the shooting. At that
7 time, I turned him over to Investigator Eric Barnes.

8 **MS. WEISS:** Beg the Court's indulgence one
9 moment.

10 (Pause.)

11 **Q** Going back to the initial Miranda warnings that
12 you gave him, you said that you have a card that you
13 keep in your pocket?

14 **A** I do. I actually carry it on the back of this
15 thing now (indicating). It's a little bit more
16 convenient.

17 **Q** Okay. And how do you go through each of the
18 rights when you read it off the card?

19 **A** I would have first started off by saying, You
20 have the right to remain silent. And kind of
21 acknowledged, Do you understand this? Have you --
22 anything you say can and will be used against you in
23 a court of law. And I'd say, Do you understand
24 that?

25 **Q** And what did he say?

1 **A** He would indicate yes, if not verbally, by
2 nodding his head in the indication of he understood
3 what I was reading. I went on to say, You have the
4 right to talk to an attorney and have him or her
5 with you while you're being questioned. And I'd
6 say, Do you understand that? If you cannot afford
7 an attorney --

8 **Q** What did he indicate when you read him that
9 question?

10 **A** He would either acknowledge yes or he indicated
11 yes. If he would have indicated no or not answer, I
12 would have stopped until he would have at least
13 acknowledged that, but these, as I read the
14 questions, he stated he understood. And I'd also
15 asked if he had ever had his rights read to him
16 before and he indicated he had.

17 **Q** And keep going after the right to have an
18 attorney.

19 **A** If you cannot afford to hire an attorney, one
20 will be appointed for you to represent you if (sic)
21 any question if you want. I then acknowledge to
22 make sure that he understood that. Again, I had a
23 positive feedback or I would have stopped.

24 If you cannot answer -- if you decide at any
25 time to exercise these rights or not answer any

1 questions or make statements that would be his
2 right. And I said, did he understand all these and
3 he indicated he did.

4 Q Based on your experience and training, do you
5 feel that he understood each of these questions as
6 you read them to him?

7 A I do.

8 Q And did you understand each of his responses?

9 A Yes. Otherwise I would have stopped until he
10 would have said either he wanted an attorney or he
11 did not understand what I was reading to him.

12 Q And were his responses timely?

13 A Yes.

14 Q He indicated that he had had his rights read to
15 him before. Are you aware of whether or not he had
16 been arrested prior to this?

17 A I'm sure I did at the time. I would have
18 run -- or I would have had a little bit of knowledge
19 about his criminal history, but today fast
20 forwarding, I don't specifically recall what his
21 arrest history would have been, but I would have had
22 a little bit of indication. We would have -- the
23 preliminary background at that time, I would have
24 had it.

25 Q At any time during the reading of these rights,

1 did he indicate that he wanted an attorney?

2 **A** He did not.

3 **Q** At any time, did he indicate that he did not
4 want to answer anymore questions?

5 **A** He did not. He indicated he did understand and
6 he would answer my questions.

7 **Q** And had he indicated either of these things,
8 what would have been your response?

9 **A** I would have stopped.

10 **Q** Did you threaten or coerce him or use any undue
11 influence to get him to answer your questions or to
12 make any statements?

13 **A** No. He was always very polite to me as I was
14 to him.

15 **MS. WEISS:** Nothing further from this witness,
16 Your Honor.

17 **THE COURT:** Thank you.

18 Cross?

19 **MR. COLLINS:** Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. COLLINS:

22 **Q** How's it going?

23 **A** Going good.

24 **Q** So you came in contact with Mr. Moore at his
25 house?

1 **A** That's correct.

2 **Q** And then you took him to the car and that's
3 where you believe -- is it your standard practice to
4 read somebody their rights at the car or do you
5 specifically remember reading his rights to him in
6 the car?

7 **A** Well, in this particular case, that is, if I'm
8 going to transport somebody and there's usually a
9 conversation of, you know, why are you arresting me
10 or this, that in nature. So it's standard practice
11 for me that if I'm going to transport somebody and
12 it's going to be a criminal investigation and there
13 may be some talk about what he's being arrested for,
14 I will stop, advise him of his rights in case there
15 comes a time to where he starts asking questions
16 about the situation. It's a little bit more
17 difficult to drive and read somebody their rights.

18 So I start out anytime somebody's under arrest
19 that I have background of the case, which I did in
20 this particular case, it's a standard practice of
21 mine to stop, advise them of their rights so there's
22 no talking about the case without him being advised
23 of his rights and he is in custody.

24 **Q** So the original conversation when you read the
25 rights is before you started the car?

1 **A** Absolutely. When I got into the car is when we
2 started the advice of rights. There was no
3 background talk, it was just, hey, you know, you are
4 under arrest, I'm going to advise you of your
5 rights, make sure you understand them. At that
6 time, I started the advice of rights, went through
7 as I just explained and then there was the basic
8 question about his background questions.

9 **Q** Do you specifically remember reading those
10 rights or is that your standard practice?

11 **A** I specifically remember that in this particular
12 case.

13 **Q** And you went on to start talking to him about
14 where he went to high school, how many children he
15 had?

16 **A** That's correct, just basic background of --
17 learn of their education level and their
18 comprehension of the questions that I'm asking.

19 **Q** I don't believe I heard you say that you ever
20 read him the warrant for murder, did you?

21 **A** No, I would not have read him --

22 **Q** You would not have read him those warrants?

23 **A** I don't think I served the warrant on him.

24 **Q** So you were just talking to him about where he
25 went to school and how many kids he had and his

1 life?

2 **A** And then we went on -- and then after I
3 gathered the fact that he was an educated person
4 that could understand my questions, then I said, Do
5 you know what you're here for? And then he said,
6 yes, the search warrant had been read to him.

7 **Q** A search warrant?

8 **A** A search warrant had been read to him. Then he
9 said, Yeah, I know why you're here.

10 **Q** But you never discussed dates or anything with
11 him?

12 **A** I would have said -- I would have said when I
13 talked about the night in -- I would have mentioned
14 the date, you know, about a year and a half ago or a
15 year ago back in...

16 **Q** You don't have any of that in your notes,
17 though, do you?

18 **A** Well, when I said, do you -- when I talked
19 about the night, I would have made mention about a
20 year ago, do you remember the shooting on I-20. And
21 the dates were mentioned in the search warrant, so
22 he had knowledge of those.

23 **Q** Do you remember actually saying the shooting on
24 I-20?

25 **A** Yes.

1 Q You remember actually saying that?

2 A Specifically in reference to that search
3 warrant, it was mentioned. And I said, Do you know
4 why you're here? And he said, Yes, the search
5 warrant was read to me. So there was a clear
6 understanding, based off of that search warrant
7 which outlines the whole details of this case, he
8 would have understood what specific situation we
9 were talking about.

10 Q And then before the statement that he made that
11 he wouldn't just shoot somebody, if he did, it would
12 be in self-defense, in your notes, it says -- you
13 were talking about you thought he was a respectful
14 person and he had good character, right?

15 A That's what I told him, based off of his
16 demeanor towards me, he seemed like a respectable
17 young man for the two, three, four or five minutes
18 that I was sitting with him at that particular time.

19 Q And I believe you said it doesn't fit his
20 character?

21 A He was a respectable person. It was my
22 commenting to him that he was a respectable person.
23 And based off of my initial meeting, that's what my
24 comment to him was.

25 Q So at that point in time, the conversation was

1 talking about his character, right?

2 **A** At some point, yes, early in the -- within
3 minutes of that conversation.

4 **MR. COLLINS:** Beg the Court's indulgence.

5 (Pause.)

6 **MR. COLLINS:** No further questions.

7 **THE COURT:** Redirect?

8 **MS. WEISS:** Nothing on redirect, Your Honor.

9 **THE COURT:** Thank you, sir. You may step down.
10 Call your next witness.

11 **MS. WEISS:** The State calls Eric Barnes.

12 **THE COURT:** Come around, please.

13 ERIC BARNES,

14 having been duly sworn, testified as follows:

15 **THE CLERK:** Please have a seat there, sir.

16 State your full name for the record.

17 **THE WITNESS:** My name is Eric Barnes.

18 DIRECT EXAMINATION

19 BY MS. WEISS:

20 **Q** Investigator Barnes, you're the lead
21 investigator on the State versus John Moore?

22 **A** Yes, ma'am.

23 **Q** And you began working on this case back in
24 October of 2004?

25 **A** That is correct.

1 Q November 3rd of 2005, were you involved with
2 the same search warrant you just heard Investigator
3 Faust discussing?

4 A I was.

5 Q And at that time, did you have the opportunity
6 to come in contact with John Moore?

7 A I did.

8 Q And after Investigator Faust took Mr. Moore to
9 headquarters, did you ever have an opportunity prior
10 to that to talk to John Moore?

11 A I did.

12 Q And what was your first conversation prior to
13 headquarters talking with John Moore?

14 A We had gained entry into the house, arrested
15 Mr. Moore. I brought Mr. Moore to the side and read
16 him the search warrant. I believe he was in the
17 company of his girlfriend at the time that the
18 search warrant was read to him. And then, at some
19 point, Investigator Faust came up and took control
20 and custody of Mr. Moore, took him back to
21 headquarters while we finished the search warrant.

22 Q And other than reading him his search warrant,
23 at that point, did you ask him any questions?

24 A No.

25 Q Later that day when you came to headquarters,

1 do you recall where Mr. Moore was located?

2 A In Investigator Faust's cubicle.

3 Q And did you speak to him at that time?

4 A I did. I briefly introduced myself to him.

5 And I had been advised by Investigator Faust that he
6 had already mirandized him. I noticed that he was
7 going through some background information. We
8 needed to get some fingerprints, major case prints
9 and other things from the lab that were just a
10 matter of paperwork, moving that through in an
11 administrative type situation, but I briefly spoke
12 with him at that time.

13 (State's Exhibit Number 1, advice of rights
14 form, was marked for identification purposes.)

15 Q Do you recognize what's been marked as State's
16 Exhibit 1 for identification?

17 A I do.

18 Q What is that form?

19 A That is a Richland County Sheriff's Department
20 Advice of Rights Form that we fill out as we're
21 getting ready to take a formal statement from a
22 suspect.

23 Q And when you first -- after the major case
24 prints were completed with Investigator Faust, did
25 he then bring John Moore to you?

1 **A** He did.

2 **Q** And where was that area located?

3 **A** I believe we had moved to Captain Smith's
4 office, it was Lieutenant Smith at the time, so that
5 we could have -- kind of be away from everybody and
6 a little bit of privacy, but we moved to his office
7 and sat down and renewed our conversation. And I
8 advised him we probably needed to take a statement
9 from him and I went through the advice of rights
10 with him.

11 **Q** Okay. What was Mr. Moore's demeanor at that
12 point?

13 **A** I found him cognizant, talkative from the
14 standpoint of, you know, at least understanding what
15 was being said to him. Nobody -- it wasn't an
16 argumentative type of situation. It was just kind
17 of working through the process.

18 **Q** Did he seem to be under the influence of
19 anything?

20 **A** No.

21 **Q** Did he seem to be clearheaded?

22 **A** He did.

23 **Q** Did he have any trouble answering your
24 questions?

25 **A** He did not.

1 **Q** Did you have any trouble getting responses from
2 him?

3 **A** No.

4 **Q** Okay. And you said, at that point, you decided
5 to go through his advice of rights?

6 **A** I did. I started going through the advice of
7 rights and then he asked for a lawyer.

8 **Q** And you knew that he had already been
9 mirandized, but what was your decision in going
10 through those again?

11 **A** We were going to memorialize his statements in
12 a written form, so this is more of a formal
13 statement. So this particular form was used in
14 these formal statements. And I was going through
15 that form and advised him that we were going to go
16 make a formal statement, or needed to make a formal
17 statement, and that's when he asked for a lawyer.

18 **Q** Did you ask him any questions prior to going
19 through that advice of rights?

20 **A** I kind of set up my questioning from the
21 standpoint of trying to tell Mr. Moore that, you
22 know, there were, like Investigator Faust said,
23 there were several stories, we needed to get Moore's
24 side of the story. It was important for him to tell
25 his side of the story. We felt like -- and this is

1 what I'm telling him. We felt like, you know, he
2 could shed some light as to what happened out there
3 on the interstate, that it could have been a
4 self-defense situation.

5 During this time, he's nodding in the
6 affirmative as if he understood and as if he were
7 acknowledging those facts. And then when I said
8 that I needed to put it in written form is when he
9 asked for a lawyer.

10 **Q** And did you get through any of the advice of
11 rights form?

12 **A** I started going through it and I had gotten to
13 -- I don't know at what point he actually stopped
14 during my reading of those advice of rights, but
15 before we got to the waiver of the rights, he did
16 ask for the lawyer.

17 **Q** Okay. And, typically, when you go through
18 these rights, do you make any notations next to each
19 of the rights?

20 **A** Typically, I do. Typically I will, especially
21 if we're, you know, I'm starting to get indications
22 that we're going to definitely put this down in a
23 written form, I will typically check off the boxes
24 off to the side of this as we're going through.

25 **Q** And do you have any marks on this form?

1 **A** I do not have any marks on this.

2 **Q** And what does that indicate to you?

3 **A** It indicates that I didn't check these off as I
4 went through them. I don't -- I believe -- I read
5 him his rights. I don't know that I checked them
6 off before he said that he wanted a lawyer.

7 **Q** And what did you do once he asked for a lawyer?

8 **A** I stopped questioning him.

9 **MS. WEISS:** Beg the Court's indulgence.

10 **THE COURT:** Yes, ma'am.

11 (Pause.)

12 **BY MS. WEISS:**

13 **Q** Just to go back over one more thing. Back when
14 -- you came in when, initially, when Investigator
15 Faust was talking to John Moore?

16 **A** That is correct.

17 **Q** In his cubicle?

18 **A** Correct.

19 **Q** And, at that point, you spoke to Mr. Moore and
20 told him that you felt like there was more to the
21 story?

22 **A** That is correct.

23 **Q** And what all were you -- can you go ahead and
24 put on the record what you were asking him about
25 then?

1 **A** I told him that we felt like there was more to
2 the story. We felt that there was more that
3 happened on the interstate, that they -- the man on
4 the interstate may have provoked him in some way and
5 that's why it all happened. Mr. Moore was nodding
6 in the affirmative at that point.

7 **Q** And then later, when he brought him to see you,
8 you again gave a little bit different version of
9 that where he told you about -- you're playing down
10 Moore's role in the shooting?

11 **A** Right. I was trying to get him, trying to set
12 it up from a self-defense standpoint. And Mr. Moore
13 was nodding in the affirmative, again, in that
14 particular line of questioning, or line of
15 statements.

16 **Q** And in your experience and training, did you
17 feel like he understood what you were asking him at
18 that point?

19 **A** Yes.

20 **Q** And do you feel like he was giving you a
21 nonverbal response at that point?

22 **A** Yes.

23 **Q** And -- now, just after that was when you
24 started going over your rights form, but you were
25 aware that he was already under his rights at that

1 point?

2 A That is correct.

3 Q And you believe that he knew that he was
4 already under --

5 A That is correct.

6 Q There was no question that he knew his rights
7 at that point?

8 A Right. And I advised him verbally as well
9 after that, too. And, you know, we tried to
10 continue this bridge of communication. And then
11 when I went to memorialize those in a formal
12 statement with this particular form in a written
13 statement, that's when he asked for a lawyer.

14 Q And how did you verbalize those rights to him?

15 A You have the right to remain silent. Anything
16 you say can be used against you in court. You have
17 the right to talk to a lawyer and have him with you
18 during questioning. If you cannot afford a lawyer,
19 one will be appointed for you before questioning if
20 you wish. If you decide to answer questions now
21 without a lawyer, you still have the right to stop
22 answering at any time. You also have the -- you
23 have the right to stop answering at any time until
24 you talk to a lawyer. And then I would ask, Do you
25 understand these rights?

1 **Q** And you verbalized those when --

2 **A** I verbalize those and we continue with our
3 chain of, you know, our communication. And then I,
4 you know, segwayed into we need to memorialize his
5 side of the story and that's -- we went back over
6 these advice of rights, started to go back over
7 these and then he asked for a lawyer.

8 **Q** And did you threaten him or coerce him in any
9 way?

10 **A** Absolutely not.

11 **Q** When you verbalized those rights to him as you
12 were segwaying into your line of questioning, did he
13 indicate to you that he understood those rights?

14 **A** Yes, he did.

15 **Q** And how did he indicate that to you?

16 **A** By nodding in the affirmative.

17 **Q** And were you able to understand his nonverbal
18 agreement of those rights?

19 **A** Yes.

20 **Q** Was there any question that he was agreeing
21 with those rights?

22 **A** There was no question in my mind.

23 **Q** At any time prior to when you tried to get this
24 in written form, did he give you any indication that
25 he wanted to stop talking or that he wanted a

1 lawyer?

2 **A** No.

3 **Q** And had he done that, what would your reaction
4 have been?

5 **A** The same as when he did exercise those rights,
6 I stopped and even attempted to get his lawyer on
7 the phone. But I would stop questioning at that
8 time.

9 **Q** And do you recognize John Moore, the person
10 that you were questioning that day, in the courtroom
11 today?

12 **A** He's sitting in the middle chair of the defense
13 table with the blue blazer, blue shirt, in between
14 counsel, black male.

15 **MS. WEISS:** Thank you. Let the record reflect
16 he's indicated the defendant.

17 **THE COURT:** Yes, ma'am.

18 **MS. WEISS:** No further questions for this
19 witness.

20 **THE COURT:** Cross?

21 **MR. COLLINS:** Please the Court.

22 CROSS-EXAMINATION

23 BY MR. COLLINS:

24 **Q** Did he ever say anything verbally to you
25 throughout the whole time?

1 **A** If you'll stand by for just a second. He asked
2 for a soda and potato chips.

3 **Q** And that's the extent of your verbal discussion
4 with Mr. Moore?

5 **A** No. Hang on just one second, sir. I did not
6 put anything down in the notes that he did in
7 regards to admissions about this particular case on
8 a verbal standpoint, no.

9 **Q** Just a lot of nodding?

10 **A** Nodding yes.

11 **Q** Not saying yes, just nodding?

12 **A** (No response.)

13 **Q** That's correct?

14 **A** He was nodding yes, yes.

15 **Q** Now, you said you first came in contact with
16 Mr. Moore at the headquarters when he was in
17 Investigator Faust's cubicle?

18 **A** I first came into contact with him at the scene
19 when I put the cuffs on him.

20 **Q** Did you give him a copy of the search warrant
21 or did you just read the search warrant to him?

22 **A** I read the search warrant to him, handed him
23 off to Faust, Faust brought him back to
24 headquarters. The search warrant was left with
25 Delia Nix at the house.

1 Q And then you came upon him in Faust's cubicle?

2 A Correct.

3 Q And that was -- were you aware that was after
4 he told Investigator Faust he didn't want to talk
5 about it anymore?

6 A I was not aware that he said anything like that
7 to Investigator Faust. Investigator Faust, when I
8 was talking to him, seemed to have a good rapport
9 with him. Mr. Moore asked if he could have
10 something to eat. I went and got him something to
11 eat out of my own pocket. And Mr. Faust walked him
12 through the other administrative things we had to do
13 and then brought him back to me.

14 Q So you weren't aware that he had told
15 Investigator Faust?

16 A I don't recall anything like that.

17 Q But you're aware of it now, aren't you?

18 A That's what you say, yes, sir.

19 Q And so this questioning or -- got chips and
20 soda while he was with Faust and then you took him
21 to Captain Smith's office?

22 A Right. It was empty at the time we walked in
23 there.

24 Q And all of the talking in between where he was
25 doing the nodding was before you had read him the

1 advice of rights?

2 **A** No. The advice of rights were read to him when
3 Faust first took him.

4 **Q** I'm asking when you read the advice of rights,
5 when you signed the paperwork?

6 **A** When I was going over the paper, that was
7 towards the very end when we were going to
8 memorialize this in a written form.

9 **Q** So it wasn't put in written form till the very
10 end of the whole conversation?

11 **A** The advice of rights when we started that, but
12 I had verbally mirandized him when he came and sat
13 back in the office.

14 **Q** So other than Mr. Moore asking for a bag of
15 chips and a soda, the only communication he gave
16 towards you was a nodding of the head, correct?

17 **A** No, that's not what I said, sir. I said the
18 only indication that he had -- of any admissions in
19 regards to this case were the nodding of the head.
20 We did have conversations. I did not memorialize
21 those conversations, but we did have a communication
22 built up between us.

23 **Q** And in regards to the self-defense aspect, he
24 was nodding his head in the same manner in which he
25 was nodding his head as far as understanding his

1 advice of rights, correct?

2 **A** Certainly. After I -- it wasn't a continual
3 thing. It was one of these things where after you
4 make a statement or after you talk to him and then
5 he's understanding what you're saying, then he's
6 affirming yes or no to that particular thing. He's
7 just not verbalizing it.

8 **Q** You can't discern any difference between a nod
9 saying, yes, I understand what you're saying, and,
10 yes, that's what happened. There's no difference in
11 those nods, is there?

12 **A** The nod of an affirmative is all I'm testifying
13 to.

14 **MR. COLLINS:** No further questions, Your Honor.

15 **THE COURT:** Redirect?

16 **MS. WEISS:** Just briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. WEISS:

19 **Q** When you were -- in your notes, you did
20 indicate that he seemed to be awake and answered
21 questions thoughtfully?

22 **A** Correct.

23 **Q** So he was -- you did observe him answering
24 questions?

25 **A** That is correct.

1 **Q** And you did have some back and forth?

2 **A** That is correct.

3 **MS. WEISS:** Thank you. No further questions,
4 Your Honor.

5 **THE COURT:** Anything further of the witness?

6 **MR. COLLINS:** Nothing further with the witness,
7 Your Honor.

8 **THE COURT:** Thank you. You may step down.
9 Any further witnesses for the State?

10 **MS. WEISS:** Nothing for the State, Your Honor.

11 **THE COURT:** Anything from the defense?

12 **MR. COLLINS:** No witnesses, Your Honor.

13 **THE COURT:** What's your argument?

14 **MR. COLLINS:** My argument's twofold. First,
15 I'd like to deal with Investigator Faust in regards
16 to the statement that he wouldn't just shoot anybody
17 unless it was in self-defense. I believe the
18 testimony was that he was talking about his
19 background. He was talking about any kids he had.
20 He told him he had good character.

21 By trying to introduce this statement out of
22 context, it's almost a circular way to try to get
23 character evidence in on my client. This statement
24 alone being introduced can be taken out of context
25 as saying that he's talking about the details of

1 this crime. The testimony was they weren't talking
2 about the details of the crime. They were talking
3 about his character and what he would do in certain
4 situations not necessarily this situation,
5 especially since it's only one sentence and that's
6 all they're seeking to introduce from this
7 conversation is the one sentence that he wouldn't
8 just shoot somebody, that's kind of a general
9 statement.

10 That's not saying that I didn't -- I acted in
11 self-defense that night. It wasn't anything of that
12 nature. It was in regards to a conversation about
13 his character.

14 And in regards to any of the so-called
15 admissions testified to by Investigator Barnes,
16 there's no vocal statements they're trying to
17 introduce through my client. They're just trying to
18 assume that it was an admission that it was in
19 self-defense.

20 It could very well have been, yes, I understand
21 what you're saying. That would definitely lean
22 towards being misunderstood or out of context,
23 especially if the investigator is going to assume or
24 make that drastic leap as to what he knows -- as if
25 he knows what's going on inside Mr. Moore's head.

1 I believe when we look at these statements and
2 these nonverbal gestures as far as nodding the head,
3 there is an extreme chance for this to be taken out
4 of context. I don't believe that there's any
5 probative value that that can -- I don't believe
6 there's much probative value that can be
7 administered to these statements when they're taken
8 out of context. The only chance is that they become
9 prejudicial being that the jury will only hear these
10 statements.

11 We admit that whatever statements were made
12 were voluntary, given freely. However, anything
13 taken after he had told Investigator Faust that he
14 didn't want to talk about it anymore, which clearly
15 was in the testimony of Investigator Faust, that
16 should have been the end of the conversation.

17 I believe Investigator Barnes said he then
18 continued to try to talk to him in Faust's cubicle,
19 brought him down to another office, Captain Smith's
20 office, tried to read him his rights there. They
21 continued to try to interrogate him after he said he
22 didn't want to talk about it.

23 The only affirmations that Mr. Moore said --
24 the only things that he did after he said he didn't
25 want to talk about it was nod his head yes, or that

1 could have just been nodding his head, period.
2 We're going by the word of the investigators that he
3 was saying yes. We don't have a video. All we have
4 is their testimony saying he was nodding his head
5 after he said he didn't want to talk about it.

6 We would just argue that would be more
7 prejudicial than probative. Also, that anything
8 after Mr. Moore stated he didn't want to talk about
9 it anymore should be inadmissible.

10 **THE COURT:** What's the State's position?

11 **MS. WEISS:** Thank you, Your Honor. May it
12 please the Court.

13 Actually, there were two statements from
14 Investigator Faust. First of all, he asked him if
15 he remembered that night, at which time Moore stated
16 that he was in bed that night. They continued to
17 talk specifically about this case where Investigator
18 Faust continued to say it was in his best interest
19 to get his side of the story because the other side
20 of the story had been given, it was not real good.
21 Then paid him a compliment about him seeming to be a
22 respectable person, it didn't seem to fit his
23 character.

24 At which time, Moore stated, he would not just
25 shoot anyone just to shoot them, that if he harmed

1 anyone, it would be in a self-defense type
2 situation. That was clearly, I think, in
3 relationship to the specific incident concerning the
4 conversation that involved his family and the
5 general questions about his education and employment
6 that happened earlier in the conversation.

7 He continued to talk and specifically turned to
8 this specific incident is when they talked about the
9 fact he knew he was there because of the search
10 warrant. There were three sides to every story and,
11 at that point, he asked if he remembered that night.

12 That specifically brought him to a night a year
13 earlier where he said that he was aware of that
14 night because of the search warrant, the facts had
15 been read to him in the search warrant, that's when
16 he commented on that search warrant, commented on
17 the facts of that night saying he was in bed and
18 then continued making the statement, he would not
19 just shoot anyone to shoot them, that if he harmed
20 anyone, it would be in a self-defense type
21 situation.

22 The defense has conceded that it was voluntary.
23 I think it was knowingly, voluntarily made. And I
24 think it was specifically about this case and,
25 therefore, should be admitted.

1 He did -- Investigator Faust said that he asked
2 him to continue on, asking him if anyone that night
3 had threatened him or caused him to fear for his
4 safety in an attempt to get an admission. And then
5 he mumbled something he didn't want to talk about
6 it. At that point, he did not indicate he wanted to
7 stop the interrogation, that he didn't want to
8 continue talking. He just didn't want to talk about
9 that.

10 So I don't think at that point -- I think
11 Investigator Faust clearly did not feel like that he
12 wanted to end the interrogation or that he wanted an
13 attorney. He had read him his rights. He was aware
14 of rights, aware of how the waiver of rights worked
15 and he -- I mean, he chose not to answer certain
16 questions and then began talking to Investigator
17 Barnes nodding. And when he was asked to reduce it
18 to writing, said they wanted to get something more
19 specific, he specifically requested an attorney
20 clearly showing he knew how to end the
21 interrogation, how to request an attorney, how to
22 stop the interrogation.

23 When he did that with Investigator Barnes,
24 Investigator Barnes immediately tried to locate his
25 attorney that he indicated he was represented by, as

1 well as stop the interrogation completely. I think
2 that shows good faith of the investigators that had
3 he made any indication he wanted to stop, that they
4 would have, which they did at the point he made that
5 indication. And I think both the nods and the
6 indications that he made to Investigator Barnes, as
7 well as the statements that he made to Investigator
8 Faust should be admitted.

9 **THE COURT:** So what is it the State intends to
10 offer into evidence? The statement by the defendant
11 that he was in bed the night of the shooting?

12 **MR. MEADORS:** That would be number one, Judge,
13 that he denied I was -- Moore stated he was in bed
14 that night. He asked him if he remembered that
15 night. He said, I was in bed that night. So if you
16 want to break it down into statements, that would be
17 number one.

18 **THE COURT:** All right. Then what else?

19 **MR. MEADORS:** Number two would be, he wouldn't
20 just shoot anyone to shoot them, that if he harmed
21 anyone, it would be in a self-defense type
22 situation. That would be what we characterize for
23 these purposes as number two.

24 And then I think the, in the State's humble
25 opinion, the more questionable one would be the next

1 one when the question was asked Moore if the driver
2 of the car that night threatened him or caused him
3 to fear his safety in an attempt to get an admission
4 out of Moore, and those are Faust's words when he's
5 saying, this is what I was trying to do in here.
6 Moore mumbled something to the effect he didn't want
7 to talk about it.

8 So, yes, sir, that would be number three that
9 we'd be attempting to get in. We could break them
10 down that way as Faust is concerned.

11 **THE COURT:** Now, what about all of this head
12 nodding?

13 **MR. MEADORS:** Yes, sir. I was going to take
14 them officer by officer, but if you want to go on to
15 the -- I think the argument is, if I'm wrong, I can
16 be corrected, I think what the testimony was that
17 Investigator Barnes was aware of the verbal rights
18 of Investigator Faust and also acknowledged on the
19 stand that he verbally read him his rights also and
20 that the defendant understood those rights.

21 And then, at that point, he was posing -- asked
22 him if there's more to the story. Basically, he's
23 conveying his feelings, his being Investigator
24 Barnes, that there may be some reason why all this
25 happened on the interstate. And, basically, I think

1 he's trying to -- obviously, trying to elicit a
2 statement out of the defendant by implying that he
3 may have been provoked. One of the tools, I think,
4 they're trained to do in law enforcement. And he's
5 trying to ask the defendant is that why it all
6 happened.

7 And at this point, I think, if the record
8 reflects, as Investigator Barnes is posing that, is
9 trying to elicit a response, his testimony is that
10 he got an affirmative nod from the defendant at that
11 point. In other words, why this all happened on the
12 interstate and that the man may have provoked him
13 that night and that was why it all happened. And in
14 his notes and I think his testimony, Moore was
15 nodding his head affirmatively.

16 Could that be taken two ways as was pointed
17 out? Perhaps. The State is offering it as a
18 statement, an affirmative nod, that's what
19 Investigator Barnes said he took it as, I believe.
20 On cross, he said it could have been subject to a
21 couple interpretations.

22 You go on -- that's when they give him soda and
23 chips. I thought there was another nod in here. I
24 beg the Court's indulgence.

25 At that point, the officer again is trying to

1 lessen his role, I think, and trying to develop a
2 demeanor, I think, with the defendant. And he was
3 trying to portray him in a self-defense light in
4 hopes of getting an admission. And that's what the
5 words say and what he said on direct.

6 And at that point, he said Moore again nodded
7 in the affirmative as he painted the driver as
8 having some kind of anger issues. That's more
9 troublesome, I'm not going to dispute the Court,
10 that nod would probably not elicit a strong argument
11 on behalf of the State as the first nod.

12 And at that point, he goes on, I think, to get
13 the written statement -- attempt to get the written
14 statement when he does invoke. So if you want to
15 characterize those, one, two, three off Faust, two
16 nods off Barnes. So five statements, Judge.

17 **MR. STRICKLER:** Your Honor?

18 **THE COURT:** Yes, sir.

19 **MR. STRICKLER:** May I be heard briefly, please?

20 **THE COURT:** Certainly.

21 **MR. STRICKLER:** Thank you, sir.

22 As Mr. Collins has been doing the work here,
23 I've been looking through the rules just trying to
24 analyze it myself. It looks to me like there are
25 only two ways these things can come in. They can

1 come in as exceptions to hearsay, you know, to penal
2 interest, they definitely aren't that. I don't see
3 anything remotely associated with that. If not
4 that, then they'd have to come in under 801,
5 statements which are not hearsay.

6 Now, in all candor, as I listened to Mr.
7 Meadors speak, I'm asleep that night is a statement.
8 I'm looking at 801 definitions, a statement is an
9 oral or written assertion. And you have testimony
10 that that's his written assertion, okay. And then
11 it's nonverbal conduct if it is intended by the
12 person as an assertion.

13 And so as to being asleep that night, you know,
14 the testimony is what it is in that regard. But as
15 to the rest where we have head nodding, where we
16 have seeming -- and then we have this statement
17 related that if I did it, it would have to be in
18 self-defense, I believe these precise words weren't
19 that, I could only have done something like that in
20 self-defense. As Mr. Collins indicated, they were
21 talking in general at that time.

22 And as to that 404(a), they're talking
23 character. This introduction of his character for
24 peacefulness into evidence when he has not taken the
25 stand, introduction by them of an assertion on his

1 part of his character for peacefulness. And it's
2 not admissible unless it's offered by an accused or
3 by the prosecution to rebut the same. Well, it
4 hasn't been offered by him yet, they're not entitled
5 to rebut that which has not been offered, so that as
6 to this alleged statement whatever Mr. Faust
7 testified to him saying.

8 After that we just get into plain head nodding.
9 Now, head nodding comes under 801(a)(2) nonverbal
10 conduct of a person if it is intended as an
11 assertion. Now, I'm sure it is intended as an
12 assertion on the part of the State because
13 Mr. Barnes has decided to characterize it as an
14 admission. It may be an admission as he
15 characterized it. It is equally probable that is
16 admission that I understand what you're saying to
17 me, which is not an assertion that that's what
18 happened.

19 And, at that point in time, the question
20 becomes whether it's relevant evidence under 401 and
21 whether if it's irrelevant, it's inadmissible under
22 402. And regardless, under 403, this head nodding
23 is -- contributes to nothing but unfair prejudice on
24 all the evils contemplated under 403 and should be
25 excluded under that.

1 So, you know, on reviewing it under the rules,
2 I think we'd have to concede that the statement, I
3 was asleep that night could come in. The rest of
4 them we have to make a leap to decide that these
5 head nods, et cetera are assertions on the part of
6 Mr. Moore. Thank you.

7 **THE COURT:** Anything else?

8 **MR. MEADORS:** Judge, briefly as to visit -- to
9 revisit Faust number two, for everybody's reference,
10 just to respond briefly to Mr. Strickler. The way I
11 took Faust's testimony, Investigator Faust, was -- I
12 mean, he developed a rapport with somebody and he
13 basically said, you seem like a nice guy, you seem
14 like -- complimented him, seem like a respectable
15 person and it does not fit his character to just
16 harm anyone.

17 Well, him saying the word character to that
18 defendant doesn't put character into evidence. If
19 he said that right after the defendant said, well I
20 shot him, well that's not showing good character,
21 but that would be admissible at that point.

22 Here, forget the word character. Forget the --
23 Faust doesn't even say, you seem like a good
24 character. At that point, he says, look, if I was
25 going to shoot somebody, it would have to be in

1 self-defense, which through some evidence
2 potentially in this case, you know, there may be the
3 claim there was a motion or something. But that
4 wouldn't have been different if he just said I did
5 kill him, I did shoot the person, at that point, it
6 would clearly come it. I think he's describing at
7 this point how he would shoot somebody if the
8 situation arose.

9 And I mean, if he says that, we do take that as
10 a statement against his interest, Judge, in this
11 case because at first he says, I wasn't even there,
12 then he's trying to explain, we think and we think
13 it's arguable, and argue it both ways, if I did do
14 it, it would have to be under this situation. And
15 that's him doing that, his words. So we would ask
16 that that be admitted as a statement against
17 interest and that's all we have. I'm sorry, if you
18 would hear Ms. Joanna.

19 **MS. MCDUFFIE:** Your Honor, in the alternative,
20 if you find it is not a statement against interest,
21 it would clearly fall under 801(d)(2)(a) as the
22 party's own statement. It would be an admission by
23 a party opponent used against him and, therefore, it
24 does not have to be against his interest in order to
25 be admissible.

1 **THE COURT:** If there's nothing else, the Court
2 finds that the State has established by the
3 requisite degree of proof that the defendant, at the
4 time of these alleged statements, was not under the
5 influence -- was not under any undue influence, that
6 he was clearheaded, that any statement that he gave
7 was his own statement made of his own free will. It
8 was made after Miranda warnings were properly given
9 and understood.

10 Specifically, the defendant was advised that he
11 had the right to remain silent, that any statement
12 that he did make could be used against him in court,
13 that he had the right to get the services of an
14 attorney, he had the right to have an attorney
15 present with him during all questions and
16 interrogations. He had the right, if he could not
17 afford an attorney, to have one appointed for him,
18 that he had the right to stop answering questions at
19 any time. And the Court finds that the defendant
20 made a free and voluntary waiver of those rights and
21 he understood the questions that were posed to him.

22 So with regard to the statement that has been
23 asserted that the defendant indicated that he was in
24 bed the night of the shooting, the Court finds that
25 the State has established by the requisite degree of

1 proof that that statement can come into evidence.
2 The jury would have to decide if it's been proven
3 beyond a reasonable doubt that the defendant made
4 such a statement. And the jury would have to decide
5 what, if any, affect that statement would have.

6 With regard to -- skipping to what's been
7 labeled as number three, the statement that he did
8 not want to talk about it, that is an assertion of
9 the right of silence, which cannot be commented upon
10 in the Court's view and I don't see how you can take
11 it any other way. And if you could take it any
12 other way, I think that Rule 403 would prohibit it
13 because it would confuse the issues.

14 With regard to all the head nodding, I do not
15 find that the State has established by a requisite
16 degree of proof that those were statements that were
17 made by the defendant. It is just as easily to be
18 understood that those were just acknowledgments of
19 questions or positions being advanced by the law
20 enforcement officers.

21 If they were admitted and a jury -- if they are
22 relevant, Rule 403, in my view, would exclude them
23 because of the dangers that are prohibited -- excuse
24 me -- the dangers that are dealt with in Rule 403
25 for the jury to even be able to consider what is

1 deemed to be relevant evidence. Some people just
2 nod their heads when you're talking to them.
3 Basically, what that's doing is allowing one witness
4 to testify to what another witness was thinking,
5 which is not permitted.

6 With regard to what's been labeled as number
7 two that he would not just shoot someone to shoot
8 them, but would have to be done in self-defense, if
9 that is not hearsay under the definitions of
10 801(d)(2), it is nonetheless, in the Court's view,
11 inadmissible under Rule 403. It confuses the
12 issues.

13 I don't think I have to get into the question
14 of whether character was injected into the
15 conversation. I would really discourage y'all not
16 to go down that -- I mean, I would encourage you not
17 to go down that road of trying to make statements
18 about the character of the accused.

19 **MR. MEADORS:** I assure the Court we'll be
20 careful on that.

21 **THE COURT:** So they can admit what they've
22 labeled number one. The other things cannot come
23 in.

24 Now, these are all in limine rulings.
25 Obviously, they're Denno rulings. I expect you to

1 adhere to them. If anything happens during the
2 trial that should change that anticipated
3 presentation of evidence so that it would in some
4 way be admissible, then y'all can raise it at the
5 appropriate time, but don't do it in front of the
6 jury, tell me you've got a matter of law you need to
7 address first.

8 And that -- I'm assuming that they're not going
9 to say he asked for an attorney.

10 **MR. MEADORS:** I was kind of -- wasn't sure if I
11 wanted that Faust two in anyway to tell you the
12 truth, Judge.

13 So I assume, Judge, there are no other
14 objections to any statement the defendant had made.
15 Those were the only law enforcement statements. So
16 with that, we're prepared to go.

17 **MR. COLLINS:** Nothing further from the defense.

18 **THE COURT:** Are those all of the pretrial
19 matters?

20 **MR. COLLINS:** Other than the settling of the
21 record, which will be handled in the morning, that's
22 all the defense has at this point.

23 **THE COURT:** Y'all get together and settle it
24 before 9:30, please.

25 **MS. WEISS:** Yes, Your Honor.

1 **THE COURT:** All right. I really -- I mean I'll
2 do my best to be on time, but I don't want to be in
3 a situation where we're sitting here Friday and
4 trying to push -- and I'm in a position of trying to
5 make y'all think I'm trying to push you to do
6 something hurriedly. This is too important for
7 something like that. If it takes two weeks to try
8 it, it takes two weeks to try it, but I don't want
9 it to be because we messed around the first week.
10 When I say we, I'm including me, all right.

11 If there's nothing else, then we're at ease on
12 this case until 9:30 in the morning.

13 **MR. MEADORS:** Thank you.

14 **MS. WEISS:** Thank you, Your Honor.

15 (Whereupon, the proceedings were concluded
16 for January 28, 2008.)

17 (The following proceedings were held on
18 January 29, 2008.)

19 **THE COURT:** Are there some pretrial issues now?

20 **MR. STRICKLER:** Please the Court, Your Honor,
21 potentially. First of all, Your Honor instructed
22 the jury -- I'm providing a copy for the State and a
23 copy for Your Honor. Your Honor instructed the jury
24 at the end of the proceedings last night to avoid
25 any contact with media coverage. We found this on

1 the Internet, I'm not sure whether it was broadcast
2 last night, that relates to this trial. It is
3 disturbing -- well, first of all, I would ask that
4 Your Honor, of course, specifically query the jury
5 as to whether they inadvertently were exposed to any
6 coverage in this regard last night.

7 My concern about this particular piece is not
8 just that it references the case, it is the nature
9 of the statements in it, which if we were involved
10 in a capital case and had reached the sentencing
11 portion of the trial, perhaps some of it might be
12 admissible under Payne, perhaps we would have a nice
13 argument about that, but it's largely irrelevant for
14 the purposes that we're here today.

15 So that's what raises the most concern on my
16 part. So I just wanted to point the Court with that
17 and with that background, ask Your Honor to
18 specifically query the jury regarding a potential
19 exposure.

20 Secondly, I see that we have a representative
21 of the broadcast media or I assume the broadcast
22 media present in the court today. And I inquire of
23 the Court whether Rule 605 has been complied with
24 and in what fashion it's been complied with if it
25 has. And I'd like to address that, Your Honor. I

1 have no idea myself. I've received no notice that
2 they intend to...

3 **THE COURT:** Well, just a few moments ago I had
4 three forms submitted to me from three television
5 media outlets, WIS, WACH and WLTX. I told them that
6 I would allow two cameras in the courtroom. The
7 only one here this morning is WIS. I think the
8 others are going to come in later in the trial.

9 I haven't set any parameters, but generally the
10 only parameter I set is that cameras cannot film the
11 jury, nor can they film the victim's family without
12 a prior consent of the person being filmed.

13 Now, anything you need to put on the record, go
14 right ahead.

15 **MR. STRICKLER:** Your Honor, at this point, I
16 would object to the presence of the cameras in the
17 courtroom. They inject an element of sensationalism
18 into the trial. I submit they operate to the
19 detriment of Mr. Moore's rights to due process of
20 law and a fair trial in this case under both the
21 State and Federal Constitution provisions.

22 And while I realize, I've just been reviewing
23 605 myself, I understand the call is yours. I would
24 submit, however, that under 605(f)(1)(2), that media
25 representatives have not given you reasonable notice

1 as a presiding judge and it is, as I read the rule,
2 well within your discretion to go ahead and ban them
3 from the courtroom. I'd ask that you do so.

4 Failing that, Your Honor, under 605(f)(2)(f)(3)
5 roman five -- small roman five, with all due respect
6 to the operator of the camera in the courtroom, he
7 is not wearing appropriate business attire in this
8 courtroom and I'd ask that he be and the camera be
9 removed from the courtroom for that purpose or for
10 that reason. That's all I have to say in that
11 regard, sir.

12 **THE COURT:** All right. Thank you. The
13 motion's respectfully denied.

14 Now, they mentioned to me that the State
15 newspaper was going to be providing me a form. I
16 don't have it. I haven't seen it, haven't heard
17 anything from the State.

18 With regard to your request for an inquiry, I'm
19 certainly going to do that. I was at home last
20 night and our cable system has WIS and I was not in
21 the room. Our house is kind of open. And I saw the
22 newscast and I saw Craig Melvin and I listened to
23 it. It was not -- what Mr. Melvin said was not what
24 is on this piece of paper.

25 **MR. STRICKLER:** If I could with leave of the

1 Court, may I have a copy of what I provided be
2 marked as a Court's Exhibit?

3 **THE COURT:** I was going to.

4 **MR. STRICKLER:** Just for purposes of the
5 record, sir, what we've been referencing that would
6 be Court's Exhibit 1.

7 Lastly, Your Honor, I don't mean to -- and this
8 may not be the time to take it up. There are
9 numbers of photographs that I imagine the State will
10 intend to introduce. What I had seen on the State's
11 table this morning appeared to be family portraits.
12 I don't know what point in time or if the State
13 intends to introduce that, I don't want to have to
14 object in front of the jury in that regard, I don't
15 know what their intent is.

16 I see Mr. Meadors shaking his head no, but we
17 don't need to go into it if that's not going to be
18 an issue.

19 **MR. MEADORS:** We do not.

20 **MR. STRICKLER:** You do not, okay. Thank you.

21 I think that's it, sir. Thank you.

22 **MR. MEADORS:** Judge, can we approach just on
23 another administrative, just very briefly?

24 (Whereupon, a bench conference was held off
25 the record.)

1 (Court's Exhibit Number 1, article, was
2 marked for identification purposes.)

3 **THE COURT:** Is the State ready for the jury?

4 **MS. WEISS:** Yes, Your Honor.

5 **THE COURT:** Is the defense ready for the jury?

6 **MR. COLLINS:** The defense is ready.

7 **THE COURT:** The defendant is present with
8 counsel and I've been told all the jurors are now
9 here.

10 Bring the jury in, please.

11 (The jury enters the courtroom at 9:48 a.m.)

12 **THE COURT:** All right. Ladies and gentlemen,
13 the first order of business is that I have to have
14 you placed under a different oath than the one you
15 took yesterday. This is your oath as a trial jury.
16 I need you to stand, raise your right hand, please,
17 and the clerk will administer your oath.

18 (The jury was duly sworn by the Clerk of
19 Court at 9:50 a.m.)

20 **THE COURT:** Was there any juror unable to take
21 that oath for any reason; if so, raise your hand?

22 (There was no response.)

23 **THE COURT:** The first order of business at this
24 point is that I need to revisit something that I
25 talked to you about yesterday and that was about

1 media coverage. As I told you yesterday, I never
2 know if there's going to be media coverage of a
3 trial. And I have learned since I made that
4 statement to you, that the media does intend to
5 cover this trial. And, in fact, there was some
6 media coverage last night.

7 Did any of you see, hear, or read anything
8 through any media outlet since I saw you last; if
9 so, raise your hand? Raise your hand so I can see.

10 (Jurors indicate.)

11 **THE COURT:** All right. So that was the foreman
12 and who else -- what's your name, ma'am?

13 **JUROR:** I'm Cheryl Worrell, 298.

14 **THE COURT:** And your name?

15 **JUROR:** 78, Lavern Evans.

16 **JUROR:** Sidney Strickland.

17 **THE COURT:** Yes, ma'am?

18 **JUROR:** Missy Kelly.

19 **THE COURT:** All right. Folks, I'm going to
20 need to ask you to step back into the jury room.
21 And those four, I need you four to go to a different
22 jury room. I'm going to bring you in one by one.
23 Do not talk in any way at all about the media
24 coverage, anything related to it in any fashion.
25 We'll get started as quickly as I can, but I'm going

1 to have to interview each of you individually, all
2 right?

3 (The jury retires to the jury room.)

4 **THE COURT:** Bring the foreman back in.

5 (The Foreman enters the courtroom.)

6 EXAMINATION

7 BY THE COURT:

8 **Q** You're Steven D. Carter, right?

9 **A** Yes, sir.

10 **Q** Why don't you sit in the witness box for me,
11 that way the microphones will pick up what you say
12 better. Now, Mr. Carter, I need you to remember
13 you're under oath, all right?

14 **A** Yes, sir.

15 **Q** What did you see, hear or read in the media
16 fashion?

17 **A** Just his face and name. At that point, I
18 turned the T.V. off.

19 **Q** Did you hear anything said at all?

20 **A** No, sir.

21 **Q** What were you watching?

22 **A** Channel 10.

23 **Q** So when you saw the face and name, you turned
24 the T.V. off?

25 **A** Yes, sir.

1 **Q** And nothing that was said before his face was
2 put on the screen that related to the case?

3 **A** Actually, we had the sound turned down, the
4 kids watch the T.V. so we'll know when it's time to
5 leave school and that's all. I didn't recognize his
6 face because I think it's an older picture, but I
7 saw the name and that's when I realized what I was
8 looking at.

9 **Q** Is there anything at all about what you may
10 have seen, heard, been exposed to through that media
11 coverage that would in any way affect your ability
12 to be a fair and impartial juror in this case?

13 **A** No, sir.

14 **Q** Do you have any doubt whatsoever in your mind
15 about that?

16 **A** No doubt.

17 **Q** All right. Mr. Carter, thank you very much.
18 I'm going to send you back into the jury room.
19 Don't discuss any of this with your fellow jurors,
20 all right?

21 **A** Yes, sir.

22 (The Foreman leaves the courtroom.)

23 **THE COURT:** Bring out Ms. Worrell, 298.

24 **THE CLERK:** Yes, sir.

25 (Juror enters the courtroom.)

1

EXAMINATION

2

BY THE COURT:

3

Q Have a seat there for me, please. Remember

4

you're still under oath.

5

A Yes, sir.

6

Q And you're Cheryl W. Worrell, juror number 298,

7

correct?

8

A Correct.

9

Q And can you tell me what you may have seen,

10

heard or read through the media last night?

11

A I didn't see anything last night, but this

12

morning I saw when I had the news on where they

13

showed the gentleman's picture and said it was a

14

trial. And I said, oops, I've got to cut this off.

15

So I cut it off and didn't watch it.

16

Q What station were you watching?

17

A I don't know stations that well. Channel

18

three. I'm new to South Carolina, so I don't know

19

stations.

20

Q And channel three on your cable?

21

A Yes.

22

Q What cable system do you use, Time Warner or

23

Comcast?

24

A Time Warner.

25

Q Do you recall anything that was said?

1 **A** No, just that it was going to trial.

2 **Q** Nothing about the facts of the case?

3 **A** No.

4 **Q** And how long do you think it was on before you
5 cut it off?

6 **A** Maybe a couple of seconds because it was really
7 after the Today show. So when I saw it, I just cut
8 it off.

9 **Q** Is there anything at all about what you saw,
10 heard or read through that media outlet that would
11 in any way affect your ability to be a fair and
12 impartial juror in the case?

13 **A** No, sir.

14 **Q** Do you have any doubt whatsoever about that?

15 **A** No, sir.

16 **THE COURT:** Okay. Thank you very much. Ms.
17 Worrell, I'm going to send you back into the jury
18 room. Don't discuss any of this with your fellow
19 jurors, please.

20 **MR. STRICKLER:** Excuse me, Your Honor, may we
21 approach briefly?

22 **THE COURT:** Sure.

23 (Whereupon, a bench conference was held off
24 the record.)

25 **THE COURT:** Thank you, Ms. Worrell. If you'll

1 step back in there for me, please.

2 (The juror leaves the courtroom.)

3 **THE COURT:** All right. Mr. Strickler, you want
4 to put something on the record?

5 **MR. STRICKLER:** Yes, if I could, please. Just
6 ask the record to reflect that when we approached,
7 this juror, as did the foreman, referenced seeing a
8 picture on television, it immediately raised concern
9 on my part that the photograph that they had seen
10 was a mugshot as opposed to some photograph of him
11 in civilian clothing. That's what it was.

12 My concern is that the jury will associate that
13 photograph with some prior criminal history as
14 opposed to any arrest in this particular case which
15 may inject elements into this trial which absent his
16 testifying and his prior criminal history, if any,
17 become relevant to this matter, is inadmissible in
18 this case. So I'd ask that Your Honor inquire
19 regarding the nature of the photograph that you've
20 seen. I would just like to place that on the
21 record, sir.

22 **THE COURT:** Is channel three on Time Warner, is
23 that WIS?

24 **MR. STRICKLER:** Yes, sir.

25 **THE COURT:** All right. The photograph that I

1 saw last night appeared to be a mugshot. So I think
2 I can take it as a given that it was a mugshot.
3 Now, if I start asking them details about the
4 mugshot, I think I make the situation worse.

5 **MR. STRICKLER:** Your Honor, I understand. I
6 was trying to think in my own mind of an artful way
7 to ask that question beyond could you describe the
8 picture. That's all I could come up with that would
9 not be leading them down any particular path.

10 **THE COURT:** Well, I note your objection. There
11 was no request for a Biggers hearing yesterday, so
12 I'm assuming identification really is not an issue.

13 If I start asking them questions, like the
14 first witness said he appeared to be younger, if I
15 start injecting that into the questioning, I'm
16 afraid that it may cause them to think that maybe it
17 came from a prior arrest and that I'll be creating
18 my own problem. So I note your objection and I
19 respectfully decline to ask those questions.

20 **MR. STRICKLER:** Thank you, sir.

21 **THE COURT:** Bring in juror number 78, Ms.
22 Evans.

23 (The juror enters the courtroom.)

24 *****

25 *****

1 EXAMINATION

2 BY THE COURT:

3 Q Ms. Evans, you're Lavern Evans, correct?

4 A Yes.

5 Q And you're juror number 78?

6 A Yes.

7 Q And I need to remind you that you're under
8 oath, all right?

9 A Yes.

10 Q Can you tell me what you may have seen, heard
11 or read about the case through the media?

12 A I was getting ready this morning. I went to
13 check the weather report. I saw a picture come up
14 and then I clicked the T.V. off. I heard nothing,
15 only saw the picture.

16 Q You didn't hear any commentary?

17 A No.

18 Q And you just recognized the picture as being
19 the defendant's picture?

20 A Yes.

21 Q And what media outlet were you watching?

22 A WIS.

23 Q Do you remember anything else about it?

24 A No, nothing but the picture.

25 Q Is there anything at all about your being

1 exposed to media coverage of this trial, what you
2 saw, anything at all that would affect your ability
3 in any way to be a fair and impartial juror in this
4 case?

5 **A** No.

6 **Q** Do you have any doubt whatsoever about that?

7 **A** No doubt.

8 **THE COURT:** All right. Ms. Evans, I'm going to
9 send you back in the jury room. Don't discuss any
10 of this with your fellow jurors, please.

11 (The juror leaves the courtroom.)

12 **THE COURT:** Mr. Strickland, Sidney Strickland,
13 juror number 264.

14 (The juror enters the courtroom.)

15 EXAMINATION

16 BY THE COURT:

17 **Q** You're Sidney Strickland, juror number 264?

18 **A** Yes, sir.

19 **Q** Mr. Strickland, I need to remind you you're
20 under oath, all right?

21 **A** Yes, sir.

22 **Q** Can you tell me what you may have seen, heard
23 or read through the media that relates to this case?

24 **A** Well, sir, I play racquetball every morning at
25 5:30 at Columbia Athletic Club.

1 Q You must be a very disciplined man.

2 A And my friends, they knew I had jury duty
3 because I told them yesterday I had to leave a
4 little early. So this morning I came in, they said,
5 You're on a case? I said, Well, I'm going back.
6 They said, Well, you're not on that murder trial
7 that was on T.V. last night, are you? I said, Well,
8 I don't know about no murder trial. So that was
9 really all that was said, but since you asked me, I
10 needed to tell you that.

11 Q Did they make any other statement about any
12 characterization of the murder trial?

13 A Well, one of my friends, he said, I believe
14 they're guilty, or something like that. And I said,
15 Well, don't tell me nothing because I don't know if
16 that's the case or anything. So I really don't know
17 anything except that's just -- he made that one
18 statement.

19 Q Mr. Strickland, anything else?

20 A That's it.

21 Q You didn't see anything on the media, just your
22 friends approached you?

23 A That's right.

24 Q Is there anything at all about that encounter,
25 what your friends said, what your friends may think

1 **A** Yes, sir.

2 **Q** Can you tell me what you may have seen, heard
3 or read through the media?

4 **A** This morning, I just seen his picture and name
5 on the T.V., that was all.

6 **Q** And what were you watching?

7 **A** It was Channel 10.

8 **Q** Did you hear them say anything?

9 **A** When I seen his name, I turned the T.V. off.

10 **Q** Before you turned it off, did you hear them say
11 anything?

12 **A** No, I didn't.

13 **Q** Are you sure about that?

14 **A** I'm sure because when I seen it, I just turned
15 it off. I said, oops. Then I turned it off.

16 **Q** Is there anything at all about what you saw or
17 the fact that there's media coverage of this trial
18 that in any way would affect your ability to be a
19 fair and impartial juror?

20 **A** No, sir.

21 **Q** Do you have any doubt whatsoever about that?

22 **A** No, sir.

23 **THE COURT:** Thank you very much. Ms. Kelly,
24 I'm going to ask you to step back in the jury room.
25 Don't discuss any of this with your fellow jurors,

1 please.

2 **JUROR:** Yes, sir.

3 (The juror leaves the courtroom.)

4 **THE COURT:** Does the defense wish to be heard?

5 **MR. STRICKLER:** Your Honor, as to Mr.

6 Strickland, I've already expressed myself as far as
7 my reservations. As to seeing the pictures,
8 everyone else was pretty uniform in their comments
9 about just seeing the photo and his name. I guess,
10 just for the purposes of the record, understanding
11 your ruling, I would move to exclude the four jurors
12 who indicated that they'd seen his photograph --
13 well, at least three of whom in inquiring on the
14 channel, referenced channel three, which is also
15 channel 10 depending on where you are and you're
16 receiving WIS, which is consistent with your comment
17 that the photograph there was a mugshot. So I'd
18 move to excuse those jurors for being exposed to
19 that and declare a mistrial. As to Mr. Strickland
20 -- because we don't have enough jurors.

21 As to Mr. Strickland, he did not see anything,
22 however, he was exposed to commentary or exposed to
23 comments by friends of his and to include, I believe
24 he's guilty, someone who undoubtedly knows something
25 about the facts of this case because there was a

1 fair amount of publicity about this at the time it
2 occurred. And I understand the nature of his
3 responses to Your Honor's follow-up questions.

4 I would suggest or submit to Your Honor that
5 he's now putting himself in a position that in order
6 to return a verdict on the facts of this case, as we
7 submit they will be found, will require him to go
8 ahead and return a verdict that contravenes the
9 opinion of his friends and that that asks him to do
10 something which I don't think he can do. So I'd
11 move that, independent of the basis for the others,
12 that he be excused for those reasons, Your Honor.

13 **THE COURT:** Does the State wish to be heard?

14 **MR. MEADORS:** Very briefly. Your Honor, I
15 think the fact Mr. Strickland came forward says a
16 lot about his character and what he thinks about his
17 job and role as a juror. He came forward and told
18 Your Honor about that conversation. I saw him,
19 watched him, watched his demeanor. He without
20 question told Your Honor he could follow the law and
21 can decide this case based on the facts, so I think
22 he kind of speaks for himself, Judge. And, again,
23 if -- just the fact he came forward. But, again, I
24 think his responses answer clearly that he could be
25 a fair and impartial juror.

1 As far as to the other four, I don't know how
2 to respond. It is what it is. They saw it. I
3 think they all said it didn't affect them, but we
4 defer to Your Honor's judgment on those.

5 **THE COURT:** Well, let me say I'm very impressed
6 with these jurors and how they reacted. They did
7 exactly what I told them to do yesterday. The four
8 that were exposed to media coverage, I told them if
9 they were exposed to any media coverage, get away
10 from it and then report to me what they saw, heard
11 or read through the media. And I told them not to
12 discuss the case with anyone. And the one who was
13 approached by his friends, did not even acknowledge
14 that he was on a murder case.

15 With regard to the mugshot, again, it was a
16 relatively short report last night. I did not see
17 the one this morning. When I said it was a mugshot,
18 I don't recall it being one of those shots where
19 somebody's holding a placard in front of them or
20 anything like that. It just appeared to be a shot
21 of -- photograph of someone who is, if you look
22 closely, was in some sort of jail clothing. In
23 Lexington, you can always recognize them because
24 they got that dark blue wall behind them.

25 With regard to the four, who were exposed to

1 media coverage, I'm confident and find beyond a
2 reasonable doubt that there's absolutely nothing
3 about their exposure to that media coverage that
4 would in any way affect their ability to be a fair
5 and impartial juror.

6 With regard to Mr. Strickland, I'm extremely
7 impressed with him and I do believe very strongly
8 that he will bend over backwards not to let this
9 influence him, but I'm not going to have that issue
10 in this trial and I'm going to set him aside.

11 **MR. MEADORS:** Judge, can I be heard on that?
12 Judge, I respectfully would ask Your Honor to
13 reconsider that.

14 **THE COURT:** Okay.

15 **MR. MEADORS:** Judge, we don't know how many
16 other folks were said something to that didn't come
17 forward. This man comes forward and says, yeah, I
18 heard this. I'm working out every morning. I'm --
19 Your Honor, it's not going to affect me.

20 I think respectfully, Judge, don't get mad at
21 me, I think --

22 **THE COURT:** Mr. Meadors, I'm not going to get
23 mad at you. I'm going to give you an answer in just
24 a second when you stop talking, but I'm not going to
25 get mad about it.

1 **MR. MEADORS:** But to punish him in effect for
2 not being -- having the right to serve for coming
3 forward and saying, I clearly can be impartial, I
4 can follow it, here's what I heard, that didn't have
5 an affect on me. There may be other folks back
6 there that didn't come forward that we don't know
7 about. Somebody says, oh, he might be guilty, might
8 not be guilty. He did come forward and I think
9 he'll bend over backwards to make sure that this
10 case -- the State meets its burden in this case,
11 Judge. And I don't know how else to put -- that's a
12 pure, that's the kind of juror we want.

13 **THE COURT:** Yes, sir, I understand. You and I
14 agree on a great deal of what you said. My ruling
15 hasn't changed.

16 Bring Mr. Strickland back out.

17 **MR. MEADORS:** Your Honor, that being said as
18 far as -- I'll join Mr. Strickler with the other
19 concerns about the other jurors.

20 **THE COURT:** Well, you lost me there. You want
21 to join in his mistrial motion?

22 **MR. MEADORS:** Beg the Court's indulgence.

23 (Pause.)

24 **MR. MEADORS:** I'd like a short break, yes, sir.

25 (The juror enters the courtroom.)

1 **THE COURT:** Mr. Strickland, you can just have a
2 seat over there in one of those chairs, that will be
3 fine.

4 Mr. Strickland, I'm very impressed with what
5 you did and the way you came forward and the answers
6 you gave me. I believe everything you've told me,
7 but I'm just not going to have that issue floating
8 around in a murder trial. So I'm going to set you
9 aside on this case.

10 Does he need to go to the jury assembly room?

11 **THE CLERK:** Yes, sir.

12 **THE COURT:** But you did exactly what you were
13 supposed to do and I really appreciate it, okay.
14 Thank you very much.

15 (The juror was excused.)

16 **THE COURT:** We'll be at ease for a couple of
17 minutes, but not more than a couple of minutes.

18 (Brief recess.)

19 **THE COURT:** Let me -- since this is,
20 apparently, becoming an issue, let me expand
21 somewhat on my ruling. I think I probably could
22 have ruled either way with regard to the one juror I
23 set aside, Mr. Strickland, but the major difference
24 with him was that someone had discussed the case
25 with him and had discussed the merits of the case.

1 This is somebody that he sees every single day.
2 This is somebody that he goes to the gym at 5:30 in
3 the morning and he's going to see this person every
4 single day.

5 I just think that -- while I know that he would
6 do everything in his power not to allow that to
7 interfere, that it is a situation where he is going
8 to be exposed to repeated pressure about it and I
9 just would rather set that juror aside. We've got
10 two alternates and we'll draw from those alternates.
11 If that's an abuse of discretion, I apologize to
12 everybody, but that's my exercise of discretion.

13 All right. What else?

14 **MR. MEADORS:** I respect your opinion, Judge.
15 And I didn't hear him say he discussed the merits of
16 the case. I heard him just say somebody said that
17 he's guilty. So I didn't hear him say they
18 discussed the merits.

19 **THE COURT:** That's about as the heart of the
20 merits as you can get, those people are guilty.

21 **MR. MEADORS:** Right. And I think somebody --
22 my point was anybody could have said that about
23 anything. He clearly said that didn't have an
24 affect on him. I respect your opinion, Judge.
25 Obviously, I agree with you, I think you could have

1 gone either way and you made your decision and I
2 respect that.

3 I would like to move for a mistrial, but I'm
4 not going to. I think it might be potential double
5 jeopardy grounds so I won't do that.

6 **THE COURT:** It would definitely be double
7 jeopardy. On your motion, I would have to find
8 manifest necessity and I don't see manifest
9 necessity. On their motion, I would.

10 All right. Do you need to put anything else on
11 the record from the defense or the State? I'm not
12 suggesting that you should, I'm just asking.

13 **MS. WEISS:** No, Your Honor.

14 **THE COURT:** Okay. Mr. Clerk, I have written
15 the two alternate's names one on each piece of
16 paper. I'm shuffling them around, pick.

17 **THE CLERK:** Number 75, Rashaad Egister, number
18 75, Your Honor.

19 **THE COURT:** I'm not through with the inquiry
20 now. I'm going to ask some more questions about
21 this whole situation.

22 Bring the jury in and tell Mr. Egister that
23 he's to sit in one of these seats up here, all
24 right.

25 (The jury returns to the courtroom.)

1 **THE COURT:** Okay. Ladies and gentlemen, as you
2 have seen, I set aside one of the jurors. And
3 Mr. Egister, if I'm pronouncing that name close to
4 correctly, is substituted in place of Mr.
5 Strickland. And I've got some more questions that
6 follow in line with what we talked about earlier.

7 Has anybody talked to you about this case in
8 any way? In other words, somebody else may have
9 seen some media coverage and said something to you.
10 Has anybody talked to you about this matter or
11 attempted to contact you and discuss the case that
12 you haven't told me about? If so, I need you to
13 raise your hand.

14 No hands are raised.

15 Okay. Now, ladies and gentlemen, before I go
16 into what I customarily do at the beginning of each
17 trial, I want to spend a little bit of time on this
18 issue about media coverage. I never know, as I told
19 you yesterday, which cases the media chooses to
20 cover. And I have had cases that I thought were
21 extremely important to the community, that everybody
22 would be interested in and never heard a peep from
23 the media. And then I've had cases that I couldn't
24 figure out why they were there.

25 So what I'm trying to say to you is the fact

1 that the media chooses to cover a trial doesn't mean
2 anything as far as what your role is and the
3 presentation of the evidence and how the case
4 proceeds and your decision making process. It
5 doesn't have anything to do with that. So please
6 understand, folks, that the fact that there will be
7 media coverage is going to vary a little bit in our
8 routine, and I'm going to explain that to you, but
9 it doesn't have a thing to do with the case itself.
10 So please understand that.

11 And the next thing I want to tell you is this.
12 I'm going to have to tighten up some on that
13 instruction I gave you yesterday where I told you
14 that if you were exposed to any media coverage, get
15 away from it and report it to me, which we did
16 today. I'm going to have to go beyond that. And
17 I'm going to tell you, you are not to watch the
18 local news, you are not to read any local
19 newspapers, that includes any South Carolina
20 newspapers. And if you're listening to the radio
21 and the news comes on, you need to switch the
22 channel before they start talking.

23 Now, obviously, a lot of times what will happen
24 is that they will give one of these teaser
25 statements and it just sort of hits you. I don't

1 know that that will happen related to this case, but
2 just please understand you have a continuing
3 obligation that if you're exposed to any media
4 coverage, you need to get away from it, cut the T.V.
5 or radio off, switch the channels and don't read
6 local print media. When I say local, I mean the
7 State of South Carolina.

8 Also, you have to stay away from the Internet.
9 Don't be going on any Internet sites that might be
10 reporting the news.

11 Now, my only option other than to give you that
12 instruction and to expect you to follow it, which I
13 do, is to lock you up in a motel room until this
14 trial is over. So please, folks, it's extremely
15 important that you follow those instructions I just
16 gave you. And I'm sure, based on the way that you
17 acted and conducted yourselves this morning, that
18 you'll do exactly that because the responses I got
19 in regard to my inquiries about media exposure were
20 exactly what I wanted you to do if there was some
21 media exposure. So I do appreciate you doing what
22 you did.

23 Now, we're going to start into the trial of
24 this case. And as I told you at the outset, there
25 are three separate indictments. Each of those

1 indictments are going to have to be evaluated on its
2 own merit or lack of merit. So when I use the term
3 case in the singular, please understand there are
4 three separate charges here that you're going to be
5 evaluating. And what I'm going to do is I'm going
6 to take about ten minutes and I'm going to explain
7 to you how we usually operate court in every case
8 and then I'm going to give you some instructions you
9 have to follow throughout the trial.

10 Now, I'll usually bring you folks in each
11 morning about 9:30. Generally, we go until about
12 one o'clock and break for lunch. Normally, you're
13 going to be on your own for lunch. The lunch break
14 typically lasts at least an hour and in some cases
15 an hour and 15 minutes to an hour and a half because
16 by the time you get out and get to where you're
17 going and get back, it takes about that long. Also,
18 we do want to give you some chance to make phone
19 calls or run an errand or something like that if you
20 need to. We usually then start court back around
21 2:00 to 2:30 and generally we stop for the day
22 between 5:00 and 5:30.

23 Now, I can't promise you we will adhere to that
24 schedule exactly, but you know as much about how
25 your day is likely to go right now as I do.

1 Now, the way the case will start is that I'm
2 first going to recognize the attorneys to make
3 opening statements to you. In these opening
4 statements, the attorneys are not permitted to
5 engage in what we call argument. An opening
6 statement can be an introduction, an outline, an
7 overview.

8 Once the opening statements are finished, then
9 I will call upon the State to present its evidence.
10 The State brought these charges and the State has
11 the entire burden of proof. As I told you
12 yesterday, the defendant is presumed to be innocent.
13 So I'll recognize the State to present evidence in
14 an attempt to meet their burden of proof. And the
15 State has to prove to you every essential element of
16 an offense charged beyond a reasonable doubt.

17 When the State finishes presenting its evidence
18 in chief, the Solicitor will advise me that the
19 State rests. At that point, I have to send you out
20 of the courtroom and discuss some legal issues with
21 the attorneys and then I'll bring you back in and
22 I'll tell you where we go from there, but that's --
23 those are the landmarks you can look for as to how
24 we're going to start with the trial.

25 Now, folks, it's really important that you

1 understand some things. The first thing is this,
2 that oath that you took this morning was an oath in
3 which you promised us that you're going to decide
4 this case based on the evidence and the law. So you
5 need to know where those things are going to come
6 from.

7 The law is going to come from me. It's my job
8 to decide what law applies to the case and tell it
9 to you at the end of the trial. The evidence is
10 going to come from the sworn testimony of witnesses.
11 Evidence can also come from exhibits. Now, an
12 exhibit can be anything tangible that's marked in
13 the record. It can be a photograph, a map, a chart,
14 anything tangible.

15 If something is an exhibit, you will have it
16 with you in the jury room when you decide the case.
17 And the reason I'm telling you that is because it's
18 not unusual for an attorney to have something like a
19 small photograph and show it to you from a distance
20 or actually hand it into the jury box and ask you to
21 circulate it around so you're trying to look at this
22 thing while you're also trying to pay attention to
23 what's going on up there on the witness stand. So
24 just realize, folks, that all the exhibits are back
25 with you in the jury room when you decide the case.

1 What the lawyers say is not evidence. I want
2 you to pay attention to them, they facilitate the
3 introduction of the evidence, but what comes out of
4 their mouths is not evidence. The evidence comes
5 from the witnesses and the exhibits.

6 Now, it's also extremely important that you
7 understand that there are two judges in this
8 courtroom. I told you I'm the judge of the law.
9 Part of my job is to tell you the law at the end of
10 the case. And, also, I'll rule on legal issues as
11 they come about.

12 You're the other judge. You have to understand
13 that you're the only judges of the facts. Only you
14 get to decide such things as whether evidence is
15 believable or not. Only you get to decide what
16 weight, if any, to put on evidence. That's entirely
17 your prerogative and I'm not going to invade your
18 province.

19 So let me give you an example of what I mean
20 about our different roles. From time to time, one
21 or the other side may feel that the opposing
22 attorney is trying to bring something out or put
23 something before you that's not proper for a jury to
24 consider in this case. And if that happens, these
25 attorneys have taken an oath just like you and I

1 have taken an oath and they have an obligation to
2 stand up and raise an objection and ask me to rule
3 on it. And if they do, I might send you out of the
4 courtroom.

5 If I send you out of the courtroom, folks, it's
6 just because it goes quicker if I do it that way,
7 all right. I'm not trying to hide anything from
8 you. It just goes quicker. Don't worry about what
9 I'm doing, let me do my job and then you come back
10 in and we'll go from there.

11 If I sustain the objection, that is, if I say I
12 agree that's not something proper for a jury to
13 consider, then you disregard it completely. You
14 don't consider it.

15 But if I overrule the objection and I allow it
16 to come before you, please understand that I haven't
17 even thought about whether that thing's believable
18 or not because that's not my job. It will not have
19 crossed my mind to decide whether the jury should
20 put any weight on that thing. That's not my job.
21 All I have done is looked to see does that thing fit
22 within the rules for the jury to consider and if I
23 believe it does, I'll let it come before you and you
24 decide whether to believe it and you decide what
25 weight, if any, to put on it. So please don't

1 misunderstand any ruling I make as passing upon the
2 facts of the case.

3 Now, while you have promised us that you're
4 going to decide the case based on the evidence and
5 the law and you have to do that, I am not telling
6 you to leave your common sense at home. We want you
7 to use your common sense, use your sense of logic
8 and reason and your good judgment. It just makes
9 good common sense that you keep an open mind about
10 this case and you don't make up your mind until
11 you've heard all the evidence and you know what the
12 law is.

13 So we have that rule that I mentioned to you
14 yesterday that you are not to discuss this case
15 among yourselves until I tell you to. That's a real
16 hard rule to follow because you folks may feel that
17 the 13 of you have little in common except you all
18 live in Richland County and you all got picked on
19 this case, so the logical thing you're going to want
20 to do when you walk out of this courtroom is talk
21 about what just happened in the courtroom, that's
22 human nature, but you have to resist that temptation
23 until I tell you to discuss the case and then we
24 wait on you.

25 Don't discuss the case until I tell you to.

1 Don't discuss the case with family members, friends,
2 anybody else until the week's over and you've been
3 seated on any jury you might possibly be seated on.
4 If anybody attempts to contact you about the case,
5 let me know about it so that I can deal with it.

6 If there's any media coverage of the trial, get
7 away from it, report what you saw, heard or read
8 through the media and I've given you specific
9 instructions about the media before.

10 Now, the last thing I'm going to tell you
11 before I turn it over to the attorneys is thank you.
12 Now, you folks probably have gathered by now that I
13 have very little personality and that I'm not the
14 kind of guy who's going to sit up here repeatedly
15 and say thank you. Now, quite frankly, my strong
16 belief is that if I do that, it cheapens it because
17 you folks had an obligation to meet, you had a duty
18 to perform and you met it head on and I appreciate
19 that.

20 It's very easy to find yourself in a dispute.
21 And if you're ever in a dispute, you're going to be
22 very grateful that people like you took time away
23 from their lives so that we can resolve these
24 disputes. And I thank you.

25 Now, my promise to you is this. I promise you

1 that if you're waiting on us, we're working. There
2 will never be a situation where we're sitting around
3 drinking coffee and telling jokes while you're
4 waiting on us. That is not going to happen on my
5 watch. I can't promise you you won't have to wait,
6 but there will be people working very hard to get
7 you back in this courtroom so that we can keep the
8 case moving along.

9 The bailiffs will attend to your comfort. If
10 you need anything, you communicate with them. If
11 you need to communicate with me for any reason, it
12 generally has to be in writing, so you have to put
13 what you need to talk to me about on a piece of
14 paper.

15 But I do want to say as a final word, thank
16 you. And to honor my commitment to you now, I'm
17 going to shut up and I'm going to recognize the
18 attorneys for their opening statements and I invite
19 your close attention. After the opening statements
20 are finished, then we will have a brief break and
21 then we'll get you out here and you'll start hearing
22 the evidence in the case.

23 I don't know how long this case is expected to
24 take right now, but I'll keep you informed as we go
25 along as to what kind of estimates I have.

1 Any of y'all want to take notes?

2 Then I have to give one brief instruction.

3 It's fine with me if you take notes, perfectly fine.

4 The judges that don't let jurors take notes, they
5 usually give this reason for not doing -- for not
6 allowing jurors to take notes, they usually say,
7 well when they get back there deliberating, if one
8 juror or a couple of jurors or a few jurors have
9 things written down, the other jurors who didn't
10 write things down, they will yield inappropriately
11 to the person who wrote stuff down.

12 I don't believe that for one second. You folks
13 know what you feel strongly about and what you
14 remember and what you got some question about and so
15 it's fine with me if you take notes. You can take
16 them from the beginning. You can decide at some
17 point in the middle of the trial you want to start
18 taking notes, that's up to you.

19 But if we do allow you to take notes, we're
20 supposed to have three rules and here they are:
21 One, when you leave the courtroom for any of these
22 breaks, you have to leave your notes in the
23 courtroom. Just turn them face down, we will not
24 read your notes, just turn them face down in your
25 chair. If you wind up in a different chair, we'll

1 make sure you have your note pad before you get
2 started.

3 The second thing is is that when you go back to
4 the jury room to deliberate, you will be allowed to
5 take your notes back there with you then, but you
6 cannot physically show the notes to another juror.
7 Now, obviously, you may look at them and then you
8 may say anything you want to, but you can't do
9 something like say, see I wrote it down right here.

10 The third thing is is that when the trial's
11 over, the notes have to be destroyed. You have to
12 give them to the bailiff and we tear them up in
13 little pieces or shred them. So if you're putting
14 them on something you need to keep, you need to stop
15 and we need to give you a note pad or something.
16 And if any of y'all want a note pad or a pencil or
17 anything, just let the bailiffs know and they'll
18 attend to it, okay.

19 Ms. Weiss, you're recognized.

20 **MS. WEISS:** Thank you. May it please the
21 Court.

22 **THE COURT:** Yes, ma'am -- oh, I forgot
23 something. About the media coverage, they cannot
24 film you. They cannot report your name. So don't
25 think the cameras are ever going to be filming you.

1 They can't film you, all right. Thank you.

2 Go ahead, Ms. Weiss.

3 **MS. WEISS:** Thank you, Your Honor.

4 Good morning. Some time after midnight on
5 Sunday morning, early Sunday morning, October 17th
6 of 2004, Grover Gene Derrick, he goes by Gene, his
7 fiancée, Stephanie Dover, and their two young boys,
8 Zachary and Cole Derrick, got in their car after a
9 cookout at a friend's house in Pelion and headed
10 home to their house just off of Monticello Road. As
11 they started driving, they got on I-20, which is the
12 direct way to get to their house off Monticello, the
13 two boys fell asleep in their car seats in the back.
14 In the front seat, Gene and Stephanie were
15 discussing their wedding. They were soon to be
16 married.

17 Just as they got around the Broad River bridge,
18 Gene noticed -- he put his car on cruise control
19 there wasn't much traffic and he was just going down
20 the interstate. He noticed a black truck that they
21 passed, not much remarkable about it, but he noticed
22 there was a black truck and he kept going.

23 As he got to the driving range, which is right
24 by the Broad River, if you're familiar with that
25 part of I-20, he noticed in his rearview mirror that

1 black truck coming up on him at a high rate of
2 speed. As that truck got just to his back driver's
3 side window, he heard boom, boom, boom, boom, four
4 shots, four or five shots that quickly. Just as
5 quickly as those shots went off, the truck took off.

6 In that split second, Gene realized that his
7 family had just been put in danger, his children had
8 been put in danger and he took off right after that
9 truck. Not knowing what he would do if he caught
10 it, he just took off, started following the truck.

11 The truck got right about to Monticello Road,
12 boom, boom, boom, boom, four more shots, four or
13 five more shots coming back towards them, the truck
14 was in front of them. He kept following the truck,
15 took off -- went right past Monticello, took off on
16 Fairfield Road, followed right behind it, took a
17 couple turns, then went down a dirt road. He said,
18 I'm not going down the dirt road. Flipped around,
19 asked his fiancée, Hand me the cell phone. At that
20 point, he didn't get a response. He looked over and
21 realized his life had changed. Stephanie Dover, his
22 fiancée, had been shot.

23 At that point, he turned his car around and
24 flew back to the Flying J. He got there, ran
25 inside, demanded somebody call 911.

1 In that instant, in those few shots, his life
2 had been changed. The life of those two boys had
3 been changed. His fiancée was dead. His son,
4 barely three years old, had been injured by a bullet
5 that struck his car seat and cut his leg.

6 Law enforcement came straight out. EMS came
7 out, took Stephanie to the hospital, took Zachary to
8 the hospital. They did what they could. Law
9 enforcement began their investigation. Ladies and
10 gentlemen, this investigation took over a year.

11 Just after the year anniversary, just after the
12 media ran some more stories about this whole case
13 had been going on for more than a year, finally the
14 case broke. Law enforcement was finally able to
15 figure out who committed this murder. And, ladies
16 and gentlemen, today we ask you to hold John Moore
17 responsible, finally hold him responsible for the
18 murder of Stephanie Dover.

19 My name is Heather Weiss. I'm an assistant
20 Solicitor here in the Fifth Judicial Circuit. We
21 cover both Kershaw and Richland Counties. It's my
22 honor to be here for you, as well as my duty to
23 represent the people of Richland County and the
24 State of South Carolina.

25 I, along with Deputy Solicitor John Meadors and

1 Assistant Solicitor Joanna McDuffie are here today
2 to present this case to you. The Judge told you
3 that it is entirely our burden to prove this case to
4 you beyond a reasonable doubt and we gladly accept
5 that burden. Because we are here for one reason,
6 we're here to prove to you that John Moore murdered
7 Stephanie Dover.

8 I want to begin like the Judge did by thanking
9 you. Thank you for being here on behalf of the
10 State. Thank you for being here. We couldn't do
11 this without you. Without the jury, this justice
12 system would completely fall apart. So thank you.
13 I know there are other places that you need to be,
14 other places you would probably rather be, but we
15 thank you for being here. Thank you for your
16 attention.

17 I've already heard from some of you this
18 morning from watching, I know you've been paying
19 close attention, answering all the questions very
20 thoughtfully, following the Court's instructions and
21 that's all we ask you to do.

22 There's no special qualifications for being a
23 juror. There's no special education for being a
24 juror. You bring into this courtroom what you need
25 and that's your common sense, that's your life

1 experiences and that's all we ask you to use. As
2 the ultimate judges of the facts, we ask you to use
3 your common sense to listen to the testimony, to
4 review the evidence and to ultimately make the final
5 decision.

6 Now, this is just the beginning of the trial.
7 The trial will progress, you'll hear the opening
8 statements. Nothing I say to you, nothing the
9 defense counsel says to you, nothing Mr. Meadors or
10 Ms. McDuffie say to you is evidence. You're going
11 to hear the evidence from this witness stand right
12 here. I ask you to listen closely to that evidence,
13 listen closely to the witnesses. You'll also get
14 evidence that will be presented to you that will be
15 sent back into the jury room.

16 At the end of this trial, we just ask you to
17 think through everything that you heard and
18 everything that you've seen, everything that you
19 have and make a decision. Because, ultimately,
20 after you've heard the evidence in the trial, you've
21 heard closing arguments, you'll go back to
22 deliberate and make the final decision.

23 Now, I told you that we're here for one reason
24 and that's to prove John Moore guilty of the murder
25 of Stephanie Dover. However, we're going to show

1 you -- we're going to present to you three
2 indictments that we're going to ask you to decide
3 upon. I'm just going to give you a brief overview
4 of those.

5 If anything I say about the law is anything
6 different from what Judge Keesley says, please defer
7 to him. I'm just trying to give you an idea of what
8 you're going to be looking for during the course of
9 this trial.

10 The first indictment says that it's illegal to
11 possess a firearm during the commission of a violent
12 crime. We're going to ask you to find that during a
13 violent crime, which murder is a violent crime,
14 during that, John Moore possessed a pistol. It's as
15 simple as that.

16 Secondly, I'm going to ask you to find that
17 when he was possessing that pistol, he was under the
18 age of 21.

19 But, ladies and gentlemen, the ultimate
20 question, the ultimate decision we ask you to make,
21 is to find that John Moore is guilty of murder.
22 Murder is the killing of any person with malice
23 aforethought either expressed or inferred. At the
24 close of the case, you'll be instructed in very much
25 detail -- in great detail on the elements of this

1 crime expressed and inferred malice. And I submit
2 to you that when John Moore pulled out the pistol,
3 sped up as the driver of the truck slowed down next
4 to the car and fired into that car, you'll find that
5 meets malice, malice aforethought. I'll leave that
6 to you at the end of the trial.

7 Our burden is to prove to you beyond a
8 reasonable doubt that John Moore is guilty of
9 murder. A reasonable doubt is not beyond any doubt.
10 It's not beyond a shadow of a doubt, terms you might
11 have heard. It's beyond a reasonable doubt. And
12 it's just that, it's just a reasonable doubt, a
13 doubt that would make a reasonable person hesitate
14 to act.

15 None of us were there. There were only a few
16 people that were present at the scene of this
17 murder. Those people were John Moore, his best
18 friend from childhood, Kerwyn Phillips, Gene
19 Derrick, his fiancée, Stephanie Dover, and his two
20 small boys, the oldest one just turning three.

21 You're going to hear from law enforcement.
22 You're going to hear them get up and testify as to
23 everything they did, the investigation they did, the
24 details they went into to corroborate the story that
25 Gene Derrick told of what unfolded that night.

1 You're going to hear all of that evidence and it's
2 very important, I ask you to pay close attention.

3 Of the people that were there that night, those
4 are the ones I ask you to listen very closely to,
5 the ones who can actually tell you what happened.
6 Gene Derrick is going to tell you what happened that
7 night. He's going to tell you about that horrific
8 trip down I-20. He's going to tell you how he lost
9 his fiancée, how his children lost their mother and
10 how his child was injured. You're going to hear
11 that from him.

12 You're also going to hear from Kerwyn Phillips.
13 Now, go ahead and tell you, Kerwyn is an inmate in
14 federal custody. He did give a statement after
15 being arrested on federal charges. He did get a
16 little bit of a break on his federal sentence.
17 We're putting that out there because you're the
18 judges of the facts. You're going to know that.
19 You're going to hear that. We're not hiding
20 anything from you.

21 You are the judges of the credibility, so I ask
22 you to listen carefully, pay close attention to
23 Kerwyn Phillips' testimony, listen to what he says
24 and how his explanation of the events that night go
25 along with what Gene Derrick tells you happened that

1 night go along with what the forensics tell you
2 happened that night. Listen closely to Kerwyn
3 Phillips as he explains to you how John Moore
4 reached across his face and shot into that car.

5 Then we're going to present to you something
6 you don't often get, those are the words of John
7 Moore. You're going to hear in a tape when Kerwyn
8 called John Moore. John Moore says, I had to shoot
9 because they were pump-faking, pump-faking, I had
10 to. He asked him, Why did you feel like you had to
11 shoot? He answered that.

12 And, finally, you're going to hear John Moore's
13 own words when he calls his girlfriend, when he
14 tells her that he shot in front of Kerwyn, when he
15 tells her there was only one gun in that car.
16 You're going to hear his own words.

17 Ladies and gentlemen, I ask you listen
18 carefully to all of the evidence, listen to the
19 witnesses. At the end of the trial, when you retire
20 to the jury room to deliberate, I ask you to finally
21 hold John Moore responsible for the murder of
22 Stephanie Dover. Thank you.

23 **THE COURT:** Thank you, Ms. Weiss.

24 Which of you is going to do the opening
25 statements?

1 **MR. COLLINS:** I am, Your Honor.

2 **THE COURT:** All right. Mr. Collins, you're
3 recognized for your opening statement.

4 **MR. COLLINS:** May it please the Court.

5 **THE COURT:** Yes, sir.

6 **MR. COLLINS:** Good morning. This is going to
7 be an emotional case. What happened is a tragedy,
8 no doubt about that. And the State, they're going
9 to play on those emotions (indicating). They're
10 going to try to use your emotions to get you to
11 convict. But you've got to check your emotions at
12 the door, to know your duty is to evaluate the facts
13 in this case.

14 And for over a year, all parties involved in
15 this case said the passenger of the truck was the
16 shooter, not the driver, the passenger. All of a
17 sudden something changed in 2005. By the end of the
18 case, you're going to see that the theory changed,
19 but why did it change? You're going to see why.
20 And it's not because suddenly they realized that the
21 passenger wasn't the shooter, there's other factors
22 in play here and you're going to hear about them.

23 You're even going to get the chance to see the
24 real shooter in this case. He's going to sit right
25 here, maybe even today, but I guarantee you some

1 time this week. Now, you hadn't seen the real
2 shooter yet.

3 When it comes down to it, you're the trier of
4 facts. And in this case, the facts are simple to
5 make the decision who's the shooter, that's what
6 you've got to decide. You should pay attention to
7 the details and don't let your emotions decide this
8 case. Thank you.

9 **THE COURT:** Thank you, Mr. Collins.

10 All right. Ladies and gentlemen, the attorneys
11 had requested a brief recess at this point so they
12 can get some things done that would speed the trial
13 up a little bit, so I'm going to grant that to them.
14 And I'll need you to wait in the jury room while
15 they do this. As soon as they get through, I'll get
16 you back out here and we'll get started hearing the
17 testimony. Don't discuss the case. Thank you.

18 (The jury retires to the jury room.)

19 **THE COURT:** How much time do you need?

20 **MS. MCDUFFIE:** Your Honor, there's a very large
21 stack of pictures and we don't know if they want to
22 go through the evidence and settle it all now or if
23 you like just to do part of it, but it could take us
24 a substantial amount of time if they go through all
25 of this right now.

1 **THE COURT:** I'm not inclined to do that, that's
2 why I told y'all to get together before 9:30 to do
3 that so at 9:30 we could start. Do what you can as
4 quickly as you can, but I'm not waiting more than 15
5 minutes.

6 **MS. WEISS:** Thank you, Your Honor.

7 **THE COURT:** Thank you. We're at ease.

8 (Brief recess.)

9 **THE COURT:** Is the State ready for the jury?

10 **MS. WEISS:** The State's ready, Your Honor.

11 **THE COURT:** Defense?

12 **MR. COLLINS:** Defense is ready.

13 **THE COURT:** Bring them in, please.

14 (The jury returns to the courtroom.)

15 **THE COURT:** Call your first witness, Solicitor.

16 **MS. WEISS:** Thank you, Your Honor. The State
17 calls Investigator Scott Faust.

18 STEVEN SCOTT FAUST,
19 having been duly sworn, testified as follows:

20 **THE CLERK:** Please have a seat there, sir.
21 State your full name for the record.

22 **THE WITNESS:** Steven Scott Faust.

23 DIRECT EXAMINATION

24 BY MS. WEISS:

25 **Q** Good morning.

1 **A** Good morning.

2 **Q** Investigator Faust, please tell the jury a
3 little bit about yourself. Where are you currently
4 employed?

5 **A** I'm currently employed at the Richland County
6 Sheriff's Department. I was hired back in 1995. In
7 1999, I was promoted to an investigator. Middle of
8 last year, I was promoted to a sergeant of
9 investigations over white collar crimes and motor
10 vehicle theft. Back on October 17th, 2004, I was an
11 armed robbery investigator and that particular night
12 I was on-call for any calls that happened during the
13 night, as well as murder on-call.

14 **Q** Will you please tell the jury a little bit
15 about your duties as an investigator?

16 **A** The on-call investigators respond to the scene,
17 gather facts and start working the case. If they
18 keep the case, you just continue to work it until
19 it's solved. And then also you have investigators
20 that when they -- reports come in the morning from
21 the on-call investigators, they get the reports and
22 pick up and go with it from there.

23 **Q** You said on October 17th of 2004, you were
24 working as an on-call investigator?

25 **A** That's correct.

1 **Q** And what were you doing at about 2:30 in the
2 morning that morning?

3 **A** I was up at the office and a short time after
4 that, I received a call from our desk sergeant,
5 which is kind of the point of contact for the
6 deputies wanting to get in touch with us. And at
7 2:25, I was notified to respond to the Flying J on
8 Fairfield Road, which is at Fairfield Road and
9 Buckner, that we had a shooting incident and I was
10 being requested by the deputies on scene.

11 **Q** And were you the first investigator to respond?

12 **A** I was the first investigator that was headed
13 that way, along with Sergeant Amaro at the time.

14 **Q** I'm going to show you what's been marked as
15 State's Exhibit 15. Do you recognize this picture?

16 **A** I do. It's an overview picture of Fairfield
17 Road, Buckner Road at the location where Flying J is
18 located. It's typically known as a truck stop.

19 **MS. WEISS:** Your Honor, at this time, I'd like
20 to enter State's Exhibit 15.

21 **MR. COLLINS:** No objection.

22 **THE COURT:** Mark it in evidence, please.

23 (State's Exhibit Number 15, photograph,
24 admitted into evidence.)

25 **BY MS. WEISS:**

1 Q And is that the location you responded to that
2 evening?

3 A I did.

4 Q And what did you find when you first got to
5 that location?

6 A When I arrived on the scene, I observed the
7 victim's vehicle located in between the gas pumps
8 and the front of the store. There was police tape.
9 We put do not cross type yellow tape saying do not
10 cross. I found the vehicle running. And at that
11 time, I located one of the deputies on scene, a
12 Deputy Bright, and got an overview of the case and
13 what he had learned and what he had been informed
14 of.

15 Q What was the overview you got at that time?

16 A That the -- Mr. Derrick and his fiancée were --
17 Ms. Dover were driving down I-20. And at some point
18 at I-20 about the time where the Broad River Road
19 Bridge and the Broad River Road River where I-20
20 passes that area going eastbound towards Monticello
21 Road towards Fairfield Road, which is considered
22 eastbound, their vehicle was starting to be shot at
23 from a pick-up truck located to the left of them and
24 numerous shots were fired at them. He started to
25 chase the vehicle and at a point where he arrived at

1 at a location at Red Hill Road at Sharp Road and at
2 that time that's when he realized that Ms. Dover had
3 been injured and at that time stopped and turned
4 around and went to the Flying J.

5 Q Okay. And when you got to the Flying J, were
6 any of the victims still present on the scene?

7 A No. When I arrived, they'd all been
8 transported by EMS.

9 Q So as far as the scene, what was left was the
10 vehicle?

11 A The vehicle.

12 Q And did you have a good opportunity to observe
13 that vehicle?

14 A I had -- I walked around the vehicle, did not
15 touch the vehicle. We preserved it, that's why
16 there's yellow tape. I walked close enough to where
17 I could see the vehicle, but not touch anything. I
18 was leaving that for the lab who was also headed to
19 process the vehicle.

20 Q Did you have the opportunity to look both
21 inside and outside the vehicle?

22 A I did.

23 Q Let me show you a series of pictures that have
24 been marked State's Exhibits 12, 4, 10, 11, 9, 8, 7,
25 6, 5, 3, and 2 and ask you just to look at these

1 pictures?

2 A (Witness complies.)

3 Q What do those pictures depict?

4 A This is a location where the car was located at
5 the Flying J. And there's pictures of basically a
6 360 of the vehicle.

7 Q And is that the same condition that you found
8 it in when you responded to the Flying J?

9 A That's correct.

10 Q And do those pictures accurately depict what
11 you saw that night?

12 A That's correct.

13 MS. WEISS: Your Honor, at this time, I would
14 like to introduce the exhibits that I just
15 enumerated into evidence.

16 MR. COLLINS: If I could just get one last look
17 to make sure it's the ones I'm fine with.

18 (Pause.)

19 MR. COLLINS: No objection, Your Honor.

20 THE COURT: Thank you. Mark those in the
21 record, please.

22 (State's Exhibit Numbers 2 through 12,
23 photographs, admitted into evidence.)

24 BY MS. WEISS:

25 Q First is State's Exhibit 12. Would you please

1 show that to the jury and tell them what that
2 depicts?

3 **A** This is a rear picture of the vehicle. And as
4 you look past the vehicle, it's going to be the
5 front of Flying J. Just behind the vehicle what you
6 can't really see are where the gas pumps are and
7 that would be, when you get this picture, in between
8 the building and a little, looks like a white
9 rectangular shape, that's going to be the cover for
10 the gas pumps and the vehicle is actually located in
11 between the building and that particular cover.

12 This is a closer up of the rear of the vehicle
13 and the tag that was on it.

14 **Q** And if you'll show that to the jury and tell
15 them what's significant about that picture?

16 **A** This is a picture of the vehicle. This is the
17 driver's side. And if you -- when you get the
18 picture, it's going -- you'll have to look at it a
19 little bit closer, there's going to be three little
20 silver marks on the right just past the rear portion
21 of the driver's side door and also a couple of marks
22 on the middle lower portion of the rear driver's
23 side passenger door.

24 Now, there's also some lights where there's a
25 reflection from the light, but you can see the

1 dimmer lights. Those are going to be the bullet
2 holes that you can see on this picture. There were
3 also some on the vehicle that are not -- they're
4 less visible in this picture. You really can't see
5 them. But there will be three marks right around
6 this area where -- are going to be the depiction of
7 some of the bullet holes. And, again, it's just
8 some of them based off of that picture.

9 Q And was there anything done to those bullet
10 holes prior to that picture being taken?

11 A No. When the victims got out of the vehicle
12 and the deputies secured the scene, no one would
13 have done anything to that vehicle.

14 Q I'm going to hand you State's Exhibits 2, 5, 8
15 and 6. If you can summarize those for the jury.

16 A The first picture here is going to be the rear
17 passenger's driver's side, just the door's open.
18 Just kind of a picture of the door, inside of the
19 door and the portion of the seat.

20 This is going to be the passenger side of the
21 vehicle, the doors are open.

22 And I believe this is going to be -- yeah, this
23 is going to be the passenger side, just a picture of
24 the door as it was as I arrived on the scene.

25 And, again, this is either going to be the rear

1 or the driver's side door. I would imagine that's
2 going to be -- one of these is going to be the
3 driver -- I would imagine this is going to be the
4 rear and this is going to be the driver. Due to the
5 child safety lock being depicted on this picture,
6 it's going to be the driver's side door -- excuse me
7 -- the passenger's side front.

8 **Q** Now, State's Exhibits 11 and 7, what you
9 noticed about those when you arrived on the scene?

10 **A** All right. This is a picture of inside of the
11 driver's side door, the window is down on the -- on
12 the side. You can see that the driver, or the
13 passenger side door is open and you can also see
14 some blood stains over here with a plain view. Keys
15 are down on the floorboard. This is, again, taking
16 the picture down through the driver's side with the
17 window down. It was like this as I arrived on the
18 scene.

19 And this is a picture of the passenger's front
20 seat where some of the blood is located and where
21 Ms. Dover was seated.

22 **Q** And, finally, State's Exhibits 9 and 3?

23 **A** This is going to be the rear seat taken from
24 the passenger side. Again, you can see a towel and
25 some other blood in the back of this seat. And,

1 again, this is going to be taken through the
2 driver's side rear door. And that was how I found
3 it when I arrived on the scene.

4 **Q** After coming to the scene and checking in, I
5 guess, at the scene, what did you do next?

6 **A** The lab arrived and, at that time, I let him
7 control the scene and do what he specialized in, and
8 that's processing the vehicle, the victim's vehicle.
9 I, at that time, left to go to the Richland Memorial
10 Emergency Room to try to go speak to Mr. Derrick and
11 the status of Ms. Dover, find out the status and
12 also as to the kids that were involved.

13 **Q** And based on the information that you had
14 gathered from the scene, what did you do on your way
15 to Richland Memorial Hospital?

16 **A** I called our desk sergeant, since I knew that
17 this incident occurred on I-20 and I was aware that
18 there are some cameras up there, I inquired at that
19 time to see if there was any video and if so, we
20 needed to start trying to make the proper contacts
21 to get the video. I learned that in the past that
22 the videos were just live, that there's no recording
23 and that it was their belief that that was still the
24 status quo unless things have changed.

25 I would then, after this incident, would learn

1 that again these cameras were just live feeds, they
2 were not recording. And so at the time at two
3 o'clock on the 17th, there would be no recordings to
4 document anything that happened on that highway.

5 **Q** And what did you do next?

6 **A** At that point in time, I arrived at the
7 hospital. This was at, approximately, 2:55. I
8 learned that Gene was over at the pediatric side of
9 the E.R. while Ms. Dover was being worked on in the
10 E.R. by the doctors.

11 **Q** And what did you find out?

12 **A** A short time after that, I learned that at,
13 approximately, 3:01, Ms. Dover was pronounced dead
14 by the doctors.

15 **Q** And what did you do next?

16 **A** I wanted to go speak to Gene. And basically
17 with me, instead of hearing what the deputies were
18 told, I wanted to go personally talk to him and
19 gather the specific facts and details from him at
20 this particular time.

21 **Q** And were you able to do that?

22 **A** I did.

23 **Q** Is this before or after he had found out about
24 his fiancée?

25 **A** This is before.

1 Q And was there a reason you wanted to talk to
2 him before he found this information out?

3 A I knew that once he learned that his fiancée
4 was deceased, I knew that I was going to have a
5 difficult time interviewing him, naturally. Anybody
6 in that situation it's going to be difficult to
7 speak to, there's going to be a starting of remorse
8 and the fact that having to deal with that. So I
9 wanted to try to get as much out of him as I could
10 before he was informed so I could start working on
11 this case and solving and trying to find out who did
12 this.

13 Q And was there anything else that you needed to
14 do prior to getting information?

15 A There was. There's a practice we call GPR,
16 gunpowder residue, which is something that we have
17 our lab do. Whenever there's a shooting, anybody
18 that's present at the shooting that we can find, and
19 you have to do this within a time window of just
20 approximately six hours for this to be an accurate
21 type of a testing done by our lab, I wanted to get
22 gunpowder residue from him for -- to make sure that
23 he didn't have any gunpowder on his hand. And then
24 if he didn't, it would be for elimination purposes
25 so we could rule him out.

1 So, at that time, I notified the lab that I had
2 him here and that we needed somebody to report to
3 his location to do this. At this time, it had only
4 been an hour so the window was still open to get an
5 accurate result.

6 Also, I had explained the procedure to
7 Mr. Derrick and advised him of why we wanted it and
8 he agreed and stated that it would be something he'd
9 be willing to allow us to do. And it's something we
10 would need consent to do. It's not something we
11 could force him to do.

12 **Q** And you had already had information that was --
13 the information was it occurred on the interstate
14 and that he was just a victim. Is this standard
15 protocol?

16 **A** This is standard. Again, anybody that is
17 present at a scene and we can locate within this
18 time window, it's something that we want to do,
19 again, to test to see if he did have gun powder
20 residue on his hand. If so, we would want to find
21 out why. And if he didn't, then it would rule that
22 -- the test would be for elimination purposes to
23 eliminate him as having a gun or gunpowder residue
24 at that particular time.

25 **Q** Where did you locate Gene Derrick?

1 **A** Again, this was outside of the pediatrics side
2 of the E.R.

3 **Q** And who was with him?

4 **A** His father.

5 **Q** And did you have the opportunity to speak to
6 him at that time?

7 **A** I did. I then began my interview with him
8 finding out what happened.

9 **Q** And, at that point, did you take a statement
10 from him?

11 **A** It was a verbal statement. This was a
12 situation where you're outside, the temperature's
13 approximately in the 40's. It's a situation where I
14 just took some notes, referred him to my follow up
15 and at a time where we're better situated and have
16 the time and the capability of taking a better
17 statement. I knew that could take place at a later
18 date, but, at this time, I wanted to get the initial
19 facts to start working on the case and get this out
20 to the deputies and other investigators that were
21 assisting and starting to look for whoever had the
22 gun and pulled the trigger.

23 **Q** And what information did he give you at that
24 time?

25 **MR. COLLINS:** Objection, Your Honor, as to

1 hearsay.

2 **THE COURT:** Do you want to be heard?

3 **MS. WEISS:** No, Your Honor. I'll rephrase the
4 question.

5 **THE COURT:** All right.

6 BY MS. WEISS:

7 **Q** Based on the information that you got from Gene
8 Derrick at that time, where was the incident
9 located?

10 **A** I would learn that the incident started -- that
11 Gene and Ms. Dover would leave a location over in
12 Pelion. At that particular time, they got on
13 Highway Number 6 and were on -- they got on Highway
14 Number 6 to I-20 eastbound and about a mile before
15 the Broad River Bridge, not the Broad River River,
16 but the bridge that goes over Broad River Road where
17 I-20 passes under it --

18 **Q** All right. I'm going to stop you at this time
19 and show you what's been marked as State's Exhibit
20 16. Do you recognize this?

21 **A** I do. That's an overview of the highway system
22 and the location where this occurred.

23 **MS. WEISS:** Your Honor, at this time, I'd like
24 to introduce State's Exhibit 16 into evidence.

25 **MR. COLLINS:** No objection.

1 **THE COURT:** Thank you. Mark it in evidence.

2 (State's Exhibit Number 16, blowup of map,
3 admitted into evidence.)

4 BY MS. WEISS:

5 **Q** Now, you can just show the jury where
6 Mr. Derrick -- from the information you got from
7 Mr. Derrick, where this was located?

8 **A** This is I-20 and going this way is eastbound,
9 this is going to be Broad River Road. This is going
10 to be the actual Broad River. This is going to be
11 Monticello and this is going to be Fairfield Road.
12 This is going to be where the Flying J is
13 approximately right in this area.

14 He stated that as they were going about this
15 location at the Broad River Bridge, he stated that
16 he was in the right-hand lane going approximately 65
17 to 75 miles per hour when he passed a pick-up truck
18 in the center lane, which he estimated was going
19 approximately 55 to 60 miles per hour.

20 He states that as he got to the Broad River
21 Bridge as he was about to drive under it, which
22 would be about this location right in here
23 (indicating), is when the pick-up truck caught up
24 with him in the far -- caught up with him in the far
25 right lane. He stated at this time is when he saw

1 gun flashes and heard his car being hit by bullets.
2 Again, this is about this time right here
3 (indicating). Was informed that this is where he
4 believed that he got struck with glass or some type
5 of object.

6 I was informed that the vehicle was believed to
7 be a 1999 to 2001 large Chevy pick-up truck, dark in
8 color, no tinted windows, a large stepside was into
9 the door and into the bed. There was an unknown
10 tag. Driver was a black male, no further
11 information, and the passenger was a black male in
12 his early to mid 20's.

13 At that time, he stated he did not get the tag
14 due to the fact he was not paying much attention to
15 it because he was trying to chase the vehicle down
16 and did not get close enough to get the tag due to
17 the fact that bullets were coming from the passenger
18 side shooting at his car.

19 Q Okay. And where did that vehicle go next?

20 A They are still traveling east. The vehicle
21 would end up -- the chase would continue along here
22 and would get off on 321. There's a little circular
23 ramp and you go back out to here about, I'm not sure
24 exactly where, but Sharp Road, I believe it's going
25 to be about in this area, both vehicles turned here.

1 He was further back at this time.

2 The vehicles would end up on Red Hill Road
3 where he saw the vehicle take a left and saw that
4 this was a dirt road, saw the dirt beginning to come
5 up and he decided to pull over. At this time, Gene
6 states that he asked his, he referred to her as his
7 wife, but he asked her to hand him his cell phone.
8 He turned over to her and that's when she fell into
9 his lap, that was when he realized that she was
10 injured. At that time, he stopped and came back to
11 -- down Sharp Road, down Fairfield Road to the
12 Flying J to call for help.

13 Q Now, that night when you were talking to him
14 outside of the E.R. was approximately how long after
15 this incident had occurred?

16 A Approximately an hour. I started talking to
17 him some time shortly after 3:00 and the incident is
18 believed to occur right around 2:00.

19 Q And he gave you a lot of details in that
20 discussion?

21 A I would consider that a good amount of details,
22 but, again, it was a brief conversation and I'm
23 trying to gather a lot of information to get out to
24 the other units that are working the case so we can
25 start, obviously, looking for a vehicle that fits

1 this description. I would also -- I would also
2 advise the deputies that due to this location of
3 someone going down Red Hill Road, for people to
4 concentrate and send some cars up and around the
5 Hollywood Hill area, which is that area, Sharp Road
6 area, and for them to start looking for a pick-up
7 truck that fits this description.

8 **Q** When you were talking to Gene Derrick outside
9 of the E.R., what was his demeanor at that point?

10 **A** Upset and had a lot of concern, there were some
11 questions about Ms. Dover's condition, his kid's
12 condition. And, you know, it's not something that I
13 was happy about withholding the fact that she had
14 passed, but something that I felt was necessary and
15 needed to do to gather information on. After the
16 interview, he was informed.

17 **Q** And what was his physical condition? Did you
18 notice...

19 **A** You know, obviously pretty shaken, excited, and
20 when I say excited, just, you know, his attention
21 span, you know, just -- you know, not really able to
22 sit still, he wasn't calm. It wasn't necessarily an
23 ideal situation for a great interview.

24 **Q** Did he appear to be intoxicated at all?

25 **A** No, but I did -- I had been informed that he

1 had, over the period of that night, had
2 approximately five to six beers. I was informed
3 that Stephanie, Ms. Dover, had not drinken (sic) and
4 does not drink. My observations were that he did
5 not appear to be drunk, but consistent with someone
6 that might have been drinking a couple of beers. We
7 were outside. I did not smell any alcohol, but,
8 again, we were outside.

9 Q Okay. You didn't smell anything. Did he
10 appear to be forthcoming?

11 A Yes. If I answered a question -- if I asked
12 him a question, his answers were reflective to the
13 answers, and didn't notice any slurring. It's just,
14 you know, question/answer. I didn't have any
15 problem communicating with him.

16 Q Did he appear to be holding anything back?

17 A Did not appear. Again, it was an excited
18 moment, so, you know, it's not -- again, it's not
19 the most ideal situation to try to get a great
20 interview right after an incident like this had
21 occurred.

22 Q And when you -- how did you conclude that
23 verbal statement, that verbal interview with him?

24 A I, at that time -- well, the lab unit arrived
25 and we did the GPR test. Again, he was very willing

1 to cooperate. And I just advised him that at a
2 point in time which was suitable for him, we would
3 like to, and after he got some rest, conduct an
4 interview where we'd sit down and work on a
5 statement.

6 Q Did you do anything else that night?

7 A I did. I collected some clothes that belonged
8 to Ms. Dover and turned them over to the lab unit.
9 And I -- at that point in time, I returned back to
10 the office to try to locate the gentlemen that
11 Mr. Derrick was at the house that night prior.

12 Q And were you able to confirm that he was?

13 A I would. I would leave a message at 5:10 in
14 the a.m., and I would think that the typical
15 response it would be to go to the voice mail, it
16 did. Later that morning at about 8:19, I received a
17 call back from a gentleman by the name of Mike...

18 Q Did he confirm the information you had gotten?

19 A He did. Mike Langford, L-A-N-G-F-O-R-D.

20 Q The next day, did you have an opportunity to
21 talk to Mr. Derrick again?

22 A Well, this actually -- I actually went home and
23 got some rest. And later that night, I spoke to
24 Grover Derrick, Senior, which is the father of
25 Mr. Derrick, and asked him if I could come collect

1 Mr. Derrick's clothes. And I was informed that his
2 son was sleeping and I think he'd just finally
3 gotten to sleep that day, but I was instructed that
4 I could drive out to their house and collect the
5 clothes.

6 Q And did you do that?

7 A I collected everything except the shoes, I
8 photographed them, but at that particular time,
9 since he was not home, that was the only pair of
10 shoes he had. I didn't think of any significance
11 not to take the shoes at that time. I was told to
12 please make sure they weren't disposed of and at a
13 later date, they were -- we were made -- we had
14 access to them.

15 Q And what was the reason behind taking his
16 clothes?

17 A Just to gather the clothes for any type of
18 evidence, you know, possible gunpowder evidence, any
19 type of shrap, blood, just basic standard procedures
20 that the lab would like the clothes to evaluate to
21 see if there is any evidentiary -- evidentiary
22 value.

23 Q Did you have the opportunity to see any of the
24 other victims while you're at the residence?

25 A I did. I looked at the young child, Zach, one

1 of the young men that was -- young man that was
2 injured.

3 Q And do you know, approximately, how old Zach
4 was?

5 A I believe, at the time, he was three.

6 Q And were you able to observe his injuries at
7 that time?

8 A I did. He had a bandage around his left leg.
9 There was some thought on my behalf of getting
10 documentation, photographing it, but I didn't want
11 to have the bandage unwrapped. I figured at a later
12 date, possibly at a doctor's visit, we could have
13 our lab unit do it. I didn't think it was too
14 crucial at that point in time when the following
15 day, maybe at another doctor's visit, the injury's
16 still going to be there and we could have a lab unit
17 do it and actually do the measurements with a ruler
18 and things of that nature, a more professional
19 picture taken versus my snapping a digital camera.

20 Q Now, to move on to the 18th -- that all
21 happened on the 17th that we were just talking
22 about?

23 A That's correct.

24 Q Moving on to the 18th, what did you do next?

25 A We had set up an appointment with Gene to come

1 in -- Mr. Derrick to come in to our headquarters to
2 interview him and at that time get a formal
3 statement from him. At that time, we knew he had
4 some rest and to just get a better statement on the
5 account of that night.

6 Q And was there another investigator working on
7 this case with you?

8 A Investigator Eric Barnes.

9 Q And who would you say was the lead investigator
10 on this case?

11 A Eric Barnes.

12 Q And, at this point, what was your job on the
13 case?

14 A Just to kind of be his co-investigator,
15 anything he needs me to do, I'd follow up on it, as
16 more or less for note taking purposes, but just,
17 basically, we just worked as a team and we go in
18 with four sets of eyes versus two.

19 Q And did Gene come in the next morning?

20 A He did.

21 Q And what happened then?

22 A At that time, we talked to him about things we
23 wanted to do, such as getting the children to the
24 ARC. It's a --

25 MR. COLLINS: Objection, Your Honor. May we

1 approach?

2 **THE COURT:** Yes, sir.

3 (Whereupon, a bench conference was held off
4 the record, in the presence of the jury, but out of
5 the hearing of the jury.)

6 **THE COURT:** Ladies and gentlemen, I need to ask
7 you to step out of the courtroom. You won't be out
8 long and I'll get you right back. Don't discuss the
9 case.

10 (The jury retires to the jury room.)

11 **THE COURT:** All right. Your objection is?

12 **MR. COLLINS:** I believe Investigator Faust was
13 getting into the nature with the -- one of the
14 children was taken to Assessment Resource Center,
15 ARC, that was an evaluation done on the child. I've
16 seen the report. There were no revelations. The
17 only thing that it could establish is the
18 prejudicial nature. It's not probative of anything.
19 We would just ask that the witness be instructed not
20 to mention anything regarding the child being taken
21 to the Assessment Resource Center.

22 **THE COURT:** And the State was not intending to
23 go into those, is that my understanding?

24 **MS. WEISS:** That's correct, Your Honor.

25 **THE COURT:** You understand that?

1 **THE WITNESS:** Yes, sir.

2 **THE COURT:** Don't mention ARC or taking the
3 child to the resource center.

4 **THE WITNESS:** Yes, sir.

5 **MS. WEISS:** Your Honor, I would ask that he
6 answer the question that they just informed the
7 family they could help with counseling, is that -- I
8 mean, without saying ARC and then move on?

9 **THE COURT:** Counseling a child doesn't really
10 have anything to do with whether this man committed
11 murder.

12 **MS. WEISS:** Yes, Your Honor. We would move on
13 from there.

14 **THE COURT:** I understand. I understand why you
15 want to get into it. It just doesn't have anything
16 to do with the question that the jury's got to deal
17 with unless you're going to try to elicit some
18 statement from the child that relates to something
19 that was done at the counseling center, which
20 nobody's told me about.

21 All right. If the jury's ready, bring them
22 back.

23 (The jury returns to the courtroom.)

24 **THE COURT:** All right. You may continue, Ms.
25 Weiss.

1 **MS. WEISS:** Thank you, Your Honor.

2 BY MS. WEISS:

3 **Q** Once Gene arrived at headquarters that morning,
4 who was he with that morning?

5 **A** His mother and father.

6 **Q** Did you separate them at that point?

7 **A** We did. Myself and Investigator Barnes
8 conducted another verbal interview with Mr. Derrick.
9 Based off this interview, we felt that he was very
10 forthcoming. There were some new things that he
11 remembered that he didn't at the initial time. Due
12 to the fact that the situation, the incident that
13 occurred, now that he had had some rest, he recalled
14 some more details. We decided to start from -- go
15 back to Mike Langford's house and basically just
16 retrace his travels that night.

17 **Q** Were y'all in one car or two?

18 **A** We did. We took Sergeant Barnes' Crown Vic. I
19 sat in the back, Gene sat in the front. And we
20 started at 2:00 p.m. at Mr. Langford's house. I
21 notated the mileage on the Crown Vic, which was
22 64,828, 64 thousand miles eight hundred and 28. It
23 was at 2:00 p.m. and I started to take notes. We
24 basically just said, Mr. Derrick, start. He stated
25 that --

1 **MR. COLLINS:** Objection, Your Honor, hearsay.

2 I have to object at this point.

3 **THE COURT:** Do you want to be heard?

4 **MS. WEISS:** No, Your Honor.

5 BY MS. WEISS:

6 **Q** If you can, just tell what you did and not
7 necessarily what he said?

8 **A** We started the travels at Mr. Langford's house.
9 Again, I stated the mileage. It was believed that
10 the travel time started around 11:45 to midnight the
11 particular night that the incident occurred. If it
12 would have been before midnight, it would have been
13 the 16th. At midnight, it would have been the 17th.
14 So he felt that it was somewhere around midnight.
15 At that time -- and -- but there was no notation of
16 a clock. There was no specific thing that helped us
17 kind of relate to help us out with the time, it was
18 just more speculation.

19 We were -- we ended up going and taking a left
20 on Fairview. At this time, it was notated that the
21 kids were in the back seat asleep, Stephanie was in
22 the passenger seat and Derrick was the driver. The
23 road turns into Main Street and we would end up
24 taking a left on Pine Street which turns into Edmond
25 Highway. We would end up making a brief stop at the

1 Country Cupboard, which is at 7801 Edmond Drive,
2 where cigarettes were purchased from within that
3 store that particular night.

4 I get out of the car, go into the store as if I
5 was purchasing cigarettes. I did have a brief
6 conversation to see if there was a video to document
7 this. I was instructed by the store that the camera
8 and video had been broken for about two to three
9 weeks, so there was no video documenting the couple
10 nights back. At that particular time, I would
11 estimate that I was there from two to three minutes.

12 I got back in the car and continued in the same
13 direction that we were headed on Edmond Highway
14 until we got to Number 6, which is South Lake Drive.
15 At that point, we took a left and we veered on to
16 I-20 going eastbound. The radio was down in the
17 car.

18 **MR. COLLINS:** Objection, Your Honor. This is
19 still hearsay.

20 **THE COURT:** The radio was down, you mean the
21 radio from the previous -- I thought he was talking
22 about the police radio, I'm sorry.

23 Don't get into hearsay.

24 BY MS. WEISS:

25 **Q** So you attempted to re-create everything?

1 **A** We attempted to re-create everything. I would
2 learn of some of the details that had taken place.
3 There was some mention -- there was some concern
4 initially on my part about the window, when I
5 initially observed the car that night, about the
6 window on the driver's side not being shot out. I
7 was concerned about, you know, it was initial
8 statement that the car window was initially up, but
9 obviously if it was up and there was a bullet
10 marking in the driver's portion top of the window,
11 which would have caused the window to break, so
12 there was some concern about why there was -- the
13 window was still intact, just lowered in the car at
14 the time we found it.

15 During the course of our travels, it was
16 determined that cigarettes were --

17 **MR. COLLINS:** Objection, Your Honor.

18 **THE COURT:** Yes?

19 **MR. COLLINS:** Still hearsay.

20 **THE COURT:** Do you want to be heard?

21 **MS. WEISS:** I don't believe this goes to the
22 truth of the matter asserted. I think this is just
23 -- I think he's talking about the window being up or
24 down.

25 **MR. COLLINS:** I believe he was getting into

1 details of what actually happened on the night in
2 question that were given to him by Mr. Derrick,
3 which would be offered for the truth of the matter.

4 **THE COURT:** You can't say what he told you.
5 You can say -- you can recount, but you can't say
6 what was said to you by Mr. Derrick.

7 BY MS. WEISS:

8 **Q** As a result of Mr. Derrick's -- your
9 conversation with Mr. Derrick, what position did you
10 end up putting the window in in your car?

11 **A** There would be an explanation of why the window
12 would be down. As we continued during our travels,
13 it was kind of -- at that point in time, I learned
14 through my investigation why the window was not shot
15 out, which made sense from my initially looking at
16 the scene and the window initially being thought
17 that was up, but me finding it down and intact
18 versus being shot out, I -- I learned, at that time,
19 there was a reasonable explanation for it.

20 **Q** And did you set the car at the same speed that
21 Mr. Derrick was going?

22 **A** We would.

23 **Q** And what was that speed?

24 **A** We would set the cruise control at a
25 guesstimated speed of 70 to 75. And at that point

1 in time, we would just go.

2 Q And at some point during your drive, did you
3 come to the locations that are depicted on that map?

4 A That's correct.

5 Q Through your investigation, at what point on
6 that map, did you find out that there was -- that
7 Mr. Derrick passed the vehicle?

8 MR. COLLINS: Objection, Your Honor. This is
9 calling for, specifically, what Mr. Derrick told
10 him. He's already stated there was only three
11 people in the car, him, Investigator Barnes and
12 Mr. Derrick. The only source of information through
13 this investigation would be Mr. Derrick's
14 statements.

15 THE COURT: Do you want to be heard, Ms. Weiss?

16 MS. WEISS: Your Honor, he's an investigator on
17 the case. I believe he's entitled to testify as to
18 what his investigation revealed.

19 THE COURT: Anything else?

20 MR. COLLINS: No, Your Honor.

21 THE COURT: The objection is sustained. He may
22 be able to testify later in the trial, he may be
23 able to say things in a different way, but this is
24 based on hearsay.

25 BY MS. WEISS:

1 **Q** And your travels that morning, that afternoon,
2 where did those travels take you?

3 **A** Again, starting from the point once we got on
4 I-20 eastbound, we were traveling, and, again, we
5 would be going in this direction (indicating).
6 During my investigation, I would learn there would
7 be significance of this area (indicating), which is
8 the area where the shooting occurred, and would
9 continue on through this area up until about this
10 point.

11 The direction of travel we would go, again,
12 would be -- we would have got off on the exit of
13 Fairfield Road going outbound. We would go to Sharp
14 Road, at which time, I notated when the vehicle came
15 to a stop, it was 2:43 p.m., which would
16 approximately be 43 minutes later. We had been 31
17 point eight miles from the starting point we had
18 started from. There was a business at this location
19 where we were at a stopping point called Providence
20 Environmental Company.

21 **Q** And at this point, I'm going to show you what's
22 been marked as State's Exhibits 13 and 14. Do you
23 recognize these?

24 **A** I do.

25 **Q** Can you say what they are for the Court?

1 **A** This picture is an overview of Sharp Road and
2 this is -- and the surrounding areas. And this is
3 an overview of the stopping point that we came to
4 after I believe it was 38 point one miles later from
5 our initial starting point.

6 **MS. WEISS:** Your Honor, at this point, I'd like
7 to enter State's Exhibits 13 and 14 into evidence.

8 **MR. COLLINS:** No objection.

9 **THE COURT:** Thank you.

10 (State's Exhibit Numbers 13 and 14,
11 photographs, admitted into evidence.)

12 BY MS. WEISS:

13 **Q** If you could, just show the direction of travel
14 you headed down on Sharp Road?

15 **A** And I believe I said 38 point one, it was 31
16 point eight miles. This is Sharp Road. There would
17 be a little yellow line right here, that's going to
18 be Fairfield Road. You can barely see it at the
19 bottom corner. And we would be going outbound and
20 we would take a right on Sharp Road. And,
21 approximately, right here is Red Hill Road, which is
22 this right here, this is Red Hill Road. And this is
23 Sharp and this is the business I just discussed
24 where we stopped at.

25 **Q** Okay. And what is the condition of Red Hill

1 Road?

2 A Red Hill Road is a dirt road.

3 Q And is there any significance to you about Red
4 Hill Road?

5 A I know that it -- when you go in, there's only
6 one way out.

7 Q And does that lead to any specific area you're
8 familiar with?

9 A Red Hill Road? It's just a dirt area. There's
10 a couple of houses back there.

11 Q After you did this drive, what did you do next?

12 A When I came to the stopping point and I noticed
13 the business over there, it was obvious to go check
14 to see if there was any cameras within the building.
15 When I arrived, I could see that there was a camera
16 on the corner of the building. And I went inside to
17 inquire from the business and asked if there was any
18 type of video system and if so, did it cover the
19 outside of the business, specifically the road area
20 out there. I would learn that there was and it was
21 on a digital -- recorded on to the computer hard
22 drive.

23 Q And were you able to view that video?

24 A I was.

25 Q And what did you see on that video?

1 **A** I would -- basically, that the drive I had just
2 done, I was able to confirm it on this video that a
3 vehicle went down and went down -- a truck looking
4 vehicle and took a left on Red Hill Road. A short
5 time later within seconds, you could see what was
6 believed to be Mr. Derrick's vehicle come to a stop
7 and then turn around and go back, which is
8 consistent with Mr. Derrick's story of him realizing
9 at that point in time --

10 **MR. COLLINS:** Objection, Your Honor.

11 **THE COURT:** Yes?

12 **MR. COLLINS:** Hearsay.

13 **THE COURT:** Sustained.

14 **MS. WEISS:** Thank you, Your Honor.

15 BY MS. WEISS:

16 **Q** After that, did you then go back to
17 headquarters?

18 **A** I did. I'd also made contact with our lab tech
19 to start getting this process going of getting the
20 video taken from the hard drive and record it to a
21 C.D. so we could have it.

22 **Q** And, at that point, where did y'all go?

23 **A** Returned back to headquarters where I took a
24 statement.

25 **Q** And what type of statement did you take at this

1 point?

2 A A written statement from Mr. Derrick.

3 Q What happened next in your investigation?

4 A On the following day, October 19th, myself and
5 a large number of employees of the Richland County
6 Sheriff's Department, deputies and investigators, we
7 conducted a search on I-20 going eastbound,
8 basically starting from this area (indicating) going
9 -- this area being the Broad River Road Bridge,
10 going to approximately Monticello Road. I believe
11 that was when we were looking for -- to the fair --
12 actually we went from this location all the way down
13 to this location.

14 We had the Department of Transportation help
15 block off the road so it was safe for us to do. We
16 started on the outside of the road, the far
17 right-hand lane, which would be considered the slow
18 lane, and had it blocked off, went all the way up
19 and then had the fast lane blocked off and we went
20 back down, but, you know, going eastbound, but we
21 were on the inside portion of the center of the road
22 and we checked both sides and would visually, you
23 know, occasionally look in the middle of the road to
24 see if we found any type of shell casings or any
25 type of evidence that would assist us in the case.

1 Q And, at this point, did you have any suspects
2 in the case?

3 A No.

4 Q And in general, what did you do next?

5 A At that point in time based off of the
6 ballistics, we would learn, from the evidence
7 gathered from our lab from the victim's vehicle, we
8 had an idea of what type of bullet and a handgun we
9 were looking for. At that time, we went out to SLED
10 regulatory and started going through the records of
11 the type of weapons we were looking for. We had it
12 narrowed down to the starting of the first two
13 serial numbers.

14 And at that point in time, we had several
15 individuals going through this paperwork and it was
16 boxes of paperwork looking for anything that would
17 allow us to identify this specific type of gun. And
18 at that point in time when we would locate guns with
19 a beginning serial number X4, we would then seek out
20 to try to find these people and test fire their gun
21 to see if it matched up to the ballistics of the
22 evidence we had --

23 Q And that X4 came off of evidence that was found
24 in the vehicle -- in the victim's vehicle?

25 A In the victim's vehicle.

1 Q You still had no information on the suspect?

2 A No information other than the type of weapon
3 that was used.

4 Q Okay. And did you find any -- did you have any
5 information that any match was found in those guns?

6 A We weren't able to locate a match.

7 Q And what did y'all do next?

8 A I would also look for the type of vehicles that
9 was described by Mr. Derrick. We spent a lot of
10 time looking for Chevy stepsides to try to narrow
11 down any specific type of vehicle. Pretty much the
12 case was -- became stagnant for my portion.

13 Q And from October of 2004 until November of
14 2005, did you play much of a role in this case?

15 A At that particular time, no.

16 Q And on November 3rd, 2005, what were you doing
17 that day?

18 A I was asked to assist Barnes in reference to
19 executing a search warrant at [REDACTED]
20 Road, which is located in Richland County.

21 Q And at that point, did you have a suspect in
22 this case?

23 A At that time, we did. There were warrants
24 brought up and we went to this location to seek
25 evidence.

1 Q And were you -- but you weren't involved --
2 other than the search warrant, you weren't involved
3 in developing that suspect?

4 A That's correct. I was -- once Investigator
5 Barnes developed the suspect, then I was called back
6 in to assist on picking back up the investigation.

7 Q But from your initial involvement of the case,
8 you're very familiar with the incidents that
9 occurred that night?

10 A Absolutely. I'd spent a lot of hours working
11 on this case. I was very familiar with it and been
12 briefed on the developments that Eric Barnes had
13 developed.

14 Q And where did you go to assist in the search
15 warrant?

16 A Again, [REDACTED].

17 Q And do you know whose residence that was?

18 A I believe it was a female's. I don't have the
19 name in front of me, but there was a reason we went
20 to that location. It was John Moore's girlfriend's.

21 Q And what happened when you went into the
22 residence?

23 A When I arrived there, Investigator Barnes
24 advised me to take custody of John Moore and take
25 him to the Richland County Sheriff's Department. At

1 that point in time, I took custody of him, had him
2 in -- took custody of him and placed him in the back
3 of my vehicle.

4 Q And when you put him in the back of your
5 vehicle, what did you do next?

6 A At that point in time, since I was familiar
7 with the case, in case there were any questions that
8 came up, I didn't want to just say, well hold off.
9 I wanted to go on, at that point in time since he
10 was in custody and not free to leave at that point
11 in time, I wanted to advise him of his rights in
12 case anything was said that was incriminating.

13 Q And do you have a process by which you do that
14 that you advise someone of their rights?

15 A There are several processes, but, yes, there
16 is. In that particular --

17 Q How do you do it?

18 A In that particular situation, we orally tell
19 them of their rights, advise them of their rights.
20 To keep this a standard procedure to -- where it's a
21 standard procedure, I keep a card that, at that
22 time, was in my back pocket, but now that we're
23 required to carry our I.D. cards on us, I now keep
24 this card in the back -- or in the back side of my
25 I.D. to where I can refer to it to where it's said

1 in verbatim.

2 **Q** And did you read John Moore his rights?

3 **A** I did. I began by stating, You have the right
4 to remain silent, and looked at him to acknowledge,
5 didn't -- asked, Did you understand this? I would
6 not move forward until he either indicated he did or
7 acknowledged in some way that he did. I got that
8 acknowledgement and then moved on to the second
9 question.

10 Is there anything -- anything you say can and
11 will be used against you in a court of law. I then,
12 at that point, acknowledged him again, you know, Did
13 you understand these? And I got a positive feedback
14 either by verbal or by nodding his head indicating
15 he did.

16 At that time, I moved forward to the next
17 question, You have the right to talk to an attorney
18 and have him or her present with you while you're
19 being questioned. Again, Do you understand these
20 questions? He indicated in the affirmative action
21 that he did.

22 Moved to the next question, If you cannot
23 afford to hire an attorney, one will be appointed to
24 represent you before any questioning if you want.
25 Again, at that time, he acknowledged that he

1 understood.

2 I moved forward to the next question, You can
3 decide at any time to exercise these rights and not
4 answer any questions or to make statements. And,
5 again, I asked him, Do you understand these rights?
6 He indicated he did. I then proceeded to go
7 forward.

8 **Q** And do you typically ask questions, just
9 general questions of people once you got them in
10 custody and read them their rights?

11 **A** In a situation where I'm familiar with it, I
12 would because I'm familiar with it. If it's a case
13 where I didn't know anything about the case, I would
14 just transport them and just say, you know, you're
15 investigating -- the case officer will talk to you
16 and come speak to you about the matter, and just
17 make small talk. I wouldn't talk to them about the
18 question -- or talk to them about the crime he was
19 alleged or accused of.

20 In this particular situation, I did start off
21 by just making sure he could understand basic
22 questions about his life, family life, education and
23 employment. At that particular time, I would learn
24 from Mr. Moore that he was employed at Snelling. He
25 stated he graduated from Keenan High School. There

1 was some talk about where he was thinking about
2 going for further education. I also learned that he
3 was a father of six kids. And at that point in
4 time, I felt like he was intelligent enough to
5 understand any questions about this case and
6 comprehend anything.

7 At that point in time, I moved forward to the
8 case. And, again, we're still parked at this
9 location where it's just he and I. At this
10 particular time, we're still located outside of [REDACTED]
11 [REDACTED]. Of course, I'm not going to
12 drive and read him his rights. There were some
13 small talk where I could make eye contact with him
14 to where I could visually see his responses and make
15 sure that he was appropriately answering my
16 questions.

17 After I got the basic background information, I
18 felt comfortable going forward. And at that
19 particular time, I informed him that Investigator
20 Barnes would be talking to him soon and then asked
21 him if he knew what this was about.

22 Q And did he indicate that he did?

23 A He did. At that particular time, Mr. Moore
24 stated that he was aware of what the situation was
25 about because the search warrant was read to him.

1 The search warrant basically lays out everything
2 from the incident to why we were searching this
3 house and what the items we were looking for.

4 **Q** And would the search warrant have laid out the
5 specific night that this murder occurred?

6 **A** That night, the incident location and so forth,
7 yes, ma'am, the specific details of that night and
8 the particular area where it occurred.

9 **Q** And once you asked him if he knew why he was
10 there, did he make any statements about the
11 incident?

12 **A** His immediate statement to me was that he was
13 in bed that night. And, again, this was on November
14 3rd, 2005, while the incident occurred on October
15 17, 2004 almost a year and a month prior.

16 **Q** And after you got back to headquarters, what
17 did you do with Mr. Moore?

18 **A** There were some standard things we do with
19 anybody that's in custody. And then Eric Barnes
20 arrived at headquarters and I turned him over to --
21 turned Mr. Moore over to Eric Barnes and advised him
22 of what I'd done with the verbal advice of rights.
23 There's also another thing to where you're in a more
24 stable environment or at a desk, there are other
25 things you can do.

1 **Q** And do you see John Moore in the courtroom
2 today?

3 **A** I do.

4 **Q** Can you point him out for the jury, please?

5 **A** He's the gentleman sitting in the center of the
6 table, the table to my left.

7 **MS. WEISS:** And can you let the record reflect
8 he's indicated the defendant?

9 **THE COURT:** It's so noted.

10 **MS. WEISS:** Thank you. Beg the Court's
11 indulgence for a minute.

12 **THE COURT:** Yes, ma'am.

13 (Pause.)

14 BY MS. WEISS:

15 **Q** Investigator Faust, in your training and your
16 experience, do you feel that John Moore understood
17 his rights?

18 **A** He did.

19 **Q** And is there any question in your mind of that?

20 **A** No. And I went over them slowly and would not
21 proceed until each question was read to him and he
22 was asked if he understood them. And these were
23 basic questions that I felt he understood and
24 definitely after talking to him further, he was
25 capable of intelligent level of understanding.

1 Q And did you threaten or coerce him in any way?

2 A I did not.

3 Q And did you feel like he was clear headed, able
4 to answer questions clearly?

5 A I did.

6 Q And he understood the questions that you were
7 asking him?

8 A That's correct.

9 MS. WEISS: No further questions for this
10 witness, Your Honor.

11 Please answer any questions the defense may
12 have for you.

13 THE COURT: Cross-examination?

14 CROSS-EXAMINATION

15 BY MR. COLLINS:

16 Q Good afternoon, Investigator Faust.

17 A Good afternoon.

18 Q I notice you've been reading from something.
19 What do you have in front of you?

20 A These are notes.

21 Q Those are case notes on this?

22 A Yes, sir.

23 Q Those are notes you take because you want to
24 remember details as it happened?

25 A They're an overview of the case, yes, sir.

1 Q Because sometimes it takes a long time before
2 you end up in trial and you want to have those
3 details and your notes so they can remind you when
4 you come to testify, right?

5 A That's an accurate -- that's correct.

6 Q And you want to make sure those notes are
7 right, right?

8 A That's correct.

9 Q You don't want to write anything wrong that's
10 in those notes?

11 A That's correct. There are occasional typos. I
12 don't consider myself to be an excellent typer
13 (sic), but that's correct. I try to be accurate to
14 the facts.

15 Q Because those notes are important to you,
16 correct?

17 A That's correct.

18 Q Now -- and you were heavily involved in this
19 investigation early on, right?

20 A Early on, yes, sir.

21 Q Like two or three days around the incident?

22 A That's correct.

23 Q And you were the first one to interview
24 Mr. Derrick, right?

25 A That's correct.

1 **Q** Did you believe him the first time you talked
2 to him?

3 **A** I was ascertaining facts. I was gathering
4 information. I had some concerns, which I explained
5 about the window, I wasn't sure of him indicating
6 the window was up, but in actuality, based off of
7 the visual facts at that particular time, there was
8 some belief that if the windows would have been up,
9 they would have been shot out and I expressed that.

10 **Q** So you had some concerns?

11 **A** I was going off of what he said and putting
12 them to the facts. I don't want to say concerns,
13 but there were some, you know, and, again, I'm going
14 through all of this, so I would go back and learn,
15 you know, when I had a chance to really look at the
16 vehicle in the light within our lab shed, I would
17 notice some things that I would want to redirect
18 questions and clarify, which I would later have
19 clarified.

20 **Q** And in your direct testimony with Ms. Weiss,
21 you were talking about the first verbal exchange you
22 had with Mr. Grover?

23 **A** Yes, sir.

24 **Q** I believe you were referencing in your notes, I
25 was reading along with you, if I could reference you

1 to page two of your notes right below the big bold
2 letters describing the truck.

3 **A** Yes, sir.

4 **Q** I believe in your direct testimony, you said
5 that you couldn't get close enough to see the tag
6 because bullets were coming from the passenger side,
7 that was your testimony, I believe. Can you read
8 what's actually written in your notes there starting
9 with, Close enough to see the tag?

10 **A** Well, is this hearsay?

11 **Q** Answer the question.

12 **A** I was under the impression this was hearsay
13 earlier.

14 **Q** Can you read from your notes starting with,
15 Close enough to see the tag?

16 **THE COURT:** You can't object. He asked the
17 question, you have to answer the question.

18 **THE WITNESS:** Yes, sir.

19 My notes reflect that Gene stated he did not
20 get the tag due to the fact that he was not paying
21 much attention to it because he was trying to chase
22 the vehicle and did not get close enough to see the
23 tag because the suspect in the passenger seat would
24 start shooting at his car from the passenger side
25 window causing him to back off. Those are what --

1 the exact quote.

2 BY MR. COLLINS:

3 Q So it wasn't bullets coming from the passenger
4 side, it was the suspect in the passenger seat,
5 correct?

6 A From the passenger side window, that's correct.

7 Q And those were details you wrote down when you
8 were taking notes --

9 A What I just read is what is in my notes.

10 Q Okay. And you testified that Gene admitted to
11 drinking that night?

12 A He indicated to me that he had five to six
13 beers over the course of that night. I believe he
14 arrived at the scene at 2:00.

15 Q Did you further learn through your
16 investigation that he possibly had a few margaritas
17 as well?

18 A I would be informed of that.

19 Q Would you possibly learn in your investigation
20 that he'd had some dealings with crystal meth?

21 A There was some information brought up, but I
22 could never confirm that.

23 Q And now you took a written statement --

24 MS. WEISS: Objection, Your Honor.

25 BY MR. COLLINS:

1 Q You took a written statement from Mr. Derrick,
2 right?

3 A I took a written statement, yes, sir.

4 Q And that's typed out, right?

5 A That would be correct.

6 Q So is there any reason why you didn't let him
7 write his own statement?

8 A It's just a common practice we use at the
9 sheriff's department to type out the statement with
10 anybody, suspects, witnesses, victims. It's just
11 something that we do.

12 Q All statements are typed?

13 A No. It just, you know, again, this was a
14 situation where we had more control. If you do one
15 out on the scene, obviously, you're not going to
16 have a typewriter or a computer, you can handwrite
17 one, but in this particular situation, it was a more
18 controlled environment where I was sitting at my
19 desk and I had the capability of typing the
20 statement, so I did. And it was a preplanned set
21 appointment.

22 Q Preplanned statement?

23 A No. It was a preplanned appointment. It was
24 an appointment. There was no set time.

25 Q There's no audio recording of this

1 conversation, is there?

2 **A** That is not a common practice we do. It's not
3 a policy for the sheriff.

4 **Q** It's not your policy?

5 **A** It is not -- we do not record any of our
6 statements. They're documented. The person
7 supplying the statement reads over it and then
8 swears or affirms that the statement that he
9 supplied is the truth.

10 **Q** You have the capability of doing an audio
11 record of this, don't you?

12 **A** I'm sure it could be done, but I don't have a
13 camera or a recorder to my immediate access.

14 **Q** So in the sheriff's department, you don't have
15 access to any kind of audio recording equipment?

16 **A** We have surveillance cameras, but I don't have
17 a recording to where I can -- at my desk put a tape
18 recorder down. It's just -- we just don't have any
19 for that particular purpose. We do have --

20 **Q** I'm talking -- I'm sorry. Go ahead.

21 **A** No, we don't have a recorder to where I could
22 record it, sure could it be done (sic), but it's
23 just not something we do. That's why you go over
24 the statement, you hand it to the person who
25 supplied you the statement and it is what it is.

1 **Q** It is what it is. So you're saying you don't
2 have any audio recording equipment at your desk --

3 **MS. WEISS:** Objection, Your Honor. This
4 question has been asked and answered.

5 **THE COURT:** Sustained.

6 **MR. COLLINS:** I hadn't finished with the
7 question.

8 **THE COURT:** You said at his desk.

9 **MR. COLLINS:** At his desk.

10 **THE COURT:** He's already answered that.
11 BY MR. COLLINS:

12 **Q** But is there audio recording equipment
13 within --

14 **MS. WEISS:** Objection.

15 **Q** -- the Richland County Sheriff's Department?

16 **A** I just explained we do have surveillance
17 recording capability, but for just something to
18 place at my desk to record an interview, no, I do
19 not have something of that nature, but we do have
20 surveillance, but I don't -- there would be no need
21 to put surveillance recorders at my desk.

22 **Q** Does the Richland County Sheriff's Department
23 have a video camera?

24 **A** Again, we have surveillance cameras. I mean,
25 we have cameras to put in the patrol vehicles, but

1 we don't have cameras that I could go to and collect
2 and put at my desk.

3 Q So this wasn't video recorded either?

4 A No.

5 Q You said you spoke with Mike Langford, which
6 was where the -- where the day started for
7 Mr. Derrick?

8 A I would speak to him that following morning,
9 yes, sir.

10 Q Were you aware that he's a known meth dealer?

11 MS. WEISS: Objection, Your Honor.

12 THE COURT: Yes.

13 MS. WEISS: This is totally irrelevant. This
14 whole line of questioning is irrelevant for the
15 case.

16 THE COURT: All right. Ladies and gentlemen,
17 please step in the jury room. Don't discuss the
18 case.

19 (The jury retires to the jury room.)

20 THE COURT: What is it you wanted to ask him
21 now?

22 MR. COLLINS: If he was aware that one of the
23 witnesses that he spoke with was a known meth dealer
24 in the area.

25 THE COURT: And what would your answer be if

1 you answered that question?

2 **THE WITNESS:** My answer would be I don't have
3 any intimate knowledge. I do believe that he was
4 arrested for something, but I cannot tell you the
5 specific details. I believe it may be along the
6 lines of that, but, again, I don't know the details,
7 that was some time after my -- a great deal of
8 involvement was in the case. I do recall that he
9 was arrested for something, but I don't know the
10 details.

11 **THE COURT:** What's the State's position?

12 **MS. WEISS:** Your Honor, this question, this
13 line of questions is completely irrelevant, that
14 there is somebody he talked to that may have had
15 some connection to methamphetamine, that is where --
16 I mean, the State concedes that's where Mr. Derrick
17 was earlier in the night. It had nothing to do with
18 the murder that occurred on I-20, which is the
19 reason that why we're here today. Mike Langford has
20 no tie to that murder whatsoever.

21 **THE COURT:** And what's the defense's position?

22 **MR. COLLINS:** Your Honor, as the case
23 progresses, I believe you'll see the relevance of
24 this. As of right now, this was where the main
25 factual witness from this case was at this house the

1 day of the murder. We're talking about his
2 perception of the events is critical in this case.
3 I think it's definitely relevant about where he was
4 hanging out and what kind of dealings are going on
5 there.

6 Further testimony that we're going to hear from
7 Investigator Barnes is going to be able to hash a
8 lot of this out as far as the yearlong
9 investigation, which contained intimate details
10 involving a lot of these facts. It's going to -- as
11 the case progresses, it's going to be a lot clearer,
12 Your Honor.

13 **MS. WEISS:** Your Honor, I disagree completely
14 with the defense. This has absolutely nothing to do
15 with the murder on I-20. He asked the question
16 specifically related to Grover Derrick and that
17 answer came in and I can, you know, perhaps see some
18 relevance there; however, there's absolutely no
19 relevance tying in Mike Langford to this whatsoever.

20 Any information that he has would be hearsay if
21 there is something he heard through a third party,
22 through some other investigation. He has no
23 independent knowledge of it and the entire line of
24 questioning would be irrelevant.

25 **THE COURT:** Anything else from the defense?

1 **MR. COLLINS:** No, Your Honor. We'd be willing
2 to move on with this witness, but this issue could
3 definitely come up in the future.

4 **THE COURT:** Well, if there's evidence that a
5 witness was under the influence of some mood
6 altering drug, that certainly may be relevant at
7 some point. Based on what I'm hearing at this
8 point, I can't just accept the fact that you're
9 telling me that this information about Langford is
10 going to be relevant in the future. You can put
11 this man back up on the stand if it becomes relevant
12 and if he can testify about it.

13 Now, I realize he's an investigator and you may
14 not want to call him back on the stand, but at this
15 point, all I've got is he's saying he doesn't really
16 know and it's just speculative and it is based on
17 hearsay and I don't see an exception to the rule,
18 looking hurriedly. So the objection is sustained.
19 We'll move on.

20 Bring the jury in.

21 (The jury returns to the courtroom.)

22 **THE COURT:** Ladies and gentlemen, the objection
23 is sustained. Disregard the last question and any
24 response that may have been elicited.

25 All right. You may continue, Mr. Collins.

1 **MR. COLLINS:** Thank you, Your Honor.

2 BY MR. COLLINS:

3 **Q** I believe you testified about the search that
4 was conducted on Interstate 20?

5 **A** That's correct.

6 **Q** Can you show me again where the search started
7 and where it ended?

8 **A** It started approximately right here
9 (indicating) and ended approximately right here.

10 **Q** And you were searching for shell casings?

11 **A** That would be the specific thing that would be
12 ideal to find. Obviously, you know, if we found a
13 gun, that would be ideal, but that would be the --
14 the shell casings would be ideal of what we were
15 searching for.

16 **Q** So part of that area, there's a river on both
17 sides of the interstate, correct?

18 **A** That's correct.

19 **Q** And I imagine there's a lot of debris around
20 the interstate?

21 **A** Absolutely.

22 **Q** And the date in which y'all did the search was
23 two days after this happened, correct?

24 **A** The incident occurred at, approximately,
25 midnight -- or actually almost 2:00 on the 17th and

1 we did the search on the 19th -- yeah, the 19th.

2 Q It would be fair to say Interstate 20 is a
3 pretty busy road, right?

4 A Very busy.

5 Q About how many officers assisted in that
6 search?

7 A I estimated approximately 35 and, again, we
8 would start in sections and go down. There was four
9 or five of us walking in lines covering an area.
10 Occasionally the person on the, depends on where you
11 were, but the closest to the middle of the road, we
12 would certainly look to the middle of the highway
13 where there weren't cars traveling, but, yes, we had
14 numerous deputies out there conducting the search.

15 Q And now I'm going to skip ahead to November
16 3rd, 2005, specifically in regards to the
17 conversation you testified about that you had with
18 Mr. Moore.

19 A That's correct.

20 Q Was there any recording from your patrol car of
21 this conversation?

22 A My car is an unmarked vehicle and I did not
23 have any recording devices, cameras. Deputies who
24 conduct frequent traffic stops do -- the majority of
25 them do have this equipment in there, but my vehicle

1 is not equipped and I'm not a vehicle that
2 frequently conducts traffic stops. I might have
3 done two in the last year, just to give you an
4 aspect of that.

5 **Q** And you don't have any recording --

6 **A** I don't have any recordings in my vehicle, any
7 surveillance type cameras or recording devices.

8 **MR. COLLINS:** Thank you. No further questions.

9 **THE COURT:** Redirect?

10 **MS. WEISS:** Very briefly, Your Honor.

11 **REDIRECT EXAMINATION**

12 **BY MS. WEISS:**

13 **Q** Investigator Faust, from your investigation on
14 the interstate, were there -- do you recall if there
15 were one or two sets of shots fired?

16 **A** There were two sets of shots.

17 **Q** And can you show the jury where the first set,
18 approximately from your investigation, where the
19 first set was fired?

20 **THE COURT:** Would you mind, when you point --
21 you've been pointing at two intersections, would you
22 say the intersections because I can't see those
23 numbers?

24 **THE WITNESS:** Yes, sir. And I'm going to refer
25 back to my notes just to make sure I get the

1 specific locations, just bear with me.

2 We started -- well, obviously, we started right
3 here, but we would focus or make sure --

4 BY MS. WEISS:

5 Q When you say right here, what's that
6 intersection?

7 A This is Broad River and I-20. We were
8 specifically searching on I-20 going under the Broad
9 River Road Bridge. Broad River Road goes over I-20
10 and we were searching starting under it.
11 Approximately right here on Monticello Road, which
12 is 215, there's a Florence 79 mile marker sign
13 somewhere in this general vicinity is where we were
14 making sure we were focusing. Also --

15 THE COURT: What intersection was that?

16 THE WITNESS: This is 215 which would be
17 Monticello Road.

18 THE COURT: Okay. I'm sorry. Go ahead.

19 THE WITNESS: And there's also a mile marker 79
20 sign somewhere in this vicinity. Also, we would
21 focus in on -- there's what was described as a space
22 sign at exit 70. If I'm not mistaken, it's going to
23 be right around here, but that's actually the sign
24 behind it, which was where we were focusing in on
25 which was kind of like a marker we were kind of told

1 to focus in on that that's where the second set of
2 shots were fired at. And this would, again, be
3 before 321, which is Fairfield Road. There's a
4 little sign letting you know there's an exit up here
5 and what exit it is. And that's where we had some
6 focus in on. And those were the two spots that we
7 kind of concentrated on when we searched the whole
8 area.

9 BY MS. WEISS:

10 Q Investigator Faust, you got several different
11 statements from Gene Derrick as the days progressed,
12 a couple days after the initial murder occurred,
13 correct?

14 A I believe so.

15 Q And his statements got more and more detailed?

16 A That's correct. We would focus in on detail or
17 if something would come up, we would focus in on
18 that particular item.

19 Q In your experience and training, did you
20 believe that Gene Derrick was being forthcoming --

21 MR. COLLINS: Objection, Your Honor.

22 THE COURT: Yes, sir.

23 MR. COLLINS: First of all, it calls for
24 speculation and it's bolstering the witness.

25 THE COURT: Well, it's an improper question

1 absent your asking the question earlier, but I'm not
2 going into that. Let's keep this trial as clean as
3 we can. Objection sustained.

4 BY MS. WEISS:

5 Q But he did give several different statements?

6 A Several statements and they were all seemed to
7 be consistent.

8 MS. WEISS: Thank you. No further questions,
9 Your Honor.

10 THE COURT: Recross?

11 RECROSS-EXAMINATION

12 BY MR. COLLINS:

13 Q Just one quick thing. You said you focused on
14 two areas or three areas?

15 A You know, again, I'm trying to read through my
16 notes real quick, but there was -- we started from
17 the whole area, which again would be the Broad River
18 Road Bridge, which is right here at I-20 east and we
19 went all the way down to Fairfield Road, but there
20 were some markers, and again I'd like to take time,
21 but there were two specific areas, there could have
22 been three, but there were -- as the cars were
23 traveling, you know, you're covering a wide variety
24 of area at certain miles per hour, you know, 50, 60
25 miles per hour, you could go from travel, extensive.

1 Q I'm just asking you about, just on the redirect
2 when you testified that Broad River Road was one
3 area you focused on, correct?

4 A That was somewhere where we made sure there was
5 special attention made, but we searched from
6 beginning to end.

7 Q I'm just asking you about your testimony, what
8 you focused on. That was one area, right?

9 A Those were areas that people were made alert
10 to, you know, hey really make sure you don't miss a
11 thing over here.

12 Q And the second area was, I believe you said
13 there was some kind of sign of, you know, which exit
14 was the second exit? You're going to have to name
15 this for me, but I believe you said there was some
16 kind of sign here?

17 A This is Monticello Road and there was a sign in
18 between Monticello and Fairfield Road. Monticello
19 is depicted by 215. Fairfield Road is depicted by
20 321. There's pretty much -- before you get to any
21 exit, there are going to be signs there letting you
22 know that the exit is coming and things to look for.
23 And there was, somewhere in between this area, there
24 was a sign and that was a marker that we were told
25 to pay attention to.

1 **MR. COLLINS:** Thank you.

2 **THE COURT:** Anything further of this witness?

3 **MS. WEISS:** Nothing further, Your Honor.

4 **THE COURT:** Thank you, Investigator Faust. You
5 may step down.

6 Let me see the attorneys up here, please.

7 (Whereupon, a bench conference was held off
8 the record, in the presence of the jury, but out of
9 the hearing of the jury.)

10 **THE COURT:** Ladies and gentlemen, there's a
11 matter that I have to address before we continue on
12 and there's no need for you to wait on us. And it's
13 right up against the normal lunch hour, so I was
14 trying to get an idea as to how long they thought
15 that would take me to do. I'm going to ask you to
16 be back in the jury room at 2:15.

17 Now, it's really important that you remember
18 all of those admonitions that we talked about, about
19 not discussing the case with anybody, not letting
20 anybody discuss the case with you. And while I have
21 every confidence you're going to follow those
22 admonitions, if a case is getting publicity, that
23 increases the risk that somebody's going to approach
24 you and say something to you. So be careful not to
25 put yourself in those situations, okay. And if

1 anything does happen, make sure you report it to me.

2 Thank you very much. You're on your own for
3 lunch. I need you back in the jury room at 2:15..
4 Don't discuss the case. Thank you.

5 (The jury was excused for lunch.)

6 **MR. MEADORS:** Judge, do you want to do this now
7 or come back early from lunch? I know we didn't
8 discuss that up there.

9 **THE COURT:** I'd rather try to do it now.

10 **MR. MEADORS:** Judge, the next witness is Grover
11 Gene Derrick, goes by Gene. This may be only the
12 third time it's ever been done in this state, but I
13 think under State v. Evans, that I'm compelled, I
14 know Your Honor knows much better than I do, and
15 also State v. Cheeseboro, to have an in camera
16 hearing.

17 Just as a brief history, Mr. Derrick gave a
18 statement initially to law enforcement. I have
19 copies, too. State v. Evans of course is --

20 **THE COURT:** I've read Evans after you told me
21 this might come up this morning.

22 **MR. MEADORS:** Basically, Judge, Mr. Derrick
23 gave a statement, a written statement as to what
24 happened. At some point in the investigation, I
25 believe, on October 27th of 2004, Judge, he did meet

1 with a hypnotist.

2 So here's the situation we're confronted with.
3 He gave a statement prior to that about his car,
4 where he was, the trip coming from Pelion down I-20,
5 some of the testimony you've already heard about,
6 goes to a hypnotist. That has been reported, I
7 think has been provided to the defense. It's my
8 understanding that that is basically the same
9 testimony with the exception of maybe a different
10 color of a car and maybe some rims are on the car
11 that he didn't say pre-hypnotic testimony.

12 **THE COURT:** Car or truck?

13 **MR. MEADORS:** Truck, I'm sorry.

14 **THE COURT:** I just want to make sure.

15 **MR. MEADORS:** I misspoke. Truck. I guess the
16 point -- and that's really kind of right on point
17 what Your Honor brought me back to. I think under
18 State v. Evans, the witness' trial testimony was
19 generally consistent with pre-hypnotic statements.
20 I can proffer him and we're prepared to call, if we
21 need to. His statement is basically the same as to
22 the event pre-hypnotic hypnosis. There's nothing
23 that as a result of hypnosis that will be added in
24 this case. He doesn't remember the hypnosis quite
25 frankly from what he said. Again, it was recorded

1 is my understanding and we have it.

2 So I guess you're kind of post-hypnotic
3 testimony, you can read that two ways. This is
4 actual post-hypnotic testimony he's giving today,
5 but we're not offering any difference that he
6 acquired as a result of the hypnosis content, if
7 that makes sense, Judge.

8 But still I think we have to have a hearing
9 because technically it's post-hypnotic testimony,
10 but it's not going to be testimony that was, however
11 you want to phrase it, strengthened or different
12 information that was provided or gathered as a
13 result of a hypnosis. The witness' responses to the
14 examination by counsel generally were not the
15 automatic responses of a pre-conditioned mental
16 process.

17 I guess, Judge, the point is his testimony is
18 going to be the same as far as the events prior to
19 the hypnosis based on my meeting with him and what,
20 I believe, his testimony will be this afternoon
21 after lunch. The only difference, and I know that's
22 subject to cross, Judge, the only difference under
23 hypnosis was just that the truck was red and there
24 were rims. Other than that, the factual events he
25 recites are the same. And, again, he doesn't even

1 remember being hypnotized.

2 So I guess what -- I don't know how else to say
3 it or to proffer it, but we're not offering anything
4 gathered from that hypnotic session, if you will.
5 Mr. Collins certainly might, but I mean -- so I
6 don't know if that effectively complies with what
7 State v. Evans requires, but that's the only way I
8 know how to proffer it.

9 **MR. COLLINS:** From my viewing of the tape and
10 my understanding of Mr. Meadors, I don't foresee
11 this being a problem. I don't think anything's been
12 drastically changed by the hypnosis. However, we
13 would reserve the right, if something comes out, if
14 he's barking like a dog or something that comes up,
15 we would respectfully ask that we may be able to
16 revisit this, but I don't foresee any problems.

17 **THE COURT:** All right. I became a judge in
18 1991. This is my first hypnosis case. Evans came
19 down in 1994 and the way I'm reading it, I've got to
20 have an in camera hearing.

21 **MR. MEADORS:** And, Judge, that's, quite
22 frankly, we were --

23 **THE COURT:** So call him. I mean, you don't
24 need to go into all of the other aspects of
25 testimony that don't relate to anything he was asked

1 about in hypnosis, but I think I've got to have some
2 sort of basis to make the determinations that I have
3 to make.

4 Do you have something else on this?

5 **MR. STRICKLER:** Yes, if I could. Of course,
6 when Mr. Collins first mentioned it to me, I just
7 said Cheeseboro because that's a capital case that
8 was tried here since my return to the office. And I
9 think it actually -- to me, it helps explain it.

10 I mean -- and Mr. Meadors has referenced some
11 of the holdings in Cheeseboro. And the court in
12 determining whether post-hypnotic testimony is
13 independent of dangers associated with hypnosis will
14 consider whether the witness' trial testimony was
15 generally consistent with pre-hypnotic statements,
16 and I think both Mr. Collins and Mr. Meadors are in
17 agreement but for the color of the truck, I suppose;
18 whether there's circumstantial evidence
19 corroborating the witness' post-hypnotic testimony,
20 and I think as to the events of that evening, I
21 think, that I don't know that there are going to be
22 a lot of argument about that; and whether the
23 witness' responses to examination by counsel
24 generally were not the automatic responses of a
25 pre-conditioned mental process.

1 I mean -- I won't use the same terms, but once
2 we hear him testify, we'll be able to address that,
3 but absent something coming up during testimony, I
4 don't think there's an issue here, quite frankly,
5 and I think that's what Mr. Collins is saying.

6 **MR. MEADORS:** And I didn't know if I could
7 proffer for your hearing, but obviously Your Honor
8 would like some testimony.

9 **THE COURT:** I'm telling you, poorly apparently,
10 I don't know, but when they say I have to have an in
11 camera hearing and I have to make these
12 determinations and they say I'm supposed to compare
13 his trial testimony to decide whether this is
14 admissible or not, then obviously I don't put him up
15 on the stand in front of the jury in my mind and let
16 the cat get out of the bag and then say, uh-oh, I
17 messed up.

18 I have an in camera hearing, I hear what he's
19 got to say and then I can make these findings. And
20 the fact that you all agree sounds to me like it
21 should be a real short hearing.

22 **MR. MEADORS:** Grover Gene Derrick.

23 **THE COURT:** Mr. Derrick, I need you to come up,
24 please, and the clerk will swear you in.

25

1 GROVER EUGENE DERRICK, JR.,
2 having been duly sworn, testified as follows:

3 THE CLERK: Please have a seat there, sir.

4 State your full name for the record.

5 THE WITNESS: Grover Eugene Derrick, Junior.

6 DIRECT EXAMINATION

7 BY MR. MEADORS:

8 Q Good afternoon, Mr. Derrick.

9 A Good afternoon.

10 Q Mr. Derrick, I'm going to ask you just
11 specifically right now, I'm not going to go into
12 your background or some other things, but I'm going
13 to ask you specifically right now after you left
14 Pelion, okay?

15 A Yes, sir.

16 Q What road do -- what was the gentleman's name,
17 Mr. Langford?

18 A Yes, sir.

19 Q You had a party there?

20 A Yes, sir.

21 Q After that, tell the Judge what you did.

22 A After I left Mr. Langford's house out on
23 Highway 6, went to a little peanut store right there
24 on 6, got four packs of cigarettes. I left the
25 store, proceeded down 6 to I-20 headed east to

1 Monticello Road where I resided at Montgomery Road.
2 When I got on I-20, me and my fiancée were talking
3 about our wedding, how we were going to get married,
4 both my little boys had went to sleep.

5 I proceeded down I-20 east, come up on Broad
6 River Road, noticed a vehicle. I come down -- I
7 passed by the vehicle, next thing I know I was in
8 the right lane, he was in the center lane when I
9 passed him. When I passed the vehicle, I kept on
10 talking to my wife -- my fiancée, excuse me, and she
11 was smoking a cigarette and I was smoking a
12 cigarette. Well, the truck come up behind me -- a
13 vehicle come up behind me that I just passed and the
14 next thing I remember, I started hearing gunfire.
15 And I proceeded on. I run off the shoulder of the
16 road, come back on the shoulder of the road.

17 By this time, they'd went across the interstate
18 dividing the outside lane and the middle lane with
19 their vehicle. I proceeded to chase them trying to
20 get close enough to get a tag number, anything I
21 could get and run them down. And we went to 321,
22 which is Fairfield Road. When I got to Fairfield
23 Road, when I come off the loop getting on to
24 Fairfield Road off of I-20, I could see the
25 passenger, briefly, looking back as if I was trying

1 to see if somebody was coming in behind me.

2 I followed him down to Sharp Road. When I
3 turned on Sharp Road behind them, I lost sight of
4 them for a few minutes. When I lost sight of them
5 -- when I topped the hill of the little curve, I saw
6 dust flying up the dirt road and that's when I
7 turned around and I asked my fiancée to hand me a
8 cell phone and that's when she fell over in my lap.
9 I turned around, went back to the Flying J.

10 **MR. MEADORS:** Judge, I don't want to cut short,
11 but I also don't want to not go over some things and
12 then later say, well you didn't testify to this
13 earlier. So I'm just trying to --

14 **THE COURT:** What I think my focus mainly is is
15 on the statements he gave at or near the time
16 compared to the statements he made at or near the
17 time of the hypnosis, compared to the statements
18 he's making in his testimony. I think that's --
19 that's all I'm really looking for.

20 **MR. MEADORS:** I understand that, but there's
21 some --

22 **THE COURT:** I know there has to be a context.
23 Go ahead.

24 BY MR. MEADORS:

25 **Q** Approximately, where were you on I-20? You

1 said you passed his vehicle first and then came
2 back, correct?

3 **A** Yes, sir.

4 **Q** When it came back near you, you said it came
5 down beside you, roughly where were you on I-20?

6 **A** I was right past Broad River Road on I-20,
7 almost to -- I was about --

8 **Q** Come on down here a second.

9 **MR. MEADORS:** Judge, do you mind?

10 (Witness leaves the witness stand.)

11 **THE COURT:** I don't mind at all, but you
12 probably need to --

13 **BY MR. MEADORS:**

14 **Q** Turn around so the Judge can hear you and come
15 on this side so the court reporter can hear you,
16 too.

17 **A** Okay. I was right about here, right past Broad
18 River Road. I had just gone underneath the Broad
19 River Road Bridge. I was right in this area here.
20 Right when I come underneath the bridge, that's when
21 I first pretty much encountered the vehicle.

22 **THE COURT:** All right. He's pointing to the
23 area where if you were going westbound on I-20, you
24 would be at the exit to go on to --

25 **THE WITNESS:** Yes, if you're getting back off.

1 **THE COURT:** Right. But you were going the
2 opposite direction.

3 **THE WITNESS:** Yes, I was going east.

4 **THE COURT:** All right. Go ahead.

5 **THE WITNESS:** I proceeded down, right before
6 there's a driving range right here, a little old
7 golf course/driving range, and that's when the first
8 set of shots started happening was right in this
9 area here right before the river.

10 **THE COURT:** All right. I know where that is.
11 BY MR. MEADORS:

12 **Q** Show the Judge on State's 16, what did you do
13 after that?

14 **A** I proceeded on -- when the shots started being
15 fired, I fell off the shoulder of the road right
16 here, approximately in this area right before the
17 bridge, and I come back across and that's when I
18 started chasing the vehicle. We come on up 20 to
19 215, crossed under 215 and there's a Caterpillar
20 rental place here for tractors. And I got right
21 there, that's -- more shots were coming back at me.

22 **THE COURT:** When he said the space sign
23 earlier, he's talking about that space, meaning a
24 decorative space that's along the interstate?

25 **THE WITNESS:** Right there, yes, sir.

1 **THE COURT:** Okay. I know where that is. Go
2 ahead.

3 **THE WITNESS:** When we got on up here and then
4 come back across, I got in behind him right in here
5 because he got back over here and he was getting off
6 the loop coming back up Fairfield Road. And that
7 loop right there, I was close enough, that's when I
8 could actually tell that there were more than one
9 person in the vehicle when I made this loop right
10 here. And like I said, the passenger was looking
11 back towards me like seeing if I was behind him
12 still.

13 BY MR. MEADORS:

14 **Q** Now, describe that vehicle that came up beside
15 you, you passed, came up beside you, you then chased
16 and then followed around this intersection, tell the
17 judge about that.

18 **A** (Witness resumed the witness stand.)

19 It was a dark-colored Chevrolet pick-up truck,
20 appeared to be a fleetside/stepsideside.

21 **MR. MEADORS:** Beg the Court's indulgence.

22 (Pause.)

23 **Q** Do you remember giving a statement, Gene, to
24 the police? I guess you gave several statements.
25 Do you remember giving a written statement?

1 **A** Yes, sir.

2 **Q** I'm going to show you what's marked State's 21
3 for identification only. Do you recognize this? Is
4 that your signature down there?

5 **A** Yes, sir, it sure is.

6 **Q** And in here on October 18th, did you tell
7 Investigator Faust basically your version of what
8 happened that morning?

9 **A** Yes, sir, I sure did.

10 **Q** Gene, what do you remember about -- have you
11 ever been to a hypnotist before?

12 **A** I remember them mentioning me going to be
13 hypnotized and I remember going --

14 **THE COURT:** Who is they?

15 **BY MR. MEADORS:**

16 **Q** Who mentioned to you you were going to be
17 hypnotized?

18 **A** Mr. Barnes and Mr. Faust.

19 **Q** This was after you gave the written statement?

20 **A** Yes, sir.

21 **Q** And did you, in fact, go and see a hypnotist?

22 **A** Yes, sir.

23 **Q** And what do you remember about going to see the
24 hypnotist?

25 **A** I just remember vaguely walking in and them

1 explaining how everything would work and just not to
2 be worried about anything, it would all work out.

3 Q And do you remember what you told that
4 hypnotist?

5 A Not exactly, sir.

6 THE COURT: What did you say? I'm sorry.

7 THE WITNESS: Not exactly word for word, I
8 mean, because I don't remember anything. I just
9 remember being there and going under hypnotism and
10 coming out of it and don't even remember it.

11 BY MR. MEADORS:

12 Q Do you know you told the hypnotist about this
13 event?

14 A Yes, sir.

15 Q And did you describe the vehicle to the
16 hypnotist?

17 A As far as I know, yes, sir, from what I was
18 told after.

19 Q So you really don't remember it?

20 A No, sir.

21 Q So prior to the hypnotic session, you said the
22 vehicle was black, correct?

23 A Yes, sir.

24 Q And your testimony today and after lunch, it's
25 going to be black?

1 **A** Yes, sir.

2 **Q** A black what?

3 **A** Black Chevrolet Truck.

4 **MR. MEADORS:** Beg the Court's indulgence.

5 **THE COURT:** Yes, sir.

6 (Pause.)

7 **MR. MEADORS:** That's all. Thank you.

8 **THE COURT:** Cross?

9 **MR. COLLINS:** No cross, Your Honor.

10 **THE COURT:** Who was in there in the hypnotist
11 session?

12 **THE WITNESS:** One of the officers that they've
13 used, I guess. I mean, I don't remember their name.
14 I can't recall their name.

15 **THE COURT:** He was actually in the room?

16 **THE WITNESS:** It was who they used to do it. I
17 don't -- I mean, there wasn't nobody else in the
18 room.

19 **THE COURT:** That's what I meant.

20 **THE WITNESS:** It was just me and him.

21 **THE COURT:** So whoever did the hypnosis and
22 you, those were the only two people in the room?

23 **THE WITNESS:** Yes, sir.

24 **THE COURT:** And you think that was a police
25 officer or you think that was a doctor or do you

1 know?

2 **THE WITNESS:** I know it wasn't a police
3 officer, I mean -- but I don't -- it was somebody
4 that they use and I just...

5 **THE COURT:** Where did you go?

6 **THE WITNESS:** The sheriff's office in Richland
7 County.

8 **THE COURT:** And did you have any indication
9 that that psychologist or psychiatrist or whoever it
10 was knew anything about this case?

11 **THE WITNESS:** No, sir.

12 **THE COURT:** Did he, in your presence, overhear
13 anybody else telling him any facts about the case?

14 **THE WITNESS:** No, sir, not that I know of.

15 **THE COURT:** Did he ever say anything to you
16 that you can recall suggesting anything about the
17 facts of the case?

18 **THE WITNESS:** No, sir.

19 **THE COURT:** Do y'all have any questions in
20 light of the Court's questions?

21 **MR. MEADORS:** No, sir.

22 CROSS-EXAMINATION

23 BY MR. COLLINS:

24 **Q** Are you sure you don't recall Investigator
25 Barnes being in that room with you?

1 **A** Not right off the top of my head I don't.

2 **MR. MEADORS:** Your Honor, I was going to call
3 Investigator Barnes briefly to answer some of the
4 things you asked.

5 **THE COURT:** That's fine. I'm not trying to
6 interfere. I just --

7 **MR. MEADORS:** I just want to make this issue,
8 if it's --

9 **THE COURT:** I'm just looking at what I've got
10 to decide and that was some of the factors that some
11 of these cases dealt with.

12 All right. If there's nothing else, then,
13 Mr. Derrick, you can step down for now. Thank you.

14 **MR. MEADORS:** Investigator Barnes.

15 ERIC BARNES,
16 having been duly sworn, testified as follows:

17 **THE CLERK:** Mr. Barnes will still be under oath
18 from yesterday, Your Honor?

19 **THE COURT:** Yes, that's fine for an in camera
20 hearing. When he testifies in front of the jury,
21 we'll need to swear him in.

22 ERIC BARNES,
23 having been previously duly sworn, resumed the
24 witness stand and testified as follows:

25 *****

1 DIRECT EXAMINATION

2 BY MR. MEADORS:

3 Q You know what I'm going to ask you about.

4 A Yes, sir.

5 Q Did you have an occasion to take the witness in
6 this case, fiancé of the victim, to see a hypnotist?
7 And if so, who was it and where did that take place?

8 A Lewis Marshal is a longtime deputy of the
9 sheriff's office. This is one of his niches in law
10 enforcement. He was involved in a couple of
11 different hypnosis over here in Richland County over
12 the last couple of decades and we used him in this
13 particular case.

14 Q And was that recorded?

15 A It was.

16 Q In what form?

17 A We had a video of that particular incident.

18 Q And you've read over -- well, you know, you're
19 the chief investigating officer, you know this file,
20 correct?

21 A Right.

22 Q And you've seen the statement of Gene Derrick,
23 correct?

24 A Correct.

25 Q The written statement that Faust took?

1 **A** Correct.

2 **Q** Were you present? You said you were present?

3 **A** I was present, yes, sir.

4 **Q** And you heard what Mr. Derrick said during that
5 session, correct?

6 **A** Yes, sir.

7 **Q** You may or may not have reviewed the video or
8 audio afterwards, I don't know.

9 **A** I have not.

10 **Q** And you also were in here just a minute ago and
11 you heard him testify to what happened in this case,
12 correct?

13 **A** That is correct.

14 **Q** First of all, as far as the hypnotic session
15 and what he said in there, the statement he said in
16 there, how did that relate to the statement he gave
17 to Faust, what he actually said in the hypnotic
18 session? What were the differences, if any?

19 **A** The whole purpose of the hypnotic session was
20 to get a better -- hopefully, try to get a tag
21 number if he could remember it through that hypnotic
22 session to kind of relax him and hopefully draw that
23 out of him, if that was possible, to try to, you
24 know, get a lead somewhere, a better description of
25 that. And then -- so it wasn't -- the session

1 wasn't to recall specific incident -- or the time
2 lines and other things that happened as much as it
3 was to recall a better description of the truck.

4 Q And you were trying to get the tag?

5 A And we were trying to get the tag.

6 Q Looking for all leads possible?

7 A That's right.

8 Q Did you suggest or did the hypnotist suggest in
9 any way, form or fashion putting any thoughts or
10 ideas into Mr. Derrick?

11 A No.

12 Q Try to cheat and tell him what to say?

13 A No.

14 Q And was it fair to say the only differences
15 then between the statement and that session was the
16 color of the truck?

17 A Yes, sir.

18 Q And was there something else about the rims
19 perhaps?

20 A It was a skirt bumper on the back and possibly
21 the rims. I don't recall the rims, but --

22 Q Rims that came out in the hypnotic session that
23 were not in his prior statement, correct?

24 A Correct.

25 Q Other than that, would you say his prior

1 hypnotic statement is consistent with what -- well,
2 you can say this in here right now, consistent with
3 what you just heard from the witness stand?

4 **A** That is correct.

5 **MR. MEADORS:** Judge, I think that's all we've
6 got.

7 **THE COURT:** Cross?

8 **MR. COLLINS:** No questions, Your Honor.

9 **THE COURT:** So what color did he say the truck
10 was?

11 **THE WITNESS:** He said it was a burgundy fade is
12 basically how we understood his description. It
13 went from dark to light in a burgundy -- dark
14 burgundy situation.

15 **THE COURT:** And do you remember what he said
16 about the rims?

17 **THE WITNESS:** I don't remember anything he said
18 about the rims. I remember something about the
19 skirt bumper.

20 **THE COURT:** Did you locate this truck
21 eventually?

22 **THE WITNESS:** We located the truck in the
23 incident, yes, sir.

24 **THE COURT:** And what was the description of the
25 truck that you found?

1 **THE WITNESS:** It was a black Chevrolet pick-up
2 truck.

3 **THE COURT:** To whom was it registered?

4 **THE WITNESS:** It was registered to Mr. Moore's
5 father.

6 **THE COURT:** And, again, this is outside the
7 presence of the jury. Do you consider that truck to
8 fit the description that was given by Mr. Derrick?

9 **THE WITNESS:** Yes, sir.

10 **THE COURT:** Do you all intend to offer that in
11 evidence in the trial?

12 **THE WITNESS:** We do.

13 **THE COURT:** What qualifications does Mr. Lewis
14 Marshal have to be hypnotizing people?

15 **THE WITNESS:** Your Honor, I think Mr. Marshal
16 would have to talk along those lines. He is -- he
17 is known at the sheriff's office to have done this
18 before, specifically in the hit and run case on Hard
19 Scrabble Road back in the early 90's. He was
20 instrumental in that particular case with the
21 highway patrol in locating a suspect in that case.

22 **THE COURT:** He works for the sheriff's
23 department?

24 **THE WITNESS:** He works for the sheriff's
25 office. I think, he's currently retired and he's a

1 dog handler -- has been a dog handler for the
2 longest time. This is kind of his sideline at the
3 sheriff's office, his little niche.

4 **THE COURT:** He is not a medical doctor?

5 **THE WITNESS:** No. He went through -- my
6 understanding is he had training in this and updated
7 that training, that's my understanding.

8 **THE COURT:** So you don't know what degrees he
9 has?

10 **THE WITNESS:** No, sir.

11 **THE COURT:** I think that's all I have. Do you
12 all want to ask him any questions in light of the
13 Court's questions from the State?

14 **MR. MEADORS:** No, sir.

15 **THE COURT:** Defense?

16 **MR. COLLINS:** No, sir.

17 **THE COURT:** Thank you very much. You may step
18 down.

19 Any argument?

20 **MR. MEADORS:** Your Honor, very briefly, and
21 perhaps hoping this isn't too simplistic, but I
22 think the State's position would be Mr. Derrick's
23 prehypnotic testimony will be substantially the
24 same, if not very close to the same as his courtroom
25 testimony. He doesn't even remember, really doesn't

1 remember who was in the room necessarily, and I
2 don't think it could have had an affect on him.

3 I think his testimony has shown it has not had
4 an affect on his prehypnotic session testimony,
5 which I think is -- and there's nothing -- actually
6 in Evans, the only difference there was maybe the
7 color of the hair or something a little more
8 accurately, here it's going to be substantially the
9 same testimony.

10 And I think the focus of that was to try to get
11 a license tag, which they weren't successful in
12 doing. He did say some type of red, I thought it
13 was red, but it was close to red, the color, and
14 some -- some rims, I thought the officer said the
15 running board, I think, but other than that, his
16 testimony, we believe, will be the same as it was
17 before in his statement; therefore, it could not
18 have been affected by any suggestion or hypnotic --
19 suggestion he got through hypnotic, posthypnotic
20 recollection I guess. So, Your Honor, we'd ask that
21 he be allowed to testify.

22 **THE COURT:** Defense have any argument or any
23 motions?

24 **MR. COLLINS:** No argument, just leave it in the
25 Court's discretion, Your Honor.

1 **THE COURT:** All right. The Evans case has a
2 section that reads as follows, and Mr. Strickler
3 read earlier from Cheeseboro, which is the same
4 language, To determine whether a witness' testimony
5 is independent of the dangers associated with
6 hypnosis, the Court must examine whether, colon,
7 one, the witness' trial testimony was, quote,
8 generally consistent, closed quote, with prehypnotic
9 statements; two, considerable circumstantial
10 evidence corroborates the witness' posthypnotic
11 testimony; and, three, the witness' responses to
12 examination by counsel, quote, generally were not
13 the automatic responses of a preconditioned mental
14 process, closed quote.

15 Now, the trial testimony that has been
16 presented thus far is generally consistent with the
17 testimony that was given by the first witness
18 related to Mr. Derrick's report, also is consistent
19 with the written statement, which has been marked
20 for identification purposes as State's 21 which I've
21 read.

22 With regard to considerable circumstantial
23 evidence corroborating the posthypnotic testimony,
24 the indication was that the truck was found, the
25 truck matched the description. It was described as

1 being black. This was in the middle of the night, a
2 burgundy truck and a black truck are probably pretty
3 much indistinguishable at night. Again, ultimately,
4 that's going to be a decision for the jury to make.

5 But I think it's significant to note with
6 regard to any suggestiveness, which may bleed over
7 into number three, that at the time of all this
8 taking place, they had no suspect. It wasn't like
9 they thought somebody did it and they're going out
10 there trying to steer this witness into designating
11 that suspect. They had no suspect.

12 And my recollection of every effort they had
13 made at that point to get cameras in the area to
14 show something had been futile. It was only after
15 they had got the camera from the store out there
16 near the dirt road that they were able to see
17 anything at all and that was described as being
18 fairly blurry images as I recall it.

19 So there is considerable circumstantial
20 evidence corroborating the posthypnotic testimony.
21 It doesn't vary in any material way. There's
22 mention of a skirt on the back of the truck.

23 And the responses to the examination of counsel
24 that were elicited here do not in any way appear to
25 be automatic responses of a preconditioned mental

1 process or anything that was planted into
2 Mr. Derrick's psyche by virtue of this process of
3 using hypnosis.

4 Now, the reason I went and asked those
5 questions that I asked were not so much because of
6 this Evans case or because of the Cheeseboro case,
7 but because of an earlier case which Evans and
8 Cheeseboro have explained to some degree, but --
9 Hurd, H-U-R-D, which a lot of people at that time
10 are reading that posthypnotic testimony was
11 inadmissible. That's been clarified. That's not
12 the law. These safeguards are put in place. I
13 think I'm supposed to have the in camera hearing and
14 I've done it. The evidence is admissible.

15 Court's in recess until 2:15.

16 (Whereupon, there was a luncheon recess.)

17 **THE COURT:** Is the State ready for the jury?

18 **MR. MEADORS:** I think so, Judge.

19 **THE COURT:** Defense?

20 **MR. COLLINS:** Defense is ready.

21 **THE COURT:** Bring the jury in for me, please.

22 (The jury returns to the courtroom.)

23 **THE COURT:** Call your next witness, Solicitor.

24 **MR. MEADORS:** If it pleases Your Honor, the
25 State would now call Grover Eugene Derrick, Junior.

1 **THE COURT:** Mr. Derrick, come around please and
2 be sworn.

3 GROVER EUGENE DERRICK, JR.,
4 having been duly sworn, testified as follows:

5 **THE CLERK:** Please have a seat there, sir.
6 State your full name for the record.

7 **THE WITNESS:** Grover Eugene Derrick, Junior.

8 DIRECT EXAMINATION

9 BY MR. MEADORS:

10 **Q** Good afternoon.

11 **A** Good afternoon.

12 **Q** Mr. Derrick, I'm going to ask you if you'll
13 just be sure and speak up where these ladies and
14 gentlemen of this jury and this court reporter can
15 hear you, if you don't mind.

16 **A** Yes, sir.

17 **Q** Grover Eugene Derrick, Junior, what do you go
18 by?

19 **A** I go by Gene.

20 **Q** And please tell these folks where you're from.

21 **A** I'm from Blythewood. I was born and raised in
22 Blythewood, South Carolina. I moved from
23 Blythewood. I moved to Monticello for a brief
24 period of time with my parents.

25 **Q** Where did you go to high school -- what schools

1 did you go to?

2 A Spring Valley.

3 Q And where did you go to elementary and middle
4 school?

5 A Went to Blythewood Elementary.

6 Q After Spring Valley, what did you do?

7 A I started a line of employment working with a
8 heating and air company right outside of Ballentine.

9 Q Do you remember the name of it?

10 A Superior Services.

11 Q How long did you work there?

12 A I worked there about two or three years.

13 Q Then what did you do after that?

14 A After that, I worked for a company called
15 Webster Plumbing and Gas.

16 Q Where was Webster Plumbing and Gas located?

17 A Right in Lexington by the airport, sir.

18 Q How long did you work there?

19 A About two years.

20 Q What did you do after that?

21 A After that, I was in a car wreck in '99 and I
22 become unemployed from my car wreck.

23 Q And how long did you stay out of work?

24 A Two or three months.

25 Q After that, did you start working somewhere

1 else?

2 **A** Yes, sir. I went to work building power lines
3 as a lineman doing distribution work.

4 **Q** Was there a particular company you first worked
5 with in the lineman -- being a lineman?

6 **A** Yes, sir, Gregory Electric.

7 **Q** And where is Gregory Electric?

8 **A** It's on Highway 215.

9 **Q** And, basically, I'm sure everybody knows, but
10 what did you do at Gregory Electric as a lineman?
11 What's that mean?

12 **A** We'd go out, we'd set telephone poles, we'd do
13 transformers, hook services up to houses, storm
14 restoration on hurricanes.

15 **Q** And after that, you worked for somewhere named
16 Mastec?

17 **A** Yes, sir.

18 **Q** And where is that located?

19 **A** That's also in Lexington County.

20 **Q** What about Bolder?

21 **A** That's in Rock Hill, South Carolina.

22 **Q** What is that?

23 **A** It's a paper mill.

24 **Q** A what?

25 **A** A paper mill. They manufacture paper.

- 1 Q Did you work there?
- 2 A Yes, sir. I worked there up until Christmas a
3 couple years ago and we got laid off.
- 4 Q Have you ever done any electrical work?
- 5 A Yes, sir.
- 6 Q When did you do that?
- 7 A Here. I went to Miami and was doing line work
8 in Miami, left Miami, come back home and I'm
9 currently self-employed doing little electrical
10 work, little odds and end jobs.
- 11 Q And had you previously done that kind of
12 commercial electrical work?
- 13 A Yes, sir.
- 14 Q Where?
- 15 A I've been at Branham Electric in Elgin, South
16 Carolina for a brief period of time.
- 17 Q Let's focus now more toward this incident.
18 Back in October of -- well, let's just say August or
19 September of 2004, were you working as a lineman?
- 20 A Yes, sir, I was.
- 21 Q Tell these folks where you were working.
- 22 A I was in Florida working on Hurricane Charlie.
- 23 Q How long were you down there?
- 24 A Several months.
- 25 Q And when did that job get through in Florida?

1 **A** Right around, a couple weeks prior to this
2 happen.

3 **Q** So in relation to what we're here about shortly
4 before that, you got through working in Florida?

5 **A** Yes, sir. I'd come back home, was taking a
6 leave.

7 **Q** Tell these folks who is or who was Stephanie
8 Dover.

9 **A** She was my fiancée.

10 **Q** And at this time, October 2004, Mr. Derrick,
11 how long had you known her?

12 **A** About three years.

13 **Q** And she was living here while you were in
14 Florida?

15 **A** Yes, sir.

16 **Q** And how many kids did y'all have?

17 **A** Had two kids, had two boys.

18 **Q** What were their names?

19 **A** Zachary and Cody Derrick.

20 **Q** Do you have two other children, also?

21 **A** Yes, sir, I do.

22 **Q** Now, tell the jury, if you will, you'd come
23 back from Florida from working on the hurricane,
24 where were you living when you came back?

25 **A** Living on [REDACTED] Road off of Highway 215.

1 Q And who were you living there with?

2 A I was living there with Stephanie and my two
3 little boys.

4 Q And, again, are we in October of 2004 now?

5 A Yes, sir.

6 Q And I guess just to -- how much time would you
7 have off between jobs?

8 A We'd do something like that, we were allowed to
9 come back and sometimes we'd take a week off or just
10 whatever was feasible.

11 Q And after the Miami job, just in relation to
12 this incident, did you have another job you were
13 supposed to do?

14 A Yes, sir.

15 Q Where was that job going to be?

16 A I was supposed to go back to Florida -- well,
17 Aiken and then back to Florida after Aiken.

18 Q With this same company?

19 A Yes, sir.

20 Q So you're back from Florida, you're at
21 Montgomery?

22 A Yes, sir.

23 Q And how long had you been back prior to this
24 incident? Two weeks?

25 A About two weeks.

1 Q Now, what, if anything -- what kind of vehicles
2 were y'all driving?

3 A I had -- at the time, I had just went and
4 bought her a brand new car. I bought her a Buick
5 Century.

6 Q Did you get it from Auto Mart?

7 A Yes, sir.

8 Q All right. Look at what's already in as
9 State's 10 and State's 4. First, take State's 10
10 and State's 4. Do you recognize that and does it
11 relate to your testimony?

12 A Yes, sir, it does.

13 Q And is that the new vehicle you bought
14 Stephanie?

15 A Yes, sir.

16 Q Let's get right to this weekend when this
17 happened. You remember it?

18 A Yes, sir.

19 Q And do you remember that morning, Saturday
20 morning, where you went?

21 A Yes, sir.

22 Q What you did?

23 A Yes, sir.

24 Q What did you do?

25 A We got up, got the kids ready and we went to

1 Barnyard Flea Market on Number 1 in Lexington.

2 Q You've been to Barnyard before?

3 A Yes, sir.

4 Q And why did y'all go there?

5 A Just something we would do on the weekends when
6 there wasn't nothing else to do.

7 Q And this was what day?

8 A That was Saturday morning.

9 Q You, Stephanie and two kids?

10 A Yes, sir.

11 Q And what time, approximately, when did you get
12 there?

13 A Probably about 9:30, ten o'clock that morning.

14 Q How long did y'all stay there?

15 A We stayed there most of the day walking around
16 just looking and just picking up little stuff here
17 and there.

18 Q Had you made previous arrangements to go
19 somewhere after the flea market, and if so, where?

20 A Yes, sir. We had previous plans to go to Mike
21 Langford's house in Pelion and have dinner.

22 Q And is this individual, Mike Langford, somebody
23 you had worked with or were working with?

24 A Yes, sir.

25 Q And did you, in fact, and Stephanie and the

1 kids go to Mike Langford's?

2 A Yes, sir, we did.

3 Q And where is that?

4 A That's in Pelion.

5 Q And what time did you get there?

6 A About 5:30, six o'clock.

7 Q What did you do, Stephanie do, the kids do when
8 you got to Mike Langford's? Why were you going
9 there?

10 A Going to a cookout. We were invited to eat
11 steaks, potatoes and salad.

12 Q Did you eat steak?

13 A Yes, sir.

14 Q Cookout?

15 A Yes, sir.

16 Q Did you have some alcohol?

17 A Yes, sir, I did.

18 Q How much did you have?

19 A I had five, six beers and a margarita.

20 Q What about Stephanie, did she drink?

21 A No, sir.

22 Q Well, let me ask you a couple -- did she drink
23 that night?

24 A No, sir, she did not.

25 Q Did she drink at all?

1 **A** No, sir.

2 **Q** How big a crowd was it there at Mike Langford's
3 for the record?

4 **A** At Mike Langford's, there was maybe five or six
5 of us sitting there.

6 **Q** Tell these ladies and gentlemen of this jury,
7 Mr. Derrick, how long did you stay there in Pelion
8 at Mike Langford's?

9 **A** I stayed in Pelion, once we got there at 5:30,
10 six o'clock, we stayed until right at midnight.
11 Somewhere right in before midnight, we started
12 getting ready to leave.

13 **Q** And you're in this vehicle in State's 10 and
14 State's 4?

15 **A** Yes, sir.

16 **Q** And where do you go from Mike Langford's?

17 **A** I go to the store on Highway 6.

18 **Q** And what, if anything, do you remember about
19 that store?

20 **A** I went in, I left her in the car with the boys,
21 and walked in and got four packs of cigarette.

22 **Q** What kind of cigarettes?

23 **A** Marlboro Lights.

24 **Q** Do you smoke?

25 **A** Yes, sir, I do.

1 Q Did Stephanie smoke?

2 A Yes, sir, she did.

3 Q Anything significant about that store you
4 remember? Or maybe not. Any kind of thing out
5 front?

6 A A peanut. It's a giant peanut out in front of
7 the store.

8 Q After you left that store -- where were
9 Stephanie and the kids when you were in the store?

10 A My two kids were in the back seat, Zach was on
11 the passenger side behind Stephanie, she was in the
12 passenger seat, and my youngest boy was behind me.

13 Q Where, if anywhere, did you go after that?

14 A Went straight down, hit I-20.

15 Q How far was it from the peanut store to I-20?

16 A Twenty minutes.

17 Q So you get on I-20 at what intersection?

18 A I-20 and Number 6, Highway 6.

19 Q And then when you get on that I-20, which
20 direction are you going in?

21 A I'm going east.

22 Q Towards Florence?

23 A Yes, sir.

24 Q And, again, where was your residence at that
25 time?

1 **A** Montgomery Road on 215.

2 **Q** Take it back right now, Mr. Derrick, you've
3 turned onto I-20 heading toward your residence on
4 215?

5 **A** Yes, sir.

6 **Q** Can you please tell these ladies and gentlemen
7 about your trip once you got on I-20?

8 **A** Yes, sir. I was eastbound on I-20 going to 215
9 to go to [REDACTED] Road. I was coming up on Broad
10 River Road just come up underneath the bridge and
11 when I come under the bridge, I noticed a vehicle,
12 it was going slow. So I got in the right-hand lane,
13 in the slow lane, and passed the vehicle.

14 **Q** What lane was this vehicle?

15 **A** It was in the center lane.

16 **Q** So how many lanes are in this I-20 where you
17 were?

18 **A** Three.

19 **Q** Go ahead. I'm sorry.

20 **A** And me and Stephanie just continued on our
21 conversation about getting married. The boys were
22 both asleep. And right as I come down I-20 after
23 Broad River Road, I noticed the vehicle was coming
24 back up on us. When the truck come back up on us, I
25 started hearing gunshots. And then I proceeded -- I

1 run off the shoulder of the road and I've come back
2 on to I-20 and tried to get in behind the vehicle
3 and run them down and proceeded on to Fairfield
4 Road.

5 Q And as you proceeded on to Fairfield Road --
6 did you hear the shots?

7 A Yes, sir, I did.

8 Q Any doubt in your mind they were shots?

9 A No doubt at all.

10 Q Had you heard gunshots before?

11 A Yes, sir.

12 Q Were those gunshots?

13 A Yes, sir.

14 Q The car passes you and what do you do?

15 A I'd run off the shoulder of the road on the
16 right side.

17 Q You then followed the car?

18 A Yes, sir.

19 Q Where do y'all go? Where does it go? Where do
20 you go?

21 A When I get in -- when I come back off the
22 shoulder of the interstate, the vehicle has got the
23 center lane and the far lane against the concrete
24 barrier wall kind of divided. And they sped up and
25 that's when I come back across the interstate and

1 got in behind them.

2 Q Why did you do that?

3 A Trying to get a tag number or anything. It's
4 just trying to figure out what was happening.

5 Q Keep going.

6 A We proceeded on, got up -- we went end up
7 underneath Highway 215 on 20, the vehicle come back
8 across and was getting over in the far right lane
9 and I saw flashes from a gun barrel. And then I
10 proceeded to follow them up to Fairfield Road.

11 Q What happens when you get to Fairfield Road?

12 A When we get to Fairfield Road, they exit the
13 interstate, come around the horseshoe to get off the
14 interstate on to Fairfield Road. And at that time,
15 I could see the passenger kind of looking back to
16 see if somebody was in behind them. And we went
17 down to Sharpe Road and that's when I realized, when
18 we turned on Sharpe Road, that my fiancée had been
19 shot. And I turned around and went -- asked her for
20 my phone and she fell over in my lap and I took her
21 to Flying J Truck Stop on Fairfield Road.

22 Q Prior to that, had you known Stephanie had been
23 shot?

24 A No, sir, I did not.

25 Q With Your Honor's permission, Gene, would you

1 come down here?

2 **A** Yes, sir.

3 (Witness leaves the witness stand.)

4 **Q** Mr. Derrick, I'm going to ask you to stand
5 right here so madame court reporter can hear your
6 comments. So be sure you don't block the jury's
7 view.

8 **A** Yes, sir.

9 **Q** First of all, I'm going to show you what's
10 State's 17. Does this, maybe not very well, but
11 depict three lanes, two vehicles which would aid you
12 in showing the jury what happened?

13 **A** Yes, sir, it does.

14 **MR. MEADORS:** Your Honor, we'd offer State's
15 17, I believe, without objection.

16 **MR. COLLINS:** No objection, Your Honor.

17 (State's Exhibit Number 17, blowup map,
18 admitted into evidence.)

19 BY MR. MEADORS:

20 **Q** And I'm also going to show you what's marked
21 State's 16. Do you recognize this as an overview
22 shot of I-20 and the areas you just talked about?

23 **A** Yes, sir, I do.

24 **Q** Can you show the jury on here, I think your
25 test -- you tell me, show the jury where you first

1 saw this vehicle, you said, in the middle lane.

2 A I was right about here at Broad River Road and
3 I-20.

4 Q And that's on State's 16. This little sticky
5 right here will be your car, okay?

6 A Okay.

7 Q When you first saw this vehicle, was it ahead
8 of you or behind you?

9 A It was ahead of me.

10 Q Put it on State's 17 basically where you would
11 have first seen them.

12 A (Witness complies.)

13 Q And where were you coming up?

14 A I was coming up here.

15 Q In the middle lane or the outside lane?

16 A I was right there in the middle lane.

17 Q You see this vehicle, what do you do?

18 A When I approached the vehicle, it's going
19 slower than we are, so I get over in the right-hand
20 lane.

21 Q Do you pass them?

22 A Yes, sir, I do.

23 Q Now, going back to State's 16, Mr. Derrick.

24 A Yes, sir.

25 Q After you passed it -- let me ask you this

1 much. You stopped to get some cigarettes?

2 A Yes, sir.

3 Q You smoke?

4 A Yes, sir.

5 Q You smoke a lot?

6 A Yes, sir.

7 Q Your wife smoke a lot?

8 A Yes, sir.

9 Q Why did you stop at the peanut store?

10 A Because that was the closest store to where I
11 was coming from and I was out of cigarettes.

12 Q Once you got the cigarettes, did you light one
13 up?

14 A Yes, sir, I did.

15 Q Is that your habit after you get cigarettes?

16 A Yes, sir.

17 Q Did Stephanie light one up?

18 A Yes, sir.

19 Q Were y'all smoking as you were going down I-20?

20 A Yes, sir.

21 Q What did you do with the cigarettes after you
22 got through smoking?

23 A I always thump them out the window.

24 Q That's littering you know?

25 A Yes, sir.

1 Q But that is your habit?

2 A Yes, sir.

3 Q And did you thump a cigarette out on I-20 as
4 you were heading back to your house?

5 A Yes, sir, I feel sure I did.

6 Q And do you know where you did that?

7 A It would be -- when we got on I-20, I know we
8 were smoking when we got on I-20 and we would throw
9 a cigarette out. And usually before I could leave
10 Pelion and get to my house, me and her could almost
11 smoke a whole pack of cigarettes.

12 Q So she was smoking?

13 A Yes, sir.

14 Q Do you remember whether or not she asked you or
15 did you throw her cigarette out?

16 A I remember throwing her cigarette out because
17 her window was not rolled down.

18 Q Say that one more time?

19 A The window in the vehicle would not roll down
20 on the passenger side.

21 Q This vehicle you just bought, the window
22 wouldn't roll down?

23 A Yes, sir, the motor was burned up in it.

24 Q Did they tell you that when you bought it?

25 A Yes, sir.

1 Q So as a result of her window not being able to
2 go down, did you throw her cigarette out?

3 A Yes, sir.

4 Q And do you know where you threw that out?

5 A Right on I-20.

6 Q And how do you throw a cigarette?

7 A Every time I throw a cigarette, I thump it that
8 way it won't come back in the vehicle with me.

9 Q And was your window up or down at this point?

10 A At that point, my window was partially down
11 when I thumped her cigarette out. I rolled it all
12 the way down when I took a couple more draws off of
13 mine before I threw it out.

14 Q You're not sure exactly where you threw it out?

15 A Not exactly, but I remember smoking and I know
16 that I was right there in the vicinity of Broad
17 River Road when it happened.

18 Q Is this window in State's 10 and State's 4,
19 after this incident, was this window still here?

20 A Yes, sir.

21 Q That window wasn't broken out?

22 A No, sir, it was not.

23 Q You testified you passed this vehicle, and
24 describe that vehicle to the ladies and gentlemen.

25 A It was a dark-colored, I say, black Chevrolet

1 pick-up truck.

2 Q You pass it?

3 A Yes, sir.

4 Q What does it do, if anything?

5 A When I passed the vehicle, I got on down I-20 a
6 little bit further and I noticed the vehicle was
7 coming back, it was approaching me again and it was
8 coming in the middle lane still. And when it got
9 up, that's when I started hearing shots being fired
10 into the back of my car.

11 Q Do you know how fast you were going?

12 A I had my cruise set at 70, 75 miles an hour.

13 Q And when this car came back up, you've shown on
14 State's 17, show again as best you can on State's 16
15 -- when it came back up beside you as you testified,
16 where was it on State's 16?

17 A When they come back up beside me, it was right
18 in this area right here, right before Broad River.

19 Q You travel this road a lot?

20 A Yes, sir.

21 Q What, if anything, is right before Broad River
22 on the right here?

23 A There's a driving range and a golf course right
24 here.

25 Q When this black vehicle came back up beside

1 you, how close were you as best you can recall to
2 that little driving range?

3 **A** I was almost right in front of it. I was
4 coming right up on it at this point in time.

5 **Q** And at what point did you hear the shots?

6 **A** About, I don't know, about 20, 25 foot before
7 the entrance to the driving range, where the driving
8 range starts at.

9 **Q** Were you taking notes?

10 **A** No, sir, I was not.

11 **Q** After you hear these shots, show the jury where
12 you go, show them what happened.

13 **A** After I heard the gunshots, we come on down,
14 right before the bridge, I run off the shoulder of
15 the road right here (indicating).

16 **Q** And you said the shoulder, you mean to the
17 right of the white line?

18 **A** Yes, sir, on the emergency lane side.

19 **Q** Okay. Go ahead.

20 **A** And then I come back on the interstate and
21 that's when the truck had split the center and the
22 outside lane.

23 **Q** Could you go back to State's 17 and show the
24 ladies and gentlemen what you're talking about?

25 **A** And that's when I'd come back across the

1 interstate trying to get in behind the truck.

2 Q Tell them why were you doing it?

3 A Because I wanted to preferably get a tag number
4 after being shot at.

5 Q That's 17. Going back to State's 16, do you
6 end up getting behind this vehicle?

7 A Yes, sir, I do.

8 Q And how far down do you go behind it on State's
9 16?

10 A When we come down I-20 after I finally got in
11 behind him, we come all the way down I-20, cross
12 under Highway 215. When we come under 215, this
13 vehicle comes back across 20 and gets back into the
14 right-hand lane over here.

15 Q Let's go back down here and start down here and
16 work our way up.

17 A And I was coming back across the interstate.

18 Q So this is the black truck you identified?

19 A Yes, sir.

20 Q Crosses over and you come back this way?

21 A Yes, sir. At that point in time --

22 Q This is State's 17 you just showed us. Show us
23 where you come out on 16.

24 A Right in here, right around 215.

25 Q What, if anything, happened there?

1 **A** After I -- after we come under 215, I got all
2 the way over in behind them. We get here on I-20
3 right before Fairfield Road, which is 321, and I got
4 more shots coming out of the vehicle towards my car.

5 **Q** The first set of shots you described, did they
6 come from your left side, your right side or from
7 the front?

8 **A** Come from my left side.

9 **Q** These shots you describe here, show me again
10 where it was.

11 **A** Right in here.

12 **Q** Did they come from the left side, the right
13 side or in front?

14 **A** In front.

15 **Q** How do you know?

16 **A** Because I could see the flash.

17 **Q** Coming back at you?

18 **A** Yes, sir.

19 **Q** Show the jury now on State's 16 after these
20 second set of shots, where did you go?

21 **A** We got off on the horseshoe right here on
22 Fairfield Road. And we're going up Fairfield Road
23 and somewhere around in here, I'm not sure which one
24 it is, it's -- Sharpe Road turns off to the right
25 and goes back up and that's when we turned off and I

1 got in behind them again and that's when I lost
2 sight of them and then I saw them turn down the dirt
3 road.

4 Q Where is your house in relation to State's 16?

5 A My house would be up in here somewhere.

6 Q Describe the atmosphere in the car after the
7 first shots. Were the kids in there?

8 A Yes, sir.

9 Q Did they say anything?

10 A They just started screaming.

11 Q After the second shots?

12 A Still they were screaming and I was just trying
13 to concentrate on staying behind the vehicle.

14 Q When you get up here to Sharpe Road, you make a
15 decision to, I guess, turn around or call?

16 A Yes, sir.

17 Q That's when you asked Stephanie for the phone?

18 A Yes, sir.

19 Q And you got no response?

20 A No response.

21 Q And describe her condition then when you looked
22 at her.

23 A When I looked over and I was making a U-turn,
24 when I looked over, I looked up at her and she just
25 kind of had her head over and she fell over in my

1 lap.

2 Q What did you do then?

3 A I turned back on 321 and come up to the Flying
4 J.

5 Q You can have a seat back.

6 A (Witness resumes the witness stand.)

7 Q Have you ever been to the Flying J before?

8 A Yes, sir.

9 Q Tell the ladies and gentlemen of the jury when
10 you got to the Flying J, what did you do?

11 A I pulled up to the Flying J. I pulled up to
12 the sliding doors and I threw the car in park and I
13 jumped out and run inside the Flying J and told the
14 attendant to call 911 that my fiancée had been shot.

15 Q And the police arrived?

16 A Yes, sir.

17 Q Did you have a gun?

18 A No, sir, I did not.

19 Q Did you make any motions or gestures to this
20 car?

21 A Not that I recall.

22 Q The first set of shots you described to these
23 folks on I-20, where in the truck did they come
24 from?

25 A They'd come from the passenger side of the

1 vehicle into the driver's side of my vehicle.

2 Q And do you know who shot -- who was the
3 shooter?

4 A I could not tell you who the shooter was, but
5 when I looked over when the first couple shots come
6 up when I got door to door, I could see that there
7 was a shoulder pressed up against the passenger side
8 of the truck on the window side.

9 Q A shoulder pressed up to the passenger side of
10 the window?

11 A Yes, sir.

12 Q Like this?

13 A Yes, sir.

14 Q Show me what you're talking about.

15 A (The witness leaves the witness stand.)

16 Q If I'm that shoulder, put me there.

17 A It would be pressed up, like this was the
18 window, it would be pressed up just like that
19 (indicating).

20 Q And could you see an arm?

21 A I saw like an elbow and a shoulder just like
22 that (indicating).

23 Q And this is -- the shots came from that window?

24 A Yes, sir.

25 (Witness resumes the witness stand.)

1 Q Did you see where the second shots came from,
2 set of shots?

3 A The flash was coming from the middle of the
4 back window.

5 Q And where was this car in relation to you now,
6 Mr. Derrick, after the second set of shots, where
7 was it?

8 A The second set of shots it was almost directly
9 in front of me.

10 Q And is that when you said you saw the flash?

11 A Yes, sir.

12 Q And as you just testified, it looked like it
13 was coming from the back of the truck?

14 A Yes, sir.

15 Q Was your front window hit?

16 A No, sir, it was not.

17 Q The first set of shots, did you see an arm or
18 did you not?

19 A I did not see an arm.

20 Q And on the second set of shots, you said it
21 came from the back of the truck, could you see an
22 arm then?

23 A No, sir. The only thing I could see was the
24 flashes.

25 Q And if you told the police earlier you saw an

1 arm out the window, could you just be confused about
2 that?

3 A Yes, sir, I could be.

4 Q Where were the shots coming from?

5 A The passenger side of the vehicle.

6 Q Where were the shots the second time?

7 A Directly behind the vehicle.

8 Q You got two kids in the back, they -- are these
9 the two baby carriages?

10 A Yes, sir.

11 Q And was one of them hit?

12 A Yes, sir, it was.

13 Q Showing you State's 36 is this one of yours?

14 A Yes, sir.

15 Q Was this in your car?

16 A Yes, sir.

17 Q And who was sitting in here?

18 A My oldest little boy, Zach.

19 Q Now, right down here, this part right here, can
20 you see that?

21 A Yes, sir.

22 Q That part right there, was that like that
23 before the shooting?

24 A No, sir, it was not.

25 Q Was it like that after the shooting?

1 **A** Yes, sir, it was.

2 **Q** And who was sitting in here?

3 **A** Zachary.

4 **Q** Did Zachary's leg get injured as a result of
5 this shooting?

6 **A** Yes, sir, it did.

7 **Q** What kind of injuries?

8 **A** He had an abrasion on the back side of his left
9 thigh.

10 **MR. MEADORS:** Your Honor, we'd offer State's
11 36.

12 **THE COURT:** Any objection?

13 **MR. COLLINS:** No objection, Your Honor.

14 **THE COURT:** Marked it in evidence. You all
15 probably need to substitute a photograph or
16 something after the trial.

17 **MR. MEADORS:** That's fine. Yes, sir.

18 (State's Exhibit Number 36, baby seat,
19 admitted into evidence.)

20 **BY MR. MEADORS:**

21 **Q** Just for right now, just tell me if you
22 recognize these or do they relate to your testimony
23 without saying what they are. This would be State's
24 20?

25 **A** Yes, sir.

1 Q State's 19?

2 A Yes, sir.

3 Q State's 18?

4 A Yes, sir.

5 Q State's 39?

6 A Yes, sir.

7 Q And State's 34?

8 A Yes, sir.

9 Q And yes, sir means they relate to your
10 testimony, you recognize them?

11 A Yes, sir, that's correct.

12 (Pause.)

13 MR. MEADORS: Your Honor, these are for I.D. at
14 this point.

15 Q State's 39 for I.D., was this the condition of
16 your car before or after the shooting?

17 A After.

18 Q Same on 34?

19 MR. COLLINS: Your Honor, he's showing the
20 pictures to the jury as he's showing them to him.

21 MR. MEADORS: Your Honor, they're coming in
22 through another witness. I'm just trying to -- and
23 I wasn't doing that intentionally.

24 BY MR. MEADORS:

25 Q 20?

1 **A** After.

2 **Q** And this is 18. It just shows your child with
3 injuries, correct?

4 **A** Yes, sir.

5 **Q** And 19?

6 **A** Yes, sir.

7 **Q** That shows the car after the shooting?

8 **A** That's after the shooting, yes, sir.

9 **MR. MEADORS:** Your Honor, we would offer
10 State's 18 as a foundation, that's the injuries to
11 his son afterwards. The other ones we'll hold and
12 try to get them through somebody else.

13 **MR. COLLINS:** Your Honor, we would object just
14 for the prejudicial nature of this picture. We
15 don't know where this picture was taken. I believe
16 it's obvious of the prejudicial nature of the
17 picture.

18 **MR. MEADORS:** Your Honor, if we could approach.

19 (Whereupon, a bench conference was held off
20 the record, in the presence of the jury, but out of
21 the hearing of the jury.)

22 **THE COURT:** I've been instructed with regard to
23 Exhibit 18 that the purpose the State is offering
24 this, they're comfortable cropping the picture so --
25 and I'm not required to make a ruling on the issue

1 because there's an agreement to crop out the part
2 that's objected to. As I understand it, you can't
3 show that to the jury until it's cropped.

4 (State's Exhibit Number 18, photograph,
5 admitted into evidence.)

6 BY MR. MEADORS:

7 Q Does that show the nature of your son's
8 injuries?

9 A Yes, sir, it does.

10 Q I'm just going to show you what's marked
11 State's 21 for I.D. Are you one Grover Gene
12 Derrick?

13 A Yes, sir, I am.

14 Q And did you give law enforcement a statement?

15 A Yes, sir, I did.

16 Q And is that your signature down there?

17 A Yes, sir, it is.

18 Q What's the date on that?

19 A The date on that is October the 18th, 2004.

20 Q And who did you give that to?

21 A Scott Faust.

22 Q Stephanie have a gun?

23 A No, sir.

24 Q You have a gun?

25 A No, sir.

- 1 Q Zachary or Cody have a gun?
- 2 A No, sir.
- 3 Q Did they have a toy gun?
- 4 A Yes, sir.
- 5 Q Had you ever seen that black truck before?
- 6 A I've never seen it before.
- 7 Q Did you know who was in that black truck?
- 8 A No, sir, I did not.
- 9 Q Did you have any bad blood with anybody in that
- 10 truck?
- 11 A No, sir.
- 12 Q Did you do anything in your mind that morning
- 13 to cause that black truck to shoot into your
- 14 vehicle?
- 15 A No, sir.
- 16 Q Did you threaten them?
- 17 A No, sir.
- 18 Q Cuss them?
- 19 A No, sir.
- 20 Q Just been in a fight with them?
- 21 A No, sir.
- 22 Q Have any idea who they were?
- 23 A No idea whatsoever.
- 24 Q To your knowledge, did Stephanie know them?
- 25 A No, sir.

1 **MR. MEADORS:** Thank you.

2 **THE COURT:** All right. Ladies and gentlemen,
3 we're going to take about a ten minute break and
4 then I'll get you back out here. Don't discuss the
5 case.

6 (The jury retires to the jury room.)

7 **THE COURT:** Mr. Derrick, during this recess,
8 you may stay up there or you may step down, but you
9 cannot discuss your testimony with anyone,
10 understand?

11 **THE WITNESS:** Yes, sir.

12 **THE COURT:** Thank you.

13 We're in recess for ten minutes.

14 (Brief recess.)

15 **THE COURT:** Mr. Derrick, I need you back up
16 there, please.

17 Defense ready?

18 **MR. COLLINS:** The defense is ready, Your Honor.

19 **THE COURT:** State?

20 **MR. MEADORS:** Yes, sir.

21 **THE COURT:** Bring the jury in, please.

22 (The jury returns to the courtroom.)

23 **THE COURT:** Cross-examination.

24 **MR. COLLINS:** Please the Court.

25 **THE COURT:** Yes, sir.

1 CROSS-EXAMINATION

2 BY MR. COLLINS:

3 Q Good afternoon, Mr. Derrick.

4 A Good afternoon.

5 Q You testified you remembered giving a written
6 statement to Investigator Faust?

7 A Yes, sir.

8 Q And that was the day after this happened?

9 A Yes, sir.

10 Q You had also spent some time with Investigator
11 Faust before you reduced that statement to writing,
12 correct?

13 A Correct.

14 Q In fact, you rode in the car with him on the
15 same route that night?

16 A No, sir, that was not the same night.

17 Q I'm sorry. The following day you rode with
18 Investigator Barnes and Investigator Faust on the
19 same route that you took the night this happened?

20 A That's correct.

21 Q And the whole time you were talking about what
22 had happened?

23 A Yes, sir.

24 Q As you remembered it?

25 A Yes, sir.

1 Q And that ride kind of triggered some extra
2 details, right?

3 A That's correct.

4 Q And you reviewed that written statement getting
5 ready for this trial, haven't you?

6 A Yes, sir, I briefly looked over it.

7 Q This happened a long time ago, correct?

8 A Yes, sir.

9 Q A few years ago?

10 A Yes, sir.

11 Q About how many times would you say you reviewed
12 that statement?

13 A I've only reviewed it one time.

14 Q One time?

15 A Yes, sir.

16 Q And you've spoken with people in the
17 Solicitor's office before this trial, right?

18 A Yes, sir.

19 Q Who notified you that the case was solved?

20 A That the case was solved?

21 Q That they had made an arrest, who notified you?

22 A I had contact with the Solicitor's office and
23 also one of the workers at Richland County, Jonathan
24 Talkish.

25 Q Did they tell you that they arrested the driver

1 of the vehicle?

2 A They didn't release anything to me, just told
3 me I needed to come in.

4 Q And you've since learned that they arrested the
5 driver of the vehicle?

6 A Yes, sir.

7 Q When did you learn that?

8 A I think it was the same day that I got the
9 telephone call.

10 Q About --

11 A When I'd come into Richland County Sheriff's
12 Office.

13 Q Okay. Now, when you originally gave this
14 information to Investigator Faust, I'm talking about
15 the verbal conversations and the written statement,
16 I'm just going to group all that together, okay?

17 A Okay.

18 Q When you're initially giving them this
19 information, you want to be as accurate as possible,
20 right?

21 A Yes, sir, I did.

22 Q Because you wanted them to catch who shot and
23 killed your fiancée?

24 A Yes, sir.

25 Q And you testified that you came up from behind

1 the truck?

2 A Yes, sir.

3 Q Did you have your lights on?

4 A Yes, sir, I did.

5 Q And it was shining in the back of the truck?

6 A Yes, sir.

7 Q And I believe in your written statement, that
8 you stated that the back window of the truck was
9 solid glass, right?

10 A Yes, sir, it was in my written statement, yes,
11 sir.

12 Q And that's what you told the investigator?

13 A Yes, sir.

14 Q Solid glass window in the back?

15 A Yes, sir, because that's the way it appeared.

16 Q That's the way it appeared?

17 A Yes, sir.

18 Q Now, you testified about two separate sets of
19 gunshots?

20 A Yes, sir.

21 Q The first one you said was as the truck came
22 past you, right?

23 A That's correct.

24 Q The passenger side of the truck passed your
25 driver's side of the car?

1 **A** Yes, sir.

2 **Q** And you did a demonstration with Mr. Meadors by
3 seeing a shoulder and an arm?

4 **A** Yes, sir, what appeared to be an arm, but I
5 mean --

6 **Q** What appeared to be an arm?

7 **A** -- I saw a shoulder leaned up.

8 **Q** Do you remember exactly what you put in your
9 written statement?

10 **A** I can't recall directly off the top of my head,
11 no, sir.

12 **Q** If I showed you a copy of the written
13 statement, would that refresh your memory?

14 **A** Yes, sir, it would.

15 **Q** This is State's Exhibit 21. See if that
16 refreshes your memory about what's exactly in your
17 statement. I can reference you to the top of page
18 two.

19 **A** Yes, sir.

20 **Q** Can you tell me exactly what you said starting
21 with, I heard gunshots, about four or five?

22 **A** I heard gunshots, about four or five. I looked
23 over and saw an arm that had a shoulder all the way
24 against the door.

25 **MR. MEADORS:** Your Honor, was he offering that?

1 **MR. COLLINS:** I'm not offering it.

2 **MR. MEADORS:** No objection.

3 BY MR. COLLINS:

4 **Q** So that was the first set of gunshots, right?

5 **A** Correct.

6 **Q** And that came from the passenger side of the
7 truck is what you testified to?

8 **A** Yes, sir.

9 **Q** And then the truck proceeded on?

10 **A** Yes, sir.

11 **Q** All right. I'm going to stay with the written
12 statement here because this is a lot closer to the
13 time it happened, correct?

14 **A** Yes, sir, it is.

15 **Q** So the truck went to the outside fast lane.
16 You got in the middle lane, right?

17 **A** Yes, sir.

18 **Q** The truck was maybe ten to 15 feet ahead of you
19 and you started chasing him, right?

20 **A** Yes, sir.

21 **Q** The truck had just fired at you and you started
22 chasing them; is that correct?

23 **A** Yes, sir.

24 **Q** And then you said the truck cut back across the
25 interstate?

1 A Yes, sir.

2 Q And then you got up to Monticello Road exit,
3 right?

4 A Yes, sir.

5 Q Can you tell me exactly what happened after
6 that, or can you tell me what's in your written
7 statement that happened at the Monticello Road exit?

8 A We got up to Monticello Road exit and he stuck
9 what looked like his left arm out of the window and
10 started shooting at us again.

11 Q So you said he?

12 A Yes, sir.

13 Q Stuck what looked like his left arm?

14 A Yes, sir.

15 Q Out of the window and started shooting again?

16 A Yes, sir.

17 Q Does it say anything about seeing a muzzle
18 blast in the middle of the window anywhere in this
19 statement?

20 A No, sir, it does not.

21 Q Further along in your statement, the bottom --
22 starting at the bottom of page two, you described
23 the passengers of the car, correct?

24 A Correct.

25 Q You say that the driver looked to be a black

1 male?

2 A Yes, sir.

3 Q And then you go on to describe the passenger.
4 What do you call the passenger at the bottom of page
5 two?

6 A It looked to be bushy hair.

7 Q Back up a little bit. If you could read your
8 answer to the question, Describe the people in the
9 truck that shot at you.

10 A The driver looked to be a black male. He did
11 not have a hat on. It looked to be bushy hair. The
12 passenger was the shooter. He looked to be black.

13 Q So you stated the passenger was the shooter,
14 that's what's in your written statement given the
15 day after this happened?

16 A Yes, sir, that's correct.

17 Q You further state that you could probably, if
18 you saw a picture of the passenger, you could
19 probably pick him out, right?

20 A Yes, sir, that's in my statement.

21 Q Did they ever show you a photo lineup of
22 anybody?

23 A No, sir, they did not.

24 Q Did you ever go to a live lineup?

25 A No, sir.

1 Q Not of any kind?

2 A No, sir.

3 Q Have you ever see Kerwyn Phillips?

4 A No, sir, I have not.

5 Q Do you know who that is?

6 A Just from -- prior to this, no, sir, I did not.

7 Q And each -- the two sets of gunshots, it was
8 the same pattern of shots, correct?

9 A That's correct.

10 Q About three or four shots?

11 A Yes, sir.

12 Q In the same manner?

13 A Yes, sir.

14 Q I'm checking over my notes, please bear with
15 me.

16 You said you and your wife probably smoked a
17 full pack of cigarettes from the time you left
18 Pelion?

19 A Yes, sir.

20 Q How long does it take -- was it about an hour?

21 A A little less. It just depends.

22 Q Now, you testified that you drank some beers
23 and possibly a margarita?

24 A Yes, sir.

25 Q And that your wife doesn't drink. She didn't

1 have anything to drink, or your fiancée, I
2 apologize?

3 **A** No, sir.

4 **Q** Why didn't you let her drive?

5 **A** She never was one that would partake in
6 drinking alcohol -- drive?

7 **Q** Yeah --

8 **A** Oh, I'm sorry. I don't know. She didn't like
9 to drive at night basically.

10 **MR. COLLINS:** Beg the Court's indulgence.

11 **THE COURT:** Yes, sir.

12 (Pause.)

13 BY MR. COLLINS:

14 **Q** One more question. You testified that the
15 window on the passenger side of the Buick did not
16 roll down?

17 **A** That's correct.

18 **MR. COLLINS:** No further questions, Your Honor.

19 **THE COURT:** Thank you.

20 Redirect?

21 **MR. MEADORS:** Yes, sir.

22 REDIRECT EXAMINATION

23 BY MR. MEADORS:

24 **Q** Specifically on what he asked you, do you still
25 have your statement up there?

1 **A** Yes, sir, I've got it right here.

2 **Q** That's 21 for I.D.

3 **MR. MEADORS:** Your Honor, mind if I approach?

4 **Q** And do you mind if I stand by you?

5 **A** No, sir, I do not.

6 **Q** Did you put in this statement about going to
7 the flea market?

8 **A** Yes, sir, I did.

9 **Q** You can just answer. And did you put in there
10 about going to Mike Langford's?

11 **A** Yes, sir.

12 **Q** Put in there about stopping to get some cigs,
13 cigarettes?

14 **A** Yes, sir.

15 **Q** Did you put in there about the peanut place?

16 **A** Yes, sir.

17 **Q** And you testified, I think you told Mr.
18 Collins, it didn't appear to you that it was a
19 sliding glass -- or the window was open -- looked
20 solid in the back?

21 **A** Yes, sir.

22 **Q** You didn't know that, but it appeared that way
23 to you?

24 **A** It appeared that way to me.

25 **Q** Did you learn to come find out it did slide; do

1 you know that?

2 **A** No, sir, I didn't know that.

3 **Q** But it appeared to you that it didn't, correct?

4 **A** Yes, sir.

5 **Q** Did you put in here whether or not how fast you
6 were going on page one?

7 **A** Yes, sir, I did.

8 **Q** Did you put in there whether or not you were on
9 cruise control?

10 **A** Yes, sir, I did.

11 **Q** On page two, did you put in here about the
12 truck coming back up on you near the driving range?

13 **A** Yes, sir.

14 **Q** And he asked you about it and I'll ask you
15 again. Did you say in this statement about looking
16 over and then seeing an arm that had its shoulder
17 all the way against the door?

18 **A** Yes, sir, I sure did.

19 **Q** You put that in here?

20 **A** Yes, sir.

21 **Q** Is that what you demonstrated to me earlier,
22 your interpretation of that?

23 **A** Yes, sir.

24 **MR. COLLINS:** Your Honor, we have no objection
25 if the State wishes to submit the statement.

1 **MR. MEADORS:** Your Honor, if he wanted to offer
2 it, that's what I said over there. Would you like
3 to offer it?

4 **MR. COLLINS:** The defense is not offering the
5 statement. If the State would like to offer the
6 statement, we do not have an objection to it.

7 **MR. MEADORS:** So they do not want to offer it?

8 **THE COURT:** There's nothing for me to rule on.

9 **MR. MEADORS:** Your Honor, we'll offer it.

10 **THE COURT:** There's no objection?

11 **MR. COLLINS:** No objection.

12 **MR. MEADORS:** So this will now be State's 21.

13 **THE COURT:** Yes, sir.

14 (State's Exhibit 21, statement, admitted
15 into evidence.)

16 BY MR. MEADORS:

17 **Q** Now, staying on page two, in this response to
18 questions, you put that the truck cut back across,
19 right?

20 **A** Yes, sir.

21 **Q** All right. And did you talk in here about the
22 truck splitting the lanes and coming back after the
23 first shot?

24 **A** Yes, sir, I sure did.

25 **Q** You put in here you started chasing them?

1 A Yes, sir.

2 Q And you did?

3 A Yes, sir.

4 Q Did you put then that the truck cut back across
5 in front of you?

6 A Yes, sir.

7 Q And where were you then?

8 A We're at Monticello Road.

9 Q And where was your car in relation to this car
10 at that time?

11 A When I'd come up to Monticello Road, I was...

12 Q Are you in front of him or behind him?

13 A I was behind him when he was coming up on
14 Monticello Road.

15 Q And is that where you heard the other shots or
16 saw the other shots?

17 A Yes, sir.

18 Q And you put in your statement you -- I don't
19 know -- I think he asked you about this. You got in
20 your statement, It looked like his left arm out of
21 the window and started shooting at us again?

22 A Yes, sir.

23 Q And where were those shots coming from?

24 A They were coming from the back of the vehicle.

25 Q Any doubt about that in your mind?

1 A No, sir, there's not.

2 Q Where did you see the flashes?

3 A From the back of the window.

4 Q Did you put in here about asking Stephanie for
5 the phone and that's when you realized that she
6 couldn't answer you?

7 A Yes, sir.

8 Q Did you put in here about asking for the phone
9 and that's when you realized she had been shot?

10 A Yes, sir.

11 Q He asked you that last question about you did
12 say about your window -- her window not being rolled
13 down because of the motor, is that in here?

14 A Yes, sir.

15 Q Her window will not roll down, the motor's
16 broke?

17 A That's right, right there.

18 Q Did you put in here about throwing her
19 cigarette out?

20 A Yes, sir, I did.

21 Q Did you put in here about whether or not you
22 took some more draws on your cigarette and threw
23 them out?

24 A Yes, sir, I sure did.

25 Q And what relation to the shooting, time-wise,

1 did you say you threw these cigarettes out?

2 A From one cigarette to the other?

3 Q Read that line right there.

4 A I had about two more draws on my cigarette and
5 I was going to throw it out, that is about the time
6 the shootings happened.

7 Q And had you already thrown her cigarette out
8 prior to that?

9 A Yes, sir, I did.

10 Q Show this jury again how you throw a cigarette
11 out.

12 A I put it in my finger and I thump it just like
13 that (indicating).

14 Q Do it again.

15 A Just like that (indicating).

16 Q Do you know who shot the shot?

17 A No, sir, I could not tell you who did.

18 Q Where did the first shots come from?

19 A They'd come from the passenger side of the
20 truck.

21 Q And is that the same passenger side where you
22 said earlier that the arm and the shoulder was up
23 like this of the passenger?

24 A Yes, sir, it is.

25 Q But those shots came from that passenger side?

1 A Yes, sir, they did.

2 Q How long was it from the time of this shooting
3 -- this is October, what, 17th?

4 A Yes, sir.

5 Q November, December, January, February, March,
6 April, May, June, July, it was on into next year,
7 right, when he got arrested?

8 A Yes, sir.

9 Q And when Mr. Collins asked you, I think on the
10 last page you gave a description, driver looked to
11 be a black male, didn't have a hat on, bushy hair,
12 the passenger was shorter, he looked to be black?

13 A Yes, sir, that's correct.

14 Q And when I passed him, I looked in the mirror
15 and he was a black male?

16 A Yes, sir.

17 Q You could tell he was a black male, probably in
18 his 20's?

19 A Yes, sir.

20 Q Hair looked to be short?

21 A That's correct.

22 Q And at that time, the day after, you said, If I
23 saw a picture of him, I might could pick him out,
24 correct?

25 A Yes, sir.

1 Q And they were arrested over a year later?

2 A Yes, sir.

3 Q And where was it you saw, Mr. Collins asked you
4 this, where was it you saw the passenger? Help me
5 out on that. Where was it -- where did you say you
6 see him in this sequence of events? On 20 or when
7 you turned around Fairfield Road exiting?

8 A When I turned on Fairfield Road coming on the
9 horseshoe loop.

10 Q And at that time, you had a view of the
11 passenger?

12 A Yes, sir.

13 Q If I'm you, your window's right here?

14 A Yes, sir.

15 Q Was the window up or down when these first set
16 of shots came in?

17 A My window was down.

18 Q Who's to the right of you?

19 A Stephanie.

20 Q After the shots, bullets in her hair?

21 A Yes, sir.

22 Q Second set of shots come up before you this
23 way?

24 A Yes, sir.

25 Q Any of your front car or window damaged?

1 **A** No, sir.

2 **Q** Based on your being there and hearing these
3 shots and seeing those flashes, does any of those
4 shots hit you?

5 **A** Not that I know of.

6 **Q** The wound to Stephanie, was it on this side,
7 this side or this side?

8 **A** It was right here (indicating).

9 **MR. MEADORS:** That's all.

10 **THE COURT:** Recross?

11 **MR. COLLINS:** Briefly, Your Honor.

12 RECROSS-EXAMINATION

13 BY MR. COLLINS:

14 **Q** I don't know if my ears are deceiving me or
15 not, but I believe I just heard Mr. Meadors, when he
16 was reading over your answer to describe the people
17 in the truck, did he just read that it said the
18 passenger was shorter or did he say the passenger
19 was the shooter? Can you read your answer again,
20 please?

21 **MR. MEADORS:** If I said shorter, it's shooter.

22 BY MR. COLLINS:

23 **Q** Basically, the only difference between the
24 statement you signed the day after this happened and
25 your testimony here today is where those shots are

1 coming from?

2 **A** Yes, sir.

3 **MR. COLLINS:** Thank you.

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

5 **MR. MEADORS:** Your Honor, was that last
6 question, different where that came from. I just
7 didn't hear it.

8 **RE-REDIRECT EXAMINATION**

9 **BY MR. MEADORS:**

10 **Q** That's not true, is it?

11 **A** No. They come --

12 **Q** They always came from that passenger --

13 **A** They come from the passenger side of the truck.

14 **Q** That ain't never changed, has it?

15 **A** No.

16 **Q** You said that then, you said that today?

17 **A** I thought he was saying who the shooter was.

18 **MR. MEADORS:** Thank you.

19 **THE COURT:** Do you have any further questions
20 of the witness?

21 **MR. COLLINS:** Nothing further, Your Honor.

22 **THE COURT:** Thank you, sir. You may step down.
23 Call your next witness.

24 **MS. MCDUFFIE:** State would call Investigator
25 Stan Richards.

1 **THE COURT:** Come around, please.

2 **MR. MEADORS:** Judge, can we approach?

3 (Whereupon, a bench conference was held off
4 the record, in the presence of the jury, but out of
5 the hearing of the jury.)

6 STANLEY RICHARDS,

7 having been duly sworn, testified as follows:

8 **THE WITNESS:** Stanley Richards, Richland County
9 Sheriff's Department Crime Scene Unit.

10 DIRECT EXAMINATION

11 BY MS. MCDUFFIE:

12 **Q** Good afternoon, Investigator Richards.

13 **A** Good afternoon.

14 **Q** Investigator Richards, where are you currently
15 employed?

16 **A** With the Richland County Sheriff's Department.
17 I am a sergeant with the crime scene unit.

18 **Q** And how long have you been employed there?

19 **A** Since 1994 and I've been with the crime scene
20 unit for about six and a half years.

21 **Q** And what are your current duties?

22 **A** I am the current sergeant of the unit. I
23 supervise seven crime scene investigators. We
24 process crime scenes that entails identification,
25 collection and preservation of physical evidence at

1 any crime scene.

2 Q And do you have any special education or
3 background to help you with these duties?

4 A Yes, ma'am. My background includes
5 undergraduate studies at Gainesville College and
6 Saint Leo University in criminal justice, also some
7 graduate studies at Wayland Baptist College in
8 sociology. I've been trained in crime scene
9 investigation, marijuana analysis, blood pattern
10 analysis, DNA procedures, crime scene photography,
11 latent print verification and latent print
12 processing, palm print verification, crime scene
13 forensic shooting reconstruction, shoe and tire
14 track impressions, NCIC and A-F-I-S, which is AFIS
15 training, crime scene reconstruction, comparison
16 examination of footwear impressions, advanced blood
17 pattern analysis. And I'm also certified as a crime
18 scene investigator with the international
19 association for identification.

20 Q Thank you, Investigator. The duties that you
21 described prior, were those the same duties that you
22 had with the sheriff's department in October of
23 2004?

24 A They are.

25 Q And were you working on October 17th of 2004?

1 **A** I was.

2 **Q** And did you happen to be called out to the
3 Flying J, which is off of I-20?

4 **A** Yes, ma'am.

5 **Q** And what was the nature of that call?

6 **A** I responded to the Flying J, which is 5901
7 Fairfield Road, that night at approximately two
8 o'clock in the morning. When I arrived, I met with
9 a Deputy Scobie who was on the scene and he had a
10 vehicle, which was a black in color Buick Century,
11 paper tags all in the mark of Carolina, in the front
12 parking lot in front of Flying J. He had it roped
13 off, which says to me he had it secured with crime
14 scene tape and secured and also had initiated a
15 crime scene log at the time.

16 I spoke with Deputy Scobie, which he told me
17 that there had been a shooting incident somewhere
18 other than there at the Flying J, presumably
19 somewhere on I-20 on the interstate and that a
20 victim in the front seat, front passenger seat, had
21 been wounded by gunfire. There had been a juvenile
22 in the back seat that also had been injured and they
23 had been transported to Richland Memorial Hospital
24 at that time.

25 **Q** I want to show you what's been marked for

1 identification as State's Exhibits 22, 23, 24, 25,
2 26, 27, 28, 29, 30 and 31. If you would, please
3 look at those and tell us if those are a fair and
4 accurate depiction of what you saw on that evening?

5 **A** Yes, they are.

6 (Pause.)

7 **MR. COLLINS:** No objection.

8 **MS. MCDUFFIE:** Your Honor, the State would move
9 Exhibits 22 through 31 into evidence.

10 **THE COURT:** All right.

11 (State's Exhibit 22 through 31, photographs,
12 admitted into evidence.)

13 BY MS. MCDUFFIE:

14 **Q** Investigator Richards, I'm going to show you
15 what's been marked as State's Exhibit 22. Would you
16 please show the jury and tell them what that picture
17 contains?

18 **A** This is a picture which depicts the left
19 exterior side of the Buick Century, that's a
20 photograph that I took. I also placed the markings
21 there. These markings are one through four on the
22 left side of the exterior. This indicates impact
23 points that I found upon observing this vehicle and
24 marked them as such. The first one is at the left
25 front door, exterior door, at the top near the

1 window.

2 Q And would that be what's depicted in State's
3 23?

4 A Yes, it is.

5 Q And what is that a picture of?

6 A It's a picture of an impact point at the left
7 front driver's side door exterior at the top near
8 the window.

9 Additionally, impact points that I found marked
10 by myself two, three and four was the left-side,
11 rear door exterior and they were photographed by me
12 also.

13 Q And what does State's 24 depict?

14 A State's 24 depicts impact point number two,
15 which I marked, on the left rear exterior door as
16 having a projectile embedded in that door, which I
17 retrieved.

18 Q I'm going to show you what's been marked as
19 State's 37 for identification purposes. Do you
20 recognize that?

21 A This, in my handwriting, is the projectile at
22 impact point marked number two from the vehicle of
23 that night.

24 MS. MCDUFFIE: State would offer Exhibit 37
25 into evidence.

1 **MR. COLLINS:** Your Honor, at this time, there's
2 been no chain of custody provided for this piece of
3 evidence.

4 BY MS. MCDUFFIE:

5 **Q** Investigator Richards, what did you do after
6 you collected that projectile?

7 **A** I placed it in this envelope, sealed it with my
8 initials on it. I filled out an evidence label
9 which we use to in turn place evidence into our
10 evidence repository, which I did.

11 **Q** And if you open that up, has that seal been
12 tampered with or changed in any way since you sealed
13 it?

14 **A** It appears it has initials and the date of
15 David Collins, which is our ballistics technician at
16 the department.

17 **Q** State's Exhibit 25, can you tell the jury what
18 that is?

19 **A** That's the third impact point from the left
20 rear exterior of the car, which I marked and
21 photographed.

22 **Q** State's Exhibit 26?

23 **A** The fourth impact area at the left rear
24 exterior of the door of the car, which I
25 photographed.

1 Q 27?

2 A Number five, I opened the door, the left rear
3 door to the vehicle, looked inside and found damage
4 to the inside of the door, the left rear door. This
5 could be -- could have been a perforated projectile
6 which came through the door itself. I marked the
7 damage as number five and photographed it.

8 Q State's Exhibit 28?

9 A Having been told during conversation with the
10 deputy and with Investigator Faust, who did arrive
11 on the scene and furnished me with more information,
12 that the juvenile in the car in the back was also
13 injured in the left leg. I noticed that the left
14 side of the child's seat, which had been in the back
15 seat of the car, was damaged on the left side. I
16 marked that as number six and I photographed it.

17 Q And please tell the jury what's in State's 29.

18 A This is marked number seven. I opened the
19 right front door, which is the passenger side front
20 door to the vehicle, observing blood on the
21 passenger seat, also observed a projectile laying in
22 the seat. I marked it as number seven and collected
23 that projectile.

24 Q I'm going to show you what's been marked for
25 I.D. as State's Exhibit 38. Do you recognize that?

1 **A** This is projectile marked number seven I
2 collected from the front passenger seat of the
3 vehicle that night and placed in evidence.

4 **Q** And is that in substantially the same condition
5 as when you placed it in evidence?

6 **A** It is aside from the markings of David Collins
7 who is our ballistics technician.

8 **Q** Show you State's Exhibit 30, can you please
9 tell the jury what that contains?

10 **A** This is some blood that was found in the back
11 floorboard of the vehicle and was photographed that
12 night.

13 **Q** And, finally, State's Exhibit 31?

14 **A** This is the blood that was found in the right
15 front passenger seat that was found that night by me
16 and photographed.

17 **Q** After you photographed the vehicle that night
18 and collected those projectiles, did you do anything
19 else there?

20 **A** I determined while I was at the scene and being
21 given information that I was given, that any
22 trajectory being -- analysis that involved
23 directionality was not needed at that particular
24 scene because that was not where the incident
25 actually happened. So there was nothing to do there

1 in the form of directionality. Trajectory analysis
2 which would in turn encompass angles, vertical
3 angles or horizontal angles or azimuth angles, could
4 be accomplished in a more secure setting like the
5 garage that we have, our forensics garage.

6 I, in turn, notified a towing company, which
7 was Carolina Towing, to come and tow the vehicle to
8 our garage. I did collect, at that time, as we've
9 stated, the two projectiles so they wouldn't be lost
10 in the transportation of the vehicle to our garage.
11 I also collected some clothing that was on the
12 ground, which I was told belonged to the juvenile.

13 Q And when you called for towing of that vehicle,
14 did you leave the vehicle at that time?

15 A No, I didn't. I stayed there until the towing
16 company got there. I followed the vehicle back to
17 our garage because I had to secure the vehicle in
18 our garage, which I did.

19 Q And then after you photographed the vehicle and
20 left the Flying J, where did you go after that?

21 A After the vehicle was secured in the garage, I
22 responded to Richland Memorial Hospital where I
23 collected clothing that belonged to a Stephanie
24 Dover. And I also collected some clothing from
25 Investigator Faust who had gotten that from Zachary

1 Dover through chain of custody and those items were
2 also placed into evidence at a later date.

3 **Q** And did you do anything else while you were at
4 the hospital?

5 **A** Yes, I did. I performed -- or I processed
6 Mr. Dover (sic) -- or -- yes, Mr. Dover for gunshot
7 residue at that time at the hospital.

8 **Q** I'm going to show you what's been marked for
9 I.D. as State's Exhibit 65. Do you recognize that?

10 **A** Yes, I do. It's a gunshot residue kit that I
11 used to process Mr. Dover.

12 **Q** Describe for the jury how you administer a
13 gunshot residue test.

14 **A** Gunshot residue comes in the form of different
15 particles such as lead, antimony, barium. These
16 escape in gases from a gun that is fired with the
17 ignition of the primer in the gun. These particles
18 go into the air, come back down in the form of a
19 vapor and they can land on a person's hand,
20 clothing, whatever might be close by and could
21 depict a gun being fired.

22 **Q** And how do you actually administer the gunshot
23 residue kit?

24 **A** What I do in order to lift those particles is I
25 use two different things and it all comes in the kit

1 that you just saw. Number one is a sticky tab.
2 It's just a cylinder type tab. It's got a sticky
3 substance on the end kind of like tape and you just
4 run it across a person's hands, clothing or whatever
5 you're trying to process. Hopefully, it's going to
6 pick up some of the particles you're trying to get.

7 Additionally, I use a swab. It's a cotton swab
8 that is moistened with distilled type water and that
9 is swabbed over a person's hands back and front, in
10 between the fingers or whatever item you're trying
11 to collect particles from and then those items are
12 then sent to the analysis at SLED.

13 Q And do you do any sort of control --

14 A Yes, I do. With every kit, there is a control
15 that you have to do and that does not entail the
16 areas where you are processing for the particles or
17 for the gunshot residue. My experience is, and what
18 I always do, is I either do the shoulders or a
19 portion of a person's leg that's underneath whatever
20 clothing they might be wearing so those particles
21 hadn't settled on that person's skin that I'm taking
22 the control from.

23 Q And what did you do with the gunshot residue
24 kit after you took it from Mr. Derrick?

25 A I sealed it. I fill out the forms for it to be

1 sent to SLED. I entered that into our evidence at
2 the evidence room, which in turn they delivered it
3 to SLED.

4 Q And did you have any other involvement with
5 this case after that?

6 A Yes, I did. I did not execute the search
7 warrant for this particular vehicle, which was the
8 black Century, but I did participate in that,
9 collecting, I believe, five blood swabs from the
10 interior of the vehicle and I photographed the trunk
11 which had the miscellaneous items in it, nothing
12 collected.

13 Q And did you have the opportunity later, either
14 that day or the next day, to go out to the scene of
15 this on I-20?

16 A Yes, I did. Once I left the hospital -- please
17 forgive me -- once I left the hospital, I did return
18 and met with my sergeant at that time, Sergeant
19 Clemens at I-20. We searched the portion of the
20 eastbound lane on I-20 from Broad River Bridge two
21 point four miles west on the eastbound side looking
22 for fired cartridge casings and that met with
23 negative results at that time.

24 Q And that portion that you were searching, was
25 that in Richland County?

1 **A** Yes, it was.

2 **Q** And you did not find anything when you were
3 searching?

4 **A** Not at that time, no.

5 **Q** And did you later have the opportunity to be
6 involved in this case in 2005?

7 **A** Yes, I was. I received a search warrant for a
8 1990 black in color Chevy truck. I, along with an
9 Investigator Bouknight, executed that search warrant
10 on the vehicle. What that encompassed was
11 photographing the vehicle inside and out and
12 searching for weapons, ammunition, paraphernalia
13 that might be used in conjunction with a shooting.

14 **Q** I'm going to show you what's been marked for
15 identification State's Exhibits 40 through 49. Do
16 you recognize those pictures?

17 **A** Yes. That's the Chevy pick-up that I executed
18 a search warrant on.

19 **Q** And are those a fair and accurate depiction of
20 how you saw the vehicle?

21 **A** They are.

22 **Q** I'm going to show you what's been marked as
23 State's Exhibits 66 through 93. Do you recognize
24 these pictures?

25 **A** Yes. These photographs depict that vehicle

1 also, the Chevy pick-up, but mostly the bed of the
2 pick-up, that was also searched.

3 **Q** And are these a fair and accurate
4 representation of the pick-up?

5 **A** They are.

6 **MS. MCDUFFIE:** Your Honor, the State would
7 offer Exhibits 40 to 49 and 66 to 93 into evidence.

8 **THE COURT:** Any objection?

9 **MR. COLLINS:** Your Honor, these pictures are
10 from over a year after the incident. I don't really
11 see the relevance of these pictures.

12 **THE COURT:** Let me see them.

13 **MR. COLLINS:** I believe there are a few
14 pictures of a portion of the tailgate which we,
15 obviously, would be okay with being introduced, but
16 the rest of the pictures just seem cumulative and
17 irrelevant.

18 **MR. MEADORS:** Can we approach?

19 (Whereupon, a bench conference was held off
20 the record, in the presence of the jury, but out of
21 the hearing of the jury.)

22 **THE COURT:** State's Exhibit 40 through 49 are
23 admitted subject to the objection. State's Exhibit
24 91, 92, 93 are admitted. Why do we need these
25 pictures of a tool box and things in the truck?

1 **MS. MCDUFFIE:** Your Honor, those would just be
2 the condition of the truck when the police recovered
3 it in 2005 showing all aspects.

4 **THE COURT:** Exhibit 88, 89 and 90 are pictures
5 of what appear to be contents of a tool box.
6 There's been no indication as how that's relevant in
7 this case.

8 Exhibits 87 and 86 are pictures of what appears
9 to be an ice chest. There's been no indication of
10 how that's relevant to this case.

11 I don't know what 85 is. 84 is a picture of
12 what appears to be the rear window of a pick-up
13 truck. It's duplicative of what already has been
14 admitted. 83 is a photograph of the interior of the
15 truck, 82 is likewise, 81 is the same. Unless
16 there's some indication that there's something in
17 there that's relevant to this case, it's duplicative
18 and it hadn't been shown to be relevant.

19 80 is a picture of a cup holder. 79 is a
20 picture of a C.D. case. 78 is a picture of some
21 Food Lion bags, 77 the same thing. 76 is the same
22 general area as the bags. 75 is a picture of a
23 seat. 74 is a picture of a seat. 73 is a picture
24 of the passenger -- driver's side door. 72 is a
25 picture of the front of the truck. 71 is a picture

1 of the passenger side of the truck. 70 is a picture
2 of the ice chest. 69 is another picture of the ice
3 chest. 68 is a picture of the cargo area of the
4 truck. 66 is a picture of the front left fender and
5 tire. And 67 is a picture of the driver's side door
6 and the rear of the truck.

7 The pictures of the truck are duplicative of
8 pictures that are already in. The pictures of the
9 interior of the truck are -- there's been no
10 indications why any of that's relevant. And I don't
11 know what the ice chest would have to do with the
12 case. If y'all want to lay a foundation to educate
13 me on that, I'll be happy to hear it.

14 (State's Exhibit Numbers 40 through 49 and
15 91 through 93, photographs, admitted into evidence.)

16 **THE COURT:** And with regard to the comments at
17 the bench, without going into any direct detail,
18 folks, if you all want to raise issues with me,
19 raise them on the record. If I need to send the
20 jury out, I'll send the jury out. But I'm not
21 comfortable at all, I know other judges are
22 different, I am not comfortable at all having a lot
23 of discussions at the bench that are not on the
24 record when y'all are asking me to make substantive
25 decisions. I'm not going to do that. Don't do it

1 anymore.

2 I appreciate you letting me know. If it's
3 something you don't really want to preserve, that's
4 fine, but I don't want to have to hear it twice.

5 All right. Go ahead.

6 BY MS. MCDUFFIE:

7 Q Investigator Richards, let me show you what's
8 been marked as State's Exhibits 50 to 64. Do you
9 recognize those pictures?

10 A Yes, I do.

11 Q Are those a fair and accurate depiction of the
12 truck in 2005?

13 A That's a fair and accurate depiction of mainly
14 the bed of the truck and the tailgate marked with
15 one, two and three on the tailgate -- inner side of
16 the tailgate itself.

17 MR. COLLINS: No objection, Your Honor.

18 MS. MCDUFFIE: State would offer 50 to 64.

19 THE COURT: All right. Without objection.

20 (State's Exhibit Numbers 50 through 64,
21 photographs, admitted into evidence.)

22 BY MS. MCDUFFIE:

23 Q Could you please tell the jury what's depicted
24 in State's 55?

25 A This is the rear tailgate of the vehicle of the

1 Chevy truck. And what is depicted there, it is let
2 down and it is marked with one, two and three of
3 indentations on the inner portion of the tailgate
4 itself.

5 Q Is that what is depicted in State's 56 and 57?

6 A Yes, it is.

7 Q And did you have the opportunity to further
8 process that tailgate?

9 A Now, what I did was when I found the
10 indentations there knowing that there was a shooting
11 incident involved, I contacted Investigator David
12 Collins, which is our ballistics technician. I
13 asked him to take a look at those. He said he would
14 process those for gunshot residue or lead particles
15 in this instance. Also, he indicated that he was
16 going to process the inner cab also for gunshot
17 residue at that time. I removed the tailgate and
18 retained it in our forensic garage along with the
19 vehicle itself for Investigator Collins.

20 Q Investigator Richards, what's been marked as
21 State's Exhibit 95, do you recognize that?

22 A Yes.

23 Q And --

24 A That would be the tailgate from the Chevy
25 vehicle.

1 tailgate of that truck has to do with the decision
2 the jury's going to have to make so I'm hoping y'all
3 will tie that up because I know my Clerk of Court
4 will be real ticked off if I told her she had to
5 store that thing for years. I hope it's relevant.

6 (State's Exhibit Number 95, tailgate,
7 admitted into evidence.)

8 BY MS. MCDUFFIE:

9 Q Investigator Richards, did you have the
10 opportunity to process this tailgate?

11 A I did not process it myself, no, ma'am.

12 Q But did you perform any tests on it?

13 A No, I did not.

14 Q Do you know if tests were performed on it?

15 A I do. Investigator Collins performed the test
16 on the tailgate and the interior cab of the vehicle.

17 MS. MCDUFFIE: Your Honor, the State would also
18 move 38 and 37 into evidence, the two projectiles in
19 which he's laid a foundation.

20 MR. COLLINS: There's still -- chain of custody
21 hasn't been established for the projectiles yet,
22 Your Honor.

23 THE COURT: What's 38 and 37?

24 MS. MCDUFFIE: It's two projectiles removed
25 from the vehicle. Your Honor, the witness has

1 already identified them and stated that they are in
2 the same packaging as when he took them to Richland
3 County evidence and that their condition has not
4 changed at all.

5 **THE COURT:** Do you intend to call the other
6 person?

7 **MS. MCDUFFIE:** Yes, sir, Your Honor.

8 **THE COURT:** The objection is sustained.

9 **MS. MCDUFFIE:** No further questions.

10 **THE COURT:** Folks, I'm going to ask y'all to
11 step in the jury room, please. Don't discuss the
12 case.

13 (The jury retires to the jury room.)

14 **THE COURT:** All right. I have two comments to
15 make and I hope everybody understands the spirit in
16 which they're intended. First of all, these folks
17 that are sitting over here, I don't know who they
18 are, y'all have got to quit giggling, laughing,
19 doing whatever y'all do from time to time.

20 Second, there's a lot of negative body language
21 coming from the counsel table for the State
22 regarding my rulings. And I apologize to you all if
23 I'm doing anything inappropriate. I don't think I
24 am. I don't know what all this has to do with this
25 case.

1 When I say all this, I mean all these things
2 related to the truck that you claim the defendant
3 was driving. And I'm sure you're going to enlighten
4 me, I hope that you're going to enlighten me and
5 maybe I'm just missing the elephant in the room, but
6 I would appreciate it if I didn't see that negative
7 body language over there. It's pretty pronounced.

8 We're in recess for 15 minutes.

9 (Brief Recess.)

10 **THE COURT:** I'm going to try to give a brief
11 explanation, and to the extent that I am in error, I
12 apologize profusely to anybody to whom I may be in
13 error. The presentation of the evidence if I have
14 missed something, I am sorry. I am assuming that
15 there must have been bullet holes in that truck
16 somewhere, is that right or wrong?

17 **MS. MCDUFFIE:** Your Honor, the witness, I
18 believe, testified that there were indentations in
19 the tailgate and I think Mr. Collins will further
20 testify to that.

21 **MR. STRICKLER:** He'll further testify that they
22 may or may not be bullet holes if my reading of his
23 reports are correct.

24 **THE COURT:** So when you all were getting him to
25 say there were indentations in the tailgate, that's

1 where you were trying to go with that?

2 **MS. MCDUFFIE:** Yes, sir, Your Honor.

3 **MR. MEADORS:** That would be consistent with
4 bullets being fired out of the back of the tailgate
5 -- of the truck that hit the tailgate.

6 **THE COURT:** That I get. And, again, I
7 apologize to you all, but if I'm sitting up here as
8 confused as I am right now, you have to realize that
9 there are 13 people in that box, plus me, who know
10 nothing about this case. And when you start talking
11 about gunpowder residue related to one person,
12 gunpowder residue may be related to something else
13 and you start talking about an indentation here, I
14 just got lost.

15 **MR. MEADORS:** Judge, if I could just for the
16 record, respectfully, it's over a year from the time
17 of the incident to the date of arrest, I don't know
18 how else we could present it as far as the person
19 who finds the truck. There's testimony there were
20 shots coming from the back, be consistent with
21 coming from the back, which, I think, I'm going to
22 tie in later for one theory and that would be
23 consistent with the nick on this tailgate. So I
24 guess to let Your Honor, that's where we were going.

25 We weren't trying to -- I don't know how Ms.

1 McDuffie could get it out any other way through this
2 witness what he did, what he processed, what he saw.
3 And we're going to go on through the rest of the
4 witnesses straight down and to save recalling them
5 back, I don't know how else we could present it.

6 **THE COURT:** Well, who was that guy sitting in
7 the middle who was so demonstrative while ago?

8 **MR. MEADORS:** For the record, he was most of
9 the problem, I'll say that. I take responsibility
10 of that. But he did not mean to -- it's my fault.
11 For the State's table, I take full responsibility
12 for that.

13 **THE COURT:** Who is he?

14 **MR. MEADORS:** He works with us, David Ross,
15 assistant solicitor, was down here just helping get
16 some of the evidence together with these forensic
17 folks. And, again, it is not his fault. He was
18 down here assisting us with this evidence and some
19 of the frustration may have been directed at each
20 other and to other -- the table here itself. And if
21 Your Honor took some of that toward you, I
22 apologize.

23 **THE COURT:** I don't have any doubt some of it
24 was directed toward me.

25 **MR. MEADORS:** But other than that, I don't know

1 what to say. So we certainly did not mean to offend
2 the Court. I know the Court was offended and on
3 behalf of the State, I apologize to Your Honor.

4 I know we're all passionate and that has to be
5 limited and sometimes that passion gets away. It's
6 not evil or malicious, certainly not meant that way
7 and I know Mr. Ross didn't mean it that way.

8 **THE COURT:** Well, I've known the three of y'all
9 for a long time. I did not know that gentleman I
10 don't think.

11 **MR. MEADORS:** He did not mean it the way it
12 appeared.

13 **THE COURT:** Well, he needs -- never mind.

14 **MR. MEADORS:** Judge, could I say one final
15 thing, too, just in defense of my -- not in defense,
16 because I'm not taking -- but I think sometimes he
17 expresses himself with his arms and he doesn't mean
18 that. It may be more demonstrative than I am. I'm
19 more --

20 **THE COURT:** I'm over it now. If I wasn't over
21 it, he'd be sitting in jail right now. I've been
22 doing this 16 years, folks. I do this every single
23 day. I know when people show disrespect and I know
24 when they don't.

25 And I will tell you that part of the problem

1 that I will concede and that's why -- I'm sitting
2 back here looking back through the transcript, it's
3 not a transcript, but I've got real time, to make
4 sure that my confusion is unwarranted because I
5 accept that you all are very good lawyers and you
6 are presenting it the best way you can. And I never
7 pretend to know the case as well as the attorneys
8 do, I know that. I never know the case like the
9 attorneys know it.

10 What happens sometimes, and I'm certainly not
11 saying it's happening in this situation, is the
12 attorneys know the case, but the 13 jurors and the
13 judge don't and we kind of get left in the shuffle
14 because you know that at some point in the future
15 somebody else is going to say something that we
16 don't know.

17 So I guess what I'm saying is it's better to
18 hit us right square in the middle of the head with
19 the facts than to put them out there in a fashion
20 where I might miss something, but I had one juror
21 over there who kept shutting her eyes and I kept
22 watching her rather intently because I had to stop
23 if she was going asleep. She never did. She
24 eventually opened her eyes up completely and that's
25 why I'm afraid I might have missed something. I'm

1 looking back through here.

2 **MR. MEADORS:** I noticed that juror on the
3 second row far left and it seemed like some of the
4 jurors were noticing her, too. And I was trying to
5 watch to see if she was sleeping, but I did not see
6 her doze off.

7 **THE COURT:** Okay. He called them impact
8 points. That's at the left driver's door. That's
9 the victim's car.

10 (Pause.)

11 **THE COURT:** All right. I found what he was
12 talking about. And I apologize to you all. He
13 testified, and I'm just telling you it's just kind
14 of hard to follow, but when you read the record, it
15 states, What I did when I found the indentations
16 there knowing there was a shooting incident
17 involved, I contacted Investigator David Collins,
18 which is our ballistics technician. I asked him to
19 take a look at those. He said he would process
20 those for gunshot residue and lead particles in this
21 instance. Also, he indicated he was going to
22 process the inner cab also for gunshot residue at
23 that time. I removed the tailgate and retained it
24 in the forensic garage along with the vehicle itself
25 for Investigator Collins.

1 And that's when we got into offering the
2 tailgate, which was wrapped up in paper.

3 **MR. MEADORS:** Judge, respectfully, David
4 Collins is going to come in tomorrow. And as Mr.
5 Strickler alluded to and I'm not saying they'll
6 agree with all this, but he's done a report, which
7 they have, which he's going to describe in his
8 opinion what these could be consistent with. And
9 there's been testimony the firing came from the back
10 so that's respectfully --

11 **THE COURT:** I understand it all now.

12 **MR. MEADORS:** I'm sorry it wasn't clear.

13 **THE COURT:** And I should not have made the
14 comment about my clerk being ticked off about
15 storing something, but y'all are going to tie it in
16 as being relevant. But I'm telling you that stuff
17 about indentations went straight over my head and
18 that's my fault. I don't know what the other 13
19 folks in that box, who are the most important people
20 in the courtroom, how it registered with them, it
21 just went straight over my head.

22 Bring the jury back.

23 (The jury returns to the courtroom.)

24 **THE COURT:** Ladies and gentlemen of the jury, I
25 want to talk to you just a moment and reaffirm what

1 I said to you at the outset of this trial. I told,
2 you at the outset of the trial that there are two
3 judges in this courtroom, that I'm the judge of the
4 law and you're the judge of the facts and that it's
5 entirely your province to decide the facts of the
6 case, to decide what evidence is believable and to
7 decide what weight, if any, should be placed on
8 evidence.

9 During that exchange when the tailgate was
10 wrapped up and being opened, I made a statement that
11 I should not have made and I was wrong in making it.
12 And I want you to understand that I did not mean by
13 that statement to infer anything to you about the
14 facts of the case. You should disregard any
15 statement I made about the tailgate in its entirety.
16 It's not my job to decide any of that. I didn't
17 really mean it the way it came out, number one.
18 And, number two, I was wrong in saying it. So
19 please forgive me. I'll try to do a better job.
20 But disregard any comment I may have made about the
21 tailgate of the vehicle.

22 All right. Ms. McDuffie, are we still with
23 you?

24 **MS. MCDUFFIE:** No, sir, Your Honor.

25 **THE COURT:** Do you want -- in light of the

1 Court's statement, do you want to ask the witness
2 anymore questions?

3 **MS. MCDUFFIE:** Briefly, Your Honor.

4 **THE COURT:** Okay.

5 BY MS. MCDUFFIE:

6 **Q** Investigator Richards, can you please describe
7 for the jury again what's in State's Exhibit 56, 57
8 and 61?

9 **A** These are markings one, two and three in the
10 rear bed and tailgate area of the Chevy truck that I
11 marked and photographed. I called these
12 indentations in that area. I notified, at the time
13 that I found them, Investigator David Collins who is
14 our ballistics expert if he would take a look at
15 this in lieu of this being a shooting incident. He
16 said that he would and he would process them for
17 lead particles, gunshot residue along with the inner
18 portion of the cab for gunshot residue.

19 **MS. MCDUFFIE:** Thank you. No further questions
20 at this time.

21 **THE COURT:** All right. The ruling I made
22 related to the chain of custody still stands, okay?

23 **MS. MCDUFFIE:** Yes, Your Honor.

24 **THE COURT:** All right. Go ahead.

25 **MR. COLLINS:** Very briefly, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. COLLINS:

3 Q Basically you saw -- you saw what amounts to
4 dents in the bed of the truck?

5 A That's correct.

6 Q And from that, you took the tailgate off the
7 truck and put it in a preserved atmosphere?

8 A Inside the forensic garage along with the
9 vehicle.

10 Q Now, you also observed four bullet holes in
11 that Buick back in 2004, right?

12 A That's correct.

13 Q But you didn't take those doors off or
14 anything, did you?

15 A No.

16 Q Do you have any idea where those doors are
17 today?

18 A On the vehicle, I assume, that's where they
19 were when I put it in the garage.

20 Q Do you have any idea where that vehicle is
21 today?

22 A No, sir.

23 MR. COLLINS: Thank you.

24 THE COURT: Redirect?

25 MS. MCDUFFIE: None, Your Honor.

1 **THE COURT:** Thank you. You may step down.

2 Thank you, sir.

3 Do you have another witness we can do today?

4 **MR. MEADORS:** No, sir.

5 **THE COURT:** All right. Ladies and gentlemen,
6 we will start in the morning at 9:30. We'll plan to
7 do that. Please remember all those admonitions
8 about not viewing any media, reading any media and
9 not talking to anybody at all about this case and
10 reporting to me anything that might happen.

11 I hope you have a very pleasant evening. I
12 need you in the jury room at 9:30 in the morning.
13 Thank you.

14 (Jury was excused for the day.)

15 **THE COURT:** All right. Ladies and gentlemen, I
16 don't know who was in here yesterday when I had a
17 chance to address the audience and who was not, so
18 I'm going to say something again that I try to say
19 in every case. Please be very careful as you leave
20 that you not have any conversations that might be
21 overheard by a juror.

22 The jurors go back out this way, but they
23 eventually are going to come out into some common
24 areas where any of you may be. So you may turn a
25 corner and there's a juror and you may have been

1 saying something that you wouldn't ordinarily be
2 saying around a juror, so just be careful. You
3 cannot assume that they'll just get in their
4 vehicles and leave. Some people have to call folks
5 for a ride, some people stand around, different
6 people do different things, so just be careful as
7 you leave.

8 Do y'all have anything else we can do tonight?

9 **MR. COLLINS:** I believe we still may need the
10 rap sheet on Kerwyn Phillips.

11 **MR. STRICKLER:** And we're both standing up
12 about the same thing, Your Honor. I anticipate, I
13 don't know when, but probably tomorrow, but
14 certainly during this case, when Kerwyn Phillips
15 will testify who is alleged to be the passenger in
16 this vehicle. Madame Solicitor has made reference
17 to him receiving some benefit for his cooperation.
18 So what I'm asking for now could be -- is commonly
19 couched in as a reveal the deal motion so that I can
20 adequately cross-examine him. I'm sure the State
21 will bring it out on direct the parameters of
22 whatever benefit he obtained from cooperation with
23 the State in regard to his testimony here.

24 **THE COURT:** Mr. Meadors.

25 **MR. MEADORS:** Yes, sir, please the Court. I

1 will bring it out. It's my understanding it was in
2 front of Judge Currie, and I don't mean this
3 disrespectful at all, I don't think he got that much
4 of a break, but it's my understanding he was looking
5 at maybe 36 and he got 32, but I'll have that in the
6 morning. I'm going to bring that out and I will --

7 **MR. STRICKLER:** Do you have it in written
8 format so I can review it?

9 **MS. MCDUFFIE:** I'll have to make copies of it.
10 I'll have it for you this afternoon.

11 **MR. MEADORS:** And, also, I have his rap sheet.

12 **MR. STRICKLER:** Thank you.

13 **THE COURT:** Well, y'all make the copy tonight
14 please -- you said this afternoon, Ms. McDuffie, so
15 make sure he's got it before the end of the day.

16 **MR. STRICKLER:** Thank you, sir.

17 **MR. MEADORS:** Your Honor, he was under a
18 federal proffer and was working with the federal
19 authorities when we learned about him and as a
20 result of that, we came in touch with him, and I
21 think Mr. Strickler knows that.

22 **MR. STRICKLER:** That I know.

23 **THE COURT:** Is there anything else we can do
24 tonight?

25 **MR. MEADORS:** Judge, we've got the other -- if

1 they want to hang around, we can go through the rest
2 of these exhibits. We've got a couple more.

3 **THE COURT:** I really would appreciate it if you
4 all would mark whatever you can mark and do whatever
5 you can do.

6 **MR. MEADORS:** We'll certainly do that right
7 now. Other than that, I know none.

8 Judge, as far as scheduling, I have one SLED
9 agent, Jennifer Stoner, on gunshot residue. I told
10 her I thought it would be Thursday morning because
11 she had another commitment in another court at a
12 lower part of the State. I think we'll pretty much
13 finish tomorrow with the exception of maybe her and
14 the pathologist no later than Thursday morning, but
15 I don't -- I mean, I've always said that and it's
16 been a little longer, but I don't think it will be
17 much later than that, but I have her coming in
18 Thursday morning, hopefully we can get through this.

19 **THE COURT:** Court's in recess until 9:30 a.m.

20 (Whereupon, the proceedings were concluded
21 for January 29, 2008.)

22 (The following proceedings were held on
23 January 30, 2008.)

24 **THE COURT:** State ready for the jury?

25 **MR. MEADORS:** State's ready.

1 **THE COURT:** Defense?

2 **MR. COLLINS:** Just a couple of things before we
3 start. I spoke with Ms. Weiss last night. She
4 showed me a picture of a gun clip that was recovered
5 in the search of Mr. Moore's house that she said the
6 State was planning on --

7 **MS. WEISS:** No we're not.

8 **MR. COLLINS:** Okay. Then the other issue, Your
9 Honor, is there's boxes of evidence. They indicated
10 to me that's from stuff they recovered from the
11 search warrant as well. If they're not planning on
12 introducing evidence behind the bench, I would ask
13 that it be removed from the courtroom. I've had
14 previous trials where, after speaking with jurors,
15 the inferences is that the defense kept that
16 evidence out. I don't want any kind of issue with
17 that in this case, Your Honor.

18 **THE COURT:** Does the State want to be heard?

19 **MS. WEISS:** Your Honor, I don't know what the
20 answer is. There's evidence here, what's --

21 **MR. COLLINS:** If it's not something that's not
22 planning on -- we were asking if there's any
23 evidence behind the State's table that they're not
24 planning on introducing as evidence, that it be
25 removed from behind the State's table.

1 **MS. WEISS:** At the conclusion of the State's
2 case, Your Honor, we'd be happy to do that. I don't
3 know at this point if it's going to be introduced.

4 **MR. COLLINS:** The first item will be the baby
5 seat right here, that's obviously not -- has never
6 been a part of the evidence.

7 **MS. WEISS:** It's been marked, so I think it has
8 to stay in here is my understanding.

9 **THE COURT:** If the court reporter marked
10 anything for identification, it won't go to the
11 jury, but it's in her possession, and her being the
12 court reporter's possession.

13 **MR. MEADORS:** My bad. I thought our office is
14 marking it for her and it hadn't been marked as an
15 I.D. yet, so I did not think it had gone on the
16 record.

17 **THE COURT:** I think it has to because you
18 showed it to the witness I believe.

19 All right. With regard to that big box sitting
20 over there, it's nothing that I think is prejudicial
21 to the defense or beneficial to the State in
22 particular. And the motion to have that box taken
23 out of the courtroom is denied.

24 Anything else?

25 **MR. COLLINS:** Nothing else.

1 **MS. WEISS:** Thank you, Your Honor.

2 **THE COURT:** Bring in the jury.

3 (The jury enters the courtroom at 9:34 a.m.)

4 **THE COURT:** Call your next witness, Solicitor.

5 **MR. MEADORS:** J. Russell, Investigator J.

6 Russell.

7 **THE COURT:** Come around, please, and be sworn.

8 JARROD RUSSELL,

9 having been duly sworn, testified as follows:

10 **THE CLERK:** Please have a seat there, sir.

11 State your full name for the record.

12 **THE WITNESS:** My name is Jarrod Russell.

13 DIRECT EXAMINATION

14 BY MR. MEADORS:

15 **Q** Good morning.

16 **A** Good morning, Solicitor.

17 **Q** Investigator, tell these folks about yourself

18 just generally, where you're from, what you do, a

19 little bit about your background and education.

20 **A** I'm a graduate from the University of South

21 Carolina, double majored in criminal justice and

22 sociology. After that, I was employed with the

23 Forest Acres Police Department for three or four

24 years as a patrol officer, went to work with the

25 Richland County Sheriff's Department in 1999 as a

1 crime scene analyst in the forensic science
2 department. I have since come back to Forest Acres
3 and I run their crime scene unit and handle criminal
4 investigations.

5 Q Other than your education and schools, did you
6 get any particular education in the criminal justice
7 academy and beyond that? Do y'all do CLE's,
8 continued legal education?

9 A That's correct.

10 Q How long have you been back at Forest Acres?

11 A Almost two years.

12 Q What's your job there?

13 A I'm over crime scene, train our investigators
14 in all the crime scene processing and whatnot. I
15 handle the call schedule for that. I also
16 investigate criminal cases.

17 Q Back in Richland County, you were with the
18 forensic unit?

19 A That's correct.

20 Q And what did you do there?

21 A I was a crime scene analyst, responded to crime
22 scenes 24/7 as an on-call person. I also worked in
23 the lab processing evidence that's brought in. If
24 we had a crime that occurred and it was a big
25 object, we had a, we called it the garage. It's

1 just a big garage where we had access to dismantling
2 things, taking things apart to process them. It's
3 pretty much any piece of evidence that came in that
4 needed to be processed, we did it there at Richland
5 County.

6 Q Where was this shop that you'd take stuff to?

7 A It's there on the campus where the sheriff's
8 office is located. It's out back right behind the
9 sheriff's department.

10 Q And, in this case, you were with the sheriff's
11 department?

12 A That's correct.

13 Q And do you remember this case?

14 A Yes, sir.

15 Q And, specifically, as a part of your duties,
16 too, and at that time as a part of your duties at
17 Richland County, did you ever go to autopsies?

18 A Yes, sir.

19 Q And in this particular case, did you have the
20 occasion, the opportunity to go to the autopsy of
21 one Stephanie Dover?

22 A Yes, sir, I did.

23 Q And when was that?

24 A The autopsy was on October 17th, 2004.

25 Q Where did you go?

1 **A** Palmetto Richland Hospital is where the county
2 morgue is located and that's where the autopsies are
3 conducted.

4 **Q** And the autopsy was performed in this case by
5 Doctor Clay Nichols?

6 **A** That's correct.

7 **Q** You observed the body of Ms. Dover?

8 **A** That's correct.

9 **Q** Observed her injuries?

10 **A** Yes, sir.

11 **Q** Did you have -- what's a gunshot residue kit or
12 gun primer kit? What do you call it?

13 **A** GSR kit. It's basically to collect the gun
14 primer that might be -- or residue. It's usually
15 microscopic. If a gun is fired, microscopic
16 particles come back out on the hand. And this kit
17 I'm trained to collect those particles, submit them
18 to the State Law Enforcement Division where a
19 scientist looks at them under a microscope and
20 determines if there's gun primer there.

21 **Q** And as a part of your duties back then in
22 October of -- at the Richland County Sheriff's
23 Department, was that part of your reason to go to
24 this autopsy?

25 **A** Yes, sir.

1 **Q** And had you done that before on a deceased --
2 on a victim of a crime or a dead body, had you done
3 a gunshot residue kit?

4 **A** Yes, sir.

5 **MR. MEADORS:** If I can approach, Your Honor?

6 **THE COURT:** Sure.

7 BY MR. MEADORS:

8 **Q** If you don't mind -- you don't mind touching
9 me, do you, J.?

10 **A** No.

11 **Q** Can you show this jury what you do when you're
12 trying to get gunshot residue or determine if
13 there's any gunshot residue on a person?

14 **A** In this case or most cases, if it's not
15 conducted on the scene, the hands are bagged with
16 paper bags, kind of like a little small paper bag,
17 put over the hands and taped to ensure that those
18 particles don't get washed off by medical personnel
19 or whatnot.

20 **Q** So when you saw Ms. Dover, were her hands
21 bagged?

22 **A** That's correct. They were bagged when the body
23 bag was opened.

24 **Q** And did you take those bags off?

25 **A** Yes, sir.

1 Q And then after you did that, what did you do?

2 A I opened the kit and there's two different
3 things in the kit. Like he was saying with his
4 hands, there's actually a little sticky pad and the
5 sticky pad is run all over the hand. There's one
6 for both palms, one for each palm. There's one for
7 a back of both hands. So you've got four sticky,
8 for lack of a better term, a sticky pad, swab those
9 -- that's where the microscopic residue is picked
10 up. You cap those off and they're sealed in an
11 envelope.

12 There's also nitric acid that's used on a Q-Tip
13 which also picks up something that might have not
14 gotten picked up by the sticky tab and you swab one
15 for the back of each hand, one for the palm of each
16 hand. And those are put into all in that same kit,
17 sealed and sent out to SLED.

18 Q Are they packaged separately, like your back,
19 left and your palm, is that put in a separate
20 container?

21 A That's correct. Each one has a tube that
22 separates them.

23 Q And once you do that -- and you did this on Ms.
24 Dover's hands?

25 A That's correct.

1 Q What did you do with them?

2 A I usually take them back to the lab, which is a
3 secure environment, leave them for a little bit just
4 so the swabs will dry, which the tube it comes in,
5 most of them have a little pinhole in the top. But
6 it's all packaged back up and sealed in that
7 envelope with all the information on the front and
8 placed in a piece of plastic and it's sent out to
9 SLED, be a chain of custody obviously, for them to
10 do their analysis.

11 Q And looking at this marked State's 96 for I.D.
12 at this point, do you recognize that?

13 A Yes, sir.

14 Q What is that?

15 A This is the actual GSR kit, the envelope, I was
16 referring to. All that's packaged in here and
17 sealed on the back with my signature. Then I placed
18 it, which they don't send it back in, but I always
19 place it in this where it's visible through the
20 plastic, but this is the one from Ms. Dover.

21 Q And does it have your name on there?

22 A Yes, sir.

23 Q After you had swabbed Ms. Dover's hands, sent
24 them on for analysis, did you have an occasion to
25 see a vehicle in this case?

1 **A** Yes, sir, I did.

2 **Q** Can you tell the jury about that?

3 **A** The vehicle was brought in to our garage. The
4 particulars of that, I don't remember, I don't have
5 my notes on that. But when it's bought in, usually
6 several of the crime scene analysts would go out
7 and, what we call, process the vehicle, that's
8 usually conducted with a search warrant that's, you
9 know, been obtained prior. And you usually have a
10 good idea what kind of evidence you're looking for
11 when you go in, you don't just go rumbling all
12 through the car, you're looking for specific items
13 and that's all part of the process. And you --
14 anything you would move or take out of that car, you
15 put on that search warrant so that it's noted that
16 that was taken under that warrant.

17 **Q** Did you take some pictures?

18 **A** Yes, sir, a lot of photographs.

19 **Q** I'm just going to show you a few, Investigator.
20 And I've just got a few more questions. As far as
21 look at State's 117, 118 and 109, look at these,
22 tell me if you recognize them and do they relate to
23 your testimony? Without saying what they are.

24 **A** Yes, sir.

25 (Pause.)

1 **MR. MEADORS:** Your Honor, at this time, we'd
2 offer State's 109, 117 and 118 without objection.

3 **MR. STRICKLER:** That's correct, sir.

4 **THE COURT:** Thank you. Mark them in the
5 record.

6 (State's Exhibit Numbers 109, 117 and 118,
7 photographs, admitted into evidence.)

8 BY MR. MEADORS:

9 **Q** What are you, as an investigator, trying to do
10 when you're looking at a vehicle that potentially
11 might be involved in a crime?

12 **A** We're looking for evidence that will prove that
13 the crime occurred, which could include anything,
14 anything I photograph that might be related to that
15 crime which we've been told occurred.

16 **Q** Are you also trying to gather any potential
17 evidence?

18 **A** That's correct.

19 **Q** And, in this case, did you find anything that
20 might be of potential evidentiary value?

21 **A** Yes, sir.

22 **Q** And what type of car was this?

23 **A** I don't recall the make and model. I know it
24 was a dark-colored four-door car.

25 **Q** Look at State's 20, do you recognize that?

- 1 **A** Yes, sir.
- 2 **Q** Is that the car?
- 3 **A** Yes, sir, it is.
- 4 **Q** Now, State's -- did you find a bullet in there?
- 5 **A** Yes, sir.
- 6 **Q** In State's 118 that's just been admitted, does
7 that depict the bullet that you found?
- 8 **A** Yes, sir.
- 9 **Q** And where did you find this bullet?
- 10 **A** It was located in the right rear floorboard --
11 or the passenger side of the vehicle in the
12 floorboard down -- if I were sitting in the right
13 rear seat there.
- 14 **Q** Look at State's 94 for I.D. and tell me if you
15 recognize that and if so, what is it?
- 16 **A** This is the bullet that I recovered.
- 17 **Q** Did you gather that?
- 18 **A** Yes, sir.
- 19 **Q** And that's what's depicted in 118?
- 20 **A** That's it.
- 21 **MR. MEADORS:** Your Honor, this is 94 for I.D.
- 22 **Q** A couple other pictures I want you to look at,
23 if you would, 109 which has been admitted, J.
- 24 **A** Yes, sir.
- 25 **Q** Can you tell the jury what that is?

1 **A** That's the rear passenger door to the vehicle
2 on the driver's side. And it depicts the internal
3 -- or inside of the door where outside had what
4 appeared to be a bullet hole and that's where it
5 entered into the vehicle on the inside of the door.

6 **Q** So what door on this car is it?

7 **A** It's the driver's side rear door, also in the
8 front door as well.

9 **Q** And looking at State's 117, can you tell the
10 jury what that is?

11 **A** That's a photo of where the seatbelt goes into
12 the column on the right side of the vehicle between
13 the front and rear doors. And it appeared, when I
14 first went into the vehicle, that something had
15 struck that because it had a kind of -- the seatbelt
16 kind of notched up against the plastic.

17 **Q** Investigator, look at State's 30.

18 **A** That's just an overview shot of the same
19 location that the bullet was located.

20 **Q** Okay. Could you point in here so to kind of
21 back -- kind of a broader view, if you will, to
22 where the bullet was?

23 **A** It was down -- obviously down below the seat
24 here, there's a -- you can't see it in this photo,
25 but there's a piece of paper up against the back of

1 the seat and it was kind of down in the seat there
2 and there's actually a sprawl. If you look close,
3 the bullet's laying right here.

4 Q This bullet in 118?

5 A Yes, sir.

6 Q And that, again, is in the front or the back of
7 the car?

8 A In the back of the vehicle.

9 Q Back, what side?

10 A The back right foot -- or floorboard.

11 MR. MEADORS: Thank you. That's all.

12 THE COURT: Cross?

13 MR. STRICKLER: Thank you. Just a couple
14 questions.

15 CROSS-EXAMINATION

16 BY MR. STRICKLER:

17 Q Good morning, Mr. Russell.

18 A Good morning, Mr. Strickler.

19 Q Just a couple of things actually. I understand
20 what you related to the jury in your direct. What
21 you found in this case, specifically from the car.

22 A Yes, sir.

23 Q You can't tell us anything about who fired the
24 shots in this case, correct?

25 A No, sir.

1 **Q** You can't tell us whether the shots were fired
2 by the -- from another car based on what you found,
3 right?

4 **A** No, sir. I just collected evidence.

5 **Q** If they'd been found fired from another car,
6 you can't tell us whether the shots were fired by a
7 passenger in the car?

8 **A** No, sir.

9 **Q** Or a driver in the car, correct?

10 **A** No, sir.

11 **Q** You can't tell us about what circumstances
12 surrounded the firing of the shots in this case,
13 correct?

14 **A** That's correct.

15 **Q** Okay. Or the reason the shots may have been
16 fired, correct?

17 **A** That's correct as well.

18 **MR. STRICKLER:** Thank you. That's all I have.
19 Thank you very much.

20 **THE COURT:** Thank you.

21 Redirect?

22 **MR. MEADORS:** No, sir.

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

24 **THE WITNESS:** Thank you, Your Honor.

25 **THE COURT:** Do you need a short break, Mr.

1 Meadors?

2 **MR. MEADORS:** Just very short I hope. Thank
3 you.

4 **THE COURT:** All right. Ladies and gentlemen, I
5 need to send you back to the jury room. You won't
6 be back there but a few minutes and then I'll bring
7 you back out. Don't discuss the case.

8 (The jury retires to the jury room.)

9 **MR. MEADORS:** Your Honor, thank you.
10 Hopefully, it won't be long. I'll go up there and
11 check. There's also a tape we're going to introduce
12 with this next witness. I know the defense has
13 heard it. And we'll go and have that marked also
14 and ready to go.

15 **THE COURT:** Is he in chains? I mean, he can be
16 in chains. I just -- if he's in chains, you may
17 want to just go ahead and put him in the witness box
18 so that we don't have to struggle for two minutes to
19 put him in the --

20 **MR. MEADORS:** Quite frankly, I don't know.

21 **THE COURT:** All right. Thank you. We're at
22 ease.

23 (Brief Recess.)

24 **THE COURT:** You got your witness here?

25 **MR. MEADORS:** Yes, sir. Thank you. Judge, we

1 have to settle the record. He has a 2003 resisting
2 arrest, which we would respectfully take the
3 position, I know Mr. Strickler's -- I think the rule
4 is in excess of a year. And it's my understanding
5 that carries a year.

6 **MR. STRICKLER:** I'm just double checking.

7 That is one year, so I do not contend -- I'll
8 withdraw that.

9 **MR. MEADORS:** Next, Your Honor, is January
10 28th, 2004, strong armed robbery conviction,
11 obviously I'll be asking him about that. Next, in
12 potential dispute is the --

13 **MR. STRICKLER:** We don't need to go into that.

14 **MR. MEADORS:** Thank you, Mr. Strickler. And
15 how about the next one, possession of stolen vehicle
16 conviction April 2005. It shows a 30 day or 500
17 dollar sentence. I think, Your Honor, that that
18 sentence would only be possible under a less than a
19 thousand and I'm not saying I'm a hundred percent
20 sure on that. Ms. McDuffie is checking it right
21 now. But I would argue that sentence is less than a
22 year.

23 **MR. STRICKLER:** And that is correct. However,
24 I would submit that as to the offense of possession
25 of a stolen motor vehicle, that that's admissible as

1 a crime of dishonesty on his part. It's crimen
2 falsi in reviewing Al-Amin. I would submit that
3 it's admissible separately under 609(a)(2) as
4 opposed to (a)(1) where punishment does not matter.

5 **MR. MEADORS:** And I defer to Your Honor on
6 that.

7 **THE COURT:** It involves dishonesty or false
8 statement and it is admissible regardless of the
9 punishment. Go ahead.

10 **MR. MEADORS:** And, finally, Judge, I think the
11 other one we are not in dispute under is just the
12 federal charge.

13 **MR. STRICKLER:** The current sentence he's
14 serving, yes, sir.

15 **THE COURT:** All right. Do you need anything
16 else from me?

17 **MR. MEADORS:** Judge, the only other thing,
18 there's a tape as I mentioned previously. We were
19 planning on offering -- there were a couple of
20 attempts, I think, to get in touch with the
21 defendant through our next witness which didn't
22 leave anything of substance. The tape we have
23 primed and ready to go is the one phone call, that's
24 what we're planning on playing in front of the jury.

25 **MR. STRICKLER:** Do you have a tape or do you

1 have a C.D.?

2 MR. MEADORS: We have the tape to put into
3 evidence, the original, and then they copied it on
4 to a C.D. from that tape to play just for
5 convenience, but, obviously, we're going to offer
6 120, the tape itself.

7 MR. STRICKLER: You're going to offer the
8 selected portion of the tape, not the portions in
9 which he calls and will not speak with Mr. Moore
10 because he wants Mr. Moore by himself when he speaks
11 with him.

12 MR. MEADORS: I have no problem playing it all
13 if you want to offer it all. I just was -- we'll
14 offer it.

15 MR. STRICKLER: It's all on the C.D.

16 MR. MEADORS: That's fine.

17 MR. STRICKLER: I'm not offering it.

18 MR. MEADORS: I understand.

19 We're ready. Thank you.

20 THE COURT: Bring the jury in, please.

21 (The jury returns to the courtroom.)

22 THE COURT: Thank you, ladies and gentlemen.
23 Call your next witness, Solicitor.

24 MR. MEADORS: If it pleases, Your Honor, the
25 State would now call Mr. Kerwyn Phillips.

1 **THE COURT:** Mr. Phillips, come up to the
2 bailiff, please.

3 KERWYN ALPHONSO PHILLIPS,
4 having been duly sworn, testified as follows:

5 **THE CLERK:** Please have a seat up here, sir.
6 State your full name for the record.

7 **THE WITNESS:** Kerwyn Alphonso Phillips.

8 DIRECT EXAMINATION

9 BY MR. MEADORS:

10 **Q** Good morning, Mr. Phillips.

11 **A** Good morning.

12 **Q** Mr. Phillips, I'm going to ask you if you'll
13 just please be sure and speak up so the ladies and
14 gentlemen can hear you, His Honor can hear you and
15 the court reporter especially can hear you, okay?

16 **A** Yes, sir.

17 **Q** Tell these folks about Kerwyn Phillips. Tell
18 them about your background. Where are you from?

19 **A** Hollywood Hills down 321.

20 **Q** Is that where you were born and raised?

21 **A** Yes, sir.

22 **Q** Where did you go to school?

23 **A** Keenan and Alcorn and John P. Thomas.

24 **Q** John P. Thomas, Alcorn and Keenan?

25 **A** Yes, sir.

1 Q And after you got out of Keenan, tell them what
2 you did, Mr. Phillips.

3 A I went to adult education for a few months.

4 Q What did you do after that?

5 A I started working with Gregory Electric because
6 I got in a little trouble so I wasn't able to keep
7 going to school.

8 Q What did you do for Gregory Electric?

9 A I was an assistant, a green helper. I pulled
10 wire, bend conduit, help them wire the building
11 downtown.

12 Q What building?

13 A The Mediterranean Tower on Main Street.

14 Q Yes, sir.

15 A That's basically what I help do and clean up
16 the area.

17 Q And that was after Keenan?

18 A Yes, sir.

19 Q And you said that you got -- did you work
20 anywhere else after Keenan, after Keenan High
21 School?

22 A No, sir. I worked at Gregory Electric and I
23 went to jail.

24 Q And that's what I was getting into. You said
25 you got into trouble, right?

1 **A** Yes, sir.

2 **Q** And tell these folks what kind of trouble you
3 got into.

4 **A** I had an armed robbery brought to a strong
5 armed robbery.

6 **Q** What year was that?

7 **A** 2004. It was 2003, but I went to jail in 2004.

8 **Q** And what kind of sentence did you get?

9 **A** A one to six and I had 90 day shock
10 incarceration and I ended up doing about six months.

11 **Q** Where did you do that?

12 **A** At Kirkland and Stevenson on Broad River Road.

13 **Q** And when did you get out?

14 **A** July the 8th, 2004.

15 **Q** And when you got out, did you start working
16 some then?

17 **A** Yes, sir.

18 **Q** Okay. Tell these folks where.

19 **A** I started working at Gibbs Construction. It's
20 a construction company out at Chapin, South
21 Carolina.

22 **Q** What did you do for Gibbs Construction?

23 **A** I was a heavy equipment operator assistant.

24 **Q** What does that mean?

25 **A** I helped the big man who do most of the work.

1 If he needs some things moved around, I can operate
2 the same equipment he can because he taught me.

3 Q How did you get that job at Gibbs?

4 A My father was working there and my uncle was
5 like a head man.

6 Q Did you like working at Gibbs?

7 A It was all right. I didn't like the outside
8 weather some time.

9 Q How long did you stay there?

10 A Nearly a year.

11 Q Nearly a year?

12 A Yes, sir.

13 Q Working outside?

14 A Yes, sir.

15 Q Did there come a time when you no longer worked
16 at Gibbs?

17 A Yes, sir.

18 Q Why did you quit working at Gibbs?

19 A To get a warehouse job.

20 Q To get a what?

21 A Warehouse job.

22 Q And did you do that?

23 A How did I?

24 Q Yes, sir. What -- where did you start
25 working --

1 **A** It was through a temp off of Bluff Road. It
2 was bending pistons inside of a warehouse all night
3 for a BMW company.

4 **Q** How long did you do that?

5 **A** About two or three months, but like I said, it
6 was a temporary job through Roper Temporary.

7 **Q** And what did you do after that?

8 **A** Start running the streets with John.

9 **Q** Don't go into any detail, did you quit working?

10 **A** Yes, sir.

11 **Q** And you said that -- you mentioned a fellow
12 named John?

13 **A** Yes, sir.

14 **Q** Who is John?

15 **A** John Moore.

16 **Q** How do you know John Moore?

17 **A** We grew up together.

18 **Q** When is the first time you remember meeting
19 him?

20 **A** Probably before I ever went to school.

21 **Q** Elementary school?

22 **A** Before elementary school.

23 **Q** And do you remember when you first met him?

24 **A** Not the first day.

25 **Q** Yes, sir. I didn't mean -- well, okay, that

1 was a bad question. Do you remember approximately
2 when you were little when you --

3 A Yes, sir.

4 Q When, please?

5 A Around the time Slip and Slide started coming
6 out. I know we played on them.

7 Q What is a Slip and Slide?

8 A It's like a blue plastic you run water down it
9 and you slide down. He had one in his backyard. I
10 remember we used to slide on it.

11 Q And where was that in his backyard, where were
12 y'all living?

13 A Hollywood Hills.

14 Q And was it in an apartment complex?

15 A No, sir, it's a neighborhood.

16 Q So y'all were in the same neighborhood. I knew
17 it was a neighborhood, but y'all lived in the same
18 neighborhood, different residences?

19 A Yes, sir.

20 Q And from the Slip and Slide on, were y'all
21 friends?

22 A Yes, sir.

23 Q Go to school together?

24 A Yes, sir.

25 Q Do things together?

1 **A** Yes, sir.

2 **Q** Fair to say you've known him your whole life?

3 **A** Yes, sir.

4 **MR. MEADORS:** Beg the Court's indulgence.

5 (Pause.)

6 **Q** From when you first got to know him in
7 Hollywood Hills neighborhood until this incident
8 that you had when you went to -- got the shock
9 incarceration.

10 **A** Yes, sir.

11 **Q** Would it be fair to say you were seeing
12 Mr. John Moore a lot?

13 **A** Yes, sir.

14 **Q** Okay. After you got out of shock incarceration
15 and you were doing these jobs, these other jobs, the
16 outside job, the warehouse job.

17 **A** Yes, sir.

18 **Q** Were you seeing Mr. Moore during that time
19 period?

20 **A** Not as much.

21 **Q** But would you still see him occasionally?

22 **A** Yes, sir.

23 **Q** Going up into the summer and October of 2004,
24 were you seeing Mr. Moore during that time? Did you
25 see him occasionally?

1 A Yes, sir.

2 Q Now, specifically, why we're here today, okay,
3 Mr. Phillips, you know why you're here today?

4 A Yes, sir.

5 Q Did you have an occasion to see Mr. Moore in
6 October 16th, 17th, 18th weekend, that weekend, of
7 2004?

8 A I can't be sure of that.

9 Q You're not sure of the exact date?

10 A No, sir.

11 Q Did you have an occasion to ever -- what kind
12 of truck did he or his father have?

13 A A Chevrolet, black, regular cab.

14 Q You ever been in that truck?

15 A Yes, sir.

16 Q And how in times have you been in that truck?

17 A So many, plenty times.

18 Q A lot of times?

19 A Yes, sir.

20 Q And do you remember, if you don't remember the
21 exact date, back in October of 2004, being with
22 Mr. Moore in that truck out on I-20?

23 A Yes, sir.

24 Q And that's what I'm going to ask you about,
25 what, if anything, you remember about that, okay?

1 **A** Yes, sir.

2 **Q** Do you remember that day, and if you don't
3 remember the exact date, but do you remember what
4 y'all did that day? Do you remember what time you
5 got with him, going back to that morning when you
6 woke up?

7 **A** I believe we was together earlier that day. We
8 eventually split up, but we got back together later
9 on that night.

10 **Q** Okay. And had you been to Lexington?

11 **A** Yes, sir.

12 **Q** And do you remember what time, approximately,
13 when you left Lexington, what time it was and where
14 you were going?

15 **A** We was heading home from Lexington. It was
16 between 1:00 to 3:00, it was real late, we was
17 heading home.

18 **Q** Who was driving?

19 **A** John.

20 **Q** Would he usually drive his daddy's truck? I
21 mean, when you were with him, it's you and him,
22 would he usually drive?

23 **A** If his car wasn't messed up.

24 **Q** I didn't ask that very well. But if you're in
25 his truck with him, is he the one usually driving

1 his daddy's truck?

2 A Yes, sir.

3 Q Not you?

4 A No, sir.

5 Q I mean, he drove his daddy's truck when y'all
6 were in it?

7 A Yes, sir.

8 Q And you're heading to Hollywood Hills?

9 A Yes, sir.

10 Q Can you tell the jury what, if anything, you
11 remember about that trip back?

12 A Yes, sir.

13 Q Look at them and tell them, Mr. Phillips.

14 A Well, when we was heading home that night, we
15 was approaching Broad River Road and we rode up
16 behind a couple. They was in a newer model car. We
17 was in his daddy's truck. We got behind them, kind
18 of close behind them. John flicked his bright
19 lights behind the man and I believe it made him mad
20 because the man stuck his middle finger back at
21 John, or at us. John flicked the light a few more
22 times and then passed on by them. And when he got
23 on the side of him, he stuck his middle finger back
24 and made faces at him.

25 Q Who made faces at him?

1 **A** John made faces at the man. And we left them.
2 They pulled over to the side of the road near the
3 golf course by Broad River Road, right after you
4 pass them. And we went on down the road a good bit.

5 They came back like to catch us, they pulled up
6 on us kind of fast. I was thinking it probably was
7 the police, we done did the wrong thing, but they
8 didn't. Then they caught up to us, on the side of
9 us. They pulled over towards us, like swerved
10 towards us. John swerved and almost hit the wall.
11 He ducked down. We seen the man, he put his hand
12 like under the seat like he was digging for
13 something. I ain't never seen nothing. But when
14 John came back up, he dug from under the seat and
15 told me to lean back. He had rolled down my window,
16 the truck got power windows where you can roll --
17 control it from the driver's side, and he shot down
18 into the car. He set the gun between us and he
19 tried to leave them.

20 The car slowed down like drift off a little
21 bit, but they started picking back up on us like
22 running after us again. He was trying to outrun
23 them, but the car was running pretty strong, too.
24 So it's a sliding window and the back window of the
25 truck, it's broke, it probably -- it have a lock on

1 it, but it's broke, so all you got to do is pull it.
2 He pulled it open, stuck the gun out the back
3 window, he shot back at the car. The car didn't
4 slow down that time. And I believe his gun was like
5 empty at the time because he set it back between us,
6 it didn't have no bullets I believe, so he just
7 tried to outrun him.

8 When we got close to Fairfield Road exit, it's
9 a turn, it's almost like a 360, it curves back
10 around. He took the turn real fast. I didn't think
11 we were going to make the turn, but we made the
12 turn. The car was right behind us. When we made
13 the turn, we ran through the light. They ran
14 through the light behind us. We went down Fairfield
15 Road. He tried to get to me to call somebody to get
16 the car for us, but I couldn't remember the number,
17 things were going too fast. So when we got closer
18 to Hollywood Hills, I told him which way to go. I
19 told him to go down Sharp Road and turn on the dirt
20 road.

21 When we went on the dirt road, he almost lost
22 control and I told him to straighten the truck up
23 before you wreck us. He straightened it up. And
24 when he straightened it up, I told him to kick the
25 rocks. So he shook the truck up on the rocks to

1 where it put a cloud behind us where the people
2 wouldn't have been able to see or they would have
3 wrecked if they tried to come after us. So we went
4 down the dirt road, then come down behind a park
5 that leads to the entrance to our neighborhood. He
6 turned off the lights and we ran through our
7 neighborhood and parked in my grandma and
8 granddaddy's back yard. Keep going?

9 Q How long did y'all sit there?

10 A Probably about 30, 35 minutes, a little bit
11 more.

12 Q You said something about the window?

13 A Yes, sir.

14 Q Did you -- was it automatic or roll...

15 A Power window.

16 Q Power window.

17 A On the doors, they're automatic -- I mean power
18 windows.

19 Q Did you roll down the window to your side?

20 A No, sir.

21 Q And so I believe, if you testified a minute
22 ago, I'm sorry, if you didn't do it, did the window
23 come down?

24 A Yes, sir.

25 Q And did you testify a minute ago that John said

1 lean back to you?

2 A Yes, sir.

3 Q What did you do when he did that?

4 A I leaned back. I leaned my face back up
5 against like the seat.

6 Q And when you leaned back, what, if anything,
7 did John do with his arm?

8 A Put it across my face, like extend it past my
9 face with the gun.

10 Q Did the gun fire?

11 A Yes, sir.

12 Q And after that, you said there were some more
13 shots. Where did they come from, Mr. Phillips?

14 A Through the back window.

15 Q Did you hear them?

16 A Yes, sir.

17 Q Could you see them?

18 A Through the back window?

19 Q Could you see a flash?

20 A When they was in front of me, I seen the sparks
21 blew across my face.

22 Q And the ones that went out of the back window,
23 which direction did they go? Out back?

24 A Yes, sir.

25 Q Did you know somebody had been hit then?

1 A No, sir.

2 Q You said something about -- I think you said
3 something about looked like somebody was reaching
4 for something?

5 A Yes, sir.

6 Q What do you mean -- what were you talking about
7 there?

8 A They're sticking their hand towards under their
9 seat.

10 Q Did you ever see anything?

11 A No, sir.

12 Q Did you see how many people were in the car,
13 Mr. Phillips?

14 A I seen two at the time.

15 Q Did you know them?

16 A No, sir.

17 Q To your knowledge, did John Moore know them?

18 A No, sir.

19 Q Ever seen them before?

20 A No, sir.

21 Q Did y'all ever have any run-ins with them?

22 A No, sir.

23 Q Have no idea who they were?

24 A No, sir.

25 Q Did you see the two kids in the back?

1 **A** No, sir.

2 **Q** What were you feeling as you got up in
3 Hollywood -- and that's your -- where y'all -- your
4 neighborhood there where you ended up going, right?

5 **A** Yes, sir.

6 **Q** And you said he asked you to call somebody?

7 **A** Yes, sir.

8 **Q** Were you able to make a call?

9 **A** No, sir.

10 **Q** Describe your condition. I mean, how were you
11 feeling?

12 **A** Heart racing, scared at the time.

13 **Q** That was in October of 2004?

14 **A** Yes, sir.

15 **Q** You'd been -- had you been in that truck prior
16 to that, prior to this day, whatever day it was --

17 **A** Yes, sir.

18 **Q** -- had you ridden in it before?

19 **A** Yes, sir.

20 **Q** Had you ridden in that truck since October 2004
21 -- between October 2004 and the arrest of John
22 Moore?

23 **A** Yes, sir.

24 **Q** What, if anything, did you learn about whether
25 or not there were any -- the truck had been damaged?

1 **A** Yes, sir.

2 **Q** What did you learn, if anything?

3 **A** Like a day after, John told me he had hit his
4 dad tailgate.

5 **Q** He said he told you that?

6 **A** Yes, sir. He shot it.

7 **Q** Did he show it to you?

8 **A** Yes, sir.

9 **Q** Did you look at it?

10 **A** Yes, sir.

11 **Q** Did you touch it?

12 **A** Yes, sir.

13 **Q** Can you come down here one second?

14 **MR. MEADORS:** With the Court's permission.

15 **THE COURT:** Yes, sir. You've got to keep your
16 voice up, please.

17 (Witness leaves the witness stand.)

18 **BY MR. MEADORS:**

19 **Q** This is marked State's 95, Mr. Phillips.
20 According to your testimony, Mr. Moore said that
21 daddy's truck had been hit a day or so after?

22 **A** Yes, sir.

23 **Q** Do you see on here where it was hit?

24 **A** Yes, sir.

25 **Q** Could you turn around here and show the jury?

1 **A** (Indicating) right there.

2 **Q** Is that what he showed you?

3 **A** Yes, sir.

4 **Q** Who did you tell that to, if anybody?

5 **A** Eric Barnes, Richland County investigator.

6 **Q** Is that when they went and got the tailgate?

7 **A** Yes, sir. They went and got the whole truck.

8 **Q** Could you see it -- could you see it like that
9 then? I mean, were you able to see it when you
10 looked at it a day or so after?

11 **A** Yes, sir.

12 **Q** You could see a bullet hole?

13 **A** I could see --

14 **Q** Or you could see this indentation, excuse me?

15 **A** Yes, sir.

16 **Q** Was anything covering your view of that?

17 **A** I don't believe so.

18 **Q** You can have a seat.

19 **A** (Witness resumes the witness stand.)

20 **Q** Was this truck, the bed of the truck -- you
21 said you'd been in it before and after?

22 **A** Yes, sir.

23 **Q** Describe the condition of the bed of the truck
24 for me.

25 **A** Scratched up, it was a work truck.

- 1 Q Work truck?
- 2 A Yes, sir.
- 3 Q Scratched up?
- 4 A Yes, sir.
- 5 Q And that's the way -- was it that way in
- 6 October of 2004 when y'all were driving it?
- 7 A Yes, sir.
- 8 Q When did you find out somebody was dead?
- 9 A About two or three days later on the news.
- 10 Q Heard it on the news?
- 11 A Yes, sir.
- 12 Q Did you tell anybody?
- 13 A No, sir.
- 14 Q Did you talk to Mr. Moore?
- 15 A Yes, sir.
- 16 Q Did he tell anybody?
- 17 A Yes, sir.
- 18 Q Did y'all talk to each other about it?
- 19 THE COURT: Did he say yes, sir?
- 20 BY MR. MEADORS:
- 21 Q Did you say Mr. Moore told somebody?
- 22 A Yes, sir.
- 23 Q Who did he tell?
- 24 A Delia Nix.
- 25 Q Who was that?

1 **A** His girlfriend. It wasn't his girlfriend at
2 the time, but his girlfriend afterwards.

3 **Q** Did you or Mr. Moore tell the law?

4 **A** The law? Police?

5 **Q** The police?

6 **A** No, sir.

7 **Q** And from October until you did talk to the
8 police in October of the next year, 2005, did you
9 tell anybody?

10 **A** When I talked to the police?

11 **Q** Prior to talking to the police, did you tell
12 anybody?

13 **A** No, sir.

14 **Q** And to your knowledge, Mr. -- now, you
15 mentioned Eric Barnes a little while ago. This is
16 Eric Barnes right here?

17 **A** Yes, sir.

18 **Q** And did there come a time that you met him in
19 the course of this investigation?

20 **A** Yes, sir.

21 **Q** Why didn't you tell anybody? Tell them why
22 didn't you tell anybody before you told Eric Barnes.
23 And you end up getting in trouble with the feds,
24 don't you?

25 **A** Yes, sir.

1 **Q** I'm going to ask you about that in a minute,
2 but prior to that, why didn't you tell anybody?

3 **A** I was scared. I thought I'd get in trouble for
4 it. And I just -- I tried the whole year to forget
5 about it.

6 **Q** Did you shoot?

7 **A** No, sir.

8 **THE COURT:** Mr. Bailiff, get that juror some
9 water for me, please.

10 Do you need a break, ma'am?

11 **JUROR:** No.

12 **THE COURT:** Just let me know if you need to
13 stop, okay?

14 **JUROR:** Okay.

15 **THE COURT:** I'm sorry, Mr. Meadors. Go ahead.

16 **MR. MEADORS:** Thank you.

17 BY MR. MEADORS:

18 **Q** At some point you plead guilty to -- well, tell
19 them what you pled guilty to in the federal system?

20 **A** Possession of ammunition.

21 **Q** That's from a pawnshop?

22 **A** Yes, sir.

23 **Q** .38, right?

24 **A** Yes, sir.

25 **Q** Got some ammunition from a pawnshop.

1 **A** .38 and .25.

2 **Q** And the pawnshop, you signed your own name?

3 **A** Yes, sir.

4 **Q** And after you had been convicted in YOA, you
5 weren't supposed to get ammunition?

6 **A** No, sir.

7 **Q** But you signed your own name and they end up
8 turning it over to the feds, the pawnshop?

9 **A** Yes, sir.

10 **Q** And it was like \$39 worth of ammunition?

11 **A** I believe so.

12 **Q** And as a result of that, did you plead guilty
13 in the federal system?

14 **A** Yes, sir.

15 **Q** And as a result of that plea, tell these folks
16 what sentence you were looking at.

17 **A** Thirty-seven months federal custody, that's
18 three years.

19 **Q** And you were before Her Honor -- the Honorable
20 Cameron McGowan Currie; is that correct?

21 **A** Yes, sir.

22 **Q** Judge Currie?

23 **A** Yes, sir.

24 **Q** And with the feds, once you had been arrested,
25 did you sign an agreement with the federal

1 government?

2 A Yes, sir.

3 Q Enter a plea agreement with them?

4 A Yes, sir.

5 Q Agreed to cooperate with them in that case
6 where you bought the ammunition?

7 A Yes, sir.

8 Q You pled guilty to that?

9 A Yes, sir.

10 Q And any other assistance that you could
11 provide, correct?

12 A Yes, sir.

13 Q And at some point, did this man or somebody
14 else from the state level come to see you?

15 A Yes, sir.

16 Q Where did that take place when they came to see
17 you?

18 A In the federal, Strom Thurmond Building on --

19 Q Right over here?

20 A -- on Assembly Street.

21 Q And who was your attorney on this charge?

22 A John Hair.

23 Q John Hair?

24 A Yes, sir.

25 Q And when you first met with Mr. Hair or

1 Mr. Barnes, I don't know who else was there, was
2 there any family members there?

3 A My baby's mom was in my car outside.

4 Q And do you remember when that meeting was?

5 A Like 2005, I believe.

6 Q When you first met Mr. Barnes, they asked you
7 about this, correct?

8 A Yes, sir.

9 Q Did you leave the Strom Thurmond building?

10 A Yes, sir.

11 Q What did you do?

12 A When I left, he asked me about John. He asked
13 me questions about him and the truck.

14 Q John Moore?

15 A Yes, sir, John Moore. And he asked me if I
16 need to talk to my lawyer for a minute. I told him,
17 No, I need to talk to my mama. He said, I'm going
18 to give you a minute to talk to your lawyer. Then
19 he turned the camera off and he asked me -- I asked
20 my lawyer was I under arrest or anything. He told
21 me no. I said, I'm gone. I left. I ran out of the
22 building.

23 Q Tell it all.

24 A I ran out of the building. I ran downstairs to
25 the basement. I didn't mean to go to the basement.

1 I just went all the way down. So I had to go out a
2 back gate and I came around the building and got in
3 my car and left.

4 Q Where did you go?

5 A I went to my baby mama's house. I hurried
6 there. I had to catch my breath. I didn't catch my
7 breath until I was down on Farrow Road near -- close
8 to Greenview area.

9 Q Did you talk to your mama?

10 A Yes, sir, later on. I talked to my baby's mom
11 at the time. She had asked me what was wrong.

12 Q Then later you talked to your mom?

13 A Yes, sir. When I got to the house, I called my
14 mom.

15 Q And did you talk to Mr. Eric Barnes?

16 A I talked to the investigator who arrested me,
17 the federal investigator. I called him back after I
18 talked to my mom. I told him I know exactly what he
19 talking about and it was just -- I had to do it.

20 Q And after you talked to the federal
21 investigator, your lawyer John Hair, did you talk to
22 Mr. Barnes?

23 A Yes, sir.

24 Q I'm going to show you what's marked 121 for
25 identification only. Whose name is that?

1 **A** Mine, Kerwyn Phillips.

2 **Q** What date is that?

3 **A** 28th of October 2005.

4 **Q** That's your name at top?

5 **A** Yes, sir.

6 **Q** What road was that?

7 **A** [REDACTED].

8 **Q** Was that your address at the time?

9 **A** Yes, sir.

10 **Q** Is this the statement you gave to Investigator
11 Barnes?

12 **A** Yes, sir.

13 **Q** Did you want to come forward and testify?

14 **A** In a way.

15 **THE COURT:** Did you say in a way or no way?

16 **THE WITNESS:** In a way.

17 **THE COURT:** Thank you.

18 BY MR. MEADORS:

19 **Q** You've known John Moore your whole life?

20 **A** Yes, sir.

21 **Q** Y'all are friends, characterize yourself as
22 friends?

23 **A** Yes, sir.

24 **Q** Now, you started talking with Investigator
25 Barnes and you -- did you tell him what happened on

1 the highway?

2 A Yes, sir.

3 Q For the record now, the person -- well, let me
4 go on. Did they ask you to or provide you with a
5 recorder to see if you could get any statements from
6 John Moore concerning this incident?

7 A Yes, sir.

8 Q They asked you to see if you could get him on
9 tape regarding this incident, correct?

10 A Yes, sir.

11 Q And did you agree with them that you would do
12 that?

13 A Yes, sir.

14 Q And did you attempt to do that?

15 A Yes, sir.

16 Q Did you have his phone number?

17 A No, sir, not at the time.

18 Q How were you attempting to get in touch with
19 him?

20 A Through Delia Nix.

21 Q And since the shooting, the death of Ms. Dover,
22 in October until October of 2000 -- well, until
23 October 28th of 2005, had you seen Mr. Moore between
24 these two dates?

25 A Yes, sir.

1 Q Had you ridden in this truck?

2 A Yes, sir.

3 Q Had you talked to him on the phone during this
4 time?

5 A Yes, sir.

6 Q About whatever you talked to him about, right?

7 A Yes, sir.

8 Q And did y'all talk anymore, you and him, after
9 those first few days of that shooting, did y'all
10 talk anymore about this much?

11 A No, sir.

12 Q Fair to say that you recognize his voice on the
13 phone from your whole Slip and Slide on up till
14 today?

15 A Yes, sir.

16 Q You know his voice?

17 A Yes, sir.

18 Q And did you, in fact, talk to the defendant on
19 the telephone about this incident?

20 A Yes, sir.

21 Q And did you record that?

22 A Yes, sir.

23 Q What did you do after you recorded it?

24 A Put it in my glove compartment in my car and I
25 went to work.

1 Q And where were you working?

2 A In Winnsboro.

3 Q I'm sorry, sir?

4 A In Winnsboro at a plant, a Chevrolet plant
5 where they make panels for Chevy cars.

6 Q So you take this, you go to work and then what
7 -- do you call Investigator Barnes?

8 A Yes, sir.

9 Q And do you arrange a time to give him the tape?

10 A Yes, sir. When I got off from work, it was
11 real early because I went to work at night, so I
12 wasn't able to get him till like after I left work
13 around 6:30, seven o'clock and that's when I called
14 him.

15 Q And did you meet with the Investigator Barnes
16 to give him the tape?

17 A Yes, sir.

18 Q Do you remember where you met him?

19 A Chic-fil-A on Decker Boulevard.

20 Q Chic-fil-A on Decker Boulevard?

21 A Yes, sir.

22 Q And you handed him over the tape?

23 A Yes, sir.

24 Q And was it a cassette type?

25 A Yes, sir.

1 Q Does this appear to be it?

2 A I never pulled the tape from the recorder.

3 Q Okay. But you handed him a tape?

4 A Yes, sir.

5 Q And have you heard that tape since?

6 A No, sir.

7 Q Did you hear it in my office the other day?

8 A Yesterday.

9 Q Okay. Does that tape accurately reflect the
10 conversation that you had with John Moore?

11 A Yes, sir.

12 Q Your voice on there?

13 A Yes, sir.

14 Q His voice on there?

15 A Yes, sir.

16 Q No doubt about that in your mind?

17 A No doubt.

18 (Pause.)

19 MR. MEADORS: Your Honor, at this time, we
20 would offer State's 120, I believe, without
21 objection.

22 MR. STRICKLER: That's correct, sir.

23 (State's Exhibit Number 120, tape, admitted
24 into evidence.)

25 THE COURT: All right. Do you have something

1 to play it with or you're going to just put it in
2 the record?

3 **MR. MEADORS:** Yes, sir, my understanding -- let
4 me correct, so the folks can understand this, that
5 that exact tape, and I think Mr. Strickler and Mr.
6 Collins are aware of this, has been put on a C.D.
7 and we're going to play it off of the C.D., which is
8 easier to play. And the C.D. is 119, we'd offer it
9 without objection.

10 **MR. STRICKLER:** That's correct, sir.

11 (State's Exhibit Number 119, C.D., admitted
12 into evidence.)

13 **MR. MEADORS:** Beg the Court's indulgence.

14 **THE COURT:** Yes, sir.

15 (Pause.)

16 **MR. MEADORS:** Your Honor, permission to play
17 it.

18 **THE COURT:** Yes, sir. They say without
19 objection, you can play it.

20 (Pause.)

21 **MR. MEADORS:** Your Honor, can Mr. Strickler and
22 I approach?

23 **THE COURT:** Yes.

24 (Whereupon, a bench conference was held off
25 the record, in the presence of the jury, but out of

1 the hearing of the jury.)

2 **MR. MEADORS:** Ladies and gentlemen, I need to
3 ask you to step in the jury room. Don't discuss the
4 case.

5 (The jury retires to the jury room.)

6 **THE COURT:** What's the issue, Solicitor?

7 **MR. MEADORS:** I have decided to withdraw -- we
8 will not offer -- that's fine. I apologize.

9 **THE COURT:** Do you all need to cue that up
10 somewhere?

11 **MR. MEADORS:** It's ready. I thought it was
12 going to play the last phone call, but we're ready.
13 I'm sorry about that.

14 **THE COURT:** If the jury's ready, bring them
15 back in. If some of them are using the restroom,
16 just bring them in whenever they're ready.

17 **BAILIFF:** Your Honor, some are in the restroom
18 and some are waiting.

19 **THE COURT:** When all 12 are ready, just let us
20 know.

21 (Pause.)

22 (The jury returns to the courtroom.)

23 **MR. MEADORS:** Please the Court. Ms. Weiss,
24 would you please continue.

25 (Whereupon, State's Exhibit Number 119 was

1 played for the jury and the following occurred.)

2 BY MR. MEADORS:

3 Q Who was the person saying, I need to talk to
4 you somewhere with just the two of us, basically?

5 A Me.

6 Q Who was the other person that was responding to
7 you to those questions?

8 A John Moore.

9 Q John Moore?

10 A Yes, sir.

11 MR. MEADORS: All right. Go ahead, Ms. Weiss,
12 please.

13 (State's Exhibit Number 119 was continued.)

14 Q Are you trying to get in touch with him during
15 these -- did you make several attempts to get in
16 touch with Mr. Moore where you could talk to him?

17 A I believe so.

18 MR. MEADORS: Go ahead.

19 (State's Exhibit Number 119 was continued.)

20 Q Very briefly, when you're saying, All right,
21 cuz, call me then, that's you?

22 A Telling him to call me.

23 Q And Mr. Moore on the other line?

24 A Yes, sir.

25 MR. MEADORS: Please continue.

1 (State's Exhibit Number 119 was continued.)

2 Q Who was that saying, I've got my first on the
3 way?

4 A Me.

5 Q And the other person you're talking to right
6 now and you were on the phone?

7 A Yes, sir, cell phone.

8 Q And the other person on the other line is whom?

9 A John Moore.

10 (State's Exhibit Number 119 was continued.)

11 Q After you said, You don't think about it
12 anymore, what was his response?

13 A He said it's over and done with and he don't
14 think about that shit no more. He don't care about
15 it.

16 (State's Exhibit Number 119 was continued.)

17 Q Was that your voice saying, Did you feel that
18 you had to shoot at them when it first happened, was
19 that you asking that question?

20 A Yes, sir.

21 Q What was his response?

22 A That they were pump faking.

23 Q That what?

24 A They was pump faking.

25 Q What is pump faking?

1 **A** Acting like you're going to do something.

2 **Q** I mean, if I acted like I was going to hit you,
3 would that be pump faking?

4 **A** Yes, sir.

5 (State's Exhibit Number 119 was continued.)

6 **Q** What was Mr. Moore saying then?

7 **A** He said I better stop thinking about that shit.
8 He don't think about that shit no more.

9 (State's Exhibit Number 119 was continued.)

10 **Q** There at the end again, Mr. Phillips, what was
11 he talking about? What were his words?

12 **A** About the, Don't think about it?

13 **Q** Yes, sir.

14 **A** He told me not to think about it, don't worry
15 about it. He said he sleep good. He don't think
16 about it.

17 **MR. MEADORS:** Ms. Weiss, thank you.

18 **Q** A couple more questions, Mr. Phillips. The gun
19 that you've testified Mr. Moore shot out of his
20 dad's truck, did he tell you anymore about that or
21 was there any other conversation about that gun, can
22 you tell these folks? Do you know what I'm talking
23 about?

24 **A** Yes, sir.

25 **Q** When is the next time, if ever, that you talked

1 to Mr. Moore about that gun after October 17th,
2 24th, when this happened? Shortly after the
3 incident, did he talk to you about the gun?

4 A Yes, sir.

5 Q Okay. Tell us about that.

6 A When he had to get rid of the gun. The police
7 had a warrant for somebody at the apartment he was
8 staying at where the gun was at. So when they came
9 and knocked on the door, nobody was there, but we
10 heard about it later on. So he was kind of scared
11 that they were coming there about that situation, so
12 he got the gun, told me he had to get rid of it. He
13 met me at my dad's house and we went in the woods
14 and buried it.

15 Q He met you over at your dad's in the woods?

16 A Yes, sir.

17 Q Tell these folks where that is in relation to
18 -- you got to your dad's property?

19 A Sir?

20 Q I say your dad's property. Is there property
21 near where your dad's is?

22 A Yes, sir.

23 Q Where is that generally?

24 A In Greenview off of Woods (ph) Road. It's
25 woods all behind my dad house on all the way back to

1 North Main.

2 Q So your dad's house in Greenview?

3 A Yes, sir.

4 Q Some woods behind it?

5 A Yes, sir.

6 Q Does the woods lead up to something on North
7 Main?

8 A Blue Ribbon.

9 Q So is that woods between -- behind your daddy's
10 house and Blue Ribbon, is that where you're talking
11 about?

12 A Yes, sir.

13 Q Behind Blue Ribbon and behind your daddy's
14 house, those woods are --

15 A Behind my daddy house.

16 Q And what, if anything, did y'all do there?
17 Y'all being you and Mr. Moore.

18 A That night?

19 Q About the gun. And if I interrupted you, I'm
20 sorry. You said he came to your daddy's house?

21 A Yes, sir.

22 Q Tell them about it, please.

23 A When we went back in the woods, he got a shovel
24 out of my dad's storage. And we ran back into the
25 woods with a flashlight and we went a good ways back

1 in the woods and buried the gun behind a tree.

2 Q Had he told you whether or not he thought about
3 doing something else with the gun?

4 A Yes, sir.

5 Q What had you told you?

6 A Crushing it, but he didn't have the time.

7 Q But he didn't have the time?

8 A No, sir.

9 Q So you went out in the woods?

10 A Yes, sir.

11 Q And what happened out there, if anything, Mr.
12 Phillips?

13 A He dug a hole, put the gun inside. The gun was
14 in a bag, he put it inside the hole, covered it up.

15 Q Did you and/or Mr. Moore do anything else --
16 you said he showed you this indentation, said it was a
17 bullet hole?

18 A Yes, sir.

19 Q Did y'all do anything else with the truck?

20 A Yes, sir.

21 Q Tell me about that.

22 A The next night after we parked it in my
23 granddaddy's backyard, we went took the rims off of
24 it. We had 20 inch wire rims.

25 Q Why did you do that?

1 **A** The truck could be identified with those rims
2 on it. It draw attention to it.

3 **Q** Now, getting back to your -- Judge Currie gave
4 you how much time off your sentence?

5 **A** Four months.

6 **Q** Mr. Phillips?

7 **A** Yes, sir.

8 **Q** Is the person who put his arm in front of you
9 and shot out of the truck, that you said you were in
10 on October 2004, to a vehicle that was on the right,
11 is that person in this courtroom?

12 **A** Yes, sir.

13 **Q** Is the person that shot out of the back of the
14 truck that later told you come here and look at the
15 indentation right here a couple days later on October
16 2004, is that person in the courtroom?

17 **A** Yes, sir.

18 **Q** Is the person in the courtroom -- is the person
19 in this courtroom who told you on this tape, I don't
20 think about that shit anymore, you need to quit
21 worrying about it, is that person in this courtroom?

22 **A** Yes, sir.

23 **Q** Is the person in this courtroom that said, when
24 you responded to him, why did you shoot, Man, he was
25 pump faking me, is that person in this courtroom?

1 **A** Yes, sir.

2 **Q** Would you tell these ladies and gentlemen who
3 he is and point that person out?

4 **A** John Moore, sitting right here in the gray suit
5 (indicating).

6 **MR. MEADORS:** I would ask the record to reflect
7 he's picked the defendant, John Moore.

8 **THE COURT:** It is so noted.

9 **MR. MEADORS:** That's all we have.

10 **THE COURT:** Cross-examination?

11 **MR. STRICKLER:** Please the Court.

12 **THE COURT:** Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. STRICKLER:

15 **Q** Now, if a person -- who's the person in the
16 courtroom that in 2005 was looking at a federal
17 weapons violation charge? That'd be you, right?

18 **A** Federal ammunition.

19 **Q** Fine. Ammunition charge.

20 **A** Yes, sir.

21 **Q** And who's the person in the courtroom when they
22 were approached and mention was made of this
23 incident, said they wanted to, what, talk with their
24 attorney and then ran away from where the interview
25 was being done?

1 A I was.

2 Q That was you?

3 A Yes, sir.

4 Q Now -- and after talking with your baby mama
5 and your mama, and you talked with your attorney,
6 right?

7 A Yes, sir.

8 Q John Hair with the federal public defender's
9 office, right?

10 A Yes, sir.

11 Q Now, you may have talked about the federal
12 thing, but you wanted to talk with them about what
13 could happen to you if you spoke about this stuff, .
14 right? You wanted to know what could happen to you
15 in state court if you gave a statement about this
16 incident here, right?

17 A No, sir.

18 Q No?

19 A No, sir.

20 Q You didn't want to make sure that the federal
21 proffer that you were getting ready to give
22 protected you from having charges brought against
23 you based on what you have said?

24 A They told me that from the start.

25 Q They told you that from the start. So you knew

1 from the start that whatever charges or whatever you
2 said in this statement to the state authorities,
3 they couldn't use to bring any state charges against
4 you, right?

5 A Yes, sir.

6 Q Like a murder charge for example?

7 A As long as I'm being honest.

8 Q Yeah.

9 A Yes, sir.

10 Q Okay. You were concerned about that, right?

11 A What part?

12 Q The possibility that you'd get charged with
13 murder in this case, sir?

14 A No, sir.

15 Q No?

16 A No, sir.

17 Q Now, let me ask you this. You talked with Mr.
18 Meadors on your direct examination about meeting
19 with, I guess, first, federal authorities, then
20 meeting with Mr. Barnes, correct?

21 A Yes, sir.

22 Q How many times did you meet with Mr. Barnes?

23 A About three or four.

24 Q When is the last time you met with Mr. Barnes?

25 A Me and Mr. Barnes one on one?

1 Q You and any meeting in which Mr. Barnes
2 participated, when was the last time?

3 A I seen him Friday when they played the tape
4 back for me, yesterday or Friday.

5 Q Friday or yesterday or both?

6 A No, it was Monday.

7 Q Monday of this week?

8 A Yes, sir.

9 Q And where was that?

10 A In the Solicitor's office on the third floor.

11 Q Okay. Now, have you met with anyone else from
12 the Richland County Sheriff's Department to review
13 what you have to say in this?

14 A No, sir.

15 Q No. And how often have you met with people
16 from the Solicitor's office either by themselves or
17 in company with Mr. Barnes?

18 A I just met with them Monday, that's my first
19 time meeting John Meadors.

20 Q And that's the only time you've met with anyone
21 from the Solicitor's office?

22 A Yes, sir.

23 Q Monday. Now, early on, you used the phrase
24 that, you know, you gave -- went through your job
25 history and talked about your prior --

1 **A** Yes, sir.

2 **Q** -- robbery conviction, getting out and went to
3 a temporary job, then you started -- you said you
4 started running the streets with John. And later
5 on, you indicated to Mr. Meadors that you didn't
6 hang out with him that much in that time frame,
7 right?

8 **A** When I was working.

9 **Q** Right. After you quit working?

10 **A** I did hang out with him.

11 **Q** Well, let me put it this way. When you made
12 these phone calls, okay, before making these phone
13 calls, you didn't even have his phone number, did
14 you?

15 **A** No, sir.

16 **Q** So you were tight enough with him at that point
17 in time that you did not have his number, right?

18 **A** We weren't hanging out that much then.

19 **Q** Okay. Now, you've testified, I think Mr.
20 Meadors had you come down here and look at this,
21 what is this State's 95, where number 1 is and you
22 pointed that out and you said you saw that, that
23 John showed that to you, right?

24 **A** Yes, sir.

25 **Q** Are you sure that there wasn't a bed liner over

1 that?

2 **A** I don't remember there being a bed liner.

3 **Q** Okay. Well, there either was or there wasn't,
4 was there?

5 **A** Yes, sir.

6 **Q** But you're sure you saw that?

7 **A** Yes, sir.

8 **Q** And you listened to the recordings that were
9 made and I counted at least twice that you spoke
10 with John.

11 **A** Yes, sir.

12 **Q** And didn't want to talk with him if someone
13 else was there, right?

14 **A** Yes, sir.

15 **Q** So you wanted to make sure that you were
16 talking with John in private when you spoke with
17 him, correct?

18 **A** Yes, sir.

19 **Q** Okay. Now, let me ask you about this. Tell me
20 how, as there's been some testimony in this trial,
21 how John Moore reached all the way across you to the
22 point that his shoulder was against the edge of the
23 window while he's driving the truck and firing the
24 shots?

25 **A** His arm wasn't out the window.

1 Q You say his arm wasn't out the window, right?

2 A Yes, sir.

3 Q Okay. Now, so I take it that when the shots
4 were fired, the gun was, what, right in front of
5 your face?

6 A Yes, sir.

7 Q So this was, what, a .45 caliber?

8 A Yes, sir.

9 Q Big gun, right?

10 A Yes, sir.

11 Q Going off right in front of your face?

12 A Yes, sir.

13 Q Okay. Now, tell me how, as there's been
14 testimony, as the driver of the car related in a
15 statement to the police the day after the incident,
16 tell me how John Moore managed to reach past you the
17 second time and stick what appeared to be his left
18 arm out that window and fire the shots?

19 A A left arm didn't go out the window. And
20 nobody in that truck was left handed.

21 Q And Mr. Meadors has marked the statement that
22 you gave to Mr. Barnes, written statement, on
23 October 28th, he's marked that for identification.
24 When was the last time you had an opportunity to
25 review that?

1 A Monday.

2 Q Monday?

3 A Yes, sir.

4 Q Have you had a copy of it since Monday?

5 A No, sir.

6 Q No?

7 A No, sir.

8 Q And if I remember your testimony correctly,
9 shortly after the incident, I didn't write down how
10 long after the incident, you and John -- when John
11 got together with you and took the weapon that was
12 used in this case, this is what you told us if I
13 remember correctly, was in a bag, a plastic bag,
14 right?

15 A Yeah, inside of a Crown Royal bag.

16 Q Plastic inside a Crown Royal. And took it out
17 in the woods behind your daddy's place?

18 A Right.

19 Q And you were with him when that happened,
20 right?

21 A Yes, sir.

22 Q And it was buried, right?

23 A Yes, sir.

24 Q You were with him when it was buried, right?

25 A Yes, sir.

1 Q That's what you told the police then, right?

2 A Yes, sir.

3 Q When you were arrested, you told them you would
4 take them out and show them where it was, right?

5 A Yes, sir.

6 Q Where is it?

7 A We couldn't find it. Me and him ran out there
8 in the middle of the night. It was a year after
9 they asked me to help them find the gun. I don't
10 play in the woods.

11 Q I understand, sir. So you couldn't find the
12 gun.

13 MR. STRICKLER: Beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 (Pause.)

16 BY MR. STRICKLER:

17 Q Now, you testified about taking the rims off
18 that pick-up truck?

19 A Yes, sir.

20 Q You didn't tell the police about that before
21 now, did you?

22 A Yes.

23 Q That's in your statement?

24 A I ain't sure.

25 Q Let me show you what's marked as State's 121.

1 I believe you identified that as a copy of your
2 statement?

3 **A** Yes, sir.

4 **Q** You take a look at that and see if there's
5 anything in there about rims?

6 **MR. MEADORS:** Your Honor, may I be heard
7 briefly?

8 **THE COURT:** Do you object?

9 **MR. MEADORS:** Well, if he's going to read off
10 that, we offer it into evidence. If he's going to
11 read something that's not in evidence, we'd offer
12 it.

13 **MR. STRICKLER:** I'm offering it to him in order
14 to have him refresh his recollection as to whether
15 or not --

16 **THE COURT:** There's nothing for me to rule.

17 **MR. MEADORS:** I'm going to object to him
18 reading off that unless it's offered -- well, I'll
19 offer it when I get -- that's fine. I apologize.

20 **THE COURT:** If I'm missing something, I'm
21 sorry. Right now there's nothing for me to rule on.

22 **THE WITNESS:** I don't believe it is.

23 BY MR. STRICKLER:

24 **Q** You don't believe it is.

25 **A** I can't really understand this writing anyway.

1 Q The best of your knowledge, there's no
2 reference in your statement as to the rims. When
3 did you talk with the prosecution about the rims?
4 That'd be Monday, right?

5 A I believe I told them before that.

6 Q When did you last meet with them before that?

7 A I believe I told them that we took the rims
8 off.

9 Q When? When did you tell them that? Or when do
10 you believe that you told them that?

11 A Back in October. Well, when they came to see
12 me, the feds.

13 Q Okay. So you think you told them about it way
14 back in October when they saw you, right?

15 A Yes, sir.

16 Q Okay. Just didn't have it maybe in the written
17 statement that you gave them, right?

18 A We didn't go into so much what happened then.

19 Q Okay. That's when you believe you told them
20 about it?

21 A That's what I believe.

22 Q You sure it wasn't -- when did you meet with
23 them on Monday of this week?

24 A When?

25 Q Yeah, when?

1 **A** Like afternoon.

2 **Q** Monday afternoon?

3 **A** Like the evening time.

4 **Q** Evening time, five o'clock, something like
5 that?

6 **A** Yeah.

7 **Q** Sure they didn't ask you about whether the
8 truck had rims on it at that point in time?

9 **A** They didn't ask me, I told them.

10 **Q** And just so I make sure I understand you
11 correctly. You have never been concerned with
12 whether you got charged with murder for this
13 incident yourself, correct? That's your testimony?

14 **A** They told me if I'm being honest about what
15 happened, I didn't have to worry about that.

16 **MR. STRICKLER:** Yes, sir. That's all I have,
17 sir.

18 **THE COURT:** All right. Redirect?

19 **MR. MEADORS:** Just very briefly, Your Honor.

20 REDIRECT EXAMINATION

21 **BY MR. MEADORS:**

22 **Q** Just a few in direct to some of his questions,
23 okay, Mr. Phillips?

24 **A** Yes, sir.

25 **Q** He asked you about when you told this jury that

1 John Moore's shoulder was up against the window, you
2 never told them that, did you?

3 A No, sir.

4 Q You never testified to that, did you?

5 A No, sir.

6 Q Whose shoulder was up against the window?

7 A My shoulder.

8 Q Your shoulder was up against the window?

9 A Yes, sir.

10 Q And whose arm was in front of you pointed
11 toward the window?

12 A John Moore.

13 Q Mr. Strickler asked you about the gun. Did you
14 take Eric Barnes and whoever else, I don't know, out
15 to those woods after you told them about the gun?

16 A Yes, sir.

17 Q Were they able to find the gun?

18 A No, sir.

19 Q How long after the incident of Mr. Moore coming
20 to your house, getting the shovel, your daddy's
21 shovel, how long after that was it when you told
22 them about the gun and took them out in the woods?

23 A A year or more.

24 Q A year?

25 A Yes, sir.

1 **Q** He was showing you this statement up here and
2 asked you about something. Is this the statement
3 you gave on October 28th?

4 **A** Yes, sir.

5 **Q** I think you said back to him, I'm not real sure
6 if it's in there, I can't read his handwriting?

7 **A** Yes, sir.

8 **Q** So you had -- this isn't your handwriting?

9 **A** No, sir.

10 **Q** But this is what you told Investigator Barnes?

11 **A** Yes, sir.

12 **Q** And did you put in here about the incident
13 going down on I-20?

14 **MR. STRICKLER:** Your Honor, I'll object, Your
15 Honor.

16 **THE COURT:** Yes, sir, what's your objection?

17 **MR. STRICKLER:** He is going to bolster his
18 witness with what he maintains is a prior consistent
19 statement.

20 **THE COURT:** Do you want to be heard?

21 **MR. MEADORS:** Yes, sir, I would, respectfully.
22 He said, were the rims in here? The only thing he
23 picked out, I think I'm -- since he attacked his
24 credibility, I'm allowed to go back just
25 respectfully with this document and say, did you put

1 this in here, did you put this in here, did you put
2 this in here and that's in response to him attacking
3 his belief about something that wasn't in here. I'm
4 going to ask him was all this other stuff in here.

5 **THE COURT:** Anything else, Mr. Strickler?

6 **MR. STRICKLER:** No, sir.

7 **THE COURT:** The objection is sustained.

8 **MR. MEADORS:** We would offer 121.

9 **MR. STRICKLER:** I would object on the same
10 basis.

11 **THE COURT:** I got reversed on that one time in
12 Newberry. I'm not doing that again. It can't come
13 in.

14 **MR. MEADORS:** Could I approach with Mr.
15 Strickler, just a specific question for my guidance?
16 Or am I allowed to ask him anything out of here?

17 **THE COURT:** Sure you can ask him questions out
18 of there. And if there's an objection, I'll rule on
19 it.

20 You know, I apologize to you all, I just don't
21 like bench conferences that much. If they relate to
22 something procedural or you need to tell me that we
23 need to take a break or something like that, that's
24 fine, but if y'all are going to come up here and
25 talk to me about the law, I want it on the record.

1 **MR. MEADORS:** We do it differently and I
2 apologize.

3 **THE COURT:** No, that's fine. I told you
4 yesterday when I said that other judges do things
5 differently.

6 But to answer your question, yes, sir, you may
7 ask him a question, I don't know if it's
8 objectionable or not, I'll hear the objection.

9 BY MR. MEADORS:

10 **Q** Did you put in this statement that he told you
11 to lean back before he fired the shot?

12 **A** Yes, sir.

13 **Q** Did you put in this statement that John Moore
14 was the shooter?

15 **A** Yes, sir.

16 **Q** I believe he was just asking you, did you put
17 in the statement about the gun in the plastic bag?

18 **A** Yes, sir.

19 **MR. MEADORS:** Thank you, Judge.

20 **THE COURT:** All right. Recross?

21 **MR. STRICKLER:** No, sir. Thank you.

22 **THE COURT:** Okay. Thank you, sir. You may
23 step down.

24 All right. Ladies and gentlemen of the jury, I
25 know you've had several breaks today. We haven't

1 had quite as many as you've had, so we need to take
2 a ten minute break. Don't discuss the case. I'll
3 get you back out here. Thank you.

4 (The jury retires to the jury room.)

5 **THE COURT:** Court's in recess for ten minutes.

6 (Brief recess.)

7 **THE COURT:** Yes, sir, Mr. Meadors.

8 **MR. MEADORS:** If it pleases Your Honor, during
9 the last break, I was just going to tell our witness
10 goodbye. He had informed an investigator in our
11 office, Ace Wesley, who then informed me, then I
12 asked the last witness, Kerwyn Phillips, and he said
13 during his testimony, he had looked at the jury, as
14 Your Honor saw him, he was addressing the jury, that
15 the lady sitting in this chair here on the front
16 row, Your Honor, and I do not know her name and he
17 does not remember her name, but he said it was the
18 lady in the front row, middle, that he recognized
19 her and said that he knew her from high school.

20 He said he knew that John Moore knew her from
21 high school and he thought Mr. Moore knew her better
22 than he did, but clearly without question, he
23 recognized her immediately. He felt that she
24 recognized him. Of course, I can't -- I'm just
25 telling you what he told me, but he said without a

1 doubt, they went to high school together, but I
2 think he -- I don't know if he was a little ahead of
3 Mr. Moore or not, but he said she might have been
4 more toward his age in school than his. I'm laying
5 that out, as I've told, I think she might have been
6 closer to Mr. Moore's age is my point.

7 I bring that to the Court's attention because
8 that concerns the State. I think, number one, I'm
9 obligated to tell Your Honor, of course, I would
10 anyway and tell this court, but that does concern
11 the State that she did not -- assuming she had gone
12 to school with both of them, Mr. Moore, clearly, was
13 in here and he saw her -- excuse me -- she saw him,
14 Your Honor had him turn around and face the jury,
15 and also the name of Kerwyn Phillips was read out,
16 at no time during the voir dire process did she
17 stand up and say, I know him, went to school or
18 anything, which I think in one of Your Honor's
19 questions would have been an appropriate response.
20 And the fact she did not divulge that that she does
21 know or knew and went to school with Mr. Moore
22 greatly concerns the State.

23 We would like Your Honor to have an alternate
24 put on. I think we have one alternate left and we
25 respectfully request Your Honor to offer that as a

1 remedy.

2 **MR. STRICKLER:** And if I could please, sir, you
3 know, I don't remember anyone I went to high school
4 with and it's been a lot longer. There are a lot of
5 people from high school people may or may not
6 remember or recognize faces, and it's entirely
7 possible not to remember or recognize names. I'm
8 more guilty than most in that regard.

9 All I'm saying is I would hesitate, in fact, I
10 adamantly oppose any action absent the questioning
11 of this juror. I don't think it's appropriate until
12 the Court makes a determination that the juror has
13 intentionally or unintentionally misled the Court,
14 et cetera to consider seating an alternate in this
15 situation.

16 **THE COURT:** The only person I see on this list
17 it could be is, because of age, is juror number 211.
18 I need you to ask Cherish L. Payton to come in the
19 courtroom, please.

20 (Juror enters the courtroom.)

21 **THE COURT:** Ms. Payton, just have a seat over
22 there in one of those chairs on the front row for
23 me. You're Cherish Payton, juror number 211?

24 **JUROR:** Uh-huh.

25 **THE COURT:** Ms. Payton, I need to ask you some

1 questions and just kind of routine stuff. It
2 happens in a lot of cases.

3 **JUROR:** Okay.

4 **THE COURT:** I need you to remember that you're
5 under oath, all right?

6 **JUROR:** Okay.

7 **THE COURT:** Did you go to Keenan High School?

8 **JUROR:** No.

9 **THE COURT:** Do you know either the defendant or
10 the man who just testified?

11 **JUROR:** No.

12 **THE COURT:** Where did you go to high school?

13 **JUROR:** Ridge View.

14 **THE COURT:** Is there anybody back there on the
15 jury about your age?

16 **JUROR:** No.

17 **THE COURT:** They're all older than you, aren't
18 they?

19 **JUROR:** Uh-huh.

20 **THE COURT:** Okay. Anything about anything that
21 I asked you that would affect your ability to be
22 fair and impartial in deciding the case?

23 **JUROR:** No.

24 **THE COURT:** Okay. I think I got some bad
25 information. Okay?

1 **JUROR:** Okay.

2 **THE COURT:** Thank you, ma'am.

3 **JUROR:** Thank you.

4 (Juror leaves the courtroom.)

5 **THE COURT:** I can go down this whole list, but
6 I'm assuming that's the lady that they were talking
7 about.

8 **MR. MEADORS:** I can affirm, that's why I was
9 talking to Ms. Joanna, that is the lady that was
10 sitting in that seat before him. I went out and
11 drew a diagram for the last witness. I said, All
12 right, point me to where she was, and that's the
13 seat. So that is the one for Your Honor's -- that
14 he was referring to.

15 **THE COURT:** Well, unless you all have anything
16 further, it just looks like that was misinformation.

17 **MR. MEADORS:** At this time if we gather
18 something else that may contradict something she
19 said, we'll certainly bring it to the Court.

20 **THE COURT:** Well, if you do, not only would you
21 bring it to my attention, I think you probably have
22 to take some other steps because she said she went
23 to a completely different high school and doesn't
24 know either one of them.

25 All right. Are you ready for the jury?

1 **MS. WEISS:** State's ready for the jury.

2 **THE COURT:** Defense?

3 **MR. STRICKLER:** Yes, sir.

4 **THE COURT:** Bring the jury in, please.

5 (The jury returns to the courtroom.)

6 **THE COURT:** All right. Call your next witness,
7 Solicitor.

8 **MS. WEISS:** Thank you, Your Honor. The State
9 calls David Collins.

10 **THE COURT:** Come around, please.

11 DAVID JEFFREY COLLINS,
12 having been duly sworn, testified as follows:

13 **THE CLERK:** Please have a seat there, sir.
14 State your full name for the record.

15 **THE WITNESS:** David Jeffrey Collins.

16 DIRECT EXAMINATION

17 BY MS. WEISS:

18 **Q** Good morning, Mr. Collins. First of all, I
19 want to apologize to the court reporter and you for
20 my voice. If you can't hear me, please just let me
21 know. Lieutenant Collins?

22 **A** Investigator.

23 **Q** Investigator Collins, where are you currently
24 employed?

25 **A** I'm employed by the Richland County Sheriff's

1 Department.

2 Q And how long have you been employed there?

3 A I've been employed there since 2002.

4 Q And please tell the jury a little bit about
5 yourself, your qualifications and your background.

6 MR. STRICKLER: And, Your Honor, I don't want
7 to cut anyone off, but if nothing else, in deference
8 to Madame Solicitor's voice, I will be happy to
9 stipulate to his expertise in the area of
10 ballistics.

11 THE COURT: You stipulate he's a ballistics
12 expert?

13 MR. STRICKLER: Yes, sir.

14 THE COURT: Do you want to go into anything
15 else?

16 MS. WEISS: If I can, just go into a little bit
17 of his training.

18 THE COURT: Sure.

19 THE WITNESS: I received my bachelors degree
20 from the Citadel in 1984 and I became employed at
21 the State Law Enforcement Division, commonly known
22 as SLED, in 1990. Through SLED, I began an
23 on-the-job training program in firearms and tool
24 marks identification, which is commonly referred to
25 as ballistics. That training lasts for

1 approximately two to three years in most cases and
2 mine took about that long.

3 And at that time, there were no actual schools
4 that could teach you the bulk of that sort of an
5 expertise. It all had to be done essentially under
6 an apprenticeship type of program where you learned
7 on the job.

8 After completing that training course, I was
9 qualified by SLED as a firearms and tool marks
10 examiner and began working a case load on my own.
11 I've also joined and am active in our professional
12 association, which is the Association of Firearms
13 and Tool Marks Examiners or AFTE. And through that
14 association and through other schools, I received
15 continuing education and training in my field.

16 I have attended and successfully completed
17 firearms repair courses given by various firearms
18 manufacturers and specialized in crime scene
19 assistance courses such as a shooting scene
20 reconstruction school that I recently attended in
21 Arizona.

22 BY MS. WEISS:

23 Q And what is your actual position at the
24 sheriff's department?

25 A I am a forensic firearms and tool marks

1 examiner or often referred to just simply as a
2 firearms examiner.

3 Q And what -- as a firearms examiner, what is
4 involved in your duties there?

5 A The primary duty that we have is the
6 examination of firearms and firearms related
7 evidence that is submitted in the forensics
8 laboratory. The most common examination that we're
9 asked to perform is to compare fired bullets and
10 fired cartridge cases with specimens that we fire
11 from suspect firearms in order to determine if those
12 items had been fired by that gun. If we don't have
13 a gun submitted, we're often asked to examine those
14 types of evidence items to determine what type of
15 firearm could have fired them and also, if possible,
16 to determine if they were all from one gun or from
17 several guns.

18 Additionally, we perform serial number
19 restorations on firearms that have had the serial
20 number removed or altered. We do multiple target
21 distance determinations to determine, if possible,
22 how far -- or, approximately, how far a firearm was
23 from a person when they were shot. And we assist
24 the crime scene unit and do shooting scene
25 reconstructions.

1 **Q** Investigator Collins, what brought you into the
2 case that we're here about today, State versus John
3 Moore?

4 **A** I was asked initially in this case to both
5 examine some fired projectiles that were recovered
6 from the vehicle and also to examine the vehicle
7 itself.

8 **Q** I'm going to show you what's been marked as
9 State's Exhibit 94, State's Exhibit 37, and State's
10 Exhibit 38. Ask you if you recognize those three
11 items?

12 **A** If you'll give me a few moments, I'm going to
13 open these up to examine the contents.

14 **Q** Certainly.

15 **A** Yes, I can identify these three items as being
16 fired bullets that I examined in this case. They
17 are represented in my report that I issued as items
18 one through three in my report.

19 **MS. WEISS:** Your Honor, at this time, I ask to
20 have these three bullets entered into evidence.

21 **MR. STRICKLER:** That's without objection.

22 **THE COURT:** Mark those in evidence, please,
23 ma'am.

24 (State's Exhibit Numbers 37, 38 and 94,
25 bullets, admitted into evidence.)

1 BY MS. WEISS:

2 Q And where did you receive these bullets?

3 A If I can refer to my notes for a moment.

4 These items were received from -- I assisted
5 the crime scene unit in the removal of some of these
6 items directly from the vehicle, but these items
7 would have come to me through the transfer within
8 the department from the crime scene personnel.
9 There was one projectile that I actually recovered
10 physically myself. I don't have that here in front
11 of me.

12 Q Did you respond to the scene on October 17th of
13 2004 out to the 'Flying J'? Were you involved in that
14 at all?

15 A What was that date again, ma'am?

16 Q October 17th, 2004.

17 A No, I did not, not on October 17th, no.

18 Q So when you first came in contact with the car,
19 was it at Richland County Sheriff's Department?

20 A When I first came into contact with the
21 vehicle, it was in the vehicle processing area in
22 the sheriff's department, yes.

23 Q And is that typically where you go to process
24 vehicles such as that?

25 A Yes. The vehicles are typically brought to us

1 in the laboratory so that we could process them in a
2 controlled environment.

3 Q I'm going to show you what's already been
4 entered into evidence as State's Exhibit 22, 23, 24,
5 25, 26, 27, 28, and 39. Is that the condition the
6 car was in when you first came in contact with it?

7 A Yes, it is.

8 Q Okay. And when you got to the car, were the
9 numbers already on it?

10 A Yes, I believe they were.

11 Q So what do you do when you first get to the
12 car?

13 A Well, the first thing that I'm going to do in
14 this type of situation where I'm assisting crime
15 scene personnel in an examination is I'm going to
16 take -- just visually look at the car and try to
17 determine exactly where the location of any damage
18 that could be associated with bullets or other
19 projectiles might be located. And as they have
20 already done this type of examination and located
21 most or all of the damage that was there, I would
22 then help them in trying to determine the directions
23 from which these projectiles were fired.

24 And, also, I would perform, in some cases,
25 chemical testing of those areas around those holes

1 to try to detect the presence of certain gunshot
2 residue materials, particularly you might be looking
3 for vaporous lead deposition that would indicate
4 that a firearm was very close to that surface when
5 it was shot.

6 **MS. WEISS:** Your Honor, just to clarify the
7 record before we get into anymore testimony, make
8 sure I officially offer Investigator Collins as a
9 ballistics expert, expert in firearms
10 identification.

11 **MR. STRICKLER:** I've already stipulated to
12 such.

13 **THE COURT:** Without objection, he's so
14 recognized.

15 **MS. WEISS:** Thank you, Your Honor.

16 BY MS. WEISS:

17 **Q** And if you could, using those photos, show the
18 jury each of the -- each thing that you examined on
19 that car, each that you felt like was important to
20 examine on the car?

21 **A** Would you like me to step down?

22 **Q** Sure.

23 **MS. WEISS:** If that's okay with Your Honor?

24 **THE COURT:** Just keep your voice up, please.

25 (Witness leaves the witness stand.)

1 **MS. WEISS:** Your Honor, at this time, I'd like
2 to move State's Exhibit 39 into evidence.

3 **THE COURT:** Show it to Mr. Strickler.

4 **MR. STRICKLER:** That's without objection.

5 **THE COURT:** Mark that in evidence, please.

6 (State's Exhibit Number 39, photograph,
7 admitted into evidence.)

8 **THE WITNESS:** The first photograph is an
9 overall view of the vehicle. There were several
10 evidence tags that the crime scene personnel would
11 place on there to look -- an area of interest that
12 they had found. Of particular interest to me are
13 those four areas, these two that are close to one
14 another on the driver's side rear door, another one
15 just above it also on the driver's side rear door,
16 and this area right at the very top of the driver's
17 door panel.

18 Also examined, there was a child's seat that
19 was in the vehicle and it had some damage here on
20 its left side, which would have been on this side of
21 the seat.

22 **MR. STRICKLER:** I'm sorry, Your Honor, may I
23 ask that reference be made to the exhibit number be
24 placed on the record?

25 **THE COURT:** Sure.

1 **THE WITNESS:** This is State's Exhibit 28 shows
2 a photograph of a child's seat. There's some damage
3 located in this area here (indicating).

4 BY MS. WEISS:

5 **Q** Investigator Collins, just for the record,
6 State's Exhibit 36, is this the same car seat that
7 you examined?

8 **A** Yes, that is the same seat.

9 State's Exhibit 27 shows the inside of the
10 driver's side rear door. And just below the window
11 mechanism, power window mechanism, you see a hole
12 here that was created by a bullet as it exited the
13 door into the vehicle.

14 This is one of the bullet holes on the outside,
15 looking at the outside of the door. This is on
16 State's Exhibit 26. This is showing one of the
17 bullet holes on the outside of the car. You can
18 tell by its virtually round shape that this is not
19 -- there's not much of an angle involved in this
20 impact.

21 State's Exhibit 25 shows the same thing,
22 another bullet -- not the same bullet hole, but you
23 can see, similarly, it's got a very round shape to
24 it.

25 State's Exhibit 24 is showing -- I'm going to

1 go back to the first photograph and briefly -- which
2 was State's Exhibit 39, the first two holes we just
3 looked at were these two right here. This next one
4 is just above them. It was marked as hole number
5 two. And this was taken while the actual projectile
6 was still lodged in the door. What you're seeing
7 here in the middle is the actual base of the bullet
8 because it is sticking out of the bullet.

9 And then State's Exhibit 23, looking at the top
10 of the driver's door, you can see a defect here
11 which is labeled number one. This is also an area
12 of bullet damage; however, it didn't pass through
13 the metal, it more just grazed across the top of the
14 door panel in that location.

15 This photograph, which is State's Exhibit 22,
16 is taken at an angle like if you're standing towards
17 the front of the vehicle and looking back towards
18 the driver's door, you can see all four of these
19 impacts indicated as number one, number two which
20 still had the bullet lodged in it, number three and
21 number four in those locations.

22 Q Okay. Thank you.

23 A (Witness resumes the witness stand.)

24 Q The information that you had just gave to the
25 jury as far as the bullet holes are concerned is

1 that basically the information that you were able to
2 glean from the holes that were in the vehicle?

3 **A** Just from -- I was able to go a little further
4 than that, yes.

5 **Q** Anything else of significance of this case just
6 from that situation there where you were just
7 looking at the holes?

8 **A** Just visual examination and determining that
9 from that visual examination that two of the
10 projectiles had either lodged in or were still in
11 the rear door. Beyond that, I was -- I would have
12 had to go to the next step.

13 **Q** Okay. Once you recovered that projectile, as
14 well as the other three, were you able to examine
15 the projectiles?

16 **A** Yes.

17 **Q** And what type of information were you able to
18 get from those four projectiles?

19 **A** The first thing that I did is I took all of the
20 projectiles, once I had them in my custody, back
21 into the laboratory.

22 **MS. WEISS:** Beg the Court's indulgence.

23 (Pause.)

24 **Q** And you were saying?

25 **A** Once I had all of these three projectiles in my

1 custody, I took them back into the laboratory where
2 I began a laboratory analysis on them. The first
3 thing that I do in any type of a situation such as
4 this is to take measurements of the projectiles to
5 try to determine what caliber they are and look at
6 other physical characteristics of them to try to get
7 as much information as I can.

8 Then once I've done all of that, I can actually
9 perform a microscopic comparison of these items with
10 one another in order to try to determine if they
11 were fired by one gun or by multiple firearms. The
12 way that we can do this is that when a firearm is
13 manufactured, there are various microscopic defects
14 that are left inside the barrel of a firearm that
15 are unique in their placement from firearm to
16 firearm. As a bullet passes down the barrel of the
17 gun, it is going to be scratched by these defects in
18 a way that is unique to that particular gun. These
19 scratch marks can in many ways be equated to the
20 uniqueness of a fingerprint to an individual. What
21 we're looking for under the microscope is a pattern
22 of these scratch marks that is unique.

23 The process by the manufacturer that leaves
24 these markings in the barrel is called -- is the
25 rifling process. What they're doing is they're

1 placing spiraling grooves in the barrel of the
2 firearm that are there to cause the bullet to spin
3 as it leaves the barrel. You want this to happen in
4 much the same way that a quarterback tries to throw
5 a spiraling pass in football. It stabilizes the
6 bullet in flight. But this process tends to erode
7 or scratch the barrel in a way like I just mentioned
8 that is unique to that particular gun.

9 What I will do is I'll place, in this case, two
10 evidence bullets side by side under the stages of a
11 comparison microscope and then rotate them and look
12 for areas where -- or try to find areas where these
13 markings would match. In this particular case, I
14 was able to identify all three of these projectiles
15 as having been fired by one gun. There were enough
16 individual characteristics there to determine that
17 all three had been fired from the same firearm.

18 Q And looking back at your notes, did you examine
19 three or four projectiles?

20 A There was a fourth projectile that I physically
21 recovered from the rear door of the vehicle.

22 Q And were you able to examine all four of them?

23 A Yes, all four -- I was able to examine all four
24 of them, but all four of them were identified as
25 having been fired by one gun. Additionally, what

1 we'll do in -- during the course of this examination
2 is actually take measurements of those rifling
3 grooves in the barrel of the firearm and look at the
4 number of them that are present and the direction in
5 which they twist. They'll either twist left or
6 right. We can take that information if we do not
7 have a firearm submitted and put it into a data base
8 program which will provide us a list of possible
9 brands of firearms that could have fired the bullet.

10 Q In this case were you able to come up with a
11 possible firearm?

12 A Yes. Actually, the rifling characteristics on
13 these bullets were very unique and were specific to
14 a Hi-Point brand .45 auto caliber firearm, the model
15 JHP.

16 Q You're aware that this case was unsolved for
17 approximately a year?

18 A Yes.

19 Q During that time, were you provided with
20 specimens of guns that matched that description to
21 try to match them?

22 A Yes. I looked at, over the course of a long
23 period of time, many firearms of that make and
24 model.

25 Q And did any of them match those four

1 cartridges -- those four projectiles that were
2 recovered from the car?

3 A I was unable to identify any of them as having
4 fired these bullets.

5 Q Now, going back to the car, you said you would
6 have to go to the next step. You identified the
7 projectiles, you identified the gun as best you
8 could and then you go to the next step. What is
9 that next step?

10 A The next part of the process would be to
11 perform, first off, a chemical analysis of the
12 outside of the vehicle to try to determine if there
13 was any lead vapors residue on the vehicle. When a
14 firearm is discharged, there is a cloud of what's
15 essentially primer composition that comes out of the
16 barrel of the gun. When you look at a firearm being
17 fired, you'll see a cloud of smoke come out of the
18 barrel and a large portion of that is actually
19 vaporized lead. It may not come from the bullet
20 itself. The primer, the explosive compound that is
21 used to fire the cartridge may actually have some
22 lead in it elementally that at fairly close range
23 that cloud of lead vapor will tend to deposit itself
24 on whatever surface it comes into contact with and
25 it can then be chemically detected through a

1 process. I did that in this case and my results of
2 that were negative. I was unable to detect the
3 presence of any lead vapor on the outside of the
4 vehicle.

5 Q How close would a gun have to be for the lead
6 vapor to land on the vehicle?

7 A That varies from firearm to firearm and with
8 various types of ammunition, but the vapor's lead
9 deposition tends to go away fairly close -- once you
10 get further than about 18 inches to three feet away,
11 it tends to disappear.

12 Q Okay. And what would be your next step?

13 A The next step would have been to actually place
14 probes in the holes of the vehicle to try to
15 determine the direction from which the rounds were
16 fired into the vehicle. In some cases, this can be
17 done with a certain degree of certainty. In some
18 cases, there's a bit of variables involved and --
19 but we did that in this case to try to get a general
20 idea of the direction from which the rounds were
21 fired.

22 Q I'm going to show you State's Exhibits 106,
23 105, 104, 103, 102, 101, 100, 99, 98 and 97. Can
24 you tell me if you recognize those photos?

25 A Yes. I identify these as being photographs

1 that I took with the assistance of crime scene
2 personnel during the processing of this vehicle.

3 (Pause.)

4 **MR. STRICKLER:** These are without objection,
5 Your Honor.

6 **THE COURT:** Thank you.

7 (State's Exhibit Numbers 97 through 106,
8 photographs, admitted into evidence.)

9 BY MS. WEISS:

10 **Q** I'm actually going to step back in time for
11 just one minute. Show you what's been marked as
12 State's Exhibit 122, do you recognize this?

13 **A** Yes. This is the fourth bullet that I examined
14 in this case. It bears my markings. All of these
15 packages bear markings that I placed on them in the
16 laboratory when I sealed them and each individual
17 item also bears markings.

18 **MS. WEISS:** Your Honor, at this time, I would
19 like to admit State's Exhibit 122.

20 **MR. STRICKLER:** That, too, is without
21 objection, sir.

22 **THE COURT:** Thank you. Mark it in the record,
23 please.

24 (State's Exhibit Number 122, bullet,
25 admitted into evidence.)

1 BY MS. WEISS:

2 Q Looking at the side of the vehicle, there are
3 four markings, four projectile markings --

4 A Yes.

5 Q -- on the side of the vehicle. So start with
6 number one -- actually start with number four. Show
7 you State's Exhibits 104 and 103, describe these two
8 and show them to the jury.

9 A This is two views of these two holes, holes
10 number three and holes number four, with what we
11 call trajectory rods placed in them so that we can
12 try to determine, again, the approximate direction
13 from which rounds were fired into the car, or
14 bullets were fired into the car.

15 State's Exhibit 104 is a view directly above
16 these two probes in place in the vehicle. Hole
17 number four will be represented by this probe here.
18 Now, you're looking down at the floor, this is the
19 side of the vehicle, this is the back seat and this
20 is the driver's seat (indicating). Hole number four
21 is represented by this probe and you can see it goes
22 into the car and it stops, that's the bullet that I
23 recovered from the vehicle myself and it was
24 actually inside the door panel. This is not to be
25 confused with the one that I showed you a photograph

1 of before that was lodged in the door and visible.
2 This one had gone into the door and then had fallen
3 to the bottom of the door on the inside.

4 Hole number three is represented by this probe.
5 And as you can see, it goes into the door and then
6 inside the vehicle and actually continues to travel
7 into the passenger compartment of the car.

8 Q I'm going to show you State's Exhibit 100. Can
9 you just say how this picture is related to the
10 testimony of this case?

11 A State's Exhibit 100 shows the actual interior
12 of the door after I had essentially torn it apart to
13 get the bullet out of the vehicle. The bullet was
14 recovered down inside this area here from bullet
15 hole number four. And here in the side of the door,
16 you can actually see the hole that bullet number
17 three -- or bullet hole number three would have led
18 to. This is where the other bullet passed through
19 into the interior of the car by means of this hole
20 here in the metal.

21 State's Exhibit 103 shows the same two holes
22 but viewed directly horizontally at them looking
23 from the front of the car towards the back. We
24 placed this gray paper here so that, you know, we
25 can identify them or see them better because there's

1 some lab equipment or whatnot in the background that
2 can confuse the photograph.

3 This is the side of the car. This probe here
4 is the one that is in hole number four. It doesn't
5 have the spacer cone in it. And this is hole number
6 three. You can see both of them are fired at a
7 slight downward angle into the vehicle based on this
8 photograph.

9 **Q** Okay. Show you what's been marked as State's
10 Exhibits 97 and 98. Describe how those relate to
11 the last two photos.

12 **A** Again, this is the child seat that I also
13 examined. And if you'll see that there -- I have a
14 probe placed in the center of the area of damage on
15 the outside of that and it also passes through the
16 hole that was in the inside part of the seat fabric
17 that shows where that projectile would have exited
18 that part from the seat into that area -- and passed
19 into this area of the seating area.

20 **Q** Next, I'm going to show you State's Exhibit
21 102.

22 **A** State's Exhibit 102, moving up to bullet hole
23 number two, this is the one that the projectile was
24 actually still visibly lodged in the hole. And as
25 it didn't pass through two pieces of metal, it

1 passed through the outer piece of the door and then
2 it hit an inner support structure and stopped, it
3 was more difficult to try to determine the actual
4 angle in which it struck the car. So what we have
5 to do is align the center of the dent on the inner
6 piece of metal with the center of the outer hole and
7 then place the probe in it and this is the angle
8 that we get.

9 Again, this is -- especially when you're
10 dealing with sheet metal, there's a certain amount
11 of variation that you can have that you can't -- you
12 have to be very careful in trying to get precise
13 angles when you're dealing with holes in sheet
14 metal. And this kind of shows why because we don't
15 -- in this case, we don't have two planes broken by
16 the bullet which would give us a much more accurate
17 idea of the direction from which it was fired.

18 **Q** And I'm going to show you State's Exhibits 99,
19 105, 106 and 101.

20 **A** State's Exhibit 101, looking at a side view,
21 again looking straight back down the side of the
22 vehicle at a probe that was laid across the
23 direction of the groove made in the top of the
24 driver's door by the bullet, that's bullet strike
25 number one. And this shows, generally, the

1 direction that, vertically, as to how that aligns
2 with that damage in the door.

3 Stepping back and look at it sort of from
4 behind looking down on the probe, you can see this
5 is the general direction that that projectile took
6 in entering the vehicle. Coming across here you can
7 see the damage is right here in the door. It left a
8 nice little track in the door that gives us a good
9 idea of at least the left right trajectory from
10 which it came. It's the up and down trajectory that
11 is hard to determine in this case and it passes
12 through and the probe actually leaves here as the
13 probe ends in the area of the front passenger seat.

14 This is State's Exhibit 105, shows the same
15 probe from the opposite side. We're looking back in
16 through the front passenger's window and seeing
17 where the probe comes across the vehicle, it
18 terminates in this area here.

19 If you look at State's Exhibit 99, the probes
20 have been removed and we're looking at the front
21 passenger seat. And there is damage in the pillar,
22 the door pillar here between the front and back door
23 that was consistent with the impact of a projectile
24 or some other object. And it generally aligns with
25 the probe that had been previously laid across from

1 the front door. It's still heading in this
2 direction towards the front passenger seat.

3 The problem that we have is that once a bullet
4 strikes an object like, for instance, that door,
5 there is going to be a slight tendency for it to
6 deviate, to change path to a certain extent, maybe
7 not much, but it could be enough to account for that
8 projectile also causing this damage. However, we
9 have no means of positively determining if that was
10 what happened.

11 Q Okay. And in your training and experience in
12 knowing the facts of this case, what did you find to
13 be the significance of projectile number one?

14 A Projectile number one, just based on the facts
15 of the case as they were relayed to me or the
16 information in the case, that was most consistent
17 with being the projectile, the path of the
18 projectile that would have struck the victim, the
19 deceased victim.

20 Q And assuming that, based on your training and
21 experience, it would have gone past the driver and
22 gone through to the victim in the passenger seat?

23 A Based on the fact that the driver was not
24 struck, to my knowledge, by any projectile, that
25 leaves, logically, that the projectile would have

1 gone past him and ended up somewhere on the other
2 side of the vehicle where the victim was, to my
3 knowledge, sitting.

4 **Q** And you have a probe that goes right into just
5 below the headrest on the passenger seat?

6 **A** At least in that general direction; however,
7 again, you have to be very careful with trying to
8 give a lot of -- to look at that as being an
9 absolute indication of that is where the bullet
10 went, because if the bullet struck the top of the
11 door, it could have deflected upward, it could have
12 actually deflected to the side to a certain extent.
13 It's kind of difficult to say exactly what the
14 bullet did once it hit the door.

15 What we can tell from the door more than
16 anything else is the general direction from which it
17 came to strike the door. Once it hit the door and
18 went into the vehicle, it's harder to actually
19 determine where it would have gone.

20 **Q** In your professional experience, you believe
21 that's the bullet that struck the victim in this
22 case, Stephanie Dover?

23 **A** That's a very distinct possibility.

24 **Q** Now, you can tell a lot from the probes and the
25 holes in the car itself, in the Buick Century, that

1 you analyzed, that's fair to say?

2 **A** Yes.

3 **Q** And you've got probes coming out of that car,
4 but they sort of end at a certain point. Do you
5 know, can you tell from those bullets where those
6 projectiles came from?

7 **A** All I can state with any degree of certainty is
8 they came from the left side of the vehicle. They
9 were fired from the left of the vehicle -- if you're
10 sitting in the car, they came from the left side, or
11 fired into the left side of the vehicle.

12 **Q** And can you tell from -- you can tell they were
13 fired from outside of the vehicle?

14 **A** Yes.

15 **Q** Can you tell from how far away they were fired?

16 **A** No, I cannot.

17 **Q** Can you tell from what height they were fired?

18 **A** Not with any degree of certainty, no.

19 **Q** Can you tell from -- can you tell whether they
20 were fired from another car?

21 **A** No.

22 **Q** And why is it with all of your training and
23 experience when you're talking about two cars on the
24 interstate, that you can't answer those questions?

25 **A** I have to look at the evidence essentially as

1 what it is physically to me. I mean, each item of
2 evidence stands on its own. And these bullet holes
3 and these trajectory rods in place fully are no
4 different.

5 If we're looking at a situation where
6 reportedly we have two vehicles that are traveling
7 down the interstate and shots are being fired from
8 one into another, there's so many variables involved
9 in trying to reconstruct that that it's virtually
10 impossible to do with any degree of precision or
11 certainty. You don't know where one vehicle was in
12 relationship to the other. You don't know exactly
13 how far apart they were. While you might be able to
14 get an idea of how much higher one window might be
15 than the other windows in the other car, you change
16 the distance between the two and that angle can
17 change dramatically.

18 Highways also have a curve nature to them. If
19 you look at a highway, it has a crown so that the
20 water can run off to one side or the other in a
21 heavy rainstorm. This means that a vehicle that's
22 in one lane is going to be canted or angled in a way
23 that would change its relationship with a vehicle in
24 another lane. These factors and many others prevent
25 me, in this case, from being able to generate an

1 exact reproduction of what happened in this case as
2 far as shots being fired from one vehicle into
3 another and being able to state with anymore
4 precision how that happened.

5 Q But with your training and experience, is it
6 possible that the truck that was driving along side
7 of that car that the driver reached across with a
8 gun and shot those holes into that car?

9 A I have no information here that would make that
10 impossible, no. That is a possibility.

11 Q But is it possible that bullets were shot
12 through the front of that car?

13 A No. There is no damage on this vehicle
14 consistent with a projectile passing through the
15 front of the vehicle into the inside of the vehicle.
16 All of the damage that I found was consistent with
17 projectiles passing into the side of the vehicle.

18 Q And is it possible at all that shots came in
19 through the passenger side of that vehicle?

20 A No. We found no damage consistent with that on
21 the vehicle.

22 Q How about from the back of the vehicle?

23 A No.

24 Q And, Investigator Collins, I'm going to move on
25 to November of 2005. Did you have the opportunity

1 at that point to examine another vehicle that was
2 allegedly involved in this incident?

3 A Yes, I did.

4 Q And what was that?

5 A There was a black Chevrolet pick-up truck that
6 was submitted. Actually, it was in the same vehicle
7 processing area as this vehicle had been previously.
8 And I was asked to come out and look at the vehicle
9 to chemically process the interior, the passenger
10 compartment of the vehicle to try, again, to define
11 if there was any vaporous lead on the back of the
12 seat that would have been consistent with a firearm
13 having been fired in close proximity to the seat.

14 Q Did you find anything?

15 A I processed the area with negative results.

16 Q Now, this is over a year after the incident
17 occurred?

18 A That's correct.

19 Q Did you expect to find anything?

20 A I would not -- I was not surprised by the fact
21 that I did not find anything.

22 Q Okay. You processed the entire vehicle?

23 A Just the seat area which would have been the
24 only area of interest in this case -- in this part.

25 Q Let me rephrase that. You examined the entire

1 vehicle?

2 **A** I assisted with the crime scene personnel. We
3 did look at the vehicle as during -- while I was
4 there processing it. It was a cursory examination
5 on my part. They were responsible for and performed
6 most of the visual and external examination.

7 **Q** And did you have the opportunity to examine the
8 tailgate of that truck?

9 **A** Yes, at a later time.

10 **Q** At a later time?

11 **A** Yes.

12 **Q** Okay. How much later was that?

13 **A** I examined an area of damage on the tailgate
14 and processed it for the presence of gunshot residue
15 on the 12th of April of 2007.

16 **MS. WEISS:** Your Honor, may the witness step
17 down?

18 **THE COURT:** Yes, ma'am.

19 (Witness leaves the witness stand.)

20 **BY MS. WEISS:**

21 **Q** Is this the tailgate that you examined?

22 **A** Yes, it is.

23 **Q** Is there anything of significance that was
24 brought -- that came to your attention when you
25 examined this tailgate?

1 **A** Should I lift it up?

2 **Q** If you can.

3 **A** The area of interest that's actually initially
4 detected by the crime scene personnel was the area
5 that I was asked to examine and chemically process
6 as indicated by this sticker here. There's an area
7 of damage here that was consistent...

8 **COURT REPORTER:** Ms. Weiss, can you switch
9 sides with him?

10 **MS. WEISS:** Yes.

11 **BY MS. WEISS:**

12 **Q** Can you repeat that?

13 **A** There's an area here by sticker number one that
14 is consistent with the impact of a bullet projectile
15 and I was asked to process this area to see what I
16 could determine about it. At that point in time,
17 the only processing that I was able -- that was
18 really available to me of note would be to
19 chemically process this, again, for the presence of
20 what we call bullet wipe or bullet residue.
21 Essentially, we're going to use two different
22 chemical tests, one test for the presence of copper
23 that you would have if a copper jacket or projectile
24 impacted the door and left the residue there behind.
25 And we also, again, test for the presence of lead.

1 If you have a lead bullet or a lead core bullet, you
2 might have a splash of lead that would result from
3 that. I did test this area and again had negative
4 results from that testing.

5 Q But this is consistent with a bullet?

6 A This is consistent with a bullet impact on the
7 inside of the tailgate.

8 (Witness resumes the witness stand.)

9 Q I'm going to show you State's Exhibit 54. Is
10 that the same bullet hole that we were just looking
11 at?

12 A Yes, it is.

13 Q And were you surprised that you did not find
14 anything when you did the bullet wipe?

15 A I was really not surprised. Again, it had been
16 over a year since the incident had taken place and
17 it's possible that the material had been removed by
18 natural processes or been otherwise physically
19 removed from the door.

20 Q Now, you said that you actually looked at this
21 truck once and then came back and processed this
22 later?

23 A The tailgate had been removed from the truck at
24 the time that the crime scene personnel initially
25 examined it. They removed it, wrapped it in paper

1 and placed it in evidence and it was later that I
2 was asked to examine the tailgate that I went and
3 retrieved it from evidence and processed it.

4 Q Was this bullet hole readily apparent when you
5 first looked at the tailgate?

6 A I don't recall seeing it when I first looked at
7 the tailgate, no.

8 Q Does State's Exhibit 59 better show what it
9 looked like when you first looked at it?

10 A Again, I have no recollection of actually
11 having physically looked at the tailgate at that
12 time. In other words, I don't remember seeing a
13 bullet impact at all. And this would -- the fact
14 that there is a liner material over the area of the
15 bullet damage would prevent me from actually seeing
16 it at that time.

17 Q And is there any -- I'm going to show you
18 State's Exhibit 60. If you can, tell what's going
19 on in that picture.

20 A In this photograph is a -- this is taken inside
21 our vehicle processing area while the tailgate was
22 still attached to the truck. And you can see the
23 area of damage here on the tailgate, the tailgate
24 has been opened. It's laying flat. But you can see
25 where a hand -- I'm presuming this to be a crime

1 scene technician that is processing the car has
2 pulled this liner material back to reveal the
3 presence of the bullet damage.

4 **Q** Was there any damage to that liner?

5 **A** Looking at State's Exhibit 59, the other
6 photograph that you've shown me, I don't see any
7 visible damage to the liner in that photograph.

8 **Q** And, finally, is it possible -- is it
9 consistent that the bullet that made that hole in
10 that tailgate could have come out of, show you
11 State's Exhibit 47, the center back window in that
12 truck?

13 **A** That is a possible scenario, yes.

14 **Q** Is it likely that it came out of the passenger
15 side window?

16 **A** That would be a much more difficult angle for
17 it to be in that location.

18 **MS. WEISS:** Beg the Court's indulgence.

19 **THE COURT:** Yes, ma'am.

20 (Pause.)

21 **MS. WEISS:** No further questions at this time,
22 Your Honor.

23 Please answer any questions the defense may
24 have.

25 **THE COURT:** I intend to break for lunch unless

1 you think it's going to be extremely short.

2 **MR. STRICKLER:** I don't think it will be
3 extremely short, Your Honor.

4 **THE COURT:** All right. Ladies and gentlemen of
5 the jury, we're going to break for lunch now. I
6 need you back in the jury room at 2:15, please,
7 that's an hour and ten minutes. Don't discuss the
8 case.

9 (The jury was excused for lunch.)

10 **THE COURT:** Please be careful as you leave
11 today that you not have any contact with a juror or
12 that you not be having conversations that might be
13 overheard by a juror either in the courthouse, on
14 the courthouse property, on the streets or out at a
15 restaurant. Make sure nobody's around you that's on
16 the jury before you say anything at all that might
17 relate to this case. Court's in recess until 2:15.

18 Mr. Collins, you cannot discuss your testimony
19 with anybody during the break. I know you know
20 that, but I have to say it. Thank you.

21 (Whereupon, there was a luncheon recess.)

22 **THE COURT:** Mr. Collins, I need you back on the
23 stand.

24 Did y'all have something else?

25 **MR. MEADORS:** Yes, sir, if it please the Court.

1 During the lunch hour, had several folks in our
2 office working. We did find out that...

3 **MS. MCDUFFIE:** Cherish Payton.

4 **MR. MEADORS:** Juror Cherish Payton, that Your
5 Honor asked if she had went to Keenan High School,
6 did, in fact, attend Keenan High School...

7 **MS. MCDUFFIE:** From August the 8th of 2002
8 until December 18th of 2002.

9 **MR. MEADORS:** And I think we went back and read
10 that Your Honor asked her and we looked at it, Did
11 you attend Keenan High School, she said, No. And
12 then you said, Where did you graduate? She said,
13 Ridge View High. And based on our witness, that was
14 where he knew her from, Keenan High School. It's
15 our position that she did not tell the truth to the
16 Court. The Court specifically asked her, Did you
17 attend Keenan High School, and she said, No.
18 Clearly, there are records that she did and Ms.
19 McDuffie has talked to --

20 **MS. MCDUFFIE:** Your Honor, I talked to Debbie
21 Lomas, who's the registrar at Keenan High School,
22 and she'll be willing to come in and testify, and
23 she also submitted, at the bottom of our subpoena,
24 in writing showing the dates from when she attended.

25 **MR. MEADORS:** I know Your Honor asked, there

1 might be other things I do and I am contemplating
2 other things, but I felt like I needed to address
3 this to the Court first. She was under oath when
4 she made the statement, so there may be other
5 avenues I'm exploring.

6 (Pause.)

7 **THE COURT:** All right. Bring her back in here.
8 Mr. Collins, you can step down.

9 (Juror enters the courtroom.)

10 **THE COURT:** Ms. Payton, I need to revisit that
11 issue I talked to you about before. You're still
12 under oath, you understand?

13 **JUROR:** (Juror nodded head.)

14 **THE COURT:** You need to speak your answers for
15 me, okay?

16 **JUROR:** Okay.

17 **THE COURT:** You've never attended Keenan High
18 School?

19 **JUROR:** I played sports for them, but I didn't
20 go to the school.

21 **THE COURT:** How did that work?

22 **JUROR:** Because we used to -- I played for
23 Ridge View, so when we would go visit, I played
24 there, but I didn't go to the school. My cousins
25 went there.

1 **THE COURT:** Your date of birth is December the
2 4th, 1984?

3 **JUROR:** Uh-huh.

4 **THE COURT:** Well, the guidance counselor
5 department at Keenan High School says you were
6 attending Keenan High School in August of 2002; is
7 that wrong?

8 **JUROR:** I didn't go to Keenan.

9 **THE COURT:** Is your middle name Lashawn?

10 **JUROR:** Uh-huh.

11 **THE COURT:** L-A-S-H-A-W-N?

12 **JUROR:** Uh-huh.

13 **THE COURT:** That's yes?

14 **JUROR:** Yes, sir.

15 **THE COURT:** And you weren't home schooled and
16 participating in sports at Keenan, you were at Ridge
17 View High School, enrolled there?

18 **JUROR:** Yes, sir.

19 **THE COURT:** And graduated from there?

20 **JUROR:** Yes, sir.

21 **THE COURT:** And never took any classes at
22 Keenan either?

23 **JUROR:** No, sir.

24 **THE COURT:** I'm not from over here, as you
25 know, I mean I have some familiarity with the area

1 obviously, but would there be any reason why Keenan
2 High School would have records on you?

3 **JUROR:** I wouldn't -- I wouldn't know.

4 **THE COURT:** You didn't have to go to guidance
5 counselors in Keenan, did you?

6 **JUROR:** No.

7 **THE COURT:** Do you know if they share guidance
8 counselors or anything like that?

9 **JUROR:** Not to my knowledge.

10 **THE COURT:** Ms. Payton, I'm going to have you
11 taken into a different room and I'll have to look
12 into this and see what I can find out and where all
13 this is coming from, okay?

14 **JUROR:** Okay.

15 **THE COURT:** Put her in a different room for me,
16 please.

17 (Juror leaves the courtroom.)

18 **THE COURT:** I'm going to make this a Court's
19 Exhibit.

20 (Court's Exhibit Number 2, subpoena, marked
21 for identification.)

22 **MS. MCDUFFIE:** Your Honor, if I may, the
23 records from Ridge View High School showing that she
24 enrolled after December 18th of '02 are being faxed
25 to us. And I was told maybe 15 minutes ago that it

1 would be 45 minutes before we had those.

2 **THE COURT:** Unless the defense agrees to set
3 her aside, y'all have got to get some witnesses up
4 here for me.

5 Y'all can talk about it. I'll give you a few
6 minutes to talk to your client about it.

7 **MR. STRICKLER:** If we could, Your Honor.

8 **THE COURT:** I mean, she's a very convincing
9 young lady. I just can't understand what's going
10 on.

11 **MR. MEADORS:** We'll have the person here as
12 quick as they can get here.

13 **THE COURT:** We're at ease.

14 (Brief Recess.)

15 (Court's Exhibit Number 3, records from
16 Keenan High School, and Court's Exhibit Number 4,
17 records from Ridge View High School, were marked for
18 identification.)

19 (Whereupon, the following proceedings were
20 reported in camera.)

21 **THE COURT:** All right. Call your witness,
22 please.

23 **MS. MCDUFFIE:** The State would call Debbie
24 Lomas.

25 **THE COURT:** Would you come up to the clerk,

1 please?

2 DEBBIE LOMAS,

3 having been duly sworn, testified as follows:

4 **THE CLERK:** Please have a seat up here and
5 state your full name for the record.

6 **THE WITNESS:** Debbie Lomas.

7 DIRECT EXAMINATION

8 BY MS. MCDUFFIE:

9 **Q** Ms. Lomas, where are you employed?

10 **A** At W.J. Keenan High School.

11 **Q** And how long have you been employed there?

12 **A** Since May the 18th of '06.

13 **Q** And what are your duties at Keenan?

14 **A** I am the guidance secretary registrar. I
15 enroll, withdraw all students. I'm the keeper of
16 all the students' records on paper and also on
17 computer.

18 **Q** And did you have access to records of a Ms.
19 Cherish Lashawn Payton?

20 **A** Yes.

21 **Q** And do you have a copy of those records?

22 **A** Yes.

23 **Q** I'm going to show you what's been marked as
24 Court's Exhibit 3. Do you recognize that?

25 **A** Yes, this is her transcript.

1 **Q** And those records are kept in the ordinary
2 course of your business duties at Keenan High
3 School?

4 **A** Yes.

5 **Q** Can you please tell us when Ms. Payton was
6 enrolled at Keenan High School?

7 **A** Her first time of enrollment was August of '01.

8 **Q** And then?

9 **A** And that was for ninth grade. And then it
10 shows where she earned some credits in December of
11 '01. She returned back to Keenan for her '02 -- May
12 of '02, she earned some more. She was enrolled from
13 '01, I believe, through '02 -- yeah, December of
14 '02.

15 **Q** And if you have the information, can you please
16 tell the Court her full name, date of birth and
17 social security number as they appear in those
18 records?

19 **A** Yes. Her date of birth is --

20 **THE COURT:** Tell me her name and her date of
21 birth.

22 **THE WITNESS:** Her name and date of birth?

23 **THE COURT:** Right.

24 **THE WITNESS:** Cherish Lashawn Payton, her date
25 of birth is 12/4/84.

1 **THE COURT:** The Court's Exhibit, the one with
2 the sticker on it, it's got a social security number
3 on there?

4 **THE WITNESS:** Yes, sir.

5 **THE COURT:** Is that the same social security
6 number that's listed on your records? Don't read it
7 out, just tell me if it's the same.

8 **THE WITNESS:** Okay. 553 --

9 **THE COURT:** No, don't read it out.

10 **THE WITNESS:** I'm sorry. Yes, it is. It's the
11 same social security number, yes.

12 **THE COURT:** Okay. Thank you. I just don't
13 want people's social security --

14 **THE WITNESS:** Yes, sir, I understand.

15 BY MS. MCDUFFIE:

16 **Q** Does it show her grade point average that she
17 attended classes while she was at Keenan?

18 **A** Her grade point? It did, it has 2.538, two
19 point 538.

20 **Q** So she was a student that was attending --

21 **A** Yes. She had total earned credits of 16 point
22 six.

23 **MS. MCDUFFIE:** That's all the questions we have
24 for this witness, Your Honor.

25 **THE COURT:** Cross?

1 CROSS-EXAMINATION

2 BY MR. COLLINS:

3 Q Is there also a picture of her?

4 A Yes, sir.

5 MR. COLLINS: No further questions.

6 THE COURT: Do you have the original records
7 with you?

8 THE WITNESS: Yes, sir, I printed an original
9 copy for you.

10 THE COURT: The photo copy of the picture is
11 like a lot of photo copies of pictures. Can I see
12 the original picture?

13 THE WITNESS: Yes, sir.

14 THE COURT: What's marked as Court's Exhibit 3
15 there that you have with the sticker on it, is that
16 an exact copy of the records on file at Keenan High
17 School?

18 THE WITNESS: Yes, sir.

19 THE COURT: All right. Any other questions?

20 MS. MCDUFFIE: None, Your Honor.

21 MR. COLLINS: No.

22 THE COURT: Thank you very much, ma'am. Just
23 leave that with the sticker on it.

24 MR. MEADORS: Can she be excused at this point?

25 THE COURT: Yes.

1 Thank you very much for coming in, ma'am.

2 **MS. MCDUFFIE:** Your Honor, would you like the
3 original with a clearer copy of the picture?

4 **THE COURT:** You've got extra copies?

5 **THE WITNESS:** Yes, sir, I have the original.

6 **MS. MCDUFFIE:** Those are a printout from the
7 computer. The computer contains the original.

8 **THE COURT:** Just attach those, Madame Court
9 Reporter, to that.

10 **MR. STRICKLER:** If I could, Your Honor, I may
11 be completely out of place here, but, at this point
12 in time, I think, it shouldn't be me, it shouldn't
13 be him, she might need counseling at this point in
14 time.

15 **THE COURT:** Believe me I know that.

16 **MR. STRICKLER:** I'm sure you do. We hadn't
17 addressed it earlier...

18 **THE COURT:** I have no plans right now to cite
19 her for contempt or to do anything in that vein, but
20 I really don't feel comfortable questioning her much
21 anymore.

22 **MR. STRICKLER:** Thank you, sir.

23 **THE COURT:** Ask them to bring her in, please.

24 (Juror enters the courtroom.)

25 **THE COURT:** Ms. Payton, I have had the people

1 from Keenan High School subpoenaed to come in and
2 testify and I've heard the testimony of the
3 registrar there and I've got copies of records. And
4 these records indicate that you were a student at
5 Keenan High School. If there is a mistake, you need
6 to get it corrected. If there's not a mistake, I
7 don't want to be asking you anymore questions
8 because it could be some very serious consequences.

9 So based on these records and the testimony of
10 the registrar from Keenan High School, would
11 indicate you were a student there, you took classes
12 there, you went to summer school there, apparently,
13 and you -- I also have obtained copies of the
14 records of Ridge View High School which indicate
15 that you were transferred from Keenan High School to
16 Ridge View High School. You moved from [REDACTED]
17 Street to [REDACTED] and that you picked up
18 from there and that was -- you withdrew in late 2002
19 and started at Ridge View.

20 So based on that, ma'am, I'm going to have to
21 excuse you from the jury on this case, not only on
22 this case, but from the whole pool. And the clerk
23 may need to give you some information about what to
24 expect by way of excuses for work and things like
25 that. But I'm going to have to set you aside from

1 this trial, okay?

2 **JUROR:** (Juror nodded head.)

3 **THE COURT:** She nodded her head affirmatively.

4 Thank you, ma'am.

5 (Juror was excused.)

6 **THE COURT:** While the jury's out, I have
7 records, we did not -- we had some difficulty
8 getting the custodian to come in on this short
9 notice, but I don't really think it's necessary
10 because if you look at the records from Ridge View
11 and the records from Keenan, they're hand in hand.

12 As a matter of fact, a lot of the records that
13 Ridge View sent are from Keenan High School. And
14 there is a very informative form in there that
15 indicates that Ms. Payton was a student at Keenan,
16 that she moved and she has the same person listed as
17 a guardian, different address, and she enrolled at
18 Ridge View. And I don't know what's going on with
19 this, but because these contain social security
20 numbers, confidential information and identifying
21 information, I'm going to order that these exhibits,
22 these court's exhibits be placed under seal. And if
23 it's necessary to open them, you have to get a court
24 order to open them.

25 Madame Court Reporter.

1 Do y'all need to put anything else on the
2 record? I've excused the juror. We'll put the
3 alternate in her place.

4 Hearing nothing, bring the jury back in. I
5 assume the State's ready to proceed.

6 Mr. Collins, I need you back up here.

7 (The jury returns to the courtroom.)

8 **THE COURT:** All right. Ladies and gentlemen,
9 I'm truly sorry about that lengthy delay. I told
10 you that I promise you that if you ever were waiting
11 on us, we were working. We've been working the
12 whole time. As a result of some issues that have
13 arisen, I have removed from the jury Ms. Payton,
14 juror number 211. So that means, Ms. Kelly, you
15 need to come down and have that empty seat. You're
16 one of the 12 jurors now. Juror number 139, Ms.
17 Kelly, is substituted in place of Ms. Payton. And
18 we're ready to proceed with cross-examination.

19 Mr. Strickler.

20 **MR. STRICKLER:** Thank you, Your Honor. May it
21 please the Court.

22 **THE COURT:** Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. STRICKLER:

25 Q Good afternoon, Mr. Collins.

1 **A** Good afternoon.

2 **Q** I have a number of things I want to go through
3 with you. I'll try to be as expeditious as
4 possible. Now, I guess no particular order -- we'll
5 take the last first, okay?

6 **A** Yes, sir.

7 **Q** You ended up doing some work on the tailgate of
8 the truck in this particular case making some
9 observations on it, correct?

10 **A** That's correct.

11 **Q** And if I remember correctly, you were -- your
12 testimony on direct, you were present at the time in
13 November of 2005, or October, November of 2005, the
14 truck was taken into evidence, but you didn't
15 actually do the testing until April of 2007, if I
16 remember correctly?

17 **A** That is correct. I assisted on November 5th of
18 2005 in processing the interior of the truck.
19 However, I did not do any processing to the tailgate
20 at that time.

21 **Q** And referring to what's marked as State's 47,
22 this is a picture of the truck that you participated
23 in the processing of and the -- which has to do with
24 the tailgate that's sitting here in the courtroom,
25 correct?

1 **A** That is correct.

2 **Q** All right. This is the picture of the truck in
3 the SLED -- excuse me -- the county sheriff's
4 department garage, correct?

5 **A** That is correct.

6 **Q** And that will be from November 5th, 2005, or
7 right at that time frame?

8 **A** Around that time, yes, sir.

9 **Q** You have no way of knowing what this truck
10 looked like in October of 2004, correct?

11 **A** No way at all.

12 **Q** Over a year had passed since. Now, referring
13 to what's marked as State's Exhibit 59.

14 **A** Correct, sir.

15 **Q** That is a picture of the tailgate that's here
16 in the courtroom, correct?

17 **A** That is a picture of that tailgate with a liner
18 on it, which is no longer on it, yes, sir.

19 **Q** With a bed liner on it?

20 **A** Some sort of a lining material, yes, sir.

21 **Q** From looking at this white square, there is
22 approximately over the -- well, I don't know what
23 that's over -- bed liner or some type of line
24 present, correct?

25 **A** Yes, sir.

1 **Q** Referring to what's marked as State's 60, this
2 is a picture of the same tailgate with the bed liner
3 being -- or the liner of whatever variety you want
4 to call it being moved back by someone with the
5 sheriff's department, correct?

6 **A** That's correct, sir.

7 **Q** And I believe one of your pieces of testimony,
8 if you look right where your marker is, this marking
9 stick, you can see the area that you talked about
10 that was consistent with a gunshot?

11 **A** Yes, sir. It's located in that little inside
12 angle of the scale.

13 **Q** You used those markers to go ahead and
14 establish the size. It's a point of reference that
15 can be used for measurements; is that right?

16 **A** That's correct.

17 **Q** You indicated that you didn't see any
18 penetration to the liner itself. If I can, direct
19 your attention to this rust colored area you see
20 where my finger was.

21 **A** Yes, sir.

22 **Q** Now, as you fold that down in relation to the
23 area where the shot was, that's going to lineup to
24 the area where the -- where what could have been a
25 gunshot was?

1 **A** Actually, I would disagree with you. I believe
2 it's going to be offset because due to the location
3 of the damage being very close to the corner, the
4 liner itself, this would be more further down. This
5 would be more further down the top of the tailgate,
6 I believe. Just based on what I'm seeing in that
7 photograph, I don't believe that it aligns in the
8 way that you're mentioning.

9 **Q** So your -- well -- referring to what's marked
10 as State's 54.

11 **A** Yes, sir.

12 **Q** Which is a photograph of the indentation that
13 you've testified to on this tailgate?

14 **A** That is correct.

15 **Q** Which is consistent with you've rendered no
16 opinion as to whether or not it was a gunshot, it's
17 consistent with?

18 **A** Consistent with the impact of a projectile,
19 yes, sir.

20 **Q** Okay. You are an expert in the field of
21 ballistics, right?

22 **A** Firearms identification and such, yes, sir.

23 **Q** I've stipulated to your expertise.

24 **A** Yes, sir.

25 **Q** And when you use terms like consistent with,

1 that means something, right?

2 **A** Yes, sir.

3 **Q** I mean, you could say consistent with. You
4 could say that is a gunshot hole, right?

5 **A** If there was -- yes, sir.

6 **Q** I mean, if there were no other possibilities --

7 **A** I could say that, yes.

8 **Q** You're here as an expert witness and you're
9 rendering your opinion as an expert witness?

10 **A** That is correct.

11 **Q** And I've listened to your testimony and you've
12 been very careful in what you've been saying. You
13 have said consistent with. You have said it's
14 possible it could happen in such a fashion. You
15 have been very careful to explain the limits of the
16 available information that you had, right?

17 **A** That is correct.

18 **Q** Okay. That's consistent with your status as an
19 expert. You're not going to say it is unless you
20 can say it is and nothing else, correct?

21 **A** That is correct.

22 **Q** Okay. So this is consistent with a gunshot.
23 If you look at the indentation itself, okay?

24 **A** Yes, sir.

25 **Q** Would you agree or disagree with me that as

1 you're looking at it, to the right side of the
2 indentation, there's an area that actually breaks
3 through the bed of the truck?

4 **A** Yes. There's a small split in the bottom of
5 the actual impression.

6 **Q** That would be consistent with the deepest point
7 of penetration, wouldn't it?

8 **A** I would expect to see that sort of damage in
9 the area where the metal was stressed more than
10 anywhere else and that would be what I would expect
11 to find in the deepest area, yes.

12 **Q** And you can view it on the bed of the truck
13 down here, you can see that there?

14 **A** Yes, sir.

15 **Q** Now, is that -- let me just orient it with my
16 finger on this side of the photograph, okay. That
17 end of the truck -- of the hatch of the truck here,
18 that would be on the passenger side, correct?

19 **A** That is correct.

20 **Q** Okay. Because this impact is toward the upper
21 part of the passenger side of the bed of the truck,
22 the tailgate of the truck?

23 **A** That's correct.

24 **Q** So the deepest point of the impact or the point
25 where the split is in the metal is to the left of

1 that -- well, as you're facing, it's to the right of
2 that. It's more towards the center of the tailgate
3 of the truck, correct?

4 **A** That is correct.

5 **Q** Okay. Now, that is consistent with a shot
6 coming in at an angle from the outside of the truck
7 towards the inside of the truck. You have the
8 deepest amount of penetration further in on the
9 tailgate?

10 **A** I would hesitate to say that I agree with that.
11 And the reason for that would be that I'm not -- I
12 have no means of examining that damage and knowing
13 for certain that the bullet struck that tailgate in
14 a direct fashion. There is no way for me to know if
15 it struck something else in the bed of the truck and
16 then tumbled and struck the tailgate at a slightly
17 different angle, or the term that we use is
18 destabilized, in which case it might strike at an
19 odd angle in relationship to the actual direction
20 from which it came.

21 The direct observation of the impact shows that
22 it's a little bit odd shaped. It's not round like
23 you would expect to find from a direct impact of the
24 nose of the bullet. It's somewhat elliptical and a
25 little bit misshapen. So that in itself may be also

1 explained by being struck by a bullet that has been
2 destabilized by striking something else perhaps in
3 the bed of the truck first. I have no means of
4 knowing that for a fact. The damage to the tailgate
5 offers me very little information. And based on the
6 little information that it gives me, I can't state
7 anything beyond the fact that it comes from
8 generally the front direction of the truck towards
9 the rear of the truck.

10 Q A couple of things in that regard. You
11 indicated it's generally elliptical. And you
12 testified a little bit, and I'll get to it in a
13 minute, about the impact wounds to the side of the
14 car and how they were round. And that they were
15 round, what you could tell is that they were -- one
16 of the things you could tell from they're being
17 pretty round in shape is that they were more or less
18 hitting at a perpendicular angle, correct?

19 A Or very close to it, yes.

20 Q Very close to it. When a shot penetrates
21 something at something other than the perpendicular,
22 then you're liable to see an elliptical shape to it,
23 correct?

24 A That is correct.

25 Q And drawn out rather than perfectly round,

1 correct?

2 **A** That is correct.

3 **Q** Okay. And that's what you see on the tailgate
4 of this truck?

5 **A** In some form, yes.

6 **Q** Now, what you're saying is, you know, how it
7 got there, where it precisely came from, you can't
8 say?

9 **A** That's exactly right.

10 **Q** You have said during your direct that it could
11 have been fired from the rear window of the truck?

12 **A** That's a possibility, yes.

13 **Q** You used that term, it's a possibility. And
14 then I believe you were asked whether it could have
15 been fired from the passenger side -- out the
16 passenger side window and you regarded that as less
17 likely?

18 **A** Merely due to the gymnastics, if you will use
19 that term, that it would take to get the firearm
20 into the position to make that shot. However, I
21 can't exclude the possibility that it could happen
22 in that way.

23 **Q** Both of those are possibilities?

24 **A** That's correct.

25 **Q** And neither of them you have a whole lot of

1 information to go ahead and render anything more
2 than you can, but it's a possibility?

3 A That is correct.

4 Q Okay. Now, do we know the height of the truck?

5 A No, we do not.

6 Q Do we have measurements as to how high, for
7 example, the bottom of the window on the passenger
8 side is?

9 A Of the truck, sir?

10 Q Yeah.

11 A I do not have that measurement. And one of the
12 reasons why I would -- even if we had measured that
13 dimension while we had the truck at the Richland
14 County Sheriff's Department garage is a large
15 portion of what dictates that height is what tires
16 are on the vehicle. And I have no way of
17 determining a year after the fact if the same tires,
18 the same shock absorbers or the same suspension is
19 in play on that truck.

20 Q Just as we discussed earlier of the general
21 configuration of the truck. You do have such
22 information regarding the car itself, correct?

23 A I have some measurements that I've been able to
24 deduce on the car, yes, sir.

25 Q Would it be fair to say that the truck stands,

1 absent some truly unusual configurations as far as
2 tire suspension, et cetera, further off the ground
3 than a car does?

4 A Generally that would be a very safe assumption,
5 yes, sir.

6 Q I mean, as a matter of no more than common
7 sense would be?

8 A Yes, sir.

9 Q Now, you've indicated -- well, before we get
10 further on, the truck is no longer in the possession
11 of the sheriff's department; is that correct?

12 A Neither vehicle is in the possession of the
13 sheriff's department, no, sir.

14 Q Do you know when the truck was disposed of?

15 A No, sir, I do not.

16 Q Now, understanding what you said about the
17 gunshots to the side of the car, which are reflected
18 in what's marked as State's 22?

19 A Yes, sir.

20 Q As I listened to your testimony -- in State's
21 26, you have what's marked as number four, correct?

22 A That's correct, sir.

23 Q All right. Now, this is one of the gunshots to
24 the rear driver's side door, correct?

25 A That is correct.

1 Q The furthest to the rear?

2 A The furthest to the rear is number four.

3 Q Then number three is also to that same door
4 slightly forward of it?

5 A That is correct.

6 Q And both of those, your testimony was, were
7 fairly round in shape indicating a more or less
8 perpendicular entry?

9 A Perpendicular to the surface of the metal that
10 it struck, yes, sir.

11 Q To the surface to the metal of the car.
12 Number, what's marked as, State's 104, which you
13 reviewed you've got your rods going into the car,
14 correct?

15 A Correct, sir.

16 Q For both number four and number three, correct?

17 A Yes, sir, that's correct. Both holes are --
18 both holes are probed in that photograph.

19 Q All right. Number four did not penetrate
20 completely as you testified?

21 A Yes.

22 Q You recovered that bullet inside of the door
23 paneling, I guess, of the door itself, correct?

24 A That is correct.

25 Q Number three was through and through the door?

1 A That is correct. Number three passed all the
2 way through the rear door.

3 Q So you were able to extend the dowel through
4 the door and into the passenger compartment of the
5 car?

6 A That is correct.

7 Q Now, at that point in time, you have entry and
8 exit, that's probably -- given that you could have
9 some variation to the impact of the door, that's
10 probably the best trajectory you have of the impacts
11 that you have on the car, isn't it? You've got
12 entry here and very shortly after, an exit?

13 A Number three is the best preserved bullet path
14 in the vehicle that I had to work with at that
15 moment in time for where that vehicle was at that
16 particular time in transit.

17 Q And State's 103, again as you explained, these
18 are again number four and number three with number
19 three being the dowel with the white thing on it?

20 A It's a spacer code is what we call that. Yes,
21 sir, that's number three with a spacer code on it.

22 Q Number three with the spacer on it is the one
23 that went completely through the door?

24 A That is correct.

25 Q And was the best indicator of trajectory that

1 you have of shots to the car?

2 **A** At that moment that that particular shot was
3 fired, yes, sir.

4 **Q** Right. Exactly. And those are taken from the
5 -- again, looking along the side of the car?

6 **A** Yes, sir. I was kneeling at the front of the
7 car looking straight down the side of the car and
8 taking that photograph looking straight down the
9 side of the car.

10 **Q** Which would give a decent estimate as to what's
11 shown, as far as these dowels show anything, as to
12 the angle of entry on these two shots, correct?

13 **A** That is correct.

14 **Q** Now, back to State's 22, the overview of the
15 side of the car, those shots are to the door, the
16 rear door of the driver's side. They are below the
17 level of the door handle?

18 **A** Yes, sir.

19 **Q** I mean, fully halfway down the door anyway, I
20 guess?

21 **A** Yes, sir.

22 **Q** Correct?

23 **A** That is correct.

24 **Q** Approximately the level of the seating in the
25 car, the rear seating in the car?

1 **A** Very close to it. As I passed the probe for
2 number three into the vehicle, it just skimmed
3 across the top of the rear seat.

4 **Q** I'm just trying to establish, get an idea of
5 where on that shown -- trying to get an idea --
6 okay. Now, you have a lot of variables I
7 understand?

8 **A** Correct.

9 **Q** A possibility would be the driver of a truck
10 passing by, reaching his arm across and firing, that
11 is coming out of the truck, firing at the car,
12 getting a sufficient angle to make those holes?

13 **A** I can't rule out that possibility.

14 **Q** You can't rule out that possibility. A
15 possibility would be a passenger in the truck,
16 putting the arm out and aiming down and firing?

17 **A** I have nothing that will refute that
18 possibility either, sir.

19 **Q** Can you tell me got the shots from in front --
20 you work with firearms all the time, don't you?

21 **A** Yes, sir.

22 **Q** I don't know the first thing about them. You
23 know, possibility on firing a weapon at some 70
24 miles an hour while you're driving a truck down the
25 highway leaning across another individual with your

1 arm -- I'm sorry -- your left arm out the window --
2 you're the driver in this truck leaning across the
3 passenger with your left arm all the way out the
4 window, I mean that's what testimony was from the
5 driver of the vehicle that was shot?

6 A I follow what you're saying, sir, but I can't
7 rule out --

8 Q You can't rule that out?

9 A I can't rule anything out because I don't know
10 how high the vehicle was.

11 Q These are shots testified to that did not hit
12 the vehicle. You've seen the truck?

13 A I've seen the truck, yes, sir.

14 Q All right. I will ask you -- perhaps I go
15 beyond your area of expertise in that regard. I do
16 want to ask you about the gun, okay?

17 A Yes, sir.

18 Q You were able to determine some very specific
19 things about the firearm. You were able to do that
20 because you were able to recover the slugs that
21 you've testified about. And you were able to
22 determine the number of lands and grooves, raised
23 areas and depressed areas from the rifling on it,
24 determined the number on them, determined the twist
25 with the left to right on them, compare it to

1 information available and you were able to nail it
2 down to that is a Hi-Point, right?

3 A (Witness nodded head.)

4 Q Not just a Hi-Point, but a particular model of
5 Hi-Point, right?

6 A That is correct.

7 Q And it's a .45 caliber?

8 A That is correct, yes, sir.

9 Q And you were able to go ahead and do
10 microscopic comparisons for minor imperfections that
11 are generated when the weapon's fired and make the
12 determination not only are they from the same kind
13 of gun, but they're from the same gun itself,
14 correct?

15 A That is correct.

16 Q So you can come up with that information and
17 give us that information. Now, a .45, I mean, to
18 me, that's a cannon. It's a big gun. Are those
19 relatively large caliber handguns?

20 A Yes, sir.

21 Q Pump .45 caliber that means the bullet itself
22 is almost half an inch in diameter; is that correct?

23 A That is correct, very close to that.

24 Q You couldn't do it in this case because --
25 well, you did it actually in this case. You

1 testified briefly about doing a comparison with a
2 number of other Hi-Points to try to determine if you
3 managed to recover the weapon that was used in this
4 case, right?

5 A Yes, sir, a total of 26 in this case.

6 Q That's a number, I wasn't negating a number, a
7 bunch. And when you do those comparisons, you make
8 sure the weapon's in operating order?

9 A That's correct.

10 Q And you do test firings on that?

11 A That is correct. You have to test fire each
12 firearm in order to obtain test standards that you
13 can use to actually compare under the microscope.

14 Q And you were comparing all Hi-Points of the
15 correct model. So the comparisons you're doing is
16 you're actually looking at those microscopic
17 similarities that are imparted when a gun fires, the
18 same gun fires a bullet, correct?

19 A That is correct.

20 Q So you do a bunch of test firings just in
21 relation to this case, correct?

22 A That is correct.

23 Q And you do this test firings indoors or
24 outdoors?

25 A We have a bullet recovery tank that is used

1 that's actually in a, if you're familiar with what a
2 shipping container looks like, it's located inside
3 the shipping container so it's sheltered. It's
4 outside of the building under a shelter and we fire
5 into that.

6 Q .45's make a bunch of noise when it goes off?

7 A Yes, sir, it's a fairly loud firearm by my
8 standards, yes, sir.

9 Q The Hi-Point .45, we've just been talking about
10 a .45, this is a .45 caliber semiautomatic firearm,
11 correct?

12 A That is correct.

13 Q Some people call them automatic, but
14 technically it's a semiautomatic?

15 A That's correct.

16 Q It will go off once every time you squeeze a
17 trigger, you don't have to -- it will just go off.
18 It doesn't have a cylinder that rotates it. It's a
19 semiautomatic?

20 A That's correct.

21 Q And the way that works is you fire the weapon,
22 a bullet is expelled and as long as there's
23 ammunition in the clip, another bullet in the clip,
24 the shell casing for the bullets fired is ejected
25 from the firearm and another bullet is fed into the

1 chamber, correct?

2 **A** Normally, a properly operated semiautomatic
3 firearm will fire once each time you pull the
4 trigger and each time it cycles or each time it
5 fires is going to eject the spent cartridge casing
6 from the gun shortly after the bullet has left the
7 muzzle of the gun going down range. And then it is
8 also going to automatically feed another cartridge
9 into the chamber and be ready to fire again next
10 time you pull the trigger.

11 **Q** Now, just as with a number of lands and grooves
12 and whether it twists left or right, the ejection
13 mechanism can either be on the left side or the
14 right side of a particular firearm. It may be able
15 to be other places, too. I guess, it could be on
16 top?

17 **A** It could be. In a case of a Hi-Point
18 semiautomatic pistol, it's located on the right
19 side.

20 **Q** On the right side?

21 **A** Yes, sir.

22 **Q** Now, have you any opinion as to the effect on
23 someone who has a .45 caliber placed right in front
24 of their face, a .45 caliber Hi-Point semiautomatic
25 firearm, placed right in front of their face and

1 fired four or five times? How is his hearing going
2 to be?

3 **A** Having had firearms fired in my presence in a
4 situation such as that, my rings ring pretty hard,
5 but it would be hard to state -- that would be up
6 for a medical doctor to determine exactly what short
7 term hearing loss or other effects it might have.

8 **Q** Inside a truck?

9 **A** It would be very loud.

10 **Q** So is muzzle flash associated with it?

11 **A** There may be, but that is more dependent on the
12 type and brand of ammunition that is fired. There's
13 different types of powders. One manufacturer may
14 use one type of powder that generates more of a
15 muzzle flash. In other words, the flash comes from
16 the burning powder and expanding gases as it leaves
17 the muzzle of the firearm.

18 **Q** So if I understand you correctly -- if I
19 understand you, what you're able to tell us is is
20 that there are possibilities as to where the shots
21 came from, all of the shots?

22 **A** That is correct. All I can state with any
23 degree of certainty is that the shots all came from
24 the left side of the vehicle.

25 **Q** The left side of the vehicle. Looking again

1 State's 103, wouldn't you be able to say with a fair
2 degree of accuracy or a fair degree of certainty,
3 that due to the circular nature of the impacts, and
4 especially to number three that's through and
5 through, that not only do they come from the side of
6 the vehicle, but they came from a fairly low
7 elevation angle?

8 **A** I can state based on what you see in this
9 photograph with the placement of these probes is
10 that the impacts of those projectiles are at a
11 shallow angle. Well, it's the horizontal downward
12 relative to the plane of the vehicle at that
13 particular point. The problem that you encounter in
14 incidents such as this is that the vehicles are
15 moving in relationship to one another and so that
16 changes in the blink of an eye the relationship from
17 one to the other. As I stated before, you may have
18 this angle that shows it's virtually perpendicular,
19 but you don't know how the vehicle is sitting on the
20 road at the time the shot was fired. I have no
21 means of duplicating that or knowing how that
22 happened.

23 **Q** So you're not prepared to help us out in that
24 regard?

25 **A** There's a limit to how much I can say in this

1 particular case as to the exact trajectory of those
2 projectiles.

3 Q As to the shots depicted one, two, three and
4 four on the side of the car then, they are
5 consistent with an arm that had its shoulder all the
6 way out the door of the truck firing the shots, an
7 arm with its shoulder all the way out against the
8 door, they're consistent with that?

9 A If you're asking if it could happen in that
10 fashion --

11 Q Yes, sir.

12 A I can't rule that possibility out.

13 Q But your testimony is also that you can't rule
14 out the possibility that the driver at 70 miles an
15 hour leans all the way across the passenger and
16 fires those shots?

17 A I can't rule out that possibility. I simply
18 don't have enough information.

19 MR. STRICKLER: Thank you. I have nothing
20 further.

21 THE COURT: Redirect?

22 MS. WEISS: Nothing further from the State,
23 Your Honor.

24 THE COURT: Thank you, Mr. Collins. You may
25 step down.

1 Call your next witness.

2 MS. WEISS: Your Honor, may Investigator
3 Collins be excused at this time?

4 MR. STRICKLER: Without objection.

5 THE COURT: You're free to go.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8 MS. MCDUFFIE: State would call Jeanie Shull.

9 JEANIE SHULL,

10 having been duly sworn, testified as follows:

11 THE CLERK: Please have a seat up here, ma'am.
12 Speak into that microphone, state your full name for
13 the record.

14 THE WITNESS: Jeanie Shull.

15 DIRECT EXAMINATION

16 BY MS. MCDUFFIE:

17 Q Ms. Shull, where are you employed?

18 A Alvin S. Glenn Detention Center.

19 Q And how long have you been employed there?

20 A Twenty years.

21 Q And what are your duties at Alvin S. Glenn?

22 A I'm a assistant director in the internal
23 affairs professional standards division.

24 Q And what does that entail?

25 A Investigate complaints, I handle the Pay-Tel

1 phone system, various duties pertaining to
2 professional standards.

3 Q And you said you handle the Pay-Tel phone
4 system?

5 A Yes.

6 Q Are you the custodian of records in recorded
7 phone calls from that phone system at Alvin S.
8 Glenn?

9 A Yes.

10 Q And how are telephone calls recorded at Alvin
11 S. Glenn?

12 A They are recorded once the -- once the call
13 party says hello, the phone calls are automatically
14 recorded and sent to a hard drive.

15 Q And are the parties told that those calls are
16 recorded?

17 A Yes.

18 Q And are all calls recorded from your facility?

19 A Yes.

20 Q And how do you capture those recordings or how
21 do you capture those calls?

22 A The software that's set up, you put in the
23 number, you can put dates or you can leave it open,
24 you search and if anyone in that facility, any
25 inmate in that facility has called that number,

1 those calls will come up.

2 **Q** And then once those calls come up, then what do
3 you do with them?

4 **A** If they're completed calls, you can download
5 them, you can listen to them, but they're always
6 stored.

7 **Q** And did Investigator Eric Barnes contact you
8 around November the 11th, 10th or 11th of 2005 and
9 ask you to see if there were any calls to various
10 phone numbers?

11 **A** Yes.

12 **Q** And did you -- were you able to capture phone
13 calls for him?

14 **A** Yes.

15 **Q** And what did you do once you got those phone
16 calls?

17 **A** I downloaded them to a C.D. and turned them
18 over to Investigator Barnes.

19 **MS. MCDUFFIE:** Beg the Court's indulgence.

20 **THE COURT:** Yes, ma'am.

21 (Pause.)

22 **BY MS. MCDUFFIE:**

23 **Q** And the parties on these conversations, do they
24 know they're being recorded?

25 **A** Yes.

1 **MS. MCDUFFIE:** Thank you. No further
2 questions.

3 **THE COURT:** Cross?

4 CROSS-EXAMINATION

5 BY MR. COLLINS:

6 **Q** So you never listen to any of these
7 conversations?

8 **A** No.

9 **MR. COLLINS:** Thank you for coming.

10 **THE COURT:** Redirect?

11 **MS. MCDUFFIE:** None, Your Honor.

12 **THE COURT:** Thank you, ma'am. You may step
13 down.

14 Call your next witness.

15 **MS. WEISS:** State calls Investigator Eric
16 Barnes.

17 ERIC BARNES,

18 having been duly sworn, testified as follows:

19 **THE CLERK:** Please have a seat there, sir, and
20 state your full name for the record.

21 **THE WITNESS:** Eric Barnes.

22 DIRECT EXAMINATION

23 BY MS. WEISS:

24 **Q** Good afternoon.

25 **A** Afternoon.

1 Q Investigator Barnes, will you please tell the
2 jury where you're employed?

3 A I'm a sergeant in investigations at the
4 Richland County Sheriff's Office.

5 Q How long have you been in law enforcement?

6 A I've been in law enforcement since 1987.

7 Q Please tell the jury a little bit about your
8 background.

9 A I graduated from Gardner-Webb College with a
10 degree in religion. I joined the secret service
11 uniform division in the Reagan and Bush
12 administrations, got ready to get married, came back
13 down to South Carolina got married to my wife. We
14 reside in the northeast part of Richland County and
15 have been working at the sheriff's office for most
16 of that time. I stepped away in 2003, opened my own
17 business and then came back to the sheriff's office
18 later on that year.

19 Q And when you came to the sheriff's department,
20 what capacity did you come there?

21 A I came to the sheriff's office in '89 as a
22 deputy and made it to investigations in 1993, became
23 a sergeant in '99, left the sheriff's office briefly
24 in 2003. I'm now a sergeant in investigations
25 again.

1 **Q** And what are your general duties as a sergeant
2 in investigations?

3 **A** I supervise ten investigators. My division,
4 the burglary division, right now handles all the
5 burglaries in Richland County investigating them,
6 talking with the victims, the witnesses, the
7 suspects in trying to remedy those problems.

8 **Q** In October of 2004, what division were you in
9 at that time?

10 **A** I was actually hired back into the sheriff's
11 office as a cold case investigator, the only
12 full-time cold case investigator. As part of my
13 duties, though, I also rotated as a on-call homicide
14 detective, lead investigator. In that capacity is
15 where I found myself in October of 2004.

16 **Q** How did you become involved in the -- what is
17 now known as the John Moore case in October of 2004?

18 **A** I received a call. I was on homicide call. I
19 received a call that a homicide did occur on I-20.
20 I went into the sheriff's office that morning and
21 met with Investigator Faust and Sergeant Amaro where
22 they briefed me on the case and I began follow-up
23 from there.

24 **Q** And you came in about eight o'clock that
25 morning?

1 **A** That is correct.

2 **Q** And you became the lead investigator on that
3 case?

4 **A** That is correct.

5 **Q** What are the duties, what is the setup, what is
6 the meaning of lead investigator?

7 **A** Well, you've got to have somebody that's
8 responsible for the case ultimately that people can
9 go back to and ask questions of. We have multiple
10 duties within investigations. Just because you're a
11 lead investigator doesn't mean you carry just
12 investigations in homicides. You may carry a
13 burglary case load, for instance, or you may carry,
14 you know, be a robbery investigator at the same
15 time. So a lead investigator would handle the
16 homicide while there are leads and through the
17 continuation of that case. And then the secondary
18 would stay on as long as there are viable leads
19 going and then -- with the understanding that that
20 secondary would have to rotate off to perform his
21 normal duties if all the leads dried up.

22 **Q** Who was the secondary on the John Moore case?

23 **A** The secondary was Investigator Faust.

24 **Q** So you came in the morning of October 17th and
25 you were assigned this case?

1 **A** That is correct.

2 **Q** What did you do, if anything, on the 17th to
3 begin this case?

4 **A** Started doing what we call the victimization
5 and going back to the crime scenes, reinterviewing
6 witnesses, following up on anything else that had
7 happened that night that might have some tie in to
8 that particular incident, so basic things that Faust
9 and Amaro had generated and then looking to for --
10 when they came back in to start fresh on that.

11 **Q** At that point, did you have any leads in this
12 case?

13 **A** We had no leads, no leads at all.

14 **Q** Did you have the opportunity to meet with Gene
15 Derrick?

16 **A** I did.

17 **Q** And when was that?

18 **A** I believe a -- possibly the next day he came
19 into the sheriff's office and sat down with
20 Investigator Faust and then we went out riding from
21 the sight in Pelion where the party was earlier that
22 evening all the way to the Flying J where it
23 ultimately ended up and we got involved in the case.

24 **Q** Showing you what's been marked as State's
25 Exhibit 16.

1 **A** Yes, ma'am.

2 **Q** Is this approximately the route that you drove
3 on I-20?

4 **A** That is part of the route as it enters into
5 Richland County, yes, ma'am.

6 **Q** And Broad River Bridge to where you got off is
7 that Fairfield Road?

8 **A** Yes, ma'am.

9 **Q** Is that in Richland County?

10 **A** That is.

11 **Q** And take us on that trip. You got off at what
12 exit?

13 **A** We got off on Highway 321. I'm not sure what
14 exactly that exit is. We call it Fairfield Road.
15 And we went northbound on Fairfield Road to Sharpe
16 Road. And the neighborhood right beside the Sharpe
17 Road intersection would be Hollywood Hills and that
18 Sharpe Road takes you from 321 to Highway 21 or
19 North Main Street.

20 **Q** At some point, did you stop on Sharpe Road?

21 **A** We did.

22 **Q** And who was leading your directions on this?

23 **A** This is -- Gene Derrick is leading us and
24 showing us -- we stopped right at Red Hill Road
25 and --

1 **Q** I'm going to show you what's been marked as
2 State's Exhibit 14. Is that what you've just
3 described as Red Hill Road?

4 **A** Yes, ma'am, that is.

5 **Q** And what's the condition of Red Hill Road?

6 **A** Red Hill Road is a dirt road. It is a road --
7 it's not even a secondary road. It's a dirt gravel
8 road.

9 **Q** As an investigator in Richland County, you've
10 been doing this for many years, is there a
11 significance to you after doing all these
12 investigations of Red Hill Road?

13 **A** No matter where you are in the county
14 geographically, you're going to have different
15 places that are unique to your area. Red Hill Road
16 is one of these roads that is unique to that
17 particular area. If you were traveling and you
18 were, percentage wise, we're talking percentages
19 here, if you're traveling down Sharpe Road and
20 happened to be on Sharpe Road, you're wanting to get
21 from point A to point B usually to North Main, which
22 would be another major artery, Red Hill Road is a
23 road off of that road and it's unique to that
24 particular community. We find that the people who
25 do take Red Hill Road that it's unique to there and

1 it became important to us that if we found a link,
2 to see if that link tied into Hollywood Hills or
3 that area because of the Red Hill Road -- the use of
4 Red Hill Road by the suspects.

5 Q And you finished doing your drive, went back
6 and that's when you and Investigator Faust took a
7 statement from Gene Derrick?

8 A Correct.

9 Q After that, what else did you do just in
10 general to try to solve this case?

11 A We needed to locate a crime scene, if we could.
12 We know that the lab units searched a certain
13 portion of the interstate that night after the
14 shooting trying to find some evidence out there. We
15 felt like we really needed to get back out there to
16 try to find a point to where these things started,
17 an incident location, if we could, during the
18 daytime hours, so we went back out there and did
19 that.

20 The only bit of evidence that we had at that
21 point was the fact that Mr. Collins had said that it
22 was a .45, a fairly specific .45 caliber handgun.
23 It was a Hi-Point. And it wasn't just a Hi-Point
24 .45, it was a specific brand of a Hi-Point
25 manufactured in certain years. And we felt like

1 well that might be a lead for us to start working on
2 in lieu of anything else and we didn't have anything
3 else. And so those two things were priorities for
4 us.

5 Q Did anything come from those two searches?

6 A No, ma'am.

7 Q And after that, did anything -- did the case
8 basically go cold for a while?

9 A Yes, ma'am, it did.

10 Q And did you have any leads that panned out
11 during basically the next year of the investigation?

12 A No, ma'am, no leads panned out for that next
13 year.

14 Q And at some point, this case changed, was no
15 longer a cold case. Will you please tell the jury
16 what changed in this case?

17 A On October 24th, 2005, I received information
18 that a Crime Stoppers tip had come in. It was an
19 anonymous tip and that it came in and listed a
20 Kerwyn Phillips and a John Joseph Moore as being
21 involved in this. John Joseph Moore being the
22 shooter, Kerwyn Phillips being the passenger in the
23 truck. And that, you know, the tip explained a
24 little bit about there was an altercation on the
25 interstate. But this led us in a new path and it

1 kind of broke the case for us that Crime Stopper
2 tip.

3 Q Did it tell you anything specific about the
4 truck? Whose truck it was?

5 A It was John -- stated it was John Joseph
6 Moore's father's pick-up truck, black pick-up truck.

7 Q And this bit of information that you got from
8 Crime Stoppers, was it consistent with what you did
9 know about the case at that time?

10 A It was. And, you know, we started doing
11 background on that and found that John Joseph Moore
12 and Kerwyn Phillips both had residences in Hollywood
13 Hills, that neighborhood right beside of Red Hill
14 Road, which was significant. And we became very
15 interested in this particular lead.

16 Q And so you found out that John Joseph Moore and
17 Kerwyn Phillips both existed, both had residents in
18 Hollywood Hills. Did you find out -- when you were
19 doing that background information, did you find out
20 a date of birth for John Joseph Moore?

21 A We did. We found out that John Joseph Moore's
22 date of birth was [REDACTED]. He was 20 years old.
23 And we also found that John Joseph Moore and Kerwyn
24 Phillips were friends and acquaintances.

25 Q And if he was born in '85, how old would he

1 have been in 2004?

2 **A** In 2004, he would have been 20 years old -- 19
3 or 20.

4 **Q** Okay. So you discovered who they were, where
5 they lived. And who were you able to locate first?

6 **A** We were able to find Kerwyn Phillips as a
7 result of our background and we set up a -- spoke
8 with the feds and arranged a meeting with Kerwyn
9 Phillips.

10 **Q** And your first meeting with Kerwyn Phillips,
11 did you have the opportunity to talk to him?

12 **A** We did, I did.

13 **Q** And did you have the opportunity to take a
14 statement at the first meeting?

15 **A** No, he left.

16 **Q** And were you eventually able to get a
17 statement?

18 **A** I got a call later on that night from the
19 federal agent, Baldwin, who said that Kerwyn had
20 called back in and wanted to meet and was --
21 apologized for leaving like that, but he was scared.
22 We arranged to meet and ultimately two days later we
23 met and I took a statement from him.

24 **Q** After you got that statement, did you talk to
25 Kerwyn and ask him to do anything else?

1 **A** I did.

2 **Q** And what was that?

3 **A** We asked him if he would wear a wire and engage
4 John Joseph Moore in a phone conversation in hopes
5 of obtaining a confession from him over the phone.

6 **Q** And did he do that?

7 **A** He did.

8 **Q** And how did you get back in touch with Kerwyn
9 Phillips?

10 **A** Kerwyn called me when it was done and brought
11 the tape to me.

12 **Q** Where did you meet?

13 **A** I was at a Chic-fil-A on Decker Boulevard. He
14 brought it over to me after he got off of work at
15 that point.

16 **Q** Let me show you what's been marked as State's
17 Exhibit 120. Do you recognize this tape?

18 **A** Yes, ma'am, I do.

19 **Q** And what is that tape?

20 **A** This is the tape that Kerwyn Phillips gave me
21 that morning at the Chic-fil-A. I have put my
22 initials on it and the date I received it from him.

23 **Q** And what was that date?

24 **A** 11/3/2005.

25 **Q** On 11/3/2005, did you have the opportunity to

1 listen to that tape?

2 A I did.

3 Q And what did you do as a result of that tape
4 and the information that you had gotten?

5 A We drew search warrants and arrest warrants for
6 John Joseph Moore and his residences that we knew
7 of, one of them being at [REDACTED],
8 the residence of Delia Nix, his girlfriend, and for
9 his father's residence, which was over on Dayton
10 Court in Hollywood Hills. And we were looking for,
11 obviously, the gun from the homicide.

12 Q Now, that was after you had gotten the initial
13 statement from Kerwyn. In Kerwyn's statement, he
14 talks about the gun. Did you ever go look for the
15 gun where Kerwyn said it was?

16 A We did. We looked behind his grandfather's
17 house on [REDACTED] Road twice, could not find it.

18 Q You couldn't find it there, so you were still
19 looking for the gun?

20 A Correct.

21 Q When did you execute those search warrants?

22 A That same day, 11/3/05.

23 Q And you searched for the gun at both of those
24 residences?

25 A We did.