

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

J. Mark Hayes, II, Circuit Court Judge

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S.C. Supreme Court

TREMAINE WRAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLANT CASE NO. 2015-000758

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) 2007-GS-40-5913, 5914

The State)
))
vs.) TRANSCRIPT OF RECORD
))
Tremain Wray and Taurus Watts)
))
_____)

May 18 and 19, 2009
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

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Crystal Holmes
Official Court Reporter

E X H I B I T S

NO. DESCRIPTION

I.D. EVD.

(REPORTER'S NOTE: NO EXHIBITS WERE INTRODUCED AT THE
HEARING.)

I N D E X

WITNESS DIRECT CROSS REDIRECT RECROSS

(REPORTER'S NOTE: NO WITNESSES TESTIFIED AT THE
HEARING.)

1

2 MONDAY, MAY 18, 2009:3 THE COURT: Give me a moment to look through
4 these things.

5 (Pause.)

6 THE COURT: Ms. Shipley.

7 MS. SHIPLEY: Yes, sir, Your Honor.

8 THE COURT: What you got, 62 witnesses listed?
9 I'm just guessing.10 MS. SHIPLEY: Well, we don't -- those are
11 potential witnesses.

12 THE COURT: I know.

13 MS. SHIPLEY: We've narrowed it down to about
14 25 witnesses.15 THE COURT: Well, do I still need to call all
16 these names to be on the safe side?

17 MS. SHIPLEY: Just to be on the safe side.

18 THE COURT: All right.

19 MS. SHIPLEY: Something could pop up where we
20 need to call them.21 THE COURT: I understand. And this handwritten
22 list, is that from you, Ms. Johns, are from both of you?

23 MR. SWERLING: Both of us.

24 THE COURT: Okay. And I see that some of them
25 are the same, got to be. All right.

1 MR. BAX: (Affirmative response.)

2 THE COURT: Okay, just give me a minute.

3 (Pause.)

4 MR. BAX: Permission to approach, Your Honor.

5 THE COURT: Yes, sir.

6 MR. BAX: We just need to add one name to our
7 witness list.

8 THE COURT: Okay. Do y'all have a copy of this
9 list?

10 MS. SHIPLEY: Yes, sir, Your Honor.

11 (Pause.)

12 THE COURT: So are you the lead counsel, Ms.
13 McDuffie?

14 MS. MCDUFFIE: No, sir, Your Honor, Ms. Shipley
15 is.

16 MS. SHIPLEY: I'm shadowing her, Your Honor.

17 THE COURT: All right. First of all, let me
18 ask both sides. Y'all have all looked at each others
19 proposed voir dire, have you not?

20 MS. SHIPLEY: Yes, sir, Your Honor.

21 THE COURT: Any objections from anybody before
22 I glance through them?

23 MS. JOHNS: No, Your Honor.

24 THE COURT: Take your time, you don't have to
25 answer right now, just take your time and make sure.

1 From the State, is there any objection from the
2 Defense's proposed?

3 MS. SHIPLEY: I have no objection to the one
4 entitled by Ms. Johns Additional Defendant's Requested
5 Pretrial Jury Instructions.

6 THE COURT: Wait ---

7 MS. SHIPLEY: A single sheet.

8 THE COURT: --- let me see if I can find it.
9 Oh, let's see.

10 (Pause.)

11 THE COURT: And what did you say again, Ms.
12 Shipley?

13 MS. SHIPLEY: The one entitled by Ms. Johns
14 Additional Defendant's Requested Pretrial Jury
15 Instructions. I have no objection to any of those. I
16 believe the one on the original Defendant's Requested
17 Voir Dire that was submitted, the only ones I have
18 objections to, Your Honor, are -- I believe you covered
19 them anyhow in your -- in your own voir dire to the
20 jury. But number four is asking whether or not anyone
21 has heard discussions about this case or any other case
22 that is similar, a similar case.

23 THE COURT: Uh-huh.

24 MS. SHIPLEY: I don't understand what ---

25 THE COURT: I'll ask it anyway. It's

1 innocuous.

2 MS. SHIPLEY: Okay.

3 THE COURT: Anything else?

4 MS. SHIPLEY: I believe most of it is already
5 covered.

6 THE COURT: All right. If I see something that
7 makes me uncomfortable, I'll let you all know.

8 MS. SHIPLEY: And then just for Mr. Swerling's
9 proposed voir dire, the name of the victim is Dumuria,
10 not Demera (phonetic).

11 MR. SWERLING: Sorry, Your Honor.

12 THE COURT: That's all right.

13 MS. SHIPLEY: It's spelled D-u-m-u-r-i-a.

14 THE COURT: It's spelled right on the
15 indictment?

16 MS. SHIPLEY: Yes, it's correct on the
17 indictment.

18 And, Your Honor, basically most of these things
19 are already covered in the Court's, so I have no
20 objections. I leave it in your discretion.

21 THE COURT: All right. Some of them might be
22 duplicitous but I will do so in an effort -- I might go
23 over it twice in an effort to make sure everything is
24 covered.

25 MR. SWERLING: Judge, we have no objections.

1 THE COURT: Sir?

2 MR. SWERLING: We have no objection to any of
3 them.

4 THE COURT: Okay. And it's going to be a
5 little tedious, but I'll ask everybody for their
6 patience. We'll get through it.

7 (Pause.)

8 THE COURT: So let me make sure I'm on the same
9 page with everybody else. The strikes will be 10 for
10 Mr. Swerling on behalf of Mr. Wray. 10 for Ms. Johns on
11 behalf of Mr. Watts, is that correct?

12 MS. JOHNS: Yes, Your Honor.

13 THE COURT: And as a result, the State will
14 have 10?

15 MS. SHIPLEY: Correct, Your Honor.

16 THE COURT: So it's 30 strikes.

17 MS. SHIPLEY: Yes, sir.

18 THE COURT: I think you have a list of 60.
19 That should be enough to cover everything.

20 Anything we need to take up before I bring the
21 jury up?

22 MR. BAX: Your Honor, one thing I wanted to add
23 to the jury list was ---

24 THE COURT: I've got it, Mr. Bax, Arie Bax.
25 Also assisting Mr. Swerling, is that correct?

1 MR. BAX: That's correct, Your Honor. Thank
2 you very much. If you don't mind, Your Honor, we would
3 like to add Marion Jacobs to the Defendant's witness
4 list. That was an omission on our part. I apologize.

5 THE COURT: All right. Do you need a transport
6 order for Mr. Morris?

7 MR. BAX: For Mr. Morris and I have it right
8 here, Your Honor.

9 THE COURT: All right, pass it up.

10 MR. BAX: The State's already seen this, Your
11 Honor.

12 (Pause.)

13 THE COURT: Mr. Bax, let me make sure I spelled
14 your name correctly, B-a-u-c or B-a ---

15 MR. BAX: It's B-a-x, Your Honor.

16 THE COURT: Okay, I knew it was a funny
17 spelling. Not that you're funny but it's sort of
18 unusual. I guess that's the way they spell names in
19 Maggie Valley, North Carolina?

20 MR. BAX: Yes.

21 THE COURT: All right. Are we all ready then?
22 Gentlemen, you may invite the jury to come up, please.
23 And it's going to take probably 10 or 15 minutes before
24 they all get up here. So, I'm sorry, Ms. Pendergrass,
25 if you'd be kind enough to do so.

1 THE COURT: While they're coming up, I spoke to
2 Judge Barber earlier and I think he may have already
3 indicated to the panel this morning in complete venire
4 that he did not think this trial would go beyond this
5 week. And at this point in time in the day, I'm not
6 sure whether that's the case or not.

7 Does everybody agree with that?

8 MS. SHIPLEY: Your Honor, the State believes
9 that it will rest sometime on Thursday.

10 THE COURT: I understand that. But does that
11 answer the question as to whether or not we will go
12 beyond this week, Ms. Shipley? There's no way to say
13 for sure. Would that be a fair statement, Ms. Johns?

14 MS. JOHNS: Yes, Your Honor.

15 THE COURT: Mr. Swerling?

16 MR. SWERLING: Yes, sir.

17 THE COURT: We hope that we can finish but I
18 think whoever we select on this jury, they need to be
19 informed and need to know there's a possibility. And
20 right now only a possibility that it could go into the
21 next week and everybody needs to be prepared for that.
22 We don't want somebody saying, well, Monday I've got a
23 vacation. So do I, I mean, for that matter, it's a
24 holiday, but.

25 Once we get in here and everybody's here, we

1 need to remove any wonderings about, it's definitely
2 going to end this week, it's a possibility it could go
3 beyond Friday. If it does, the choice is Saturday or
4 Sunday or come back Monday or Tuesday or something like
5 that. I think it's only fair to everybody. I don't
6 know. I hope it ends as we all do, but it may not. If
7 it doesn't, then if somebody has a problem being here
8 next week, we need to know in advance before Wednesday
9 or Thursday or something like that.

10 But I'll sort of give them a gist of that when
11 they get in here and encourage anyone if they have any
12 problems with being here beyond Friday to let me know
13 here and now. We can all take it up today.

14 MS. SHIPLEY: Yes, sir.

15 THE COURT: All right. We'll be at ease and
16 I'll wait until they get up here.

17 (The Court was in recess.)

18 THE BAILIFF: the jury panel is here,
19 Your Honor.

20 THE COURT: Do we have 60?

21 THE BAILIFF: 61.

22 THE CLERK: 60.

23 THE BAILIFF: You said 60 and there was
24 another lady.

25 THE COURT: I know the Bailiffs have trouble

1 counting up to 60, so just calm down.

2 THE BAILIFF: I was going by what he told me.

3 (Laughter.)

4 THE COURT: Good afternoon, ladies and
5 gentlemen, how are y'all doing today?

6 PROSPECTIVE JURORS: Good afternoon.

7 THE COURT: I take this opportunity to welcome
8 you a second time here to the Richland County Judicial
9 Center. Can you all hear me?

10 PROSPECTIVE JURORS: Yes, sir.

11 THE COURT: I assume that y'all met -- was it
12 Judge Barber or Judge Dickson that welcomed y'all this
13 morning?

14 PROSPECTIVE JURORS: Judge Barber.

15 THE COURT: Do y'all remember?

16 PROSPECTIVE JURORS: Judge Barber.

17 THE COURT: Judge Barber?

18 PROSPECTIVE JURORS: Yes, sir.

19 THE COURT: Okay. First of all, I want to say
20 this at the outset. This is a murder case. And it's
21 probably going to be at least a week long. I hope it
22 doesn't last beyond Friday but there's a possibility
23 that it could, depending on what unfolds. And I want to
24 give you fair warning.

25 I've got to also temper that with, you know, a

1 government of the people, by the people and for the
2 people cannot exist without the people. It's impossible
3 -- it's impossible for us to have this trial without
4 you. So you are the most important link in this chain
5 and -- but I'll tell you once again, we cannot have this
6 case. It might go a little long. I'll prepare you for
7 that -- prepare you for that eventuality before we get
8 started.

9 Yes, sir, can I help you? You need something?

10 GENTLEMAN: No, sir, Your Honor.

11 THE COURT: You sure. It's okay, do you?

12 GENTLEMAN: No, sir.

13 THE COURT: All right. Thank you.

14 So with that in mind, we'll try to get started.

15 I'm going to ask for your patience in this selection

16 process. It's going to take a little while, okay.

17 Y'all all prepared to be patient? I hope so.

18 And I want to thank you on behalf of everybody
19 in the judicial system, everybody here at the Richland
20 County Judicial Center, for being patriotic citizens by
21 answering your invitation to come and serve your country
22 in the capacity as jurors. It's a patriotic process and
23 it's a noble undertaking.

24 So, once again, you're the most important link
25 in this chain. And without you we couldn't get anything

1 done. So, I want y'all to understand that before we get
2 started.

3 (Pause.)

4 THE COURT: Now, ladies and gentlemen of the
5 jury panel, this is a murder case. We have two Co-
6 Defendants both charged with murder. I am going read
7 each indictment.

8 And the first indictment is docket number
9 2007-5914, The State versus Tremain Wray. It's an
10 indictment for murder and the allegations are that
11 Tremain Wray did in Richland County on or about June
12 30th of 2007, feloniously, willfully and with malice
13 aforethought, kill one Dumuria Johnson by means of a
14 gunshot wound, and that the said victim died as a
15 proximate result thereof.

16 Now, Mr. Tremain Wray is being represented by
17 Mr. Jack Swerling. Stand up for me, Mr. Swerling.

18 (Complied.)

19 THE COURT: And Mr. Arie -- I want to say Bauch
20 (phonetic).

21 (Mr. Bax stands.)

22 MR. BAX: Bax.

23 THE COURT: Pronounced Bax. They are
24 representing Mr. Wray.

25 Thank you, gentlemen, for right now.

1 You need to come in and have a seat?

2 (Pause.)

3 THE COURT: All right. And I would ask that
4 Mr. Tremain -- Mr. Tremain Wray, will you stand up and
5 face the jury panel, please, Mr. Wray?

6 (Complied.)

7 THE COURT: This is the Defendant, Mr. Tremain
8 Wray, being represented by Mr. Swerling and Mr. Bax.

9 Thank you, sir.

10 Now the other Co-Defendant in this case is Mr.
11 Taurius (sic) Watts. And his indictment reads exactly
12 the same. It's number 2007-5913, The State versus
13 Taurius (sic) -- Taurus Watts. And the allegations of
14 this indictment is that Taurus Watts did in Richland
15 County, on or about June 30th of 2007, feloniously,
16 willfully and with malice aforethought kill one Dumuria
17 Johnson by means of a gunshot wound and that said victim
18 died as a proximate result thereof.

19 And Mr. Watts is being represented in this case
20 by Ms. Theresa Johns. Ms. Johns.

21 (Ms. Johns stands.)

22 THE COURT: Thank you, Ms. Johns. And Mr.
23 Watts is next to her, to her right. Will you stand up
24 and face the jury panel, Mr. Watts?

25 (Complied.)

1 THE COURT: Thank you, sir. So we have two Co-
2 Defendants charged with murder, Mr. Wray and Mr. Watts.

3 Now, I need to ask this question first of all.
4 Any member of this jury panel related by blood or
5 connected by marriage or employment or are you a close
6 personal acquaintance of Taurus Watts or Tremain Wray?

7 If so, please stand, either one of the Co-
8 Defendants. Members of the jury panel, do you know
9 either one of these gentlemen? Do you work with them,
10 do you live in the same community, that sort of thing?

11 If so, please stand.

12 (Jurors stand.)

13 THE COURT: All right. Your juror number,
14 please, sir. Give me your name and juror number, if you
15 don't mind.

16 PROSPECTIVE JUROR: My name is Michael Bates.

17 THE COURT: Michael what?

18 PROSPECTIVE JUROR: Bates, B-a-t-e-s.

19 THE COURT: Bates. Yes, sir, Mr. Bates.

20 PROSPECTIVE JUROR: My number is 18.

21 THE COURT: Yes, sir, and who do know?

22 PROSPECTIVE JUROR: I know both of them. I
23 know Tremain a little better.

24 MR. SWERLING: Judge, can we approach a minute?

25 THE COURT: Yes. Just have a seat for right

1 now.

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

5 THE COURT: All right. Well, come on up here,
6 sir. Let's bring him up right now.

7 Come on up.

8 (Complied.)

9 THE COURT: How are you doing?

10 PROSPECTIVE JUROR: How you doing, Your Honor?

11 THE COURT: Now, somebody thinks that maybe you
12 worked at the Alvin S. Glenn ---

13 PROSPECTIVE JUROR: I did. I did.

14 THE COURT: That's how you know these
15 gentlemen?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Okay. I'm afraid probably, out of
18 an abundance of caution, I need to take you off this
19 jury.

20 PROSPECTIVE JUROR: I appreciate that.

21 THE COURT: Okay. That's all right. For that
22 reason I need to do so.

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: You understand that? Okay, I'll
25 just ask you to go have a seat in the back.

1 PROSPECTIVE JUROR: Thank you.

2 THE COURT: Hold on, hold on. Yeah, you can
3 go.

4 Yes, ma'am, you stood up a minute ago.

5 PROSPECTIVE JUROR: I know both of them.

6 THE COURT: Ma'am?

7 PROSPECTIVE JUROR: I know both of them.

8 THE COURT: Well, let me invite you to come on
9 up here right now.

10 (Complied.)

11 THE COURT: Your name and juror number.

12 PROSPECTIVE JUROR: My name is Marvette Byrd,
13 juror number 44. I went to school -- high school.

14 THE COURT: Come on up.

15 PROSPECTIVE JUROR: High school.

16 THE COURT: Okay. What high school?

17 PROSPECTIVE JUROR: Ridgeview High.

18 THE COURT: Ridgewood High School.

19 PROSPECTIVE JUROR: Ridgeview High School.

20 THE COURT: How long ago was that, 15 years.
21 ago?

22 (Laughter.)

23 PROSPECTIVE JUROR: No, about eight.

24 THE COURT: About eight years ago, okay. I was
25 just guessing. Would that or could that, the fact that

1 you know both of them, went to Ridgeview High School
2 with them ---

3 PROSPECTIVE JUROR: I don't even want to
4 participate.

5 THE COURT: Huh?

6 PROSPECTIVE JUROR: I don't even want to
7 participate.

8 THE COURT: Okay, that's understandable.
9 Everybody fine with that. I can understand why. That's
10 why I brought you up here.

11 PROSPECTIVE JUROR: Okay.

12 THE COURT: Now what I want you to do is go
13 have a seat in the back of the courtroom.

14 PROSPECTIVE JUROR: Okay.

15 THE COURT: Okay, thank you. Everybody's fine
16 with that?

17 MS. SHIPLEY: Yes, sir.

18 THE COURT: Okay.

19 MS. SHIPLEY: Your Honor, if we may. There's a
20 gentleman -- there's one juror, just I want to bring it
21 to your attention, he's got a big diamond earring in his
22 left ear and was looking at the Defendant's family. So
23 if you could just clarify the Defendants or their
24 family. If you know the Defendants or their families.

25 THE COURT: Oh, sure.

1 MS. SHIPLEY: Okay. Thank you.

2 THE COURT: Left ear or right ear?

3 (Laughter.)

4 THE COURT: Are you Gerald Wilson?

5 MR. WILSON: Yes, sir.

6 THE COURT: I thought so.

7 Now, members of the jury panel, I'll repeat
8 that question one more time and ask that you listen
9 carefully. The most important thing that can happen
10 this particular process that we're involved in now is
11 for everybody to be fair. There is no friends for you
12 to reward in a court of law, there's no enemies for you
13 to punish. And like someone once said, if there's any
14 doubt, then there is no doubt. If you feel
15 uncomfortable, you need to let me know right away, okay.
16 And trust me, there's no right or wrong answer. It's
17 honest answers.

18 So, I'll repeat this question for everybody's
19 benefit. And once again, to cover everything, Mr.
20 Taurus Watts and Mr. Tremain Wray are the Co-Defendants.
21 And the question once again, backing up a little bit,
22 is: Is any member of this jury panel related by blood
23 or connected by marriage or employment or are you a
24 close personal acquaintance of either Defendant or
25 members of their family? Do you know the Defendants?

1 Do you know their mother and father? Do you know their
2 brothers and sisters? Do you go to church with them?
3 Do you shop at the same Publix with them or Food Lion or
4 anything like that? Have you seen them over the years?

5 If so, please stand.

6 (There was no response.)

7 THE COURT: All right.

8 Now, I'm really going to have to ask your
9 patience in the next question I've got to ask. I'm
10 going to read a long list of witnesses, there are
11 approximately 60 names. These are proposed witnesses or
12 potential witnesses on behalf of the State. There are
13 60 of them. So I'll ask that you listen very carefully.
14 It's going to take some time so I ask for your patience.
15 And I'm going to read the names out at least twice.

16 All right. Y'all all ready? And the same
17 question is going to apply -- are going to apply. Are
18 you related by blood or marriage, connected by
19 employment, are you a close personal acquaintance of any
20 of these names I just called out? And there is no right
21 or wrong answer, just an honest one. And there's a good
22 reason for that that you all can probably understand.

23 So, I'm going to ask that you bear with me once
24 again for your patience. Let me find this list.

25 So, some of the proposed or potential witnesses

1 in this case will be, first of all, Investigator Don
2 McRae from the Richland County Sheriff's Office,
3 Sheriff's Department.

4 (Investigator McRae stands.)

5 THE COURT: That's Investigator McRae that just
6 stood up for you.

7 Deputy Ray Weldon Gregory formerly of the
8 Richland County Sheriff's Department. Is Deputy Gregory
9 present?

10 MS. SHIPLEY: No, sir.

11 THE COURT: All right. Deputy Ryan Galinski
12 who is not present, is that correct, with the Richland
13 County Sheriff's Department? Deputy James Gore from the
14 Richland County Sheriff's Department. Deputy M. P.
15 Smith -- what does the M. P. stand for?

16 MS. SHIPLEY: Your Honor, Michael.

17 THE COURT: Michael what?

18 MS. SHIPLEY: Smith. I'm not sure what the P
19 is for.

20 THE COURT: All right. Deputy Michael P. Smith
21 from the Richland County Sheriff's Office. Investigator
22 Gilbert Gallegos -- Gallegos?

23 MR. GALLEGOS: Gallegos.

24 THE COURT: Gallegos.

25 MR. GALLEGOS: Yes, sir.

1 THE COURT: Did I say that correctly?

2 MR. GALLEGOS: Yes, sir.

3 THE COURT: From the Richland County Sheriff's
4 Department. He's present, dressed in the blue suit with
5 a blue shirt and a blue tie.

6 Sergeant Eric Barnes of the Richland County
7 Sheriff's Department. Sergeant Barnes is not present.
8 Okay, Sergeant Eric Barnes of the Richland County
9 Sheriff's Department.

10 Investigator Heidi Scott from the Richland
11 County Sheriff's Department. She's not present, is that
12 correct?

13 MS. SHIPLEY: (Affirmative response.)

14 THE COURT: All right. Investigator Matt Ellis
15 of the Richland County Sheriff's Department. Lieutenant
16 Zane Padgett of the Richland County Sheriff's
17 Department. Investigator David Collins of the Richland
18 County Sheriff's Department. Investigator Cataldo?

19 MS. SHIPLEY: Investigator Tara Cataldo, Your
20 Honor.

21 THE COURT: Say that again.

22 MS. SHIPLEY: Cataldo.

23 THE COURT: Tara Cataldo.

24 MS. SHIPLEY: Yes, sir.

25 THE COURT: T-a-r-a?

1 MS. SHIPLEY: Yes, sir.

2 THE COURT: All right. Investigator Tara
3 Cataldo of the Richland County Sheriff's Department.

4 Melissa Horne of the Richland County Sheriff's
5 Department. Investigator Patricia Reed-Enzor, E-n-z-o-
6 r, of the Richland County Sheriff's Department.

7 Investigator Harold Bouknight of the Richland County
8 Sheriff's Department. Investigator Ray Livingston of
9 the Richland County Sheriff's Department. Lieutenant
10 Anna Elsey, E-l-s-e-y, of the Richland County Sheriff's
11 Department.

12 (Lieutenant Elsey stands.)

13 THE COURT: She's present. Thank you, ma'am.

14 All right, Investigator Oates. What's
15 Investigator Oates' first name?

16 MS. SHIPLEY: Robert Oates, Your Honor.

17 THE COURT: All right. Investigator Robert
18 Oates of the Richland County Sheriff's Department.
19 Investigator Trish Odom of the Richland County Sheriff's
20 Department. Investigator Stan Richards of the Richland
21 County Sheriff's Department. Tena
22 Goff of the Richland County Sheriff's Department. Will
23 Cedarstaff of the Richland County Sheriff's Department.
24 Curtis Burnett of the Richland County Sheriff's
25 Department. Randy Mack of the Richland County Sheriff's

1 Department. David Bell from the Richland County
2 Sheriff's Department. Dr. Grayson Amick of the Richland
3 County Sheriff's Department.

4 Sergeant White of the Columbia Police Department.

5 What's Sergeant ---

6 MS. SHIPLEY: Christopher.

7 THE COURT: Christopher. Sergeant Christopher
8 White of the Columbia Police Department. Jim Reese of
9 the Richland County Coroner's Office. Amy Stephens from
10 the State Law Enforcement Division or SLED. Nikki Perry
11 from the State Law Enforcement Division or SLED. Selena
12 Kinard from SLED. Lisa McReynolds from SLED. Christine
13 Benson from the Richland County Coroner's Office.

14 Michael Moskal?

15 MS. SHIPLEY: Moskal.

16 THE COURT: Michael Moskal from the State Law
17 Enforcement Division or SLED. Jennifer Blair from 911
18 Communications. Tim Grambow from SLED. Dr. Clay
19 Nichols from Palmetto Richland Memorial Hospital. Dr.
20 Michael Taillon, looks like, from Providence Northeast
21 Hospital. Gabriel Dominguez from Suncom Custodial
22 Records. That's the wireless carrier, a wireless
23 carrier. Gabriel Dominguez from Suncom Wireless
24 Carrier.

25 Okay, Ricky Jacobs, a fact witness. This is

1 Mr. Jacobs. Stand up and face the jury panel, Mr.
2 Jacobs.

3 (Complied.)

4 THE COURT: Thank you, sir. Stephanie Boston.
5 (Ms. Boston stands.)

6 THE COURT: Now, can y'all turn around and take
7 a look? Ms. Boston, Stephanie Boston. Thank you, Ms.
8 Boston.

9 Verda Roberts.

10 (Ms. Roberts stands.)

11 THE COURT: This is Ms. Roberts, Verda Roberts.
12 Thank you, Ms. Roberts.

13 Travis Malone. Is Mr. Malone present? He's
14 another fact witness, is that correct?

15 MS. MCDUFFIE: (Affirmative response.)

16 THE COURT: All right. Timothy Weldon.
17 Another fact witness who's not present, is that correct?

18 MS. SHIPLEY: Yes, sir.

19 THE COURT: Charlie Bates. Is Mr. Bates
20 present?

21 (Mr. Bates stands.)

22 THE COURT: This is Charlie Bates, Mr. Bates.
23 Thank you, sir.

24 Marcus D. Gordon. Is Mr. Gordon present?

25 MS. SHIPLEY: No, sir.

1 THE COURT: All right. Earl Jerome Green. Is
2 Mr. Green present? All right. Luther Landrum. All
3 right. Nathaniel Johnson, not present. Jessica (sic)
4 Lisa Johnson.

5 MS. SHIPLEY: Your Honor, it's pronounced
6 Jalicca Lisa Johnson.

7 THE COURT: Jalicca? How do you say it again?

8 MS. SHIPLEY: Jalicca.

9 THE COURT: Jalicca.

10 MS. SHIPLEY: Yes, sir.

11 THE COURT: Lisa Johnson. Darrell Wray, W-r-a-
12 y. Mr. Wray, is he present?

13 MS. SHIPLEY: No, sir, Your Honor.

14 THE COURT: All right. Landon Monroe. Lauren
15 Stuckey. James Lamont Goodwin. Joel Mc ---

16 MS. SHIPLEY: Your Honor, he's present.

17 (Mr. Goodwin stands.)

18 THE COURT: James Lamont Goodwin. This is Mr.
19 Goodwin, is that correct?

20 MR. GOODWIN: Yes, sir.

21 THE COURT: Thank you, sir.

22 Joel McMichael. Is Mr. Michael present?

23 MS. SHIPLEY: No, sir.

24 THE COURT: All right. Chris Crosby. Is that
25 a man or a woman?

1 MS. SHIPLEY: It's a man, Your Honor.

2 THE COURT: It's a man, Mr. Chris Crosby, all
3 right. Bryan Johnson, Bryan Johnson. All right.

4 Shawn Watts. Is Shawn Watts a man or a woman?

5 MS. SHIPLEY: I believe a woman, Your Honor.

6 THE COURT: All right. Shonda Watts. Nellie
7 Wray. Kasondra Roper.

8 Now, would y'all prefer I just continue reading
9 all witnesses listed -- all of them together? Is that
10 good enough for everybody?

11 MR. SWERLING: Yes, sir.

12 MS. SHIPLEY: Yes, sir.

13 MS. JOHNS: (Affirmative response.)

14 THE COURT: Additionally, Maurice Cunning, C-u-
15 n-n-i-n-g. Jeff Hollyfield (phonetic). Is it Holyfield
16 (phonetic) or Hollyfield?

17 MS. JOHNS: Hollyfield.

18 THE COURT: Hollyfield, okay. Dave MacDougall.
19 Gary Clark.

20 (Mr. Clark stands.)

21 THE COURT: This is Mr. Clark. Thank you, sir.

22 Uraine (phonetic) Wilson? Did I pronounce it?
23 Okay. Ronald Ray.

24 (Mr. Ray stands.)

25 THE COURT: This is Mr. Ronald Ray back with

1 the suit and tie on or coat and tie on. Okay, thank
2 you, Mr. Ray.

3 Norris Bond (phonetic). Darius (phonetic)
4 White. Timothy Weldon. Darian (phonetic) Gordon.
5 Charles Willard (phonetic).

6 MS. JOHNS: And, Your Honor, he's with Richland
7 County, Charles Willard.

8 THE COURT: Who, Charles Willard?

9 MS. JOHNS: Yes, Your Honor.

10 THE COURT: With Richland County Sheriff's
11 Department?

12 MS. JOHNS: Yes, Your Honor.

13 THE COURT: Okay. Bryan (Phonetic) Morris.
14 And Marion (phonetic) Jacobs.

15 Now, members of the jury panel, you can
16 imagine, with all those things, I'm going to go back
17 over them. But bear in mind this, before I do so.

18 Are you related by blood, connected by marriage
19 or employment, or are you a close personal acquaintance
20 of any of those names? If you're not sure you can just
21 stand up, we need to make sure.

22 Yes, sir, Dr. Wilson.

23 PROSPECTIVE JUROR: I'm juror number 293,
24 Gerald Wilson. The two physicians, the Providence
25 Northeast emergency room physician and Palmetto Health

1 ---

2 THE COURT: I can't quite hear you. You work
3 with these gentlemen, you said, the two physicians?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: The fact that you worked in a
6 professional capacity with the doctors whose names I've
7 called out on this potential juror (sic) list --
8 potential witness list, would that or could that affect
9 your ability to be a fair and impartial juror in the
10 trial of this case?

11 PROSPECTIVE JUROR: I don't think it would
12 affect my ---

13 THE COURT: Beg your pardon?

14 PROSPECTIVE JUROR: I don't think it would
15 affect my judgment.

16 THE COURT: Okay. Thank you, sir.

17 Now, y'all ready for me to go back through
18 these names, ladies and gentlemen?

19 Yes, sir. Your name and juror number.

20 PROSPECTIVE JUROR: 14 -- I don't remember the
21 guy -- the first -- Deputy Weldon Gregory -- Gregory
22 Weldon?

23 THE COURT: All right. Hold on, let me see if
24 I can find it.

25 PROSPECTIVE JUROR: Okay.

1 THE COURT: Ray Weldon Gregory, formerly of the
2 Richland County Sheriff's Department.

3 PROSPECTIVE JUROR: Okay. I'm pretty sure he's
4 the guy that I used to play golf with about three or
5 four times a week. I think he worked down the road
6 here. I don't know if he -- he's a deputy, or he was.

7 THE COURT: How old is he, do you remember?

8 PROSPECTIVE JUROR: Probably about 50.

9 THE COURT: Is he tall, thin?

10 PROSPECTIVE JUROR: Tall, red -- red headed
11 fellow, he used to be.

12 THE COURT: All right. Would that be the same
13 gentlemen?

14 MS. MCDUFFIE: Yes, sir, Your Honor.

15 THE COURT: Okay. So the fact -- and how long
16 have you known him?

17 PROSPECTIVE JUROR: Probably 20 years.

18 THE COURT: All right. The fact that you've
19 known Deputy Ray Weldon Gregory 20 years or so, you used
20 to play golf with him and maybe still do.

21 PROSPECTIVE JUROR: Sometime.

22 THE COURT: Would that or could that affect
23 your ability to be a fair and impartial juror in the
24 trial of this case?

25 PROSPECTIVE JUROR: I wouldn't think so.

1 THE COURT: I don't know.

2 PROSPECTIVE JUROR: No, sir, I don't think so.

3 THE COURT: You're absolutely sure?

4 PROSPECTIVE JUROR: Well, yes, sir, I'm sure.

5 THE COURT: Okay. Then it would not affect
6 your ability to be a fair juror and judge this case
7 based on the facts and the law and the evidence to be
8 presented?

9 PROSPECTIVE JUROR: That's right.

10 THE COURT: Okay. Thank you, sir.

11 That's all right, we've got plenty of time.

12 Yes, ma'am, your name and juror number.

13 PROSPECTIVE JUROR: I'm Tammy Lenker. I'm 175.

14 And Eric Barnes ---

15 THE COURT: Wait, hold on, Eric Barnes?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Which one is he?

18 PROSPECTIVE JUROR: Investigator with the
19 police.

20 THE COURT: Where is he? Do you see him?

21 MS. SHIPLEY: He's number seven down the list,
22 Your Honor, on the first page.

23 THE COURT: Yeah, Sergeant Eric Barnes from
24 Richland County Sheriff's Department. Yes, ma'am.

25 PROSPECTIVE JUROR: I've known that family for

1 I guess about 13 years. Our kids are good friends and
2 his wife is one of my -- one of the teachers at our
3 school, kindergarten teacher. And then Chris Crosby, I
4 don't know if he's the same -- if he works for the
5 police department, Chris Crosby, I go to church with
6 him.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR: If that's the same Chris
9 Crosby or not.

10 THE COURT: Well, the State shook their head
11 and said, no.

12 PROSPECTIVE JUROR: Okay.

13 THE COURT: But as to Sergeant Eric Barnes, you
14 said that you've known him for about 13 years. Your
15 kids play together, that sort of thing.

16 PROSPECTIVE JUROR: Uh-huh.

17 THE COURT: Now, he is a potential witness in
18 this case. I don't know whether he's going to be called
19 or not. But let's say he is called as a witness. Would
20 that or could that affect your ability to be a fair and
21 impartial juror in the trial of this case?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: You're absolutely sure about that?

24 PROSPECTIVE JUROR: (Affirmative response.)

25 THE COURT: And what's your name and number

1 again?

2 PROSPECTIVE JUROR: Tammy Lenker, 175.

3 THE COURT: All right. Thank you, Ms. Lenker.

4 Somebody else stood up, I thought. Yes, ma'am,
5 your name and number.

6 PROSPECTIVE JUROR: My name is Jennifer Rath.
7 My number is 224.

8 THE COURT: R-a-s-h?

9 PROSPECTIVE JUROR: R-a-t-h.

10 THE COURT: Oh, Rath.

11 PROSPECTIVE JUROR: Rath.

12 THE COURT: Like George Rath.

13 PROSPECTIVE JUROR: I don't know George Rath.

14 THE COURT: You just told me your age, ma'am.

15 (Laughter.)

16 THE COURT: Anybody over 50 probably has
17 heard of George Rath. I'm sorry.

18 PROSPECTIVE JUROR: Although not a close
19 personal friend, Investigator Tara Cataldo used to live
20 across the street from me.

21 THE COURT: For how long?

22 PROSPECTIVE JUROR: Two or three years perhaps.

23 THE COURT: Did y'all go on picnics together or

24 ---

25 PROSPECTIVE JUROR: No, I think we attended one

1 neighborhood function together and knew her well enough
2 to greet her and say hello to her children.

3 THE COURT: All right. Now, would that
4 relationship you just described for me affect your
5 ability to be a fair and impartial juror in the trial of
6 this case if you are selected?

7 PROSPECTIVE JUROR: No, sir.

8 THE COURT: Are you sure about that?

9 PROSPECTIVE JUROR: I am.

10 THE COURT: All right. Thank you, Ms. Rath.

11 Anybody else remember George Rath besides me
12 and Mr. Swerling and a couple of the older guys?

13 (Prospective jurors raised hands.)

14 THE COURT: Okay. Thank you, ladies and
15 gentlemen.

16 (Laughter.)

17 THE COURT: Anybody else need to stand up right
18 now? I've got to go back over these names again. But
19 once again, listen carefully. And the same questions
20 apply.

21 Basically, if you know these people or their
22 family, or you go to church with them, you're neighbors
23 with them, we need to know this. It doesn't disqualify
24 you as a juror but it's important for a fair resolution
25 of this case.

1 So, I've got to read these names one more time.
2 I'm going to ask the question one more time, I'll go on
3 to something else. I just want you to sit down and
4 relax because this is not going to end quickly.

5 So once again -- and I'll speed up a little
6 bit. The list of potential witnesses are:

7 Investigator Don McRae from the Richland County
8 Sheriff's Department. Deputy Ray Weldon Gregory
9 formerly of the Richland County Sheriff's Department.
10 Deputy Ryan Galinski of the Richland County Sheriff's
11 Department. Deputy James Gore of the Richland County
12 Sheriff's Department. Deputy M.P. Smith of the Richland
13 County Sheriff's Department. Investigator Gilbert
14 Gallegos?

15 MR. GALLEGOS: Gallegos.

16 THE COURT: Gallegos, I'm sorry, but --
17 Gallegos, all right, of the Richland County Sheriff's
18 Department. Sergeant Eric Barnes of the Richland County
19 Sheriff's Department. Investigator Heidi Scott of the
20 Richland County Sheriff's Department. Investigator Matt
21 Ellis of the Richland County Sheriff's Department.
22 Lieutenant Zane Padgett of the Richland County Sheriff's
23 Department. Investigator David Collins of the Richland
24 County Sheriff's Department. Investigator Tara Cataldo?

25 MS. SHIPLEY: Yes, sir.

1 THE COURT: Cataldo of the Richland County
2 Sheriff's Department. Melissa Horne of the Richland
3 County Sheriff's Department. Investigator Patricia
4 Reed-Enzor of the Richland County Sheriff's Department.
5 Investigator Harold Bouknight of the Richland County
6 Sheriff's Department. Investigator Ray Livingston of
7 the Richland County Sheriff's Department. Lieutenant
8 Anna Elsey of the Richland County Sheriff's Department.
9 Investigator Robert Oates of the Richland County
10 Sheriff's Department. Investigator Trish Odom of the
11 Richland County Sheriff's Department. Investigator Stan
12 Richards of the Richland County Sheriff's Department.
13 Tena Goff of the Richland County Sheriff's Department.
14 Will Cedarstaff of the Richland County Sheriff's
15 Department. Curtis Burnett of the Richland County
16 Sheriff's Department. Randy Mack of the Richland County
17 Sheriff's Department. David Bell of the Richland County
18 Sheriff's Department. Dr. Grayson Amick of the Richland
19 County Sheriff's Department.

20 And Dr. Wilson, this is Dr. Amick, one of your
21 colleagues or somebody you worked with, I think you
22 said?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: All right. Sergeant Christopher
25 White of the Columbia Police Department. Jim Reese of

1 the Richland County Coroner's Office. Amy Stephens from
2 SLED or the State Law Enforcement Division. Nikki Perry
3 of the State Law Enforcement Division. Selena Kinard of
4 the State Law Enforcement Division. Lisa McReynolds of
5 the State Law Enforcement Division. Christine Benson of
6 the Richland County Coroner's Office. Michael Moskal --
7 Moskal of SLED. Jennifer Blair of 911 Communications.
8 Tim Grambow of SLED. Dr. Clay Nichols of Palmetto
9 Richland Memorial Hospital. Dr. Michael Taillon of
10 Providence Northeast Hospital. Gabriel Dominguez from
11 Suncom Communications -- Suncom Wireless Carrier. Ricky
12 Jacobs, Stephanie Boston, Verda Roberts, Travis Malone,
13 Timothy Weldon, Charlie Bates, Marcus D. Gordon, Earl
14 Jerome Green, Luther Landrum, Nathaniel Johnson, Jalicca
15 Lisa Johnson, Darrell Wray, Landon Monroe, Lauren
16 Stuckey, James Lamont Goodwin, Joel McMichael, Chris
17 Crosby, Bryan Johnson, Shawn Watts, Shonda Watts, Nellie
18 Wray, Kasondra Roper, Maurice Cunning, Jeff Hollyfield,
19 Dave MacDougall, Gary Clark, Uraime Wilson, Ronald Ray,
20 Norris Bond, Darius White, Timothy Weldon, Darian
21 Gordon, Charles Willard of the Richland County Sheriff's
22 Department, Bryan Morris and Marion Jacobs.

23 Now, members of the jury, I'm not -- yes, sir.

24 MR. BAX: Your Honor, just for clarification.

25 Maurice -- you have listed Maurice Cunning. That's our

1 mistake, it should be Cunningham. There should be an h-
2 a-m at the end of that name. I just thought I would put
3 that out there for clarification so the jury ---

4 THE COURT: Maurice Cunningham.

5 MR. BAX: That is correct, Your Honor, thank
6 you.

7 THE COURT: Maurice Cunningham.

8 MR. BAX: Yes, sir.

9 THE COURT: So instead of Maurice Cuning, it's
10 Maurice Cunningham.

11 Now, members of the jury, I'm not suggesting by
12 calling out all these names that all these people are
13 going to testify. Don't be alarmed about all that. But
14 they are potential witnesses, and I emphasize the word
15 potential.

16 And so once again, I'll ask you for the final
17 time, any of this jury panel related by blood or
18 marriage or connected by employment, are you a close
19 personal acquaintance of any of those names I called out
20 twice?

21 Yes, sir. And I hope you don't mind, tell me
22 your name and number.

23 PROSPECTIVE JUROR: James Wallace.

24 THE COURT: Yes, Mr. Wallace.

25 PROSPECTIVE JUROR: 2-7-8.

1 THE COURT: 2 ---

2 PROSPECTIVE JUROR: 2-7-8, I used to be a
3 public safety officer at Mental Health and I might have
4 worked with some of the ---

5 THE COURT: You might or you're not sure?

6 PROSPECTIVE JUROR: Not sure.

7 THE COURT: Okay. Let's assume -- let's assume
8 you did work with some of them, but you're not sure.
9 Let me ask you this question. Would that or could that
10 -- thinking that you might have, would that or could
11 that affect your ability to be a fair juror in the trial
12 of this case?

13 PROSPECTIVE JUROR: No, it would not.

14 THE COURT: You're sure about that?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: All right. Thank you, sir. And
17 you worked as a public safety officer?

18 PROSPECTIVE JUROR: I did at one time.

19 THE COURT: Okay, you retired now?

20 PROSPECTIVE JUROR: No, I left in '92, 18
21 years.

22 THE COURT: Oh, well, I'm waiting for
23 retirement myself. That's why I like to ask that
24 question.

25 (Laughter.)

1 THE COURT: All right. I think that covered
2 all the names on behalf of everybody concerned, is that
3 fair enough?

4 (Affirmative response.)

5 THE COURT: Okay. I'll ask this question. I
6 don't think it's probably germane. Was any member of
7 this jury panel a member of the grand jury that founded
8 the indictments in this case?

9 If so, please stand. Have any of y'all been a
10 member of the grand jury here in Richland County in the
11 last two or three years, if so, please stand.

12 (There was no response.)

13 THE COURT: All right. Now, has any member of
14 this jury panel formed or expressed any opinion about
15 this case or as to the guilt or innocence of Mr. Taurus
16 Watts or Mr. Tremain Wray?

17 If so, please stand.

18 (There was no response.)

19 THE COURT: All right. Is any member of this
20 jury panel aware of any bias or prejudice in connection
21 with this case or any of the parties thereto? And the
22 parties would be the Defendants as well as the victim.

23 If so, please stand. Of course it would be the
24 lawyers as well as the prosecution. So, is any member
25 of this jury panel aware of any bias or prejudice in

1 connection with this case or any of the parties thereto?

2 If so, please stand.

3 (Prospective juror stands.)

4 THE COURT: Yes, sir, your name and number.

5 PROSPECTIVE JUROR: Your Honor, jury number --
6 juror number 86.

7 THE COURT: Yes, sir.

8 PROSPECTIVE JUROR: I actually graduated law
9 school and consider myself a very good friend of one of
10 the members of the prosecution.

11 THE COURT: Joanna McDuffie?

12 PROSPECTIVE JUROR: That's correct, yes, sir.

13 THE COURT: Okay. You pointed at her, that's
14 the only reason I could guess that. Would that or could
15 that affect your ability to be a fair juror in the trial
16 of this case?

17 PROSPECTIVE JUROR: I would say probably, no,
18 sir.

19 THE COURT: Probably, no, sir. Come on, do
20 better than that. You're a lawyer. Would it or would
21 it not?

22 PROSPECTIVE JUROR: No, Your Honor.

23 (Laughter.)

24 PROSPECTIVE JUROR: That's why I hedged, they
25 can't give you the ---

1 THE COURT: When you're a lawyer, you can give
2 everybyody a definite maybe. So you don't think it
3 would affect your ability to be a fair juror ---

4 PROSPECTIVE JUROR: No, Your Honor.

5 THE COURT: All right. Thank you, sir.

6 MR. SWERLING: What number is that, Your Honor?

7 THE COURT: What was your number again?

8 PROSPECTIVE JUROR: 86.

9 THE COURT: 86. Yes, ma'am, you name and
10 number.

11 PROSPECTIVE JUROR: Ingram Thomas, juror ---

12 THE COURT: April what?

13 PROSPECTIVE JUROR: --- 2-6-2. Ingram Thomas,
14 juror 2-6-2. Jack Swerling was the attorney in a murder
15 case that was closely related to me.

16 THE COURT: All right. How long ago was that?

17 PROSPECTIVE JUROR: Must have been a few years.

18 THE COURT: Ma'am?

19 PROSPECTIVE JUROR: It's been a few years.

20 THE COURT: Five years, ten years, 20 years?

21 PROSPECTIVE JUROR: More than 10 years.

22 THE COURT: What now?

23 PROSPECTIVE JUROR: More than 10 years.

24 THE COURT: More than 10 years.

25 MR. SWERLING: Judge, can we approach.

1 THE COURT: Yeah, yeah. Y'all come on up. All
2 right, that's fine.

3 (Pause.)

4 THE COURT: You want me to bring her up?

5 MR. SWERLING: Yes ---

6 THE COURT: Let's bring her up. Come on up,
7 ma'am, please.

8 (Complied.)

9 THE COURT: Your name and number again.

10 PROSPECTIVE JUROR: Ingram Thomas, juror 2-6-2.

11 THE COURT: And this is Jack Swerling. Was he
12 for you or against you?

13 PROSPECTIVE JUROR: He was actually my uncle's
14 attorney.

15 THE COURT: Okay. All right. And how long ago
16 was this?

17 PROSPECTIVE JUROR: It's been over 10 years.

18 THE COURT: 10 years ago. Who's your uncle?

19 PROSPECTIVE JUROR: Andrew Jackson.

20 THE COURT: Andrew Jackson.

21 PROSPECTIVE JUROR: Uh-huh.

22 THE COURT: Would that affect your ability to
23 be a fair juror in the trial of this case?

24 PROSPECTIVE JUROR: I don't think so.

25 THE COURT: You're sure now?

1 PROSPECTIVE JUROR: Yeah.

2 THE COURT: Like I said, there's no right or
3 wrong answer. It would not affect your ability, you
4 could sit fairly and squarely?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Okay, thank you.

7 (Pause.)

8 THE COURT: All right. Does any member of this
9 jury panel know of any reason why they could not give
10 both the State and the Defendants a fair and impartial
11 trial in this case?

12 If so, please stand. I've got several more
13 questions to ask but for right now, if there's any
14 reason you feel you could not be a fair juror, you would
15 be so uncomfortable by being a juror in a murder case,
16 please stand now.

17 (Prospective juror stands.)

18 THE COURT: Do you need to come up and speak
19 with me privately or you want to tell me from back
20 there?

21 PROSPECTIVE JUROR: That would work.

22 THE COURT: Ma'am?

23 PROSPECTIVE JUROR: Privately.

24 THE COURT: All right. Come on up, ma'am.

25 PROSPECTIVE JUROR: Yes, sir.

1 (Complied.)

2 THE COURT: Yes, ma'am, your name, please.

3 PROSPECTIVE JUROR: Jessica Rouse, 302.

4 THE COURT: Yes, ma'am.

5 PROSPECTIVE JUROR: I didn't know if this
6 applied or not but I wouldn't feel comfortable in a
7 murder trial ---

8 THE COURT: What now?

9 PROSPECTIVE JUROR: In during the proceedings
10 with the trial, I don't think I would feel comfortable
11 making certain decisions about their future.

12 THE COURT: Well, first of all let me explain
13 this. If you are selected on this jury, you will only
14 be one of 12.

15 PROSPECTIVE JUROR: Okay.

16 THE COURT: So it won't be -- like it will be
17 all of you, you'll be one of a group.

18 THE COURT: Uh-huh.

19 THE COURT: So does that help you understand
20 the process a little better? Does it still make you
21 feel uncomfortable?

22 PROSPECTIVE JUROR: I still feel uncomfortable
23 because I'm not God and I feel like -- I feel like ---

24 THE COURT: None of us here, not even ---

25 PROSPECTIVE JUROR: I'm uncomfortable with

1 making ---

2 THE COURT: Well, I'm not going to put you a
3 jury if you tell me that you with good conscience would
4 feel uncomfortable and ---

5 PROSPECTIVE JUROR: I don't think I could help
6 that.

7 THE COURT: Okay. Well, what we'll do is I'll
8 send you back downstairs and ask that we put you on a
9 civil panel for now so you won't be on a criminal panel.

10 PROSPECTIVE JUROR: That would be good.

11 THE COURT: Okay?

12 PROSPECTIVE JUROR: (Affirmative response.)

13 THE COURT: All right. Everybody understand
14 that? All right. What's your number again?

15 PROSPECTIVE JUROR: 302.

16 THE COURT: Okay, thank you.

17 PROSPECTIVE JUROR: Thank you.

18 (Pause.)

19 THE COURT: All right, are y'all ready to
20 continue?

21 PROSPECTIVE JURORS: Yes, sir.

22 THE COURT: Is anybody from the Pee Dee region
23 of this state by chance? Besides you, Gerald.

24 Let's see. Now, I'm going to ask you probably,
25 ladies and gentlemen, could be 25 or 30 more questions.

1 But the questions I've already asked sort of covers a
2 lot of it. But I've got to ask for your patience and
3 attention once again.

4 So, let's see. Okay, has any member of the
5 jury panel or any member of their family ever been a
6 victim of a crime of violence? I'll repeat that. Has
7 any member of the jury panel or any member of your
8 family ever been a victim of a crime of violence?

9 If so, please stand. And I ask you not to
10 hesitate. I'll bring you up here and speak to you
11 privately if you fall into that category. And y'all
12 would prefer to do that, would you not, come up and
13 speak to me privately?

14 (Affirmative response.)

15 (Prospective jurors stand.)

16 THE COURT: Okay. I would ask that you form a
17 line to your left, my right. The bailiffs will help us
18 in this process.

19 (Pause.)

20 THE COURT: How are you doing? Come on up
21 here.

22 PROSPECTIVE JUROR: Okay.

23 (Prospective juror comes forward.)

24 THE COURT: All right. Your name and juror
25 number.

1 PROSPECTIVE JUROR: Ashley Patterson, number
2 215.

3 THE COURT: Angela (sic) Patterson

4 ---PROSPECTIVE JUROR: Ashley.

5 THE COURT: Ashley, all right. Ashley, I'm
6 sorry. Yes, ma'am, what happened?

7 PROSPECTIVE JUROR: My brother, he was a victim

8 ---

9 THE COURT: All right, slow down. Your ---

10 PROSPECTIVE JUROR: My brother ---

11 THE COURT: --- was the victim?

12 PROSPECTIVE JUROR: Yes, his jaw got broken ---

13 THE COURT: His what got broken into?

14 PROSPECTIVE JUROR: His jaw.

15 THE COURT: His job got broken into?

16 PROSPECTIVE JUROR: No, his jaw got broken.

17 THE COURT: Oh, his jaw got broken. So he was
18 assaulted.

19 PROSPECTIVE JUROR: Uh-huh.

20 THE COURT: His jaw was broken and he had to go
21 to court?

22 PROSPECTIVE JUROR: Uh-huh.

23 THE COURT: How long ago was that?

24 PROSPECTIVE JUROR: It was more than five years
25 ago.

1 THE COURT: Five years ago. Was it here in
2 Richland County?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Okay. Did the Solicitor's Office
5 prosecute the case, do you remember?

6 PROSPECTIVE JUROR: I believe so.

7 THE COURT: Okay. The fact that your brother
8 was assaulted -- well, he got his jaw broken about five
9 years or so ago here in Richland County, would that or
10 could that affect your ability to be a fair juror in the
11 trial of this case?

12 PROSPECTIVE JUROR: No.

13 THE COURT: You sure about that?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Okay. That's what I need to know.
16 Thank you, ma'am. Y'all get her number and everything?
17 Fine.

18 MS. MCDUFFIE: I think I prosecuted that case.

19 THE COURT: Okay. Well, that's just for his
20 information and may be for cause later on. But just
21 make a note of it.

22 All right. Yes, ma'am.

23 (Prospective juror comes forward.)

24 THE COURT: This is like Moses and the Red Sea.
25 Come on up. And you've got to tell me your name again

1 for the record.

2 PROSPECTIVE JUROR: Ingram Thomas, 2-6-2.

3 THE COURT: Yes, Ms. Thomas, who was it?

4 PROSPECTIVE JUROR: I had a cousin murdered and
5 an uncle murdered.

6 THE COURT: How long ago was that?

7 PROSPECTIVE JUROR: It's been over 10 years.

8 THE COURT: Over 10 years ago. Would that or
9 could that affect your ability ---

10 PROSPECTIVE JUROR: It might.

11 THE COURT: You think it might?

12 PROSPECTIVE JUROR: It might.

13 THE COURT: You're sure?

14 PROSPECTIVE JUROR: (Affirmative response.)

15 THE COURT: Okay. What's your number again?

16 PROSPECTIVE JUROR: 2-6-2.

17 THE COURT: 2-6-2, so I'm going to take you off
18 the case, okay?

19 PROSPECTIVE JUROR: Thank you.

20 THE COURT: All right, thank you.

21 (Prospective juror comes forward.)

22 THE COURT: Yes, ma'am, your name and number.

23 PROSPECTIVE JUROR: Kimberly Sussewell.

24 THE COURT: Sussewell, what kind of name is
25 that?

1 PROSPECTIVE JUROR: Well, they're from
2 Abbeville but ---

3 THE COURT: That explains it then.

4 PROSPECTIVE JUROR: Okay.

5 THE COURT: You from Calhoun Falls?

6 PROSPECTIVE JUROR: No, I'm ---

7 THE COURT: Due West?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Your husband was from Abbeville.

10 PROSPECTIVE JUROR: Uh-huh.

11 THE COURT: Did he go to Abbeville High School?

12 PROSPECTIVE JUROR: No, his mother and father.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR: Yeah.

15 THE COURT: I've been to Abbeville.

16 PROSPECTIVE JUROR: You have?

17 THE COURT: Have you?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Don't go.

20 (Laughter.)

21 THE COURT: I'm sorry, go ahead.

22 PROSPECTIVE JUROR: 264.

23 THE COURT: Yes, ma'am.

24 PROSPECTIVE JUROR: My cousin was -- he shot
25 someone.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR: He robbed them and I don't
3 know how long ago it was, probable five years now. And
4 then my nephew was for armed robbery two years ago.

5 THE COURT: Okay. They were charged with
6 these?

7 PROSPECTIVE JUROR: Uh-huh.

8 THE COURT: All right, now. Would that or
9 could that affect your ability to be a fair juror in
10 this case?

11 PROSPECTIVE JUROR: No.

12 THE COURT: You sure about that?

13 PROSPECTIVE JUROR: I'm sure.

14 THE COURT: Okay. Where are you from?

15 PROSPECTIVE JUROR: Hopkins.

16 THE COURT: That explains it. You sure you're
17 not from Eastover?

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: You went to the Creek (phonetic).

20 PROSPECTIVE JUROR: No.

21 THE COURT: You didn't go to Lower Richland?

22 PROSPECTIVE JUROR: Yes, I did.

23 THE COURT: That's the Creek, come on.

24 PROSPECTIVE JUROR: Okay.

25 THE COURT: Okay. Thank you.

1 PROSPECTIVE JUROR: Okay.

2 THE COURT: All right, y'all get her number?

3 (Affirmative response.)

4 (Prospective juror comes forward.)

5 THE COURT: Come on up, Doctor. You're from
6 Hartsville, right?

7 PROSPECTIVE JUROR: Sure. How are you doing,
8 Your Honor?

9 THE COURT: You from Hartsville, where is it?

10 PROSPECTIVE JUROR: Hartsville.

11 THE COURT: Yeah, that's what I thought.

12 PROSPECTIVE JUROR: Butler High School.

13 THE COURT: Yeah, I know, we used to beat
14 y'all, Gordon (phonetic) High. Anyway, so.

15 PROSPECTIVE JUROR: My mother's brother, my
16 uncle, their last living sibling, was killed last August
17 at 87 years old. He was assaulted in his house, his car
18 was stolen.

19 THE COURT: Yeah.

20 PROSPECTIVE JUROR: And the 15 year old that did
21 it was caught in Manning.

22 THE COURT: In Manning?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Okay. Now, would that experience
25 affect your ability to be a fair juror if you are picked

1 on this murder case?

2 PROSPECTIVE JUROR: I don't think so.

3 THE COURT: All right.

4 PROSPECTIVE JUROR: I did have one other
5 question to ask you.

6 THE COURT: Yeah.

7 PROSPECTIVE JUROR: You said it was possible
8 that the case may go to next week.

9 THE COURT: It's possible, yeah. Yeah, you
10 know, I don't -- I don't anticipate that it will but
11 it's possible. I had to warn everybody. What I'm
12 probably going to do is wait and try to get rid of it.
13 But it could.

14 PROSPECTIVE JUROR: The problem I have ---

15 THE COURT: You've got surgeries scheduled?

16 PROSPECTIVE JUROR: --- patients for surgery
17 that we've got on for Monday morning.

18 THE COURT: All right. Let me just put you
19 back out there. If you -- if you're pulled out of the
20 hat, then we'll take it up. He's a surgeon, so.

21 All right, give me your number. What's your
22 number, George?

23 PROSPECTIVE JUROR: 293.

24 THE COURT: All right. And I don't think
25 Butler would ever beat Gordon. But anyway, we'll talk

1 about that later.

2 (Prospective juror comes forward.)

3 THE COURT: Come on up, son. Your name,
4 please.

5 PROSPECTIVE JUROR: Christopher Buckner.

6 THE COURT: Butler?

7 PROSPECTIVE JUROR: Buckner.

8 THE COURT: Buckner?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: And your number, please.

11 PROSPECTIVE JUROR: 41.

12 THE COURT: And you or somebody in your family
13 was a victim?

14 PROSPECTIVE JUROR: Yes, sir. My brother was a
15 victim of assault.

16 THE COURT: Assault?

17 PROSPECTIVE JUROR: Yeah, somebody broke his
18 nose.

19 THE COURT: How long ago was this?

20 PROSPECTIVE JUROR: It was about two years ago.
21 And then one of my former high school football teammates
22 got killed.

23 THE COURT: Okay. Was it a shooting or?

24 PROSPECTIVE JUROR: Yeah and ---

25 THE COURT: What high school did you go to?

1 PROSPECTIVE JUROR: C. A. Johnson.

2 THE COURT: Okay. Now, would these two
3 experiences affect your ability to be a fair juror in
4 this case?

5 PROSPECTIVE JUROR: Well, it's not so much as
6 affected it to be fair. It's just that I personally I
7 don't feel like, you know -- if it's possible to be
8 removed for consideration for this case, it's like, you
9 know, too serious for me. I feel like somebody innocent
10 could, you know, be convicted or somebody guilty could
11 be, you know, set free.

12 THE COURT: Well, that's why we have people
13 like you that make these decisions. Wait, relax a
14 little bit before I let you go.

15 You may or may not be picked.

16 PROSPECTIVE JUROR: Right.

17 THE COURT: Now, if you come up, if your name
18 is called and you feel really uncomfortable, I mean, I
19 can consider it then.

20 PROSPECTIVE JUROR: All right.

21 THE COURT: But, I mean, nobody wants to do
22 this.

23 PROSPECTIVE JUROR: Right.

24 THE COURT: Okay. But we also have a civic
25 obligation to try to do so. But for right now I'm going

1 to say let's try. And if you're picked and you still
2 feel that way, we'll talk about it a little bit more,
3 okay.

4 PROSPECTIVE JUROR: All right.

5 THE COURT: All right, thank you.

6 Is that good enough for everybody right now?

7 MR. SWERLING: Uh-huh.

8 THE COURT: Because he may or may not be picked
9 out of the hat. I can't let everybody go.

10 MS. SHIPLEY: He was the one that was waving at
11 the victim's family.

12 THE COURT: He was the one with the earring?

13 MS. SHIPLEY: Yeah. I didn't see the other
14 ear.

15 THE COURT: He had two?

16 MS. SHIPLEY: Yeah.

17 THE COURT: So, I mean if he comes up you can
18 ask for cause. Is that good enough? Everybody's on the
19 same page?

20 (Affirmative response.)

21 THE COURT: Yes, sir.

22 (Prospective juror comes forward.)

23 THE COURT: Make a note of it. You get his
24 number and everything?

25 MS. SHIPLEY: Yes, sir, I got it.

1 THE COURT: Yes, sir.

2 PROSPECTIVE JUROR: Your Honor, juror 58.

3 THE COURT: Yes, sir.

4 PROSPECTIVE JUROR: Ronald Cooper.

5 THE COURT: Yes, sir, Mr. Cooper.

6 PROSPECTIVE JUROR: I was ---

7 THE COURT: Just don't talk too loud. You've
8 got a heavy voice.

9 PROSPECTIVE JUROR: Thank you, sir. I was
10 assaulted at knife point on Elmwood Avenue.

11 THE COURT: How long ago was that?

12 PROSPECTIVE JUROR: Early 70's.

13 THE COURT: Okay. That's a long time ago. You
14 don't look that old.

15 PROSPECTIVE JUROR: I hadn't had a rough life
16 like you. Sorry.

17 THE COURT: Now, would that or could that
18 affect your ability to be a fair juror?

19 PROSPECTIVE JUROR: I don't know. It depends
20 if the evidence goes too far the other way, I may want
21 to get my revenge, I don't know.

22 THE COURT: In the 70's you were assaulted at
23 knife point you said?

24 PROSPECTIVE JUROR: Yeah. They took my glasses
25 and my glasses are not cheap.

1 THE COURT: But do you think that would prevent
2 you from being a fair juror in a totally unrelated
3 murder case 20 years later?

4 PROSPECTIVE JUROR: I hope not.

5 THE COURT: I mean, do you think you could be a
6 fair juror, have an open mind, hear all of the evidence
7 and make a decision at the end with all the other
8 jurors?

9 PROSPECTIVE JUROR: I guess I could.

10 THE COURT: All right. Thank you.

11 PROSPECTIVE JUROR: All right.

12 MR. SWERLING: Judge, we might have ---

13 THE COURT: That's fine. If it comes up, make
14 that motion then. Don't forget -- you've got his number?
15 All right. Some of these people, I mean, I'm going to
16 invite y'all to do that in case they're called.

17 (Prospective juror comes forward.)

18 THE COURT: Yes, sir. And there's going to be
19 50 more people by the time I finish the questions.

20 Yes, sir, your name and number, please.

21 PROSPECTIVE JUROR: James Wallace, 278.

22 THE COURT: Yes, sir.

23 PROSPECTIVE JUROR: My father was in a bar
24 fight and got hit over the head with a cue stick. It
25 was ruled accidental.

1 THE COURT: How long ago was that?

2 PROSPECTIVE JUROR: Back in the 60's.

3 THE COURT: That's not going to keep you from
4 be a fair juror?

5 PROSPECTIVE JUROR: No, sir.

6 THE COURT: What bar was it?

7 PROSPECTIVE JUROR: There in Five Points.

8 Frank's -- right beside Frank's

9 THE COURT: Yeah, yeah, Frank's Hot Dogs. I
10 used to eat breakfast there. That's neither here nor
11 there. You can go, thank you.

12 (Prospective juror comes forward.)

13 THE COURT: Yes, ma'am. How you doing? Come
14 on up. Your name, please.

15 PROSPECTIVE JUROR: Lenora Hampton, 123.

16 THE COURT: Lenora Hampton. Yes, Ms. Hampton.

17 PROSPECTIVE JUROR: I was assaulted ---

18 THE COURT: You were what?

19 PROSPECTIVE JUROR: My husband assaulted ---

20 THE COURT: You were assaulted by your former
21 husband.

22 PROSPECTIVE JUROR: Yeah.

23 THE COURT: It was a criminal domestic violence
24 situation?

25 PROSPECTIVE JUROR: Uh-huh.

1 THE COURT: How long was that?
2 PROSPECTIVE JUROR: Years, about 15 years ago.
3 THE COURT: Y'all still married?
4 PROSPECTIVE JUROR: No, no.
5 THE COURT: Okay. Good, former husband.
6 PROSPECTIVE JUROR: Uh-huh.
7 THE COURT: Would that affect your ability to
8 be a fair juror in the trial of this case?
9 PROSPECTIVE JUROR: (Negative response.)
10 THE COURT: Okay, thank you.
11 PROSPECTIVE JUROR: Thank you.
12 THE COURT: All right. Yes, ma'am.
13 (Prospective juror comes forward.)
14 THE COURT: Yes, ma'am. Good morning -- I'm
15 sorry, good afternoon. See, I've been working too hard.
16 Your number, please. Come on up.
17 PROSPECTIVE JUROR: 251.
18 THE COURT: Your name?
19 PROSPECTIVE JUROR: Barbara Solomon.
20 THE COURT: Solomon.
21 PROSPECTIVE JUROR: Uh-huh.
22 THE COURT: Yes, Ms. Solomon.
23 PROSPECTIVE JUROR: I was victim of armed
24 robbery. It was 20 years ago.
25 THE COURT: Where are you from, Ohio?

1 PROSPECTIVE JUROR: Huh-uh.

2 THE COURT: Where?

3 PROSPECTIVE JUROR: Sumter, military
4 transplant.

5 THE COURT: Oh, that makes sense. Where were
6 you born?

7 PROSPECTIVE JUROR: North Carolina.

8 THE COURT: What part?

9 PROSPECTIVE JUROR: Greensboro.

10 THE COURT: Oh. You ever lived in Ohio?

11 PROSPECTIVE JUROR: Yes, for a while.

12 THE COURT: That's all right. You've got an
13 Ohio accent still.

14 THE COURT: Would that or could that affect
15 your ability to be a fair juror in this case?

16 PROSPECTIVE JUROR: No, sir.

17 THE COURT: Are you sure about that?

18 PROSPECTIVE JUROR: Uh-huh.

19 THE COURT: Okay, thank you.

20 (Pause.)

21 THE COURT: All right. Has any member of the
22 jury panel or any member of their family, your family,
23 ever been charged with -- charged with or convicted for
24 a crime of violence. And I'll repeat that question.
25 And, members of the jury panel, first of all, it's not

1 that I want to ask these questions or the lawyers want
2 to ask these questions. But the only way we can get a
3 fair jury is that these type of questions be asked. And
4 nobody wants to pry into anybody's personal business.
5 But it's impossible to get a fair jury without asking
6 questions like this. I hope you all understand.

7 It's one of these unique situations we have in
8 our lives where you're called upon to perform a public
9 service and part of that public service is being
10 subjected to questions like I'm asking you. Don't take
11 any of these personally, please.

12 So, the next question once again is this. Has
13 any member of this jury panel or member of your
14 immediate family ever been charged with or convicted of
15 a crime of violence?

16 If so, you need to stand and I can invite you
17 to come down here and you can speak to me privately, if
18 that's the case.

19 PROSPECTIVE JUROR: I already came up and I
20 told you.

21 THE COURT: Yes, the young lady whose husband's
22 from Abbeville.

23 PROSPECTIVE JUROR: Yes

24 THE COURT: And you went to -- you're from ---

25 PROSPECTIVE JUROR: I'm from Hopkins.

1 THE COURT: Yeah, I know, Hopkins. I was going
2 to say Eastover. Yes, ma'am, come on up and ---

3 (Prospective juror comes forward.)

4 PROSPECTIVE JUROR: It's been many years ago.

5 THE COURT: All right, just hold on. We need
6 to wait for them. She's coming up again. Come on up
7 and tell me your name and number.

8 PROSPECTIVE JUROR: Debra Moultrie, juror 198.

9 THE COURT: Moultrie?

10 PROSPECTIVE JUROR: Yes sir.

11 THE COURT: 198

12 PROSPECTIVE JUROR: Yes sir.

13 THE COURT: Yes, Ms. Moultrie?

14 PROSPECTIVE JUROR: My uncle, years ago, maybe
15 about eight or nine years ago, killed his girlfriend.

16 THE COURT: Ok, your uncle killed his
17 girlfriend eight or nine years ago?

18 PROSPECTIVE JUROR: Uh-huh.

19 THE COURT: All right. Would that or could
20 that affect your ability to be a fair juror in this
21 case?

22 PROSPECTIVE JUROR: Huh-uh.

23 THE COURT: Are you sure about that?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Are you from here or someplace

1 else?

2 PROSPECTIVE JUROR: Sumter.

3 THE COURT: Sumter?

4 PROSPECTIVE JUROR: Uh-huh.

5 THE COURT: You're not from Wedgefield are you?

6 PROSPECTIVE JUROR: Huh-uh.

7 THE COURT: You ever been to Wedgefield?

8 PROSPECTIVE JUROR: I'm sure I have.

9 THE COURT: You've passed through it?

10 PROSPECTIVE JUROR: Right.

11 THE COURT: Thank you, all right. Yeah, the
12 young lady that was up with him.

13 (Prospective juror comes forward.)

14 THE COURT: Yeah, I forgot your name again,
15 tell me, for the record.

16 PROSPECTIVE JUROR: Ashley Patterson.

17 THE COURT: Yes, Ms. Patterson?

18 PROSPECTIVE JUROR: Two of my cousins ---

19 THE COURT: Two of your cousins?

20 PROSPECTIVE JUROR: Are convicted of armed
21 robbery in the Five Points area and robbing a police
22 officer.

23 THE COURT: Okay, two of your cousins were
24 convicted of some robberies in the Five Points area?

25 PROSPECTIVE JUROR: And robbing a police

1 officer.

2 THE COURT: And robbed a police officer. How
3 long ago was this?

4 PROSPECTIVE JUROR: This was...

5 THE COURT: It looks like before you were born.

6 PROSPECTIVE JUROR: No. Five years ago.

7 THE COURT: Five years ago?

8 PROSPECTIVE JUROR: Uh-huh.

9 THE COURT: Now would that, what your cousins
10 did, affect your ability to be a fair juror in this
11 case?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Okay, thank you. All right.

14 (Pause.)

15 THE COURT: Now, members of the jury panel, is
16 any member of the jury panel or members of their
17 immediate family, related by blood or marriage or a
18 close personal place with Mr. Jack Swerling, Mr. Arie
19 Bax, Ms. Theresa Johns or Ms. Vanessa Shipley or Ms.
20 Joanna McDuffie, the lawyers in this case.

21 If so, please stand.

22 THE COURT: All right, relax for a minute. So
23 what I'm asking you about the lawyers and your
24 connection with any of the lawyers involved, Mr. Jack
25 Swerling, Arie Bax, Theresa Johns, Joanna McDuffie and

1 Vanessa Shipley, do you know them or that sort of thing?

2 If so, please stand.

3 If you want to talk to me privately about
4 connections with them or you feel uncomfortable telling
5 me from where you are?

6 PROSPECTIVE JUROR: I can tell you from where I
7 stand?

8 THE COURT: Ma'am?

9 PROSPECTIVE JUROR: I can tell you from where I
10 stand. Lori Paschall ---

11 THE COURT: All right, tell me your name and
12 number, please.

13 PROSPECTIVE JUROR: Lori Pas ---

14 THE COURT: No, no, no, we'll start at the
15 front and we'll work our way to the back.

16 PROSPECTIVE JUROR: Ok. Juror number 29, Renee
17 Bland.

18 THE COURT: Ms. Bland, who do you know?

19 PROSPECTIVE JUROR: Both Jack Swerling and
20 Joanna McDuffie. She was Joanna Specter (phonetic) to
21 me. I knew her before she was married.

22 THE COURT: All right. Say that again now, you
23 knew Ms. McDuffie when she was a lawyer?

24 PROSPECTIVE JUROR: Excuse me? Actually a
25 Specter.

1 THE COURT: A what?

2 PROSPECTIVE JUROR: Specter was her maiden
3 name.

4 THE COURT: I'm confused but that's not
5 unusual. So you know both Ms. McDuffie and you knew her
6 when she was a Lourie.

7 PROSPECTIVE JUROR: Correct.

8 THE COURT: And you know Jack Swerling?

9 PROSPECTIVE JUROR: Yes, I do.

10 THE COURT: How long have you known both of
11 them?

12 PROSPECTIVE JUROR: About 15 years.

13 THE COURT: All right. Would that, that is
14 that you know Mr. Swerling, that you know a lawyer on
15 both sides, would that knowledge or acquaintance with
16 Mr. Swerling or Ms. McDuffie affect your ability to be a
17 fair juror in this case?

18 PROSPECTIVE JUROR: Absolutely not.

19 THE COURT: Well, thank you.

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Good. Yes, ma'am, your name and
22 number.

23 PROSPECTIVE JUROR: Gail Evans, number 94. I
24 know Mr. Swerling from when I worked at the Federal
25 Courthouse and I have a friend that still works there

1 and deals closely with him.

2 THE COURT: Ma'am?

3 PROSPECTIVE JUROR: I said, I have a friend who
4 still works at the Federal Courthouse who works closely
5 with him.

6 THE COURT: Okay, so how long did you work at
7 the Federal Courthouse?

8 PROSPECTIVE JUROR: I left there in 2002.

9 THE COURT: 2002?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: The fact that you worked at the
12 Federal Courthouse and that work ended in 2002, you know
13 Mr. Swerling from being a lawyer. Would that or could
14 that affect your ability to be a fair juror in the trial
15 of this case?

16 PROSPECTIVE JUROR: No, it wouldn't.

17 THE COURT: All right. Thank you, ma'am.

18 Yes, sir, your name and number.

19 PROSPECTIVE JUROR: I'm Kevin James and my
20 number is 149 ---

21 THE COURT: You said Jacobs?

22 PROSPECTIVE JUROR: Kevin James.

23 THE COURT: James. Yes, sir.

24 PROSPECTIVE JUROR: I believe I know him. It's
25 been about three years. His wife, I believe, is friends

1 or used to be friends with my son's mother, but I've
2 since remarried.

3 (Laughter.)

4 PROSPECTIVE JUROR: It's been a while but ---

5 THE COURT: I'd like to stop you and tell you
6 not to say too much more. So your kid used to be -- say
7 that again.

8 (Laughter.)

9 PROSPECTIVE JUROR: My -- my -- his wife ---

10 THE COURT: Yeah, who is from Charleston.
11 She's from Charleston.

12 PROSPECTIVE JUROR: --- knows my son's mother,
13 who happens to be a lawyer, but I have since remarried,
14 so that's it.

15 THE COURT: Okay. So would that or could that
16 affect your ability to be a fair juror in this case?

17 PROSPECTIVE JUROR: I would be impartial.

18 THE COURT: All right. Thank you, sir. Okay,
19 yes, ma'am, your name and number.

20 PROSPECTIVE JUROR: Lori Paschall, number 2 ---

21 THE COURT: Paschall?

22 PROSPECTIVE JUROR: Paschall.

23 THE COURT: P-A-S-C-H-A-L (sic)?

24 PROSPECTIVE JUROR: A-L-L, that is correct.

25 THE COURT: All right. You're not from

1 Greenville are you?

2 PROSPECTIVE JUROR: No, sir.

3 (Laughter.)

4 THE COURT: All right, go ahead.

5 PROSPECTIVE JUROR: I used to know Ms. Johns.

6 Our daughters were at the high school together but we
7 haven't seen each other for so many years and that will
8 not in any way ---

9 THE COURT: Affect your ability to be a juror?

10 PROSPECTIVE JUROR: No, sir.

11 THE COURT: Thank you, ma'am. Y'all get her
12 number?

13 (Affirmative response.)

14 THE COURT: All right. I think I covered number
15 4, is that fair enough, on yours?

16 MS. MCDUFFIE: Yes, sir, it is.

17 THE COURT: Thank you, well, that covers all of
18 you guys. Let's see.

19 You know, I might have about 30 more minutes to
20 go. Does anybody need to take a break right now,
21 anybody? Y'all okay? Okay, I just wanted to make sure.
22 Very well, I will continue.

23 Let's see. All right, now, members of the jury
24 panel, this case stems from a shooting in June of 2007
25 at the H & J Club also know as Chasers Lounge on

1 Hardscrabble Road. Has any member of the jury panel
2 heard anything about this case in the media?

3 If so, please stand. Have you heard or read
4 anything about this case? That's where it happened and
5 when it happened. If so, please stand.

6 (There was no response.)

7 THE COURT: Now, members of the jury panel, are
8 you inclined to think that a person is guilty of some
9 crime simply because he or she was arrested?

10 If so, please stand.

11 (There was no response.)

12 THE COURT: Do you think a citizen may be
13 guilty because he or she was arrested?

14 If so, please stand.

15 (There was no response.)

16 THE COURT: All right. Now, members of the
17 jury panel, do you understand that the Defendant or
18 Defendants are presumed innocent and that the burden is
19 upon the State to prove them guilty beyond a reasonable
20 doubt? Everybody understands that, right?

21 (There was no response.)

22 THE COURT: Okay. Now, has any member of the
23 jury panel discussed this case or heard anyone else
24 discuss this or a similar case either today or before
25 today?

1 If so, please stand.

2 (There was no response.)

3 THE COURT: All right. Do you understand,
4 members of the jury panel, that you as a juror or you as
5 a jury would be the only judge of the facts in this
6 case? Y'all understand the nature of your job, don't
7 you? Thank you.

8 (There was no response.)

9 THE COURT: All right. This case involves an
10 accusation of homicide. Does that fact cause you to
11 feel uneasy, hesitant or frightened in any way? Can you
12 still be a fair and impartial juror?

13 If you can't be, stand up for me now.

14 (There was no response.)

15 THE COURT: All right, thank you. Now, members
16 of the panel, do you understand that the Defendants have
17 no obligation to prove or disprove any facts in this
18 case but may in fact remain silent and compel the State
19 to carry the burden of proof?

20 We all understand that, do we not?

21 (Affirmative response.)

22 THE COURT: Okay. Now, members of the jury,
23 I'm going to ask this next question but I might have
24 halfway covered it tangentially, at least. Have you or
25 any member of your family or any close friend ever been

1 involved in any similar offense? If so, how would that
2 experience affect your decision today? I think that's
3 where I asked whether or not you have ever been a victim
4 or whether anybody in your family had ever been charged.
5 I think I sort of covered that, but I will ask it one
6 more time and see whether anybody additionally needs to
7 stand.

8 Have you or any member of your family or any
9 close friend, ever been involved in any similar offense,
10 that means one side or the other. If so, how would that
11 affect -- how would that experience affect your
12 decision?

13 Anybody needs to stand specifically in regards
14 to that question?

15 (There was no response.)

16 THE COURT: All right. Now, members of the
17 jury, this case contains facts of drinking, cursing,
18 fighting and fatal injury. Does the nature of these
19 facts cause any member of the panel discomfort,
20 suspicion or any problem in sitting as an impartial
21 juror?

22 If so please stand.

23 (There was no response.)

24 THE COURT: Now, members of the jury, do you
25 understand that it is not the Defendant's duty to prove

1 himself innocent or themselves innocent, but rather it
2 is the burden of the State to prove them guilty beyond a
3 reasonable doubt?

4 Anybody?

5 (There was no response.)

6 THE COURT: All right. Now, is any member of
7 the jury panel a regular patient -- look at number 11
8 for me, please.

9 MS. JOHNS: I'm sorry about that.

10 THE COURT: That's all right.

11 MS. JOHNS: I did. I did.

12 THE COURT: Let me -- I think I can work it
13 out.

14 MS. JOHNS: Your Honor, I believe that's
15 already been covered. I won't object to that not being
16 offered to them.

17 THE COURT: I think Mr. Swerling might have a
18 similar question. I would assume -- it's about law
19 enforcement connections. So I'll just skip that for
20 right now. If I have to come back to it at the end, let
21 me know.

22 MR. SWERLING: Yes, sir.

23 THE COURT: All right. Is any member of the
24 jury panel scheduled to work a second or third shift
25 this week? If so, is it your desire to work

1 contemporaneously while serving as a -- while serving
2 jury duty?

3 (Prospective jurors respond.)

4 PROSPECTIVE JUROR: 293.

5 THE COURT: Let me repeat that, we have two
6 people, one person stood up and one raised their hand.
7 Is any member of the jury panel scheduled to work a
8 third or -- second or third shift this week? If so, is
9 it your desire to work contemporaneously while serving
10 as a juror?

11 THE COURT: All right. Yes, sir.

12 PROSPECTIVE JUROR: I work at Holiday Inn. I
13 have to be in at 4 for work and get off at 12.

14 THE COURT: Well, it depends on whether or not
15 you selected on the jury or not.

16 PROSPECTIVE JUROR: Well, after -- well that's
17 a question that they have. I'm planning on trying to
18 make some money.

19 THE COURT: I understand. We all -- I have two
20 jobs myself, so we are all trying to work. But this
21 wouldn't affect your ability to be a fair juror?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Okay, that's the most important
24 thing. But you do work a second or third shift?

25 PROSPECTIVE JUROR: I work two jobs.

1 THE COURT: Well, so do I. But I mean, just
2 this wouldn't affect your ability if you're selected on
3 this jury to be a fair juror?

4 PROSPECTIVE JUROR: No.

5 THE COURT: All right. And what's your number
6 again?

7 PROSPECTIVE JUROR: 58

8 THE COURT: All right. Yes, sir?

9 PROSPECTIVE JUROR: I work a second shift, 6
10 p.m. to 12 midnight.

11 THE COURT: All right. You need to tell me
12 your number again.

13 PROSPECTIVE JUROR: It's 78.

14 THE COURT: Now, it might be difficult and it
15 depends on what happens. You might miss a night of work
16 or something like that but that wouldn't affect your
17 ability to be a fair juror?

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: All right. Thank you, sir.

20 Yes, Doc?

21 PROSPECTIVE JUROR: 293. I'm on call Wednesday
22 night and Thursday night from 5 p.m. to 8:00 a.m. the
23 next morning.

24 THE COURT: All right. Well, you know -- we'll
25 see what happens. I doubt we'll go at night but we

1 might. And, you know, if it comes up we'll take care of
2 it. But that wouldn't affect your ability to be fair if
3 you were a juror?

4 PROSPECTIVE JUROR: No, it won't.

5 THE COURT: All right. Yes, ma'am, your name.

6 PROSPECTIVE JUROR: I'm 107, Sarah Fuller. I'm
7 also on call from 5:00 tonight until 8 a.m. every night
8 this week.

9 THE COURT: Okay. Well, I mean, if you're not
10 on the jury it doesn't make a difference but if you're
11 on the jury you might still be on call but we will just
12 see what happens. The fact that you might have this
13 potential conflict, because we haven't selected the jury
14 yet, will that affect your ability to be a fair juror?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Okay. Thank you, ma'am. Would any
17 member of the jury panel more readily believe the
18 testimony of the police officer than the testimony of a
19 witness who is not a police officer.

20 If so, please stand.

21 PROSPECTIVE JUROR: Probably, I would. I'm a
22 retired F.B.I. agent.

23 THE COURT: Relax. Just wait, calm down.
24 You're not from New York are you?

25 PROSPECTIVE JUROR: No, I'm from South Carolina

1 but I spent 14 years in New York.

2 THE COURT: Stand up.

3 (Prospective juror stands.)

4 PROSPECTIVE JUROR: Sit down. Stand up.

5 THE COURT: Manhattan or?

6 PROSPECTIVE JUROR: We worked in Manhattan.

7 THE COURT: Okay. Let me ask you this.

8 PROSPECTIVE JUROR: Sure.

9 THE COURT: Oh great. So being a former F.B.I.
10 agent, you think you'll be more inclined to believe a
11 police officer's testimony over that of a lay witness?

12 PROSPECTIVE JUROR: I had 29 years in law
13 enforcement.

14 THE COURT: Okay, okay, okay. Now, that would
15 affect your ability to be fair and impartial juror then,
16 would it not?

17 PROSPECTIVE JUROR: It probably would, Judge.
18 It probably would.

19 THE COURT: All right. That's all right. I
20 mean, you know, once you become a cop, I guess, always a
21 cop. Now what's your number again?

22 PROSPECTIVE JUROR: 35.

23 THE COURT: Well, I'm going to ask you to go
24 sit in the back. We'll let you out of this.

25 PROSPECTIVE JUROR: Okay.

1 THE COURT: But not for the week, just for this
2 trial.

3 PROSPECTIVE JUROR: No, no, I understand.

4 (Laughter.)

5 THE COURT: Yeah, we'll put you on a civil.

6 PROSPECTIVE JUROR: That's fine.

7 THE COURT: All right. I should have read
8 these before I agreed to give them.

9 Is there any member of the jury panel more than
10 a casual smoker? If so do you believe you can't limit
11 your urges ---

12 (Laughter.)

13 THE COURT: I don't make these questions up,
14 ladies and gentlemen, I just ask them.

15 Let me see, is any member of the jury more than
16 a casual smoker? If so, do you believe you can limit
17 your urges to one cigarette during a lunch break?

18 Do we have any smokers out there? The fact
19 that you smoke, is that going to affect your ability to
20 be a fair juror in this case?

21 (There was no response.)

22 THE COURT: Thank you. Yeah, it's all right.
23 I'm not even telling you who it is.

24 Let's see. All right. Finally, well not
25 finally. Members of the jury panel, do you understand

1 that you must give the Defendant the benefit of the
2 presumption of innocence during the trial and in your
3 deliberation? If you don't, I'm going to tell you that,
4 I'm going to order that. That's the law.

5 Y'all understand that, don't you?

6 (There was no response.)

7 THE COURT: All right. Let's see. You know
8 when I was in high school we only had a slide rule.
9 Since things have changed so much, I'm going to ask
10 y'all this next question.

11 In addition to my charge to you that you cannot
12 discuss this case during this trial, I will tell you
13 that later on if you're on the jury, you can't -- you
14 must refrain from using your Google, electronic mail,
15 your Facebook, Myspace and Twitter or stuff during the
16 course of this trial.

17 (Laughter.)

18 THE COURT: You can't talk to anybody else
19 except your fellow jurors.

20 Y'all understand that before y'all are even
21 selected, do you not?

22 (Affirmative repsonse.)

23 THE COURT: All right, thank you. And you know
24 if you're selected you can't talk about the case with
25 anybody else except for your fellow jurors.

1 Do y'all understand that? I ain't got there
2 yet, but that's what I'm going to tell you.

3 And you know you can't talk to the bailiffs or
4 anybody else about this. Do y'all know that? I'm going
5 to tell you that anyway. Although you ain't on the jury
6 yet but you need to know that.

7 Let's see. All right, that's all I'm going to
8 ask on that.

9 (Pause.)

10 THE COURT: You want me to read you a preamble?

11 MR. SWERLING: No.

12 THE COURT: Okay.

13 MR. SWERLING: Not today.

14 THE COURT: I'll just go straight to the
15 questions. All right. Here we go.

16 Now, members of the panel, are you or is any
17 member of your family employed by any law enforcement
18 agency?

19 If so, please stand.

20 (Prospective jurors stand.)

21 THE COURT: I believed we would get a response
22 from that. We'll take our time.

23 Your name and number.

24 PROSPECTIVE JUROR: Chris Cavalleri, number 52.

25 THE COURT: Cavalleri?

1 PROSPECTIVE JUROR: Cavallari. My brother in-
2 law is a State Trooper in New York State.

3 THE COURT: In what?

4 PROSPECTIVE JUROR: New York State, a State
5 Trooper, my brother in-law.

6 THE COURT: All right. The fact -- how long
7 has he been a State Trooper for New York?

8 PROSPECTIVE JUROR: About six years.

9 THE COURT: Six years. The fact that your
10 brother is State Trooper in New York, would that or
11 could that affect your ability to be a fair juror in
12 this case?

13 PROSPECTIVE JUROR: No.

14 THE COURT: All right. What's your number
15 again?

16 PROSPECTIVE JUROR: 52.

17 THE COURT: Y'all get that?

18 MR. SWERLING: Yes, sir.

19 THE COURT: All right. I can't -- y'all on the
20 same row?

21 PROSPECTIVE JUROR: I guess so.

22 THE COURT: All right. We'll start with you
23 then. Your name and number.

24 PROSPECTIVE JUROR: Kristi McLendon. I'm juror
25 number 192.

1 THE COURT: Ms. McLendon, go ahead.

2 PROSPECTIVE JUROR: My father's employed with
3 Richland County Sheriff's Department.

4 THE COURT: Your father's a what?

5 PROSPECTIVE JUROR: Employed at Richland County
6 Sheriff's Department.

7 THE COURT: I didn't -- what did she say?
8 Your father's a what?

9 PROSPECTIVE JUROR: A sergeant at Richland
10 County.

11 THE COURT: Okay. All right. Your father
12 works at the Richland County Sheriff's Department?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: How long has he worked there?

15 PROSPECTIVE JUROR: Over 10 years.

16 THE COURT: And you live with him?

17 PROSPECTIVE JUROR: I do.

18 THE COURT: All right. The fact that your
19 daddy, who you live with, that works at the Richland
20 County Sheriff's Department, has been there for over 10
21 years, and this is a Richland County Sheriff's
22 Department case, would that or could that affect your
23 ability to be a fair juror in the trial of this case?

24 PROSPECTIVE JUROR: No, sir.

25 THE COURT: Are you sure?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Are you in college? Are you in
3 college?

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: Where do you go to school?

6 PROSPECTIVE JUROR: The University of South
7 Carolina.

8 THE COURT: All right. So living with you
9 daddy who pays your bills, is a Sheriff's Department ---

10 PROSPECTIVE JUROR: Whoa, whoa, whoa, I have
11 three jobs.

12 (Laughter.)

13 THE COURT: All right, relax. You have three
14 jobs. You pay for your own education but you live with
15 your daddy who is a sergeant at the Richland County
16 Sheriff's Department. Would that or could that affect
17 you ability to be fair juror?

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: All right. Thank you, ma'am.

20 All right. Yes, ma'am, your name and number.

21 PROSPECTIVE JUROR: Stephanie Nelson, juror
22 203. My sister works for the Department of Corrections
23 for 10 years. I would not have a problem.

24 THE COURT: Being fair?

25 PROSPECTIVE JUROR: Being fair.

1 THE COURT: Are you sure?

2 PROSPECTIVE JUROR: I'm positive.

3 THE COURT: Okay. Thank you. ma'am.

4 PROSPECTIVE JUROR: Tammy Lenker.

5 THE COURT: And you know Ms. Somebody, go
6 ahead.

7 PROSPECTIVE JUROR: Juror 175.. My father in-law
8 is an LAPD, retired LAPD.

9 THE COURT: Los Angeles?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: How long has he been there -- I
12 mean, how long has he worked?

13 PROSPECTIVE JUROR: At least 30 years.

14 THE COURT: Your father in-law, right?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: Does he pay your bills?

17 PROSPECTIVE JUROR: No, sir.

18 (Laughter.)

19 THE COURT: The fact that your father-in-law
20 has been LAPD for 30 years in Los Angeles, California,
21 would that or could that affect you ability to be a fair
22 juror?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: All right. Thank you, ma'am.

25 Yes, ma'am, your name and number.

1 PROSPECTIVE JUROR: Alice Renfrow, juror 227.

2 THE COURT: Alice what?

3 PROSPECTIVE JUROR: Renfrow.

4 THE COURT: Renfrow?

5 PROSPECTIVE JUROR: Renfrow.

6 THE COURT: All right. Yes, ma'am.

7 PROSPECTIVE JUROR: My son works for the
8 Columbia City Police for about six to eight weeks now
9 and I think I can be most impartial.

10 THE COURT: You think you can be most
11 impartial?

12 PROSPECTIVE JUROR: I believe I would, yes.

13 THE COURT: You're not from around here, are
14 you?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Where are you from?

17 PROSPECTIVE JUROR: I'm from Miami, Florida.

18 THE COURT: Yeah, okay. Thank you. Now, are
19 you or is anyone in your family personally acquainted
20 with anyone employed by any law enforcement agency? I
21 might have just covered that.

22 If so please stand. It's not if you're related
23 but let's say there your next door neighbor, they work
24 in the same job, y'all go to the same church, anything
25 like that, if so, please stand.

1 Yes sir, your name and number.

2 PROSPECTIVE JUROR: 149, my next door neighbor,
3 he is the K-9 supervisor for Richland County.

4 THE COURT: How long has he been your next door
5 neighbor?

6 PROSPECTIVE JUROR: Two years but we are good
7 friends. I wouldn't be impartial but, you know, I just
8 need to, you know, I guess.

9 THE COURT: Oh, you need to let us know that.

10 PROSPECTIVE JUROR: Yeah.

11 THE COURT: But it wouldn't affect your ability
12 to be a fair juror in this case?

13 PROSPECTIVE JUROR: Not at all.

14 THE COURT: All right. Y'all got his number,
15 right, name?

16 MR. SWERLING: (Affirmative reponse.)

17 THE COURT: All right. Some of these questions
18 are close. Are you or any member of your family related
19 to anyone employed by any Richland -- by any law
20 enforcement agency? Related to anyone employed, like I
21 guess, of course, son, daughter, husband, wife, first
22 cousin. I don't know, uncle, aunt, anything like that.

23 If so please stand.

24 (Prospective juror stands.)

25 Yes, sir, your name and number.

1 PROSPECTIVE JUROR: Bruce Snell, 250. I have a
2 nephew that's with the Police Department of Summerton.

3 THE COURT: Is that in Clarendon County or
4 Dorchester County?

5 PROSPECTIVE JUROR: I have no idea. Summerton.
6 I'm not sure what county that's in.

7 THE COURT: It's Clarendon County, down near
8 Manning?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: All right. Would that or could
11 that affect your ability to be a fair juror in this
12 case?

13 PROSPECTIVE JUROR: No, sir.

14 THE COURT: Your nephew being -- worked for
15 Summerton.

16 PROSPECTIVE JUROR: No sir.

17 THE COURT: Now are you or is any member of
18 your family related to any member of the Solicitor's
19 Office in the Fifth Judicial Circuit or with the South
20 Carolina Attorney General's Office? Are you related to
21 anybody that works here in the Fifth Circuit as a
22 prosecutor or anybody in that office or with the South
23 Carolina Attorney General's Office?

24 If so please stand.

25 (There was no response.)

1 THE COURT: All right. Are you personally
2 acquainted with any of the members of the Solicitor's
3 Office here in the Fifth Circuit or with the South
4 Carolina Attorney General's office? Do you know anybody
5 who works for Solicitor Barney Giese's office or do you
6 know anybody that works for Henry McMaster our Attorney
7 General?

8 If so please -- I used to work up there, so, I
9 can laugh about it.

10 (Prospective juror stands.)

11 THE COURT: Yes ma'am, your name and number.

12 PROSPECTIVE JUROR: Barbara Solomon. I'm juror
13 251 and I'm acquaintances with the Gieses.

14 THE COURT: You're acquaintances with the
15 Gieses?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Do you live out that way or
18 something or what?

19 PROSPECTIVE JUROR: No, our children go to the
20 same school.

21 THE COURT: Your children go to the same church
22 or school?

23 PROSPECTIVE JUROR: School -- school, I don't
24 think we go to the same church anymore.

25 THE COURT: Okay, have you ever been to

1 Barney's house for example?

2 PROSPECTIVE JUROR: No, we've mutually been at
3 other events.

4 THE COURT: Events, swim meets or something
5 like that?

6 PROSPECTIVE JUROR: Yes, things such as that.

7 THE COURT: So you're an acquaintance of
8 Solicitor Giese through your children, maybe a swim meet
9 or two or something like that?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: I'm just being sort of general.
12 Would that or could that affect your ability to be a fair
13 juror in this case?

14 PROSPECTIVE JUROR: No, sir.

15 THE COURT: Are you sure about that?

16 PROSPECTIVE JUROR: Uh-huh.

17 THE COURT: All right. Thank you, ma'am. And
18 you know Mr. Swerling and Ms. McDuffie, but go ahead.

19 PROSPECTIVE JUROR: Correct

20 THE COURT: Who do you know besides Ms.
21 McDuffie?

22 PROSPECTIVE JUROR: I'm juror number 29, Renee
23 Bland. I know Solicitor Giese. My daughter is a year
24 around swimmer.

25 THE COURT: Yeah, go ahead.

1 PROSPECTIVE JUROR: As you can imagine, I run
2 into him a lot. And his wife has taught my daughter.

3 THE COURT: Yeah, she's in the Hall of Fame.

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Yeah, go ahead.

6 PROSPECTIVE JUROR: Also, Margaret Fent
7 (phonetic).

8 THE COURT: Uh-huh.

9 PROSPECTIVE JUROR: Her husband works at my
10 husband's law firm. I just want to let you know ---

11 THE COURT: Wow, what a small world.

12 PROSPECTIVE JUROR: --- it will not affect my
13 being impartial.

14 THE COURT: But all these relationships you
15 described that everybody I think heard and understood,
16 would not affect your ability to be a fair juror?

17 PROSPECTIVE JUROR: Absolutely not.

18 THE COURT: All right. Thank you, ma'am.

19 Have you seen, heard or read anything or any
20 news accounts about this case?

21 If so, please stand. I think I've covered that.

22 (There was no response.)

23 THE COURT: Have you formed any opinion about
24 the guilt or innocence of the Defendants based on what
25 you've heard, seen or read?

1 If so, please stand.

2 (There was no response.)

3 THE COURT: I think I've sort of covered all
4 this, but it's all right. Based upon any news accounts
5 you may have seen or read about, is there any
6 information that you are aware of that would render you
7 unable to give both the State and the Defense a fair
8 trial?

9 If so, please stand.

10 (There was no response.)

11 THE COURT: Have -- and some of these questions
12 are duplicitous because I've asked something generally
13 and I ask you to be patient once again.

14 Have you expressed any -- have you expressed an
15 opinion about the guilt or innocence of the Defendants
16 in this case?

17 If so, please stand.

18 (There was no response.)

19 THE COURT: Has anyone ever expressed to you an
20 opinion about the guilt or innocence of the Defendants
21 in this case?

22 If so please stand.

23 (There was no response.)

24 THE COURT: Have you participated in any
25 discussions with any other individuals concerning the

1 facts or circumstances of this case?

2 If so, please stand.

3 (There was no response.)

4 THE COURT: Do you think I need to ask number
5 12?

6 MR. SWERLING: No.

7 THE COURT: All right. Now are you aware or
8 conscious of any bias or prejudice either for or against
9 the Defendants in this case, members of the jury?

10 If so, please stand.

11 (There was no response.)

12 THE COURT: Are you aware of any evidence in
13 this case as a result of any conversations or through
14 the news media?

15 If so, please stand.

16 (There was no response.)

17 THE COURT: I think I've asked number 15.
18 Double check.

19 MR. SWERLING: (Affirmative response.)

20 THE COURT: And I think also number 16.

21 MR. SWERLING: Yes, sir.

22 THE COURT: All right, 17 and 18.

23 MR. SWERLING: Yes.

24 MR. BAX: (Affirmative response.)

25 THE COURT: Now, members of the jury -- well

1 first of all, any further voir dire on behalf of the
2 State?

3 MS. SHIPLEY: Nothing from the State, Your
4 Honor.

5 THE COURT: All right. Ms. Johns, anything?

6 MS. JOHNS: No, Your Honor.

7 THE COURT: Mr. Swerling?

8 MR. SWERLING: No, Your Honor.

9 THE COURT: All right. We're near the end of
10 this process and I want to make sure that everybody's
11 fine. It will probably take another 15, might be 20
12 minutes or something like that. Is that okay? Y'all
13 ready to proceed?

14 All right, Madam Clerk.

15 MR. SWERLING: Judge, can we approach for a
16 minute?

17 THE COURT: Yeah, yeah. Hold on a minute.
18 Yeah, y'all come on up.

19 MR. SWERLING: Can we just confer for a minute.

20 THE COURT: Yeah, yeah. Do you want me to just
21 give them about a 15 minute break and let them go to the
22 bathroom?

23 MR. SWERLING: Yeah, at the most.

24 THE COURT: Okay. All right. That's good,
25 that's good.

1 Members of the jury, I'm going to give y'all a
2 little break. There's a little matter, has nothing to
3 do with y'all. I'm going to let the lawyers talk to
4 each other about it a minute.

5 So if y'all need to run to the bathroom, we'll
6 be back in about 15 minutes. If you ain't back in 15
7 minutes, we've got deputies here with guns.

8 All right. Come right back, okay. Thank you.

9 (The jury panel retires from the courtroom at
10 approximately 4:05 p.m.)

11 (The Court was in recess.)

12 (The jury panel returned to the courtroom at
13 approximately 4:30 p.m.)

14 THE COURT: All right. We all ready?

15 MR. SWERLING: Judge, we want to strike jointly
16 if that's all right with the Court?

17 THE COURT: I beg your pardon?

18 MR. SWERLING: We're going to strike jointly.

19 THE COURT: That's fine. It's 20 and 10
20 basically, right? Cumulative 20 for the Defendants, 10
21 for the State. The alternates will be four and two.

22 Yes, ma'am?

23 PROSPECTIVE JUROR: The jury coordinator
24 downstairs told me to ask you this question before jury
25 selection started. I'm juror 107, Sarah Fuller.

1 THE COURT: Do you need to talk to me privately
2 or do want to say it from there?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Go ahead.

5 PROSPECTIVE JUROR: It might apply to other
6 people if picked for the jury. If it extends beyond
7 Friday, do you give us some sort of documentation to
8 talk about the extended jury? I have a flight at 6:00
9 a.m. on Saturday and that might allow me to change my
10 flight without financial penalty.

11 THE COURT: Yeah, I'll put it this way. If you
12 are selected on this jury, I'll know probably by
13 Wednesday at least, maybe sooner about how long it might
14 take, and I can prepare a document for you to help you
15 out. I hope you don't have a vacation scheduled in
16 Sicily or something like that?

17 PROSPECTIVE JUROR: No but it's visiting my 90
18 year old mother.

19 THE COURT: Well, okay, where does she live?

20 PROSPECTIVE JUROR: Texas. Texas.

21 THE COURT: What part of Texas?

22 PROSPECTIVE JUROR: Austin.

23 THE COURT: Austin, Texas. I was in Texas --
24 well this year I was in Texas, around Colleen, Texas.

25 PROSPECTIVE JUROR: The army ---

1 THE COURT: Yeah, yeah, that's right. Not too
2 far from Crawford, Texas. Yeah, right outside of Waco,
3 Texas actually.

4 MR. SWERLING: Way outside.

5 THE COURT: Yeah, I don't think I saw a hill
6 within 500 miles when I was down there, but anyway.

7 So we all ready now?

8 (Affirmative response.)

9 THE COURT: All right. Ms. Pendergrass?

10 THE CLERK: Ladies and gentlemen of the jury
11 panel, if I call your name, please come to the
12 microphone located here at the center. At the
13 microphone, please restate your name and your place of
14 occupation.

15 Juror number 98, Mary Fentress. Please bring
16 any personal items you may have with you.

17 (No response.)

18 THE COURT: Number 98?

19 THE CLERK: Number 98.

20 (Mary S. Fentress, a white female, now comes
21 forward.)

22 PROSPECTIVE JUROR: Mary Fentress, assistant
23 manager of Strasburg Children over at the Village at
24 Sandhills.

25 THE CLERK: What says the State?

1 MS. MCDUFFIE: Please present Ms. Fentress.

2 THE COURT: What says the Defense?

3 MR. BAX: Please excuse the juror from the
4 trial of this case.

5 THE CLERK: Please return to the back of the
6 courtroom.

7 Juror number 278, James Wallace.

8 (James A. Wallace, a white male, now comes
9 forward.)

10 PROSPECTIVE JUROR: James Wallace, security
11 officer.

12 THE CLERK: What says the State?

13 MS. MCDUFFIE: Please present Mr. Wallace.

14 THE CLERK: What says the Defense?

15 MR. BAX: Please excuse the juror from the
16 trial of this case.

17 THE CLERK: Please return to the back of the
18 courtroom.

19 Juror number 215, Ashley Patterson.

20 (Ashley N. Patterson, a black female, now comes
21 forward.)

22 PROSPECTIVE JUROR: Ashley Patterson, stay at
23 home mom.

24 THE CLERK: What says the state?

25 MS. MCDUFFIE: Please excuse the juror.

1 THE CLERK: Please return to the back of the
2 courtroom.

3 Juror number 266, Michael Taylor.

4 (Michael K. Taylor, a black male, now comes
5 forward.)

6 PROSPECTIVE JUROR: My name is Michael Taylor.
7 I'm an employee of the Square D (phonetic) Corporation,
8 production associate.

9 THE CLERK: What says the state?

10 MS. MCDUFFIE: Please present Mr. Taylor.

11 THE CLERK: What says the Defense?

12 MR. BAX: Please seat the juror in the trial of
13 this case.

14 THE CLERK: Please have a seat in the jury box.

15 Juror number 123, Lenora Hampton.

16 (Lenora Hampton, a black female, now comes
17 forward.)

18 PROSPECTIVE JUROR: Lenora Hampton. I'm a
19 registered nurse and a Bible student at Columbia
20 International.

21 THE CLERK: What says the State?

22 MS. MCDUFFIE: Please present Ms. Hampton.

23 THE CLERK: What says the Defense?

24 MR. SWERLING: Your Honor, can we ask where she
25 is a nurse, which hospital?

1 PROSPECTIVE JUROR: Providence Hospital.

2 THE COURT: All right.

3 MR. BAX: Please excuse the juror from the
4 trial of this case, thank you.

5 THE CLERK: Please return to the back of the
6 courtroom.

7 Juror number 287, Margaret Wilhelm.

8 (Margaret B. Wilhelm, a white female, now comes
9 forward.)

10 PROSPECTIVE JUROR: Margaret Wilhelm. I'm a
11 retired management analyst at Fort Jackson.

12 THE CLERK: What says the State?

13 MS. MCDUFFIE: Please present Ms. Wilhelm.

14 THE CLERK: What says the Defense?

15 MR. BAX: Please excuse the juror from the
16 trial of this case, thank you.

17 THE CLERK: Please return to the back of the
18 courtroom.

19 Juror number 149, Kevin James.

20 (Kevin M. James, a black male, now comes
21 forward.)

22 PROSPECTIVE JUROR: Juror 149, dentist.

23 THE CLERK: What says the State?

24 MS. MCDUFFIE: Please present Mr. James.

25 THE CLERK: What says the Defense?

1 MR. BAX: Please excuse the juror from the
2 trial of this case, thank you.

3 THE CLERK: Please return to the back of the
4 courtroom.

5 Juror number 81, Michele Dunbar.

6 (Michele W. Dunbar, a white female, now comes
7 forward.)

8 PROSPECTIVE JUROR: Michele Dunbar. Registered
9 nurse at Palmetto Health Richland.

10 THE CLERK: What says the State?

11 MS. MCDUFFIE: Please present Ms. Dunbar.

12 THE CLERK: What says the Defense?

13 MR. BAX: Please excuse the juror from the
14 trial of this case, thank you.

15 THE CLERK: Please return to the back of the
16 courtroom.

17 Juror number 155, Linda Johnson.

18 (Linda A. Johnson, a white female, now comes
19 forward.)

20 PROSPECTIVE JUROR: Linda Johnson.
21 Environmental Compliance Technician of the South
22 Carolina Military Department.

23 THE CLERK: What says the State?

24 MS. MCDUFFIE: Please present Ms. Johnson.

25 THE CLERK: What says the Defense?

1 MR. BAX: Please seat the juror.

2 THE CLERK: Please have a seat in the jury box.

3 Juror number 250, Bruce Snell.

4 (Bruce K. Snell, a white male, now comes
5 forward.)

6 PROSPECTIVE JUROR: Bruce Snell. Director of
7 Brokerage, South Financial Group.

8 THE CLERK: What says the State?

9 MS. MCDUFFIE: Please present Mr. Snell.

10 THE CLERK: What says the Defense?

11 MR. BAX: Please excuse the juror from the
12 trial of this case.

13 THE CLERK: Please return to the back of the
14 courtroom.

15 Juror number 93, Nathan Etheredge.

16 (Nathan Etheredge, a black male, now comes
17 forward.)

18 PROSPECTIVE JUROR: Juror number 93, Nathan
19 Etheredge. Owner of Etheredge Enterprises.

20 THE CLERK: What says the State?

21 MS. MCDUFFIE: Please excuse Mr. Etheredge.

22 THE CLERK: Please return to the back of the
23 courtroom.

24 Juror number 214, Lori Paschall.

25 (Lori A. Paschall, a white female, now comes

1 forward.)

2 PROSPECTIVE JUROR: Lori Paschall. Certified
3 dental assistant and territory sales manager for
4 Atlantic Dental Supply (phonetic).

5 THE CLERK: What says the State?

6 MS. MCDUFFIE: Please present Ms. Paschall.

7 THE CLERK: What says the Defense?

8 MR. SWERLING: Please seat the juror in the
9 trial of this case.

10 THE CLERK: Please have a seat in the jury box.
11 Juror number 107, Sara Fuller.

12 (Sara G. Fuller, a white female, now comes
13 forward.)

14 PROSPECTIVE JUROR: Juror 107, Sara Fuller.
15 Nursing professor.

16 THE CLERK: What says the State?

17 MS. MCDUFFIE: Please present Ms. Fuller.

18 THE CLERK: What says the Defense?

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

21 THE CLERK: Please return to the back of the
22 courtroom.

23 THE COURT: Have a nice visit with you mother.

24 PROSPECTIVE JUROR: I will.

25 THE CLERK: Juror number 198, Deborah Moultrie.

1 (Deborah D. Moultrie, a white female, now comes
2 forward.)

3 PROSPECTIVE JUROR: Deborah Moultrie. Parish
4 Nurse, Columbia Housing Authority.

5 THE CLERK: What says the State?

6 MS. MCDUFFIE: Please excuse the juror.

7 THE CLERK: Please return to the back of the
8 courtroom.

9 Juror number 52, Christopher Cavalleri.

10 (Christopher M. Cavalleri, a white male, now
11 comes forward.)

12 PROSPECTIVE JUROR: Chris Cavalleri.

13 Production Supervisor, FN Manufacturing.

14 THE CLERK: What says the State?

15 MS. MCDUFFIE: Please present Mr. Cava?

16 PROSPECTIVE JUROR: Cavallerri.

17 THE CLERK: What says the Defense?

18 MR. BAX: Please seat the juror, thank you.

19 THE CLERK: Please have a seat in the jury box.

20 Juror number 265, Joyce Taylor.

21 PROSPECTIVE JUROR: Young.

22 (Joyce Taylor, a black female, now comes
23 forward.)

24 PROSPECTIVE JUROR: Joyce Young. FN
25 Manufacturing.

1 THE CLERK: What says the State?

2 MS. MCDUFFIE: Please present Ms. Taylor.

3 THE CLERK: What says the Defense?

4 MR. BAX: Please seat the juror.

5 THE CLERK: Please have a seat in the jury box.

6 Juror number 203, Stephanie Nelson.

7 (Stephanie L. Nelson, a black female, now comes
8 forward.)

9 PROSPECTIVE JUROR: Stephanie Nelson. Palmetto
10 Health Richland Laboratory (phonetic).

11 THE CLERK: What says the State?

12 MS. SHIPLEY: Please present Ms. Nelson.

13 THE CLERK: What says the Defense?

14 MR. BAX: Please seat the juror, thank you very
15 much.

16 THE CLERK: Please have a seat in the jury box.

17 Juror number 148, Stacy Jackson.

18 (Stacy Jackson, a black female, now comes
19 forward.)

20 PROSPECTIVE JUROR: Juror number 148, Stacy
21 Jackson. Interim Director of Postal Services for the
22 South Carolina Department of Transportation.

23 THE CLERK: What says the State?

24 MS. MCDUFFIE: Please present Ms. Jackson.

25 THE CLERK: What says the Defense?

1 MR. BAX: Please seat the juror in the trial of
2 this case, thank you.

3 THE CLERK: Please have a seat in the jury box.
4 Juror number 175, Tamela Lenker.

5 (Tamela F. Lenker, a white female, now comes
6 forward.)

7 PROSPECTIVE JUROR: Tamela Lenker. Stay at
8 home mom and graduate student.

9 THE CLERK: What says the State?

10 MS. MCDUFFIE: Please present Ms. Lenker.

11 THE CLERK: What says the Defense?

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

14 THE CLERK: Please return to the back of the
15 courtroom.

16 Juror number 29, Renee Bland.

17 (Renee C. Bland, a white female, now comes
18 forward.)

19 PROSPECTIVE JUROR: Renee Bland. Stay at home
20 mom and accountant.

21 THE COURT: What says the State?

22 MS. MCDUFFIE: Please excuse Ms. Bland.

23 THE CLERK: Please return to the back of the
24 courtroom.

25 Juror number 304, William McLaren.

1 (William J. McLaren, a white male, now comes
2 forward.)

3 PROSPECTIVE JUROR: William McLaren, part time
4 student.

5 THE CLERK: What says the State?

6 MS. MCDUFFIE: Please excuse Mr. McLaren.

7 THE CLERK: Please return to the back of the
8 courtroom.

9 Juror number 168, Stephanie Lance.

10 (Stephanie L. Lance, a black female, now comes
11 forward.)

12 PROSPECTIVE JUROR: I'm Stephanie Lance.
13 Medical Billing Specialist for Pricewaterhouse Coopers.

14 THE CLERK: What says the State?

15 MS. MCDUFFIE: Please present Ms. Lance.

16 THE CLERK: What says the Defense?

17 MR. BAX: Please seat the juror in the trial of
18 this case.

19 THE CLERK: Please have a seat in the jury box.

20 Juror number 280, Michael Ward.

21 (Michael A. Ward, a black male, now comes
22 forward.)

23 PROSPECTIVE JUROR: Michael Ward. College
24 student.

25 THE CLERK: What says the State?

1 MS. MCDUFFIE: Please excuse Mr. Ward.

2 THE CLERK: Please return to the back of the
3 courtroom.

4 Juror number 216, Carmelia Patterson.

5 (Carmelia M. Patterson, a black female, now
6 comes forward.)

7 PROSPECTIVE JUROR: Carmelia Patterson.
8 Substitute teacher.

9 THE COURT: What says the State?

10 MS. MCDUFFIE: Please present Ms. Patterson.

11 THE CLERK: What says the Defense?

12 MR. BAX: Please seat the juror in the trial of
13 this case, thank you.

14 THE CLERK: Please have a seat in the jury box.

15 Juror number 196, Amy Moragues.

16 (Amy C. Moragues, a white female, now comes
17 forward.)

18 PROSPECTIVE JUROR: My name is Amy Moragues.
19 I'm an accountant.

20 THE CLERK: What says the State?

21 MS. MCDUFFIE: Please present Ms. Moragues.

22 THE CLERK: What says the Defense?

23 MR. BAX: Please excuse the juror from the
24 trial of this case, thank you.

25 THE CLERK: Please return to the back of the

1 courtroom.

2 Juror number 53, Brandon Chapman.

3 (Brandon J. Chapman, a black male, now comes
4 forward.)

5 PROSPECTIVE JUROR: Number 53, Brandon Chapman.
6 Vice president of Operations for a property maintenance
7 and management firm.

8 THE CLERK: What says the State?

9 MS. MCDUFFIE: Please present Mr. Chapman.

10 THE CLERK: What says the Defense?

11 MR. BAX: Please seat the juror in the trial of
12 this case.

13 THE CLERK: Please have a seat in the jury box.

14 Juror number 31, Tony Brock.

15 (Tony D. Brock, a black male, now comes
16 forward.)

17 PROSPECTIVE JUROR: Tony Brock -- Wachovia
18 Bank.

19 THE CLERK: What says the State?

20 MS. MCDUFFIE: Please present Mr. Brock.

21 THE CLERK: What says the Defense?

22 MR. BAX: Please seat the juror.

23 THE CLERK: Please have a seat in the jury box.

24 Juror number 201, Joshua Nadeau.

25 (Joshua N. Nadeau, a white male, now comes

1 forward.)

2 PROSPECTIVE JUROR: Joshua Nadeau.

3 THE CLERK: What says the State?

4 MS. MCDUFFIE: Please present Mr. Nadeau.

5 THE CLERK: What says the Defense?

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

8 THE CLERK: Please return to the back of the
9 courtroom.

10 Juror number 251, Barbara Solomon.

11 (Barbara M. Solomon, a white female, now comes
12 forward.)

13 PROSPECTIVE JUROR: I'm Barbara Solomon. I'm a
14 computer software trainer at the Department of
15 Education.

16 THE CLERK: What says the State?

17 MS. MCDUFFIE: Please present Ms. Solomon.

18 THE CLERK: What says the Defense?

19 MR. SWERLING: Please excuse the juror from the
20 trial of this case, thank you.

21 THE COURT: Please return the back of the
22 courtroom.

23 Juror number 195, Angus Moody.

24 (Angus W. Moody, Jr., a black male, now comes
25 forward.)

1 PROSPECTIVE JUROR: Angus Moody. Truck driver
2 for Gateway Supply.

3 THE CLERK: What says the State?

4 MS. MCDUFFIE: Please present Mr. Moody.

5 THE CLERK: What says the Defense?

6 MR. BAX: Please seat the juror in the trial of
7 this case.

8 THE CLERK: Please have a seat in the jury box.

9 THE COURT: Two alternates.

10 THE CLERK: Juror number 293, Gerald Wilson.

11 (Gerald A. Wilson a black male, now comes
12 forward.)

13 PROSPECTIVE JUROR: My name is Gerald Wilson.
14 I'm a general surgeon.

15 THE CLERK: What says the State?

16 MS. MCDUFFIE: Please present Dr. Wilson.

17 THE CLERK: What says the Defense?

18 MR. BAX: Please excuse from the trial in this
19 case.

20 THE CLERK: Please return to the back of the
21 courtroom.

22 Juror number 39, Sharon Bryant.

23 (Sharon W. Bryant, a white female, now comes
24 forward.)

25 PROSPECTIVE JUROR: Sharon Bryant. Division

1 Executive (phonetic) First Citizens Bank.

2 THE CLERK: What says the State?

3 MS. MCDUFFIE: Please present Ms. Bryant.

4 THE CLERK: What says the Defense?

5 MR. BAX: Please excuse the juror from this
6 case.

7 THE CLERK: Please return to the back of the
8 courtroom.

9 Juror number 66, Daniel Cross.

10 (Daniel W. Cross, a white male, now comes
11 forward.)

12 PROSPECTIVE JUROR: Daniel Cross. I'm a self-
13 employed truck driver.

14 THE CLERK: What says the State?

15 MS. MCDUFFIE: Please excuse Mr. Cross.

16 THE CLERK: Please return to the back of the
17 courtroom.

18 Juror number 145, Anastasia Jackson.

19 (Anastasia I. Jackson, a black female, now
20 comes forward.)

21 PROSPECTIVE JUROR: Anastasia Jackson.

22 Assistant manager ---

23 THE CLERK: Does the State challenge for cause?

24 MS. MCDUFFIE: No.

25 THE COURT: Does the Defense challenge for

1 cause?

2 MR. SWERLING: We have ---

3 THE COURT: It's four and two for the
4 alternates.

5 THE CLERK: Okay.

6 THE COURT: So they still have a strike.

7 THE CLERK: Well, what says the State?

8 MS. MCDUFFIE: Please present the juror.

9 THE CLERK: What say the Defense?

10 MR. BAX: Please excuse the juror from the
11 trial of the case.

12 THE CLERK: Please return to the back of the
13 courtroom.

14 THE COURT: That's three for the Defense and
15 one for the State.

16 THE CLERK: Juror number 264, Kimberly
17 Sussewell.

18 (Kimberly A. Sussewell, a black female, now
19 comes forward.)

20 PROSPECTIVE JUROR: I'm Kimberly Sussewell.
21 I'm Collection (phonetic) Manager at Providence
22 Northeast.

23 THE CLERK: What says the State?

24 MS. MCDUFFIE: Please excuse Ms. Sussewell.

25 THE CLERK: Please return to the back of the

1 courtroom.

2 Juror number 166, John Kupfer.

3 (John A. Kupfer, a white male, now comes
4 forward.)

5 PROSPECTIVE JUROR: John Kupfer. I'm a
6 professor at the University of South Carolina.

7 THE CLERK: Does the State challenge for cause?

8 MS. MCDUFFIE: No.

9 THE CLERK: What says the Defense?

10 MR. BAX: Please seat the juror, thank you.

11 THE CLERK: Please have a seat in the jury box.

12 Juror number 20, Beau Bauerschmidt.

13 (Beau J. Bauerschmidt, a white male, now comes
14 forward.)

15 PROSPECTIVE JUROR: Beau Bauerschmidt. IT
16 support Palmetto G B A (phonetic).

17 THE CLERK: What says the State?

18 MS. MCDUFFIE: Please present Mr. Bauerschmidt.

19 THE CLERK: What says the Defense?

20 MR. BAX: Please seat the juror.

21 THE CLERK: Please have a seat in the jury box.

22 THE COURT: Now, any matters that need to be
23 taken up at this time in connection with the -- yes,
24 sir.

25 PROSPECTIVE JUROR: I'm taking a group of

1 students to California ---

2 THE COURT: I can't understand you. Come down
3 here and talk to me privately.

4 (Complied.)

5 THE COURT: What's your number?

6 PROSPECTIVE JUROR: 166.

7 THE COURT: Yes, sir.

8 PROSPECTIVE JUROR: I'm a professor at USC and
9 I'm taking a group of students to California Tuesday and
10 ---

11 THE COURT: And?

12 PROSPECTIVE JUROR: --- several thousand
13 dollars. So well, I'm just bringing it up. I mean ---

14 THE COURT: Look, you're probably ---

15 PROSPECTIVE JUROR: --- rescheduling ---

16 THE COURT: Relax, relax, relax. We'll
17 probably be through by Friday.

18 PROSPECTIVE JUROR: Okay. Just ---

19 THE COURT: Wait. Just relax. Is he an
20 alternate?

21 MR. SWERLING: Yes, sir.

22 THE COURT: Relax.

23 PROSPECTIVE JUROR: Okay.

24 THE COURT: We'll talk care of it. Relax,
25 okay? Thank you.

1 What do you teach?

2 PROSPECTIVE JUROR: Geography and Environmental
3 Science.

4 THE COURT: Oh, all right.

5 Now, any matters need to be taken up at this
6 time in connection with the selection of this jury?

7 Anything from the State?

8 MS. SHIPLEY: Your Honor, could we approach the
9 bench. I think we can resolve this.

10 THE COURT: Sure, sure.

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

14 MS. SHIPLEY: Your Honor, nothing from the
15 State.

16 THE COURT: All right. Anything, Ms. Johns?

17 MS. JOHNS: No, Your Honor.

18 THE COURT: Mr. Swerling?

19 MR. SWERLING: No, Your Honor.

20 THE COURT: All right. To the remaining
21 members of the panel, I take this opportunity to thank
22 each and every one of you on behalf of everybody
23 involved in this case for participating in this process.

24 I repeat, and it's one of my favorite
25 expressions, a government of the people, by the people

1 and for the people cannot exist without the people. And
2 that means the participation of each and every one of
3 you in this process. And as a result of your stay and
4 participation in the process this week, I can tell you
5 without any hesitation that you have the thanks and
6 appreciation of a grateful nation.

7 So thank you all so very much. Good luck to
8 you and calm nights and sunshiny days, that sort of
9 thing. You're free to go. I think go back downstairs
10 but to go home for the day, I'm sure.

11 Good luck to each and every one of you.

12 (The remaining members of the jury panel retire
13 from the courtroom at approximately 5:00 p.m.)

14 THE COURT: Now, ladies and gentlemen of the
15 jury, what I'm going to do, I'm going to send you home
16 today. It took quite a while to select you and that's
17 probably one of the most important steps in this
18 process, selecting a jury. That's why we ask all the
19 questions and everything, to select a fair and impartial
20 jury. And everybody seems to be satisfied with that.
21 That's exactly what we have.

22 Now, there are some other matters I need to
23 take up with the attorneys in this case that won't
24 involve you. So I'm going to send you home for the day.
25 I'm sure you're glad to go. Mondays are one of those

1 strange days where you don't know whether you're going
2 to be selected or how long you're going to be here. But
3 generally court will run from about 9:30 in the morning
4 until 5 or so in the afternoon. In this case, there's a
5 good chance we could work in the evenings. And I'll
6 give you a heads-up on that.

7 So -- but I'm going to send you home for the
8 day right now and I'm going to ask that you come back at
9 11:00 in the morning because there's some pretrial
10 matters I need to take up with the lawyers and the only
11 way I can do that is in your absence anyway.

12 But bear this in mind, don't talk about this
13 case in any way, shape or form. The time to do so will
14 be at the end once you've heard all the evidence and
15 once you've heard the arguments from the lawyers and
16 once I tell you what the law is that applies to this
17 case. Until then, it would be unfair to the State and
18 unfair to the Defendants for you talk about this case in
19 any way. That's the system that we all operate under.
20 So please bear that in mind. Don't go home and talk to
21 your husbands and wives or significant others about it.
22 I'm involved in a murder case, you can tell them that,
23 and I can't talk about it. All right, so don't let
24 anybody pressure you into talking about.

25 And I will encourage you to wear your juror

1 badges, certainly when you're on the way to the
2 courthouse and when you're leaving the courthouse so no
3 one will inadvertently come up and say anything to you
4 that you shouldn't hear. So be mindful of that,
5 certainly when you go to lunch and on the way in the
6 morning. And you don't have to wear them necessarily
7 when you get in your car to go home in the afternoon but
8 have them in and around the courthouse at all times so
9 someone won't inadvertently say something to you that
10 you shouldn't hear.

11 I will tell you that you need to have an open
12 mind until you hear all of the evidence that you're
13 going to hear in this case. And I'm going to ask the
14 bailiffs to show you the jury room that you will use
15 during the course of this trial. And tomorrow morning
16 when you come back -- they will show you how to get in
17 and out. It's a little maze. It's not that difficult,
18 but until you get used to it, it's a little maze. You
19 don't come back through the courtroom, you come back
20 through the back hallway and Mr. Crumpton (phonetic)
21 here, one of the bailiffs, will show you how to do so.

22 So I wish you all a pleasant and a restful
23 evening and be back tomorrow, a little bit of extra time
24 in the morning, at 11:00, okay.

25 Thank you all so very much.

1 (The jury retires from the courtroom at
2 approximately 5:05 p.m.)

3 THE COURT: As always, if I don't repeat
4 myself, any exceptions or additions to any remarks I
5 just made to the jury from anyone?

6 MR. SWERLING: No, sir.

7 THE COURT: If ever I say something
8 inadvertently that sounds as if you need to protect
9 yourself on the record, don't hesitate to do so.

10 I will let y'all chat for awhile if y'all want
11 to. I will be here like about 9, certainly no later
12 than 9:30 in the morning. And at that time if there's
13 something that needs to be put on the record in terms of
14 some matters y'all discussed that couldn't be worked
15 out, let me know, I'll be prepared to do so at that
16 time.

17 Yes, ma'am.

18 MS. SHIPLEY: My understanding is that
19 Ms. Johns will not challenge the statement that
20 Mr. Gallegos plans to testify about, so no Jackson v..
21 Denno. Is that correct, Ms. Johns?

22 MS. JOHNS: That's correct, Your Honor.

23 THE COURT: All right.

24 MS. SHIPLEY: Okay. And then they are not
25 going to challenge the identification by Mr. Ricky

1 Jacobs or -- I think Mr. Swerling indicated he wanted to
2 go through the hearing.

3 THE COURT: Okay.

4 MS. SHIPLEY: I'm not sure. I just want
5 clarification.

6 MR. SWERLING: Judge, I just want to think
7 about it overnight.

8 THE COURT: Okay.

9 MR. SWERLING: There may be a reason why I want
10 to do it.

11 THE COURT: And, you know, whatever's said here
12 today, I'm not locking you down to it. If you sleep on
13 it overnight and change your mind, just let me know. I
14 mean, it's one of those things.

15 MS. SHIPLEY: Yes, sir, and this is for
16 scheduling purposes ---

17 THE COURT: Yes.

18 MS. SHIPLEY: --- for the State, Your Honor.
19 One last thing, my understanding was Mr. Swerling was
20 going to move to suppress the evidence seized from his
21 client's Suburban. We do have the witnesses available.
22 Does he need them here in the morning?

23 MR. SWERLING: I think -- if you want to get
24 into it tomorrow, yeah.

25 MS. SHIPLEY: Okay. Well, Ms. Elsey's prepared

1 to testify about -- are you going to challenge the date
2 on the return?

3 THE COURT: I think he wants to think about it
4 is my guess. But have them here anyway prepared to go
5 forward.

6 MS. SHIPLEY: Okay.

7 THE COURT: All right.

8 MS. SHIPLEY: So I should have Ms. Elsey here,
9 okay.

10 THE COURT: Now, what's your name again?

11 MS. ELSEY: Elsey, Anna Elsey.

12 THE COURT: Where are you from?

13 MS. ELSEY: I'm from Columbia.

14 THE COURT: Okay. Go ahead, Mr. Shipley.

15 MS. SHIPLEY: Your Honor, I think we can knock
16 out some chain of custody witnesses. I've explained
17 that the State intends -- we met for this trial two
18 months ago.

19 THE COURT: Yeah.

20 MS. SHIPLEY: And everybody has stipulated to
21 the chain as far as people handling it inside of SLED
22 and inside of the Sheriff's Department.

23 THE COURT: Yes, ma'am.

24 MS. SHIPLEY: And so I'm just confirming that
25 that is still the case, the internal chain of custody at

1 SLED and the internal chain of custody at the Richland
2 County Sheriff's Department. We do plan on calling Tena
3 Goff who is in charge of the evidence room at the
4 Sheriff's Department who brought all the evidence to
5 SLED. And then once it got to SLED, there's like five
6 witnesses that handled the evidence before it got to the
7 analyst. We plan on calling an analyst who will testify
8 about the condition of the item when he received it.
9 That would knock out quite a few witnesses if they're
10 willing to stipulate to that.

11 THE COURT: I don't know whether they are or
12 not. Are you asking me or?

13 MS. SHIPLEY: I'm asking to confirm that this
14 morning -- or this afternoon.

15 MR. SWERLING: We have agreed to stipulate the
16 internal chain witnesses.

17 MS. SHIPLEY: Okay.

18 THE COURT: Okay, all right.

19 MS. SHIPLEY: And then lastly, we have a chain
20 -- or, excuse me, a custodian of records for Tremain
21 Wray's cell phone records and wanted to see if the
22 Defense would stipulate to the testimony of that
23 witness.

24 THE COURT: You mean stipulate to the testimony
25 of that witness?

1 MS. SHIPLEY: Or stipulate that these are the
2 cell phone records.

3 THE COURT: Oh.

4 MS. SHIPLEY: Yeah, stipulate to the records,
5 Your Honor.

6 THE COURT: All right, okay.

7 MR. SWERLING: Well, not -- stipulate that
8 those are the records but not to any admissibility.

9 MS. SHIPLEY: Any ---

10 MR. SWERLING: Any other issues that may come
11 up regarding admissibility of it. We'll stipulate those
12 are his records.

13 THE COURT: Okay. But whether or not it should
14 come in was the point that you want to argue about,
15 whether or not they're relevant, I don't know what the
16 reason might be.

17 He's saying, these are the records but whether
18 or not they should be -- he's not stipulating to the
19 admissibility of them but he will stipulate to the
20 authenticity of them.

21 MS. SHIPLEY: Okay. So do you want me to --
22 should I have this witness fly in from Allentown,
23 Pennsylvania or ---

24 MR. SWERLING: No.

25 THE COURT: I can't answer that question.

1 MR. SWERLING: The authenticity, I'm not.

2 MS. SHIPLEY: Okay, all right.

3 MR. SWERLING: Just whether or not they're
4 relevant.

5 MS. SHIPLEY: Okay, I see.

6 MR. SWERLING: Or some other objection.

7 MS. SHIPLEY: So we can -- all right.

8 THE COURT: Is everybody on the same page? I
9 don't know, I don't care whatever y'all need, I'll be
10 happy to accommodate either side if I can.

11 But y'all are all on the same page, is that
12 fair enough so far, Ms. Johns?

13 MS. JOHNS: Yes, Your Honor. However, can I
14 revisit the chain of custody? There's an internal chain
15 of custody at SLED where people are moving things in the
16 building.

17 THE COURT: Okay.

18 MS. JOHNS: I don't have a problem with that.
19 But anything outside of SLED, Your Honor, I would at
20 least need to look at ---

21 THE COURT: Oh, yeah, sure. I think that's all
22 she said. She's putting up ---

23 MS. SHIPLEY: Yeah, we'll definitely put that
24 chain up.

25 THE COURT: --- chain of custody.

1 MS. SHIPLEY: Absolutely.

2 THE COURT: In other words, when it got to
3 SLED, four or five people handled it. Then when it left
4 SLED, you're not stipulating to that. But who saw it in
5 SLED, there's no problem with that?

6 MS. JOHNS: No problem.

7 THE COURT: All right, is that right?

8 MS. SHIPLEY: Yes, sir. We'll put everybody up
9 except for the five people that handled it ---

10 THE COURT: Yeah, in SLED.

11 MS. SHIPLEY: --- and took it from floor 1 to
12 floor 2. And then we'll put ---

13 THE COURT: Like somebody opened the door and
14 ---

15 MS. SHIPLEY: Yes.

16 THE COURT: --- and they picked it up and
17 handed it ---

18 MS. SHIPLEY: Yeah, it's just -- yeah.

19 THE COURT: Okay. Anything else?

20 MS. SHIPLEY: Your Honor, Lieutenant Elsey has
21 an appointment at 9:30 in the morning. So could we take
22 up the search warrant matter at another time or -- and
23 just -- or can we just take her up last in the morning?

24 THE COURT: I don't care.

25 MS. SHIPLEY: Okay. Thank you, Your Honor.

1 THE COURT: If they do, we got a problem. But
2 if not, we can handle it. I'm going be here at 9:30.
3 Everybody else is invited to be here at 9:30, when we
4 should be here. But the jury won't be here until 11.

5 MS. SHIPLEY: Yes, sir.

6 THE COURT: You know, I've built in a little
7 bit of extra time so people can think about the thing.
8 Something could happen overnight, who knows. And we'll
9 have a little bit of extra time to put something on the
10 record if we have to. Hopefully we won't need to but if
11 we have to, we will just take it as it comes.

12 MS. SHIPLEY: Okay. Thank you, Your Honor.
13 Also at this time the State moves to get date of births
14 of all the Defense witnesses and the race and gender and
15 date of birth of each witness.

16 THE COURT: That you want to run record checks
17 on.

18 MS. SHIPLEY: Absolutely.

19 THE COURT: That's fine. I'm leaving ---

20 MS. SHIPLEY: We have rap sheets for them on
21 all of our witnesses.

22 THE COURT: That's fine. I'm going to leave
23 and y'all can handle this. I don't need to be here.

24 MS. SHIPLEY: Okay.

25 THE COURT: This is a matter y'all want to

1 discuss privately among yourselves.

2 Anyway, everybody get a pleasant and restful
3 evening. I can't think of anything else, can anybody
4 else think of something else we need to do?

5 MS. SHIPLEY: Just need your signature for an
6 unrelated matter.

7 THE COURT: And are you going to have trouble
8 getting this witness transported that I signed ---

9 MR. BAX: I don't believe so. Actually they
10 transported him apparently today. So we went ahead and
11 served SCDC's officer so I don't think there's going to
12 be a problem, Your Honor.

13 THE COURT: All right.

14 (Pause.)

15 THE COURT: See y'all in the morning.

16 (The Court was in recess.)

17 TUESDAY, MAY 19, 2009:

18 MS. SHIPLEY: Thank you, Your Honor, may it
19 please the Court.

20 Your Honor, the State at this time is moving
21 for a continuance. I wanted to put on the record the
22 reasons why.

23 THE COURT: Yes, ma'am.

24 MS. SHIPLEY: I have some case law that I have
25 handed to Defense counsel and that I will hand up to the

1 Court at this time.

2 Your Honor, yesterday during jury selection, my
3 paralegal who's here prepared to testify if necessary,
4 Cynthia Jones, approached me while Ms. McDuffie and I
5 were deciding which jurors to take and strike and the
6 Defense counsel was also doing that. And Ms. Johns
7 (sic) inquired about the murder weapon in this case and
8 I dismissed her because a murder weapon was not
9 recovered in this case, Your Honor.

10 THE COURT: You mean Ms. Theresa Johns?

11 MS. SHIPLEY: Excuse me, Ms. Jones.

12 THE COURT: Jones.

13 MS. SHIPLEY: Cynthia Jones.

14 THE COURT: I thought you said Johns.

15 MS. SHIPLEY: Ms. Jones asked me about the
16 murder weapon in this case, that an investigator from
17 the Richland County Sheriff's Department named Sergeant
18 Stan Smith was calling concerning the murder weapon.

19 Your Honor, at that time I dismissed her
20 because we don't have a murder weapon in this case, one
21 was never recovered.

22 At that point, we continued with the jury
23 selection and when we concluded for the day, I went up
24 to my office and Ms. Jones asked me to call Sergeant
25 Stan Smith. So I did so immediately. He reported that

1 there is a witness -- and I'm not going to name names at
2 this time. There is a witness currently incarcerated at
3 the jail who through his attorney contacted my office
4 and in turn Stan Smith was contacted. That there was a
5 -- the witness was familiar with the location of the
6 murder weapon used in this case.

7 At first it was unclear whether it was a cold
8 case but apparently the witness is familiar with the
9 name of at least one of these Defendants. He's also
10 familiar with the description of the gun and its
11 location. That he was approached to get rid of it and
12 bury it in some fashion.

13 At that point, Your Honor, Investigator McRae
14 who spent all night, from the time we parted ways ---

15 THE COURT: He looks sleepy, let the record
16 reflect. Go ahead.

17 MR. MCRAE: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 MS. SHIPLEY: In fact, he called me at 1:30 in
20 the morning for some legal research. But anyhow, Your
21 Honor, he has been duly diligent in pursuing this
22 information. He interviewed that witness. Even went to
23 the location of where the weapon was buried or thrown
24 into a creek. And because it got dark, he had to call
25 off the search. They are duly diligently looking for

1 that weapon. We have not been able to find it yet.

2 And I believe that this is material evidence in
3 this case and we would respectfully request that the
4 Court grant us a continuance so that we can find this
5 weapon. We don't know if it's going to inculcate or
6 exculpate the Defendants.

7 THE COURT: I understand.

8 MS. SHIPLEY: So, Your Honor, I do have case
9 law. I just wanted to cite one of them.

10 THE COURT: Yes, ma'am.

11 MS. SHIPLEY: I think it's very much on point.
12 The State versus Baum which is cited at 584 S.E.2d 419.
13 Your Honor, in that case the jury was actually sworn and
14 I would like the record to reflect that this jury has
15 not been sworn.

16 THE COURT: There's no -- what is it, manifest
17 necessity?

18 MS. SHIPLEY: Correct, Your Honor. And in that
19 case that I just cited, a murder case proceeded without
20 a body being located. During the trial, two days into
21 the trial, a body was found in another county or another
22 state and they were able to confirm that this was indeed
23 the missing body of the victim in the case of the murder
24 trial. And so in that case, the judge granted a
25 mistrial due to manifest necessity because it was

1 critical to the State's presentation of the facts and
2 evidence in the case.

3 And the point of going through the system, Your
4 Honor, is that the truth can be presented and all facts
5 and pertinent relevant evidence can be presented to the
6 trier of facts so that they can make an informed
7 decision on the guilt or not guilt of the Defendants.

8 So, Your Honor, based on State versus Baum
9 which is even -- they were further along in the process.
10 We would respectfully request that you grant us the
11 motion.

12 As far as a date to continue this trial until,
13 it really just depends if they find the murder weapon.
14 If they find the gun, we're going to have to have it
15 analyzed because there's a lot of ballistics in this
16 case. And so I'm not educated enough in that field to
17 tell you how long it will be.

18 But I will be in close contact with Ms. Johns
19 and Mr. Swerling to let them know about the
20 developments. I did speak to them last night to tell
21 them about the developments and I will be happy to
22 coordinate with their schedules to get this case ---

23 THE COURT: Well, when the case may or may not
24 be reset will be up to -- I better say Chief Judge
25 Childs. I was going to say Ms. Obama but I shouldn't

1 say that on the record. She's the Chief Judge for
2 criminal. So I can continue it beyond this term and
3 after that you would have to see her in terms of
4 coordinating when this matter might be called again, if
5 at this point I grant the continuance.

6 MS. SHIPLEY: Yes, sir, Your Honor. And I just
7 wanted to also -- we did extensive research on this
8 matter. So I would like to also cite a couple of other
9 cases.

10 THE COURT: Yes, ma'am.

11 MS. SHIPLEY: Newly discovered evidence,
12 typically the only cases we could really find, Your
13 Honor, were where a Defendant made the motion for a new
14 trial.

15 THE COURT: Did you find any cases that
16 involved state's east of the Mississippi?

17 MS. SHIPLEY: Your Honor, I don't -- did not
18 memorize -- well, actually, yes, Virginia.

19 THE COURT: Okay.

20 MS. SHIPLEY: I did find one from there. There
21 are several from California. But, Your Honor, the test
22 for newly discovered evidence, I would submit, would be
23 the same for the Defendant as it would be for the State.

24 It said, the evidence would probably change the
25 result, that it has been discovered since the trial,

1 that it could not have been discovered before the trial
2 by the exercise of due diligence.

3 THE COURT: Is that Acey (phonetic) versus
4 State? What's the name of that case?

5 MS. SHIPLEY: Your Honor, I'm sorry, The State
6 versus Kennerly (phonetic).

7 THE COURT: Okay.

8 MS. SHIPLEY: And this is a South Carolina --
9 excuse me, McCabe verus Sloan ---

10 THE COURT: All right.

11 MS. SHIPLEY: --- which is a South Carolina
12 Supreme Court decision from 1937. So this -- the law is
13 -- and it's still good law, Your Honor.

14 THE COURT: I'll take your word for it.

15 MS. SHIPLEY: And the last prong, Your Honor,
16 is that it is material to the issue. Your Honor, we
17 would submit that we satisfy the elements of this test.
18 There's no question if the ballistics match this gun and
19 the way in which the witness was provided with this gun
20 that it would change the results of the case.

21 That it has been discovered since the trial,
22 we found out last night after selecting a jury, that it
23 could not have been discovered before the trial by the
24 exercise of due diligence. Your Honor, we were
25 prepared. This is the second time we've called this

1 case for trial. We were prepared to go forward with
2 this case.

3 THE COURT: Is it the one that was mistried?

4 MS. SHIPLEY: No, sir, Your Honor. We were
5 prepared to go forward March 16th and at that time Dick
6 Harpootlian had a case and it bumped our case.

7 THE COURT: Okay, all right.

8 MS. SHIPLEY: And so we had to coordinate our
9 schedules and everyone agreed on this date.

10 THE COURT: All right.

11 MS. SHIPLEY: And also I failed to mention,
12 this case was originally scheduled in September of '08
13 and then again in October of '08 due to Mr. Swerling
14 being retained sort of late -- later in the game.

15 THE COURT: All right.

16 MS. SHIPLEY: But anyhow, Your Honor, we --
17 we've been prepared. This has not been failure of the
18 State to exercise due diligence. This is a witness who
19 came forward on their own fruition.

20 Then also, Your Honor, there's no question that
21 this case -- that evidence would be produced from this
22 would be material to the issue. This is after all a
23 murder case, our victim was shot. And we do have a
24 witness that identified the murder weapon -- or
25 describes it and that is corroborated by this witness

1 that has come forward.

2 And lastly, Your Honor, just to hurry up.

3 THE COURT: No, take your time.

4 MS. SHIPLEY: I did find some federal cases
5 where -- and just in case you asked. Maryland, east of
6 the Mississippi ---

7 THE COURT: All right. Well, you know, the
8 people in those states never thought very much of the
9 federal government, Ms. Shipley, but ---

10 MS. SHIPLEY: Your Honor, I ---

11 THE COURT: --- I won't stop you from citing a
12 federal case.

13 MS. SHIPLEY: I was pretty baffled that there
14 are hardly any case law where the government makes a
15 motion for a continuance based on new information. And
16 in fact, Your Honor, this is the first time I've ever
17 had to do this.

18 THE COURT: Well, congratulations on your
19 debut.

20 MS. SHIPLEY: Well thank you very much, Your
21 Honor. It's been a lovely experience.

22 But basically one case, United States versus
23 Clinger, cited at 681 F.2d 221, Your Honor, the State --
24 or the government requested a continuance to secure a
25 witness and in that case the court found that it was

1 abuse of discretion to deny their motion for a
2 continuance.. There's different procedures essentially,
3 Your Honor. That the government has the right to
4 dismiss an indictment with leave to restore, I guess.
5 But the procedures are different but the argument can be
6 the same, that the government's diligence was proved by
7 its willingness to provide information of their
8 confidential informant if necessary in order to get
9 their evidence into the pretrial matter.

10 And so, Your Honor, we are prepared to disclose
11 all of this to the Defense. Right now it is an under --
12 ongoing investigation. We've had some death threats and
13 so we are not willing to provide names or statements at
14 this time..

15 THE COURT: All right.

16 MS. SHIPLEY: But we will clearly and certainly
17 turn that over as soon as we can complete this newly
18 discovered information.

19 THE COURT: All right. Thank you, Ms. Shipley.

20 MS. SHIPLEY: Thank you, Your Honor.

21 THE COURT: Who wants to go first?

22 MR. SWERLING: I can go.

23 THE COURT: All right, Mr. Swerling.

24 MR. SWERLING: Your Honor, first of all I would
25 ask that Investigator McRae present some testimony in

1 support of the motion since this is a, you know, a
2 murder case and has been continued on a couple of
3 occasions. And of course the ruling that you make will
4 have a great impact on the future trial of this case and
5 maybe gathering some evidence. So I would ask that the
6 State present some evidence to support their motion.

7 THE COURT: I will consider it at a later time.
8 Go ahead and make your motion -- I mean, your argument
9 in response to her motion.

10 MR. SWERLING: All right, Judge. Relying on
11 Rule 7 of the South Carolina Rules which requires that
12 motion for continuance be made on a showing of good and
13 sufficient legal cause. So obviously that's the
14 standard that you have to apply.

15 And most of the cases that I'm aware of is
16 where the State -- and of course there's a number of
17 annotations ---

18 THE COURT: Yes, sir.

19 MR. SWERLING: --- of cases in that rule which
20 I would just cite to the Court and we can -- I can hand
21 those up to the Court as to all those different cases.
22 But most of them are made by the Defense.

23 THE COURT: Yep.

24 MR. SWERLING: And in those cases on most
25 occasions the denial of the continuance motion has been

1 upheld by the Supreme Court as not an abuse of
2 discretion. And there are many situations where the
3 Defense has had the unavailability of a witness or new
4 evidence has come up and they need -- want time to go
5 ahead and develop some new evidence or to respond to the
6 State's evidence. And unless you can show an abuse of
7 discretion, the Supreme Court has upheld those cont --
8 the denial of those continuances.

9 And I think that's what we have here. That
10 there would be an abuse of discretion to go ahead and
11 grant a continuance in this case. This case goes back
12 to June 30th of 2007.

13 THE COURT: 2007, yeah.

14 MR. SWERLING: Both Defendants have been in
15 jail since that time without bond. The case has been
16 scheduled. I don't disagree with what Ms. Shipley told
17 you as far as the schedule of the case. We've been
18 prepared on several occasions to go to trial and we are
19 prepared today to go to trial. In fact, we started the
20 trial yesterday as you know and the jury is impaneled
21 but not sworn.

22 THE COURT: Yeah, it took a long time to select
23 a jury, that's how complicated this case was, yes.

24 MR. SWERLING: It did, it did. In response to
25 the -- it just seems that to go ahead and have a case

1 two years old and then on the eve of trial or actually
2 the trial starts, someone comes forward and gives the
3 State some story that they want to go ahead and further
4 investigate to see whether or not it would either
5 inculcate or exculpate the Defendant. It just seems
6 like it's -- it's too late. It comes too late. They've
7 had all this time to investigate the case, over two
8 years -- almost two years. And the trial's got to
9 proceed at some point.

10 Now, I'm making the argument the State usually
11 makes. So it's a little difficult for me to change
12 caps. But ---

13 THE COURT: I understand.

14 MR. SWERLING: --- if it were the other way
15 around, the State would be opposing the motion. And,
16 Judge, I'm just saying we are prepared to go. If you
17 look at State versus Baum -- and even though this is the
18 issue in the case of whether or not there was a manifest
19 necessity to -- as to whether or not the double jeopardy
20 clause would kick in, if there was no manifest necessity
21 in the granting of a mistrial. That was really the
22 issue in this case as to whether or not there was a
23 manifest necessity.

24 THE COURT: And that only comes about if the
25 jury has already been sworn, I do believe.

1 MR. SWERLING: Correct, correct. But there's
2 some interesting language in there. They refer to a
3 case called Arizona versus Washington where it says --
4 and that's U. S. Supreme Court case 434 U.S. 497 (1978).
5 The test to determine whether sound ground exists for
6 declaring a mistrial after the jury is sworn is whether
7 the mistrial is dictated by manifest necessity or the
8 ends of public justice, the latter being defined as the
9 public's interest in a fair trial designated and in just
10 judgment.

11 Now even though this is not a manifest
12 necessity case, they -- I would just read this to the
13 Court. Baum asserts however that the State sought a
14 mistrial to simply marshal evidence to strengthen its
15 case against him and that the granting of a mistrial on
16 such a basis is clearly prohibited by the double
17 jeopardy laws. We agree with that as it has evolved in
18 this country. The prohibition against double jeopardy is
19 intended to condemn the practice of the prosecution
20 requesting a mistrial for the sole purpose of
21 buttressing the witnesses -- weaknesses in its evidence
22 and the strictness of scrutiny is appropriate when the
23 basis for a mistrial is the unavailability of critical
24 prosecution evidence.

25 Even though they didn't find it in this case, I

1 think that that argument is pretty sound here. That all
2 this evidence is doing, as the State is seeking to do,
3 is buttress their case by trying to find this additional
4 evidence or explore this additional evidence and
5 investigate.

6 So for those reasons, the fact that it's two
7 years old and the fact that we started the trial
8 yesterday, the fact that this comes late in the game and
9 the fact that it really is being used to just buttress
10 the State's case ---

11 THE COURT: All right.

12 MR. SWERLING: --- and we're ready, we would
13 oppose the motion for a continuance.

14 THE COURT: All right. Thank you, Mr.
15 Swerling. Ms. Johns.

16 MS. JOHNS: Thank you, Your Honor. May it
17 please the Court.

18 Your Honor, on behalf of my client, Taurus
19 Watts, I would join in the opposition of the granting of
20 a continuance in this case for the reasons that Mr.
21 Swerling has cited. In addition, Your Honor, in filing
22 my client's Sixth and Fourteenth Amendment rights.

23 In this particular factual situation, basically
24 what we're saying this morning is, Defendant, sorry
25 about your luck, we didn't swear the jury yesterday.

1 Otherwise, we'd be looking at double jeopardy issues.

2 We're not doing that. Granted, the jury has
3 not been sworn. But we are ready to go forward. The
4 standard is, Your Honor, with regard to these cases that
5 the State has cited is whether or not the evidence will
6 probably change the result. And the evidence, if they
7 do find this weapon that they've gotten from somebody
8 who's willing to come in and say something at the last
9 minute, it could happen in every case. It would
10 snowball. If anybody at the Detention Center has
11 learned this case is going to go forward, all they'd
12 have to do is call up the Sheriff's Department saying,
13 guess what, I have some evidence. I want you to come
14 down and talk to me and I want you to go and see what it
15 is you can find. It's like a fishing expedition in this
16 particular case, Your Honor.

17 I don't know that finding a weapon is going to
18 change the result. I think that they have sufficient
19 eyewitnesses that they -- we've got a list of, I don't
20 know, 60 State's potential witnesses ---

21 THE COURT: Well, 61 -- it's either 60 or 61, I
22 didn't count them.

23 MS. JOHNS: It is, Your Honor. And, you know,
24 I agree that this would buttress a very weak case for
25 the State and I think that, you know -- and even

1 considering the State's due diligence in finding this
2 evidence, Your Honor, I would oppose this motion based
3 on those grounds.

4 MR. SWERLING: Could I just add one thing.
5 I've just kind of -- I'm thinking here, sitting here
6 thinking that had this happened in the reverse situation
7 yesterday where we got information that could
8 potentially help the Defendant, the question in my mind
9 would be would the Court entertain a motion for
10 continuance under the same or similar circumstances.

11 THE COURT: I can assure you I would without
12 any hesitation. I don't know about another judge but
13 ---

14 MR. SWERLING: I understand and I'm not
15 suggesting you wouldn't ---

16 THE COURT: Not me personally, yeah, I
17 understand.

18 MR. SWERLING: But to me that is the question I
19 think comes here as to whether or not ---

20 THE COURT: Equal and fair treatment is what
21 everyone seeks, the Defense as well as the State. My
22 job as a trial judge is to try to level the playing
23 field and that's why I'm inviting y'all to make all the
24 arguments you can.

25 MR. SWERLING: I just -- I don't want to make

1 any additional arguments. I just think -- the reason I

2 ---

3 THE COURT: It's one of fundamental fairness.
4 Treat everybody the same, feed us with the same spoon.

5 MR. SWERLING: And I know you will but I guess
6 what I'm -- in order to -- because there's very few
7 cases of where the State's asking for a continuance, I
8 think you have to look at the cases where the Defense
9 has asked for a continuance. And that's what I'm trying
10 to say is that where we're making the motion is a number
11 of cases and especially in the rules book that has in
12 the annotations that it was not a denial -- it was not
13 abuse of discretion for the judge to deny the
14 continuance. So that's why I raise that issue.

15 THE COURT: All right. Yes, ma'am.

16 MS. JOHNS: And further, Your Honor, with
17 regard to the property the State may have, I think it
18 would be important for the Court to consider when the
19 information was available to the State. If this
20 information was available the last time that we had this
21 trial scheduled which was March 16th and they're just
22 acting upon it now, I think that that would be a very

23 ---

24 THE COURT: Well, all indication -- let me stop
25 you and help you. All indication is that this

1 information became available to the State last night.
2 And if in fact it was available last time, was April or
3 six months ago, whenever, one would assume that that
4 particular witness that came forward last night would
5 have come forward then if he had information knowing
6 when the trial was going to be. So whatever that's
7 worth.

8 MS. JOHNS: Very well, Your Honor, thank you.

9 THE COURT: All right. Yes, Ms. Shipley,
10 anything further?

11 MS. SHIPLEY: No, Your Honor.

12 THE COURT: All right. Now I think there was a
13 question by Mr. Swerling to ask Investigator Don McRae
14 to give some testimony. I'm going to deny that at this
15 time because it is an ongoing investigation.

16 And I do find from the arguments that I've
17 heard this morning and the little bit I know about this
18 case that this evidence that is a gun that could be the
19 murder weapon is not simply marginal evidence. And when
20 I don't have a gun but would have another or additional
21 potential witness that might shed light on this case,
22 that might be inculpatory or exculpatory, I don't know.
23 But out of an abundance of caution, to be fair to the
24 State as well as to the Defendants, it could exculpate
25 them, I'm going to grant the State's request for a

1 continuance. I think the standard is abuse of
2 discretion. And continuance, as I remember the old
3 rule, it is left within the sound discretion or the
4 tunder (phonetic) of the discretion of the trial judge.

5 It's an unfortunate matter that brings us here
6 today but I think that in the effort to be fair to
7 everybody involved, it's the correct decision that I've
8 made herein granting the State their request for a
9 continuance.

10 MR. SWERLING: Judge, I'm not arguing the
11 ruling ---

12 THE COURT: That's all right.

13 MR. SWERLING: --- but I would wonder -- I
14 would like to have the Court consider a motion for bail
15 then since the Defendants have been held for two years
16 without bail.

17 THE COURT: I would let you apply for that
18 motion in front of the Chief Judge for Administrative
19 Purposes. My job here today is to grant or deny the
20 continuance. And my authority only extends beyond the
21 term, for the extent of the term. Beyond that, I think
22 it's fair and appropriate and under the rules, you
23 should go before the Honorable Michelle Childs to
24 request bail.

25 MR. SWERLING: Yes, sir, thank you.

1 THE COURT: All right, anything further?

2 MS. SHIPLEY: No, Your Honor.

3 THE COURT: Good luck to both of you gentlemen
4 and maybe you'll get another suit by the time we come
5 back all right.

6 Thank you all so very much.

7 MR. SWERLING: Judge, do you want us to stay

8 ---

9 THE COURT: You can if you want to. The jury's
10 going to come in at 11:00. You want me ---

11 MR. SWERLING: I don't have any problem if you
12 want to discharge them without us being there.

13 THE COURT: Okay, that's fine.

14 MR. SWERLING: Whatever you want, if you want
15 us here.

16 THE COURT: I'll just say something came up and
17 I had to continue the case. It was nobody's fault and
18 it will be retried at some future day. And I'll tell
19 them that you and Ms. Johns thank them for their
20 participation in this matter.

21 Thank you all so very much.

22 MS. SHIPLEY: Thank you, Your Honor.

23 MR. SWERLING: Thank you, Your Honor.

24 ----- END OF TRANSCRIPT OF RECORD -----

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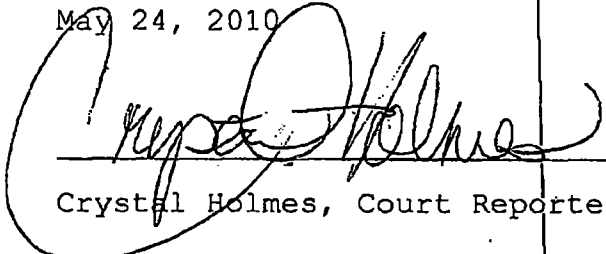
STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Crystal Holmes, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and Complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 18th and 19th days of May, 2009.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 24, 2010


Crystal Holmes, Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FIFTH JUDICIAL CIRCUIT
 COUNTY OF RICHLAND)

STATE OF SOUTH CAROLINA)

PLAINTIFF,)

VS.)

TREMAINE WRAY AND TAURUS WATTS,)

DEFENDANT.)

07-GS-40-5913

07-GS-40-5914

VOLUME 1

OCTOBER 5, 2009
 COLUMBIA, SOUTH CAROLINA

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE MICHELLE CHILDS, JUDGE, AND A JURY

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

ATTORNEYS FOR THE STATE:
 VANESSA SHIPLEY, ESQUIRE
 JOANNA MCDUFFIE, ESQUIRE

ATTORNEY FOR DEFENDANT WRAY
 JACK SWERLING, ESQUIRE
 ARIE BAX, ESQUIRE

ATTORNEY FOR DEFENDANT WATTS
 THERESA JOHNS, ESQUIRE

HILDA M. JORDAN, CVR
 CIRCUIT COURT REPORTER

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ID ENTERED

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before the start of this proceeding.

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1 THE COURT: I'm ready to proceed. Go ahead.

2 MS. MCDUFFIE: Your Honor, they are transporting
3 the defendants up one at a time, so it may take a moment.

4 THE COURT: Okay. That's fine. And if somebody
5 sneaks in we'll deal with that, but I told them I need full
6 attention to you-all. They'll just have to wait for breaks
7 and all of that.

8 As we are waiting, any objections to voir dire on
9 either side?

10 MR. SWERLING: We have none, Your Honor.

11 MS. MCDUFFIE: We have none.

12 THE COURT: Okay.

13 MR. SWERLING: I don't know where my co-counsel
14 is.

15 THE COURT: Okay.

16 MS. MCDUFFIE: And, Your Honor, we don't have the
17 strike sheets yet.

18 THE COURT: Oh, okay. All right.

19 You all can come in now, if you can catch me,
20 because I've had delays this morning. I need to give them my
21 full attention, but if anybody can catch me I'm happy to
22 hear you.

23 Mr. Truett, you're aware that we're waiting on more to
24 be added in --

25 MR. TRUETT: Yes, ma'am.

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1 THE COURT: All right.

2 MS. SHIPLEY: At this time, the state calls the
3 case against Tremaine Wray and Taurus Watts. Both are
4 indicted for the charge of murder. Taurus Watts indictment
5 number of 2007-GS-5913. Tremaine Wray's indictment number
6 is 2007-GS-40-5914. Mr. Watts is represented by Teresa
7 Johns, and Mr. Wray is represented by Jack Swerling. The
8 state is represented by the Vanessa Shipley, myself, and
9 Joanna McDuffie.

10 THE COURT: Okay. And are we ready to proceed to
11 jury selection, all parties?

12 MS. MCDUFFIE: We just got handed --

13 MR. BAX: Your Honor, the defendant is coming in
14 right now.

15 THE COURT: I apologize.

16 MS. MCDUFFIE: Your Honor, we just got Ms. Johns'
17 voir dire, if we could look over it.

18 THE COURT: Sure, go ahead.

19 (Pause.)

20 THE COURT: Okay, let the record reflect that both
21 defendants are in the courtroom.

22 MS. SHIPLEY: Should I recall the state, Your
23 Honor.

24 THE COURT: That will be fine.

25 MS. SHIPLEY: Thank you, Your Honor.

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1 Your Honor, at this time, the state calls the case
2 against Taurus Watts and Tremaine Wray. As I indicated
3 earlier, Your Honor, the defendants are both indicted for
4 murder. The Taurus Watts indictment number is
5 07-GS-40-5913, and Tremaine Wray's indictment also for
6 murder under 2007-GS-40-5914.

7 THE COURT: Are the parties ready to proceed to
8 jury selection?

9 MR. SWERLING: Yes, Your Honor.

10 MS. MCDUFFIE: In terms of voir dire handed up by
11 Ms. Johns, the state would object to number two, number
12 three, number seven, numbers 10, 11, 13 and 15.

13 THE COURT: Okay. Let me review those.

14 (Pause.)

15 THE COURT: Okay, what's wrong with number 11?

16 MS. MCDUFFIE: Your Honor, we only object to the
17 wording of regular patient. I don't think that --

18 THE COURT: Patient -- okay. All right, with that
19 -- other than that objection is that okay?

20 MS. MCDUFFIE: Yes, Your Honor.

21 THE COURT: Okay.

22 As to questions number three and number seven and
23 number 10 and number 15 -- I'm categorizing. Those I would
24 submit would be properly as jury charges as opposed to
25 asking that at this point in time, so I am inclined to not

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1 ask those particular questions.

2 MS. JOHNS: Your Honor, do you give a preliminary
3 charge to the jurors with regards to -- at the beginning of
4 the case with presumption of innocence?

5 THE COURT: I will state some general language
6 about that this case has been brought forth for trial based
7 upon an indictment. An indictment does not indicate that a
8 defendant is guilty or innocence, but just is a formal
9 document by which this case is brought to trial. The
10 defendants have exercised their constitutional rights to a
11 jury trial. It's the states burden to prove them guilty.

12 MS. JOHNS: That is the charge that --

13 THE COURT: Sure.

14 MS. JOHNS: -- prior to the start --

15 THE COURT: Right.

16 MS. JOHNS: And that should cover all these, Your
17 Honor. THE COURT: Okay. Okay, all right. So with that
18 notation of the Court on the preliminary charge, I
19 understand Ms. Johns to be withdrawing the request that you
20 requested

21 MS. MCDUFFIE: You Honor, we still object to
22 question number 13. I believe it's --

23 THE COURT: I'm sorry. I missed one. Okay.

24 MS. MCDUFFIE: -- State v. Adams. That is not
25 proper.

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1 THE COURT: Okay. I would agree with that.

2 MS. MCDUFFIE: And Your Honor, finally, on number
3 two. I don't know if you said that or not, but I believe
4 that's also covered in your charge.

5 THE COURT: Okay. That's number two. That is
6 also in that category so that is covered in the charge, as
7 well.

8 So I believe the only one that I actually have to rule
9 on is number 13, is that correct?

10 MS. MCDUFFIE: That is correct, Your Honor.

11 THE COURT: Okay. So I will agree with that.

12 Okay, and then I understand that the state has no
13 objection to defense's voir dire and defense has no
14 objection to the state's voir dire, and that would include
15 both defendants; is that correct?

16 MR. SWERLING: Yes, Your Honor.

17 MS. JOHNS: Yes, Your Honor.

18 MS. MCDUFFIE: Yes, Your Honor.

19 THE COURT: Okay. All right.

20 Are we now ready to proceed with jury selection?

21 MS. SHIPLEY: Yes, Your Honor.

22 THE COURT: And all parties have gotten their
23 strike sheet?

24 MR. SWERLING: Yes. You have my voir dire and the
25 witness list. We crossed out the ones that -- I just want

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1 to be sure you have that one.

2 THE COURT: Okay. And the state -- I do not have
3 a witness list from you.

4 MS. MCDUFFIE: Your Honor, it's on the bench with
5 our voir dire.

6 THE COURT: Okay. Let me just make sure I have
7 it. Okay got it. Oh, yeah, I remember seeing this.

8 Okay, just so you know, because this is a criminal
9 proceeding all jurors will be referred to by number. No
10 names will be mentioned. The clerks will monitor except
11 when the jurors are asked to stand at the appropriate time,
12 but they would only be indicating their juror numbers.
13 There will be questions that I deem to be appropriate in
14 terms of their responses to be heard outside the jury and,
15 of course, I will invite the attorneys to come over by me
16 with the court reporter and hear those responses. Okay.

17 MS. JOHNS: Your Honor, there are just a couple
18 more housekeeping matters with regards to this jury.
19 Everybody has electronic devices now. I don't know how Your
20 Honor handles those issues, but I'd like for them to
21 specifically be instructed not to use communication devices
22 even during their lunch break. To either tweet somebody to
23 let them know their status is or what they're doing right
24 now on Facebook or any of those other social networking
25 groups. I do believe that they are collected and then they

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1 are dispersed when they go to lunch and then when they go
2 home. But even overnight, I will ask the Court to charge
3 the jurors not to communicate anything about this case
4 through those networking sites.

5 Also, Your Honor, it's not going to be a problem, but
6 just out of an abundance of caution I would like for the
7 Court to instruct the staff of the courtroom and anybody
8 that has any direct or indirect dealings with the jurors
9 that are selected, not to discuss the proceeding in any
10 manner with them, whether we're doing motions or we're
11 negotiating a plea, whether we're going to discuss whether
12 or not they're going to get lunch. I mean, those kinds of
13 things can develop into a conversation, and misconstrued,
14 and I just want to make sure that these jurors remain fair
15 and impartial in this case.

16 THE COURT: Okay. I will so instruct the staff of
17 the court to include the clerk, the court reporter, any of
18 the deputies or anybody else that they are not to have any
19 type of conversation or instructions or conversations with
20 the jurors. I'll also indicate that to the jurors that
21 these persons are not being rude, but that is just to deal
22 with how we will be proceeding. Okay. Are the parties
23 ready to proceed?

24 MS. SHIPLEY: Yes, ma'am.

25 MS. JOHNS: Yes, for defendant Watts.

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1 THE COURT: Okay. All right. Jurors please.

2 (Jury panel members enter courtroom.)

3 MR. SWERLING: Judge --

4 THE COURT: Yes?

5 MR. SWERLING: -- we're going to strike jointly.

6 THE COURT: Oh, okay.

7 MR. SWERLING: It will save time, make it easier
8 -- could you instruct the jury as to why we're doing that,
9 instead of individually, we'll do it together.

10 THE COURT: Oh, okay.

11 MS. SHIPLEY: And it's ten, ten, and ten for us.

12 THE COURT: Oh, okay.

13 (Pause. More jury panel members enter courtroom.)

14 BAILIFF: All members of the jury panel are
15 present, Your Honor.

16 THE COURT: Ladies and gentlemen of the jury
17 panel, if you would please direct your attention to me. My
18 name is Michelle Childs. I'm a circuit court judge here in
19 Richland County, and we are about to proceed with a criminal
20 case. You-all have been duly qualified this morning to be
21 in the process of selection for various juries that we have
22 going on in court -- throughout this term of court, this one
23 week until this Friday. There are civil cases and there are
24 criminal cases. We are about to proceed with a criminal
25 case in this matter, and you-all would be asked certain

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1 questions to determine your qualifications to serve on this
2 particular jury.

3 The state has the case of the State versus Tremaine
4 Wray, as well as the State versus Taurus Watts. Both of
5 these defendants will be tried here today together. They
6 have both been true billed by indictments, and that just
7 means that they have been true billed for murder, but these
8 are indictments only. They are the formal instrument by
9 which this case is brought to trial. It does not mean that
10 they are guilty. They are exercising today their
11 constitutional right to a jury trial, which means that the
12 state has the burden of proving them guilty beyond a
13 reasonable doubt. They are not required to prove themselves
14 innocent. So they are exercising their constitutional right
15 to have you as potential jurors to determine their guilt or
16 innocence during this proceeding.

17 I'm going to ask you all a series of questions, but
18 before we do so I will have the clerk swear you in for your
19 qualification process at this time.

20 Madam Clerk.

21 THE CLERK: Thank you, Your Honor. Ladies and
22 gentlemen of the jury panel, please.

23 (WHEREUPON, the jury panel was
24 sworn to tell the truth.)

25 THE COURT: Ladies and gentlemen of the jury, I'm

1 going to ask that if you have a response to any of the
2 questions that I ask you, please stand in your place and
3 indicate your juror number only. Do not indicate your name
4 for purposes of this proceeding at any time. Indicate your
5 juror number only, and we will have your name on our sheets.
6 You do not need to state your name out loud. Then you can
7 indicate your response.

8 There may be certain questions that you do not wish to
9 respond to in front of your fellow jurors. I still need to
10 hear your response. So, just raise your hand and direct
11 yourselves to one of the bailiffs and they will then allow
12 you will be invited to come over here with me by the court
13 reporter, and I will invite the attorneys up, the defendants
14 as well as the state, to hear your answers so they will be
15 entitled know what your response will be but it won't be in
16 front of your fellow jurors so as to protect your privacy
17 issues. We are not here to embarrass you at all. We are
18 just here for full information to assist us with the
19 selection process for you to serve as a juror in this
20 particular case.

21 So I'm ready to proceed now please listen carefully to
22 the various questions I will ask you.

23 First let me introduce you to the lawyers and their
24 clients. The state is being represented by Ms. Vanessa
25 Shipley and Ms. Joanna McDuffie. They are both employed by

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1 the Richland County Solicitor's Office. Do any of you know
2 either of these persons or have a close personal or social
3 relationship with either of them or have you or have any
4 member of your family been a victim such that they have
5 represented your interest for the state? If so please
6 stand. I need your juror number.

7 JUROR NO. 18: Number 18.

8 THE COURT: 18. Okay juror number 18.

9 JUROR NO: I wouldn't say it's a personal nature,
10 but I think I was her neighbor for a very short period of
11 time.

12 THE COURT: And which person are you referring to.

13 JUROR NO. 18: Vanessa Shipley. She doesn't --

14 MS. SHIPLEY: I don't know her.

15 THE COURT: Okay.

16 JUROR NO. 18: A very short time.

17 THE COURT: Okay. Okay. Would that affect your
18 ability to proceed as a fair and impartial juror in this
19 case.

20 JUROR NO. 18: I don't think so.

21 THE COURT: Okay. Thank you for the information.

22 Yes, ma'am?

23 JUROR NO. 85: Number 85. I met Joanna at a
24 gathering that we were --

25 THE COURT: Okay. Would that affect your ability

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1 to proceed as a fair and impartial juror in this case?

2 JUROR NO. 85: No.

3 THE COURT: Okay. Thank you. Thank you for that
4 information.

5 Jurors, I would like to introduce you to Tremaine Wray,
6 who is being represented by Jack Swerling and then, also,
7 Mr. Ari Bax. Do any of you know Mr. Tremaine Wray, have a
8 close personal associate relationship with Mr. Tremaine
9 Wray. If so please stand. Okay, do either of you know Jack
10 Swerling or Ari Bax, who are representing Mr. Tremaine Wray.
11 Do you have a close personal or social relationship with
12 him, have you or any member of your immediate family or
13 close friends or family ever been represented by Mr.
14 Swerling's law firm, who is a sole practitioner -- is that
15 still correct?

16 MR. SWERLING: That is correct.

17 THE COURT: Okay. And then also Mr. Ari Bax, who
18 works with his wife, Ms. Richardson-Bax?

19 MR. BAX: That's correct, Your Honor.

20 THE COURT: Okay. Yes ma'am, you know them?

21 JUROR NO 66: Yes, ma'am. I know them. This
22 wouldn't affect my ability to serve, but a friend of mine
23 works for Mr. Swerling.

24 THE COURT: Okay. And you should be fair and
25 impartial in this case.

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1 JUROR NO. 66: Yes.

2 THE COURT: Okay. All right.

3 JUROR NO 135: My father was represented by Jack
4 Swerling.

5 THE COURT: Okay, would that affect your ability
6 to be a fair and impartial juror in this case.

7 JUROR NO 135: No, ma'am.

8 THE COURT: Okay. Thank you. All right. Thank
9 you, gentlemen.

10 We now have Mr. Taurus Watts, who is represented by
11 Teresa Johns. Does anyone on the jury panel know Mr. Taurus
12 Watts or have a close personal or social relationship with
13 him, if so please stand. Juror No. 135 stands.

14 JUROR NO. 135: Yes, ma'am.

15 THE COURT: Okay, tell us your relationship?

16 JUROR NO. 135: He's a real good friend of mine.
17 I'm real close to his family.

18 THE COURT: Okay. All right, with that affect
19 your ability to proceed as a fair and impartial juror in
20 this case.

21 JUROR NO. 135: No, ma'am.

22 THE COURT: Okay. Thank you.

23 And does anyone know Ms. Teresa Johns, who also
24 practices alone. Do you have a close personal or social
25 relationship with Ms. Teresa Johns or has anyone in your

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1 family or yourself been represented by her law firm for any
2 type of matter. Okay.

3 All right listen carefully to another series of
4 questions that I have for you. Has any member the jury
5 panel or any member of their family ever been a victim of a
6 crime of violence; if so please stand. Okay, I'm going to
7 ask you to come forward on these.

8 THE CLERK: Number 44.

9 (Off the record discussion with Juror No. 44, counsel and
10 the Court.)

11 THE COURT: Okay. Juror number 44 will remain
12 with us.

13 THE CLERK: Juror number six.

14 (Off the record discussion with Juror No. 6, counsel and the
15 Court.)

16 THE COURT: All right. Juror No. 6, will remain
17 with us.

18 THE CLERK: Juror number 285.

19 (Off the record discussion with Juror No. 285, counsel and
20 the Court.)

21 THE COURT: All right. Juror No. 285 will remain
22 with us.

23 THE CLERK: Juror No. 192.

24 (Off the record discussion with Juror No. 192, counsel and
25 the Court.)

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1 THE COURT: All right. Juror No. 192 will remain
2 with us.

3 THE CLERK: Number 236.

4 (Off the record discussion with Juror No. 236, counsel and
5 the Court.)

6 THE COURT: All right. 236 will remain with us.

7 THE CLERK: Number 247.

8 (Off the record discussion with Juror 247, counsel and the
9 Court.)

10 THE COURT: All right. 247 will remain with us.

11 THE CLERK: Number 232.

12 (Off the record discussion with Juror 232, counsel and the
13 Court.)

14 THE COURT: 232 will remain with us.

15 Just to be sure that I have clarification on this
16 question. Has any member of the jury panel or any member of
17 their immediate families related by blood or marriage or
18 close personal friends or acquaintance of Warren B. Giese,
19 known as Barney Giese, the solicitor or any employee of the
20 Fifth Circuit Solicitor's Office here in Richland County, if
21 so please stand.

22 All right, I'm now going to give you certain of the
23 witnesses who might be in this case before I proceed to
24 other voir dire questions. Please listen carefully because
25 some of these persons may not actually be physically in the

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1 courtroom, so listen for their names.

2 Do any of you, and this will be the preference to all
3 these questions, have a close personal or social
4 relationship or know any of these following persons:

5 Investigator Don McRae, Richland County Sheriff's
6 Department. He is president in the courtroom and is
7 standing. Deputy Ray Weldon Gregory, formerly with the
8 Richland County Sheriff's Department. Deputy Brian
9 Galinski, Richland County Sheriffs Department. Deputy James
10 Gore, Richland County Sheriff's Department. Deputy Michael
11 P. Smith, Richland County Sheriff's Department.
12 Investigator Gilbert Gallegos, Richland County Sheriff's
13 Department, and he is present and standing. Sergeant Eric
14 Barnes, Richland County Sheriff's Department. Investigator
15 Heidi Scott, Richland County Sheriff's Department.
16 Investigator Matt Ellis, Richland County Sheriff's
17 apartment.

18 THE BAILIFF: Your Honor.

19 THE COURT: I apologize.

20 Juror number?

21 JUROR NO. 209: 209.

22 THE COURT: Okay.

23 JUROR NO. 209: I have known Matt Ellis for
24 several years, about 15 years, now.

25 THE COURT: In what capacity?

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1 JUROR NO. 209: Socially, business when he was --
2 before he was with the Sheriff's Department.

3 THE COURT: Okay. Would that affect your ability
4 to proceed as a fair and impartial juror in this case?

5 JUROR NO. 209: No.

6 THE COURT: Okay, thank you for the information.

7 Lt. Zane Padgett, Richland County Sheriff's Department.
8 Investigator David Collins --

9 THE CLERK: Your Honor, there's a juror --

10 THE COURT: I'm sorry I'm looking down, and I need
11 to look back up.

12 JUROR NO. 73: Number 73.

13 THE COURT: Okay, thank you. And your association
14 -- is it with Lt. Zane Padgett or --

15 JUROR NO. 73: Yes, ma'am. I just know him.
16 We've been friends a long time.

17 THE COURT: Okay. Will that affect your ability
18 to proceed as a fair and impartial juror in this case?

19 JUROR NO. 73: No, ma'am.

20 THE COURT: Okay.

21 Investigator David Collins, Investigator Patricia
22 Reid-Enzor, Richland County Sheriff's Department. Same with
23 David Collins. Investigator Harold Bouknight, Richland
24 County Sheriff's Department. And the remainder of these
25 persons will be Richland County Sheriff's Department: Lt.

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1 Anna Elsey, Investigator Robert Oates, Investigator Trish
2 Odom, Investigator Stan Richards, Tina Goff, Will
3 Cedarstaff, Curtis Burnett, Dr. Grayson Amick, Sgt.
4 Christopher White, and that is Columbia Police Department on
5 that one. Okay, Richland County Sheriff's Department again.
6 Sgt. Dave McRoberts, Capt. Stan Smith. Lt. Scott McDonald,
7 both Richland County Sheriff's Department. Jim Reese,
8 Coroner's Office, Christine Vincent, Coroner's Office. Amy
9 Stephens, South Carolina Law Enforcement Division or also
10 known as SLED. Nikki Perry, SLED. Selena Kinard, SLED.
11 Lisa McReynolds, SLED. Karonda Williams, formerly with the
12 Department of Health and Environmental Control or DHEC.
13 Michael Moskal, SLED. Jennifer Blair, 911 Communications.
14 Tim Grambow, SLED. Dr. Clay Nichols, Palmetto Richland
15 Mental Health -- Palmetto Richland Memorial Hospital.
16 Excuse me. Dr. Michael Taillon, Providence Northeast
17 Hospital. Suncom Custodian of Records, Ray McDonald. And
18 the following persons are essentially lay witnesses: Cary
19 Watson, Ricky Jacobs, Stephanie Boston, Verda Roberts,
20 Travis Malone, Charlie Bates, Earl Jerome Green, Luther
21 Landrum, Nathaniel Johnson, Jalicca "Lisa" Johnson, Darrell
22 Wray, James Lamont Goodwin, Chris Crosby, Bryan --

23 Oh, yes, sir. Juror No. 135; is that correct?

24 JUROR NO. 135: Yes, ma'am. Chris Crosby.

25 THE COURT: Okay. Yes, sir. Okay. How do you

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1 know Mr. Crosby?

2 JUROR NO. 135: He used to be my uncle-in-law.

3 THE COURT: He is your former uncle-in-law?

4 JUROR NO. 135: Yes, ma'am.

5 THE COURT: Okay. Will that affect your ability
6 to proceed as a fair and impartial juror in this case?

7 JUROR NO. 135: No, ma'am.

8 THE COURT: Okay. Thank you for the information.

9 Bryan Johnson, Shawn Watts, Nellie Wray, Kasondra
10 Roper, Jarrell Dansby, Rashonda Simpson, Brian Watson.

11 I would also go over some other witnesses: Ronald
12 Wray. Brian Johnson. Darius White. Brian Morris.

13 Yes? Juror number?

14 JUROR NO. 250: 250. Brian Morris.

15 THE COURT: Okay, that's a defense potential
16 witness. Can you give us some further information to assist
17 the clerk?

18 MS. JOHNS: What was the question, Your Honor?

19 THE COURT: Brian Morris. She knows the name so
20 she needed a little more information.

21 MR. SWERLING: I think we need to approach on
22 that.

23 THE COURT: Okay. All right.

24 (Off the record bench conference with counsel and the
25 Court.)

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1 THE COURT: Okay. All right, let's do it this
2 way. We need to narrow it down by which Brian Morris you
3 know.

4 JUROR NO. 250: My son. He's a Kershaw County
5 Deputy.

6 THE COURT: That's your son?

7 JUROR NO. 250: Yes.

8 THE COURT: Brian Morris -- Okay. That's not who
9 we're referring to. Okay. State your juror number.

10 JUROR NO. 236: I also know a Brian Morris.

11 THE COURT: Okay. State your juror number:

12 JUROR NO. 236: Juror number 236.

13 THE COURT: Okay. All right.

14 JUROR NO. 236: And I'm not sure -- it's a medical
15 insurance company that he works for.

16 THE COURT: Okay. That's not the Brian Morris
17 here.

18 JUROR NO. 236: Okay.

19 THE COURT: Okay. Thank you all.

20 Okay. Ray Livingston, Richland County Sheriff's
21 Department? Okay. Juror number?

22 JUROR NO. 57: Juror number 57.

23 THE COURT: Okay, how do you know Mr. Livingston?

24 JUROR NO. 57: A neighbor.

25 THE COURT: Okay, do you feel that you can be a

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1 fair and impartial juror?

2 JUROR NO. 57: Of course.

3 THE COURT: Okay. Thank you.

4 Timothy Weldon. Darian Gordan. Marcus Gordon. Marion
5 Jacobs. Maurice Cunningham. Dave McDougall. Jeff
6 Holyfield. Gary Clark. Okay.

7 All right. Okay.

8 Are you or any member of your family employed by any
9 law enforcement agency, if so please stand. Juror number
10 please?

11 JUROR NO. 250: 250.

12 THE COURT: Okay.

13 JUROR NO. 250: My son is a deputy with Kershaw
14 County Sheriff's Department.

15 THE COURT: Okay. Would that affect your ability
16 to be a fair and impartial juror?

17 JUROR NO. 250: No, ma'am.

18 THE COURT: All right. Your juror number?

19 JUROR NO. 247: 247. Is that just locally or --

20 THE COURT: Anywhere. It could be anywhere.

21 JUROR NO. 247: Well, my brother is an
22 investigator in Chicago.

23 THE COURT: Okay. Would that affect your ability
24 to proceed as a fair and impartial juror in this case?

25 JUROR NO. 247: No, ma'am.

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1 THE COURT: Okay. Anyone else?

2 Are you or anyone in your family personally acquainted
3 with anyone employed by any law enforcement agency? Juror
4 number?

5 JUROR NO. 66: I have several close friends who
6 are law enforcement investigators and my husband is a former
7 law enforcement officer.

8 THE COURT: Who are they employed by?

9 JUROR NO. 66: Lexington County.

10 THE COURT: Okay. Would that affect your ability
11 to be a fair and impartial juror in this case?

12 JUROR NO. 66: No, ma'am.

13 THE COURT: Okay. Juror number?

14 JUROR NO. 151: 151. I have a friend with the
15 Richland County Sheriff's Department and another friend with
16 the City of Columbia. That will not affect my service as a
17 juror.

18 THE COURT: Okay. The person with the Richland
19 County Sheriff's Department is not listed as a witness here?

20 JUROR NO. 151: Correct. No.

21 THE COURT: Okay. Thank you. I just wanted to
22 clarify.

23 Yes, sir?

24 JUROR NO. 296: All right.

25 THE COURT: What's your number:

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1 JUROR NO. 296: 296. I deal with Richland County,
2 most of the law enforcement departments all over the
3 country.

4 THE COURT: In what capacity?

5 JUROR NO. 269: I am a defense realization
6 marketing service for CLA (sp).

7 THE COURT: Okay. Would that affect your ability
8 to be a fair and impartial juror?

9 JUROR NO. 269: No.

10 THE COURT: And as I listed the various names for
11 potential witnesses here, did any of those names ring a bell
12 for you?

13 JUROR NO. 269: No.

14 THE COURT: Okay. Thank you.

15 Yes?

16 JUROR NO. 34: Actually, I think I know --

17 THE COURT: Juror number, first?

18 JUROR NO. 34: 34.

19 THE COURT: Okay.

20 JUROR NO. 34: I have a relative who's in law
21 enforcement. He's on the Federal District Court of Appeals
22 and a circuit judge in Florida?

23 THE COURT: Okay. That's not -- would that affect
24 your ability to be a fair and impartial juror?

25 JUROR NO. 34: No, ma'am.

1 THE COURT: Okay. Thank you.

2 Are you or any member of your family related to anyone
3 employed by any law enforcement agency, and if you've
4 already answered that question then you don't need to stand.
5 Okay. Are you or any member of your family -- and we've
6 already asked about the solicitor's office, fifth circuit.
7 And we've covered everybody there. Okay. Or the South
8 Carolina Attorney General's Office, if so, please stand.
9 The South Carolina Attorney General's office, meaning, are
10 you or any member of your family related to anyone employed
11 there? Are you personally acquainted with any member of the
12 solicitor's office or the South Carolina Attorney General's
13 Office, and we're referring to the Fifth Circuit Solicitor's
14 Office.

15 Yes, ma'am?

16 JUROR NO. 142: My family --

17 THE COURT: Juror number first, please?

18 JUROR NO. 142: Oh. 142. My father is real good
19 friends with Henry McMaster, the Attorney General.

20 THE COURT: Okay, and would that affect your
21 ability to proceed as a fair and impartial juror here?

22 JUROR NO. 142: No. No, ma'am.

23 THE COURT: Okay.

24 JUROR NO. 301: 301.

25 THE COURT: Okay.

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1 JUROR NO. 301: My friend works for the Attorney
2 General's Office.

3 THE COURT: You have a friend at the Attorney
4 General's Office?

5 JUROR NO. 301: Yes.

6 THE COURT: Okay. Would that affect your ability
7 to be a fair and impartial juror here?

8 JUROR NO. 301: No.

9 THE COURT: Okay. Yes, sir?

10 JUROR NO. 9: Number 9. My sister is good friends
11 with Henry McMaster.

12 THE COURT: Would that affect your ability to
13 proceed as a fair and impartial juror here?

14 JUROR NO. 9: Not at all.

15 THE COURT: Okay. Yes, sir.

16 JUROR NO. 197: I have a friend who works --

17 THE COURT: Juror number first.

18 JUROR NO. 197: 197.

19 THE COURT: Okay.

20 JUROR NO. 197: I have a friend who works in
21 Barney Giese's office.

22 THE COURT: Would that affect your ability to
23 proceed as a fair and impartial juror here?

24 JUROR NO. 197: No, ma'am.

25 THE COURT: Okay.

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1 JUROR NO. 273: 273. Close personal friends with,
2 the McMasters.

3 THE COURT: Would that affect your ability to
4 proceed as a fair and impartial juror here?

5 JUROR NO. 273: No.

6 THE COURT: Okay.

7 Have you seen, heard or read anything in the news
8 accounts of this case; if so please stand.

9 Have you formed an opinion about the guilt or innocence
10 of this defendant based on what you have seen, heard or
11 read. Nobody's indicating they've seen, heard or read
12 anything. Have you expressed an opinion about the guilt or
13 innocence of the defendant to any individual, and that is
14 regardless of whether or not you've seen, heard or read
15 anything; if so please stand.

16 Has anyone expressed an opinion to you about the guilt
17 or innocence of these defendants; if so please stand.

18 Have you participated in any discussions with any other
19 individuals concerning the facts and circumstances of this
20 case; if so please stand.

21 Based upon any conversations that you may have had is
22 there any information that you are aware of that would
23 render you unable to give both the state and the defense an
24 impartial trial; if so please stand.

25 Are you aware of an conscious or any bias or any

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1 prejudice either for or against the defendant in this case;
2 if so please stand.

3 Are you aware of any evidence in this case as a result
4 of any conversations or through the news media; if so please
5 stand.

6 The victim is Demuria Johnson of Columbia, South
7 Carolina. Are you related by blood or marriage to Demuria
8 Johnson or any member of his family; if so please stand.

9 MS. JOHNS: Demuria Johnson, Your Honor.

10 THE COURT: Demuria Johnson. Thank you.

11 Do you know Demuria Johnson or any member of his
12 family; do you have any close personal relationships with
13 anyone who knows or is related to Demuria Johnson or any
14 member of his family; if so please stand.

15 Can anyone, at this time, think of any reason why you
16 would not be impartial to both the state and the defense in
17 this case; if so please stand.

18 Okay. Some other questions. Just to make sure. This
19 case stems from a shooting in June of 2007, at the H&J Club,
20 also known as Chasers Lounge on Hardscrabble Road. Has any
21 jury member heard anything about this case in the media or
22 otherwise; if so please stand.

23 Has any member of the jury panel discussed this case or
24 heard anyone discuss this or a similar case either today or
25 before today; if so please stand.

1 This case involves an accusation of homicide. Does
2 that fact cause you to feel uneasy, hesitant or frightened
3 in any way; if so please stand. And then, of course, the
4 Court needs to know if you can be a fair and impartial
5 juror.

6 MS. JOHNS: Your Honor.

7 THE COURT: Yes. Okay. Juror number?

8 JUROR NO. 61: 61.

9 THE COURT: Okay. Can you come forward, please.
10 (Off record discussion with Juror No. 61, counsel and the
11 Court.)

12 THE COURT: All right. Juror No. 61 will remain
13 with us.

14 THE CLERK: Number 301.

15 THE COURT: You can come forward.

16 (Off the record discussion with Juror No. 301, counsel and
17 the Court.)

18 THE COURT: Juror No. 301 will be excused from the
19 trial of this case.

20 Earlier, I indicated that the victim is Demuria Johnson
21 from Columbia, South Carolina, but it's actually from St.
22 Matthews, South Carolina. So if that changes your mind as
23 to whether any of you know this person and have a close
24 personal or social relationship with him, please indicate so
25 to the Court. Okay.

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1 And has any member of the jury panel or any member of
2 their family ever been charged with or convicted of a crime
3 of violence; if so please stand. Please come forward. What
4 juror number?

5 THE CLERK: Number 8.

6 THE COURT: Okay.

7 (Off the record discussion with Juror No. 8, counsel and the
8 Court.)

9 THE COURT: Okay.

10 (Juror No. 8 remains.)

11 THE CLERK: Number 175.

12 THE COURT: Yes, sir.

13 (Off the record discussion with Juror No. 175, counsel and
14 the Court.)

15 THE COURT: Thank you, sir.

16 (Juror number 175 remains.)

17 THE COURT: This case contains facts regarding
18 drinking, cursing, fighting, and fatal injuries. Does the
19 nature of these facts cause any member of the panel
20 discomfort, suspicion, or any problem sitting as an
21 impartial juror; if so please stand. And other than those
22 person who have indicated earlier, is any member of the jury
23 panel a friend or acquaintance of any employee of Richland
24 County Sheriff's Department?

25 Do you have any new information to add, because I asked

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1 the question earlier about knowing such persons and being
2 acquainted? Okay.

3 Yes, ma'am, juror number?

4 JUROR NO. 273: 273. My dad worked for Sheriff
5 Lott a long time ago.

6 THE COURT: Would that affect your ability to be a
7 fair and impartial juror?

8 JUROR NO. 273: No, ma'am.

9 THE COURT: Okay.

10 Yes, sir?

11 JUROR NO. 159: Juror No. 159. I had friends on
12 the Richland County Sheriff's Department a few years ago.

13 THE COURT: Okay. Would that affect your ability
14 to proceed as a fair and impartial juror in this case?

15 JUROR NO. 159: No, ma'am.

16 THE COURT: Okay.

17 Yes, sir.

18 JUROR NO. 8: Number 8. I have a friend at the
19 Richland County Sheriff's Department, as well.

20 THE COURT: Would that affect your ability to
21 proceed as a fair and impartial juror?

22 JUROR NO. 8: No.

23 THE COURT: Okay.

24 Okay, listen carefully to this one because it
25 deals with scheduling. This case, we expect, will proceed

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1 at least until Friday. I need to know if any of you have
2 second or third shift work such that you're here in the day
3 time and you're trying to be awake and participate, but you
4 also have to go to work right after at night, and maybe lose
5 some sleep and be trying to come here. We need whoever is
6 on the panel to be very attentive and to be fair to both
7 sides. So just be honest about that information at this
8 time, please stand.

9 Juror number?

10 JUROR NO. 89: 89.

11 THE COURT: Okay.

12 JUROR NO. 89: I work second shift, but I'm
13 excused for this week.

14 THE COURT: Okay. Thanks for the information.

15 JUROR NO. 159: 159. I have a full-time job in
16 the day, 6:30 to 3:00, and I have my own business in the
17 afternoons. I usually work from 4:00 to 7:00 or 8:00 p.m.

18 THE COURT: Okay, but you -- you're on jury duty
19 this week?

20 JUROR NO. 159: Yes, but I --

21 THE COURT: Okay. I understand. And so indicated
22 so I understand that information, but I can't excuse you for
23 just that reason, but thanks for the information.

24 All right. Is any member of the jury panel more than a
25 causal smoker. If so do you believe you can limit your

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1 urges to just cigarettes during the break, and we're not
2 trying to be funny about that, but, again, this goes to
3 attentiveness to the trial and to make sure that you're okay
4 -- just to give you general information. We generally start
5 about 9:30. We'll go on to 5:00, 5:30. Just depends on
6 where we are with a witness. You'll get your appropriate
7 breaks. We try to break at appropriate times during the
8 trial, but you will have comfort breaks during the trial.
9 Okay. Thank you very much.

10 All right, and just generally, is there any member of
11 the jury who is a member of any organization supporting,
12 promoting, contributing to law enforcement rights; if so
13 please stand. Juror number?

14 JUROR NO. 32: I'm a volunteer at social services
15 and I work with a non-profit organization with Pardon and
16 Parole sometimes.

17 THE COURT: Would that affect your ability to
18 proceed as a fair and impartial juror?

19 JUROR NO. 32: No, ma'am.

20 THE COURT: Okay.

21 Anyone else?

22 Is there any member of the jury who is a member,
23 contributor, supporter or member of any organization
24 supporting victims rights; if so please stand?

25 Juror number?

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1 JUROR NO. 172: Juror number 172. I volunteer at
2 DAWN.

3 THE COURT: And what does that organization do?

4 JUROR NO. 172: It's for battered people.

5 THE COURT: Okay. Would that affect your ability
6 to proceed as a fair and impartial juror?

7 JUROR NO. 172: No.

8 THE COURT: Is there any member of the jury panel
9 who is a member, supporter or contributor of rights of
10 person's who have been accused or arrested for a crime; is
11 so please stand? Okay.

12 All right, do any party's counsel need for the Court to
13 exercise any more questions to the jurors?

14 MS. SHIPLEY: Nothing from the State, Your Honor.

15 MR. SWERLING: Nothing.

16 MS. JOHNS: No, Your Honor.

17 THE COURT: Okay. Ladies and gentlemen, at this
18 time we will now proceed to jury selection. Do the parties
19 need a break at or would you like to proceed on? Okay. All
20 right.

21 Generally, when we have a trial where there is more
22 than one defendant, the state would have the opportunity to
23 strike 10. For the nature of the charges here, each
24 defendant will have the opportunity to exercise 10 strikes.
25 I've been informed by defendant counsel that they will do

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1 their strikes jointly at this time. But you need to know
2 that as we proceed with the trial that each defendant has
3 their own counsel. So you'll need to listen to the facts
4 carefully and be separate and independent in your thinking
5 as to the state's burden of proof as to each defendant on
6 the trial of the case, but just for this purpose of
7 proceeding they intend to exercise their strikes jointly.

8 Madam Clerk, I'm ready to proceed.

9 THE CLERK: Thank Your Honor.

10 Ladies and gentlemen of the jury panel, as I call your
11 number please come down and stand in front of this
12 microphone and give your occupation, okay. Bring all your
13 belongings with you.

14 Number 169.

15 JUROR NO. 169: I'm a family nurse practitioner.

16 THE CLERK: What says the state?

17 MS. SHIPLEY: Please present the juror.

18 THE CLERK: What says the defense?

19 MR. BAX: Please excuse the juror from the trial
20 of this case. Thank you.

21 THE CLERK: Have a seat back in the jury box.

22 Juror No. 47.

23 JUROR NO. 47: Truck driver for Shaw Industries.

24 THE CLERK: What says the state?

25 MS. SHIPLEY: Please excuse the juror.

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1 THE CLERK: Have a seat back in the back of the
2 courtroom, please.

3 Juror 9.

4 JUROR NO. 9: Account manager for a local
5 furniture company.

6 THE CLERK: What says the state?

7 MS. SHIPLEY: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. BAX: Please excuse the juror from the trial
10 in this case. Thank you.

11 THE CLERK: Have a seat back in the courtroom,
12 please.

13 Number 224.

14 JUROR NO. 224: I'm a quality management systems
15 coordinator for an automotive shop.

16 THE CLERK: What says the state?

17 MS. SHIPLEY: Please present the juror.

18 THE CLERK: What says the defense?

19 MR. BAX: Please seat the juror in the trial of
20 this case. Thank you, ma'am.

21 THE CLERK: Please have a seat in the jury box.

22 Number 297.

23 JUROR NO. 297: I work in collections.

24 THE CLERK: What says the state?

25 MS. SHIPLEY: Please present the juror.

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1 THE CLERK: What says the defense?

2 MR. BAX: Please seat the juror in the trial of
3 this case.

4 THE CLERK: Thank you. Have a seat in the jury
5 box, please.

6 Number 34.

7 JUROR NO. 34: I'm a homemaker.

8 THE CLERK: What says the state?

9 MS. SHIPLEY: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. BAX: Please excuse the juror from the trial
12 of this case.

13 THE CLERK: Please have a seat back in the
14 courtroom, please.

15 Number 36.

16 JUROR NO. 36: I'm a graduate teaching assistant
17 at USC.

18 THE CLERK: What says the state?

19 MS. SHIPLEY: Please present the juror.

20 THE CLERK: What says the defense?

21 MR. BAX: Please seat the juror in the trial of
22 this case. Thank you.

23 THE CLERK: Have a seat in the jury box, please.

24 Number 28.

25 JUROR NO. 28: I work for the National Bank of

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1 South Carolina.

2 THE CLERK: What says the state?

3 MS. SHIPLEY: Please present the juror.

4 THE CLERK: What says the defense?

5 MR. BAX: Please excuse the juror from the trial
6 in this case.

7 THE CLERK: Please have a seat back in the
8 courtroom.

9 Number 151.

10 JUROR NO. 151: I'm a budget analyst with the
11 Richland One Finance Department.

12 THE CLERK: What says the state?

13 MS. SHIPLEY: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. BAX: Please excuse the juror from the trial
16 in this case. Thank you.

17 THE CLERK: Please have a seat back in the
18 courtroom.

19 Number 247.

20 JUROR NO. 247: I work at the Department of
21 Veteran Affairs. I'm a veteran's service specialist.

22 THE CLERK: What says the state?

23 MS. SHIPLEY: Please present the juror.

24 THE CLERK: What says the defense?

25 MR. BAX: Please excuse the juror from the trial

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1 in this case.

2 THE CLERK: Please have a seat back in the
3 courtroom.

4 Number 222.

5 JUROR NO. 222: Chief Warrant Officer, United
6 States Army.

7 THE CLERK: What says the state?

8 MS. SHIPLEY: Please present the juror.

9 THE CLERK: What says the defense?

10 MR. BAX: Please excuse the juror from the trial
11 in this case. Thank you.

12 THE CLERK: Please have a seat back in the
13 courtroom.

14 Number 218.

15 JUROR NO. 218: I am an application analyst with
16 South Carolina State.

17 THE CLERK: What says the state?

18 MS. SHIPLEY: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. BAX: Please seat the juror in the trial of
21 this case.

22 THE CLERK: Have a seat in the jury box, please.

23 Number 244.

24 JUROR NO. 244: I'm a self-employed furniture
25 upholsterer.

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1 THE CLERK: What says the state?

2 MS. SHIPLEY: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. BAX: Please seat the juror in the trial of
5 this case. Thank you.

6 THE CLERK: Please have a seat in the jury box,
7 please.

8 Number 253.

9 MR. BAX: Would you repeat the number, please?

10 THE CLERK: 253, 2, 5, 3. 253.

11 JUROR NO. 253: Contractor.

12 THE CLERK: What says the state?

13 MS. SHIPLEY: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. BAX: Please seat the juror in the trial of
16 this case. Thank you.

17 THE CLERK: Have a seat in the jury box, please.

18 Number 172.

19 JUROR NO. 172: Currently unemployed.

20 THE CLERK: What says the state?

21 MS. SHIPLEY: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. BAX: Please excuse the juror from the trial
24 of this case. Thank you.

25 THE CLERK: Have a seat back in the courtroom,

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1 please.

2 Number 212.

3 JUROR NO. 212: South Carolina Department of
4 Education.

5 THE CLERK: What says the state?

6 MS. SHIPLEY: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. BAX: Please seat the juror in the trial of
9 this case. Thank you.

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

11 Number 210.

12 JUROR NO. 210: I work for a holding company --
13 beverages.

14 THE CLERK: What says the state?

15 MS. SHIPLEY: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. BAX: Please seat the juror in the trial of
18 this case.

19 THE CLERK: Have a seat in the jury box, please.

20 Number 260.

21 JUROR NO. 260: I'm the associate director of a
22 non-profit organization.

23 THE CLERK: What says the state?

24 MS. SHIPLEY: Please present the juror.

25 THE CLERK: What says the defense?

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1 MR. BAX: Please seat the juror in the trial of
2 this case.

3 THE CLERK: Have a seat in the jury box, please.
4 Number 135.

5 JUROR NO. 135: I'm in manufacturing.

6 THE CLERK: What says the state?

7 MS. SHIPLEY: Please excuse the juror.

8 THE CLERK: Have a seat back in the courtroom,
9 please.

10 Number 175.

11 JUROR NO. 175: Chemist manager for South Carolina

12 DHEC. THE CLERK: What says the state?

13 MS. SHIPLEY: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. BAX: Please excuse the juror from the trial
16 of this case. Thank you.

17 THE CLERK: Have a seat back in the courtroom,
18 please.

19 Number 197.

20 JUROR NO. 197: Engineering tech.

21 THE CLERK: What says the state?

22 MS. SHIPLEY: Please seat the juror.

23 THE CLERK: What says the defense?

24 MR. BAX: Please excuse the juror from the trial
25 of this case. Thank you.

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1 THE CLERK: Have a seat back in the courtroom,
2 please.

3 Number 250.

4 JUROR NO. 250: I'm employed by National Bank of
5 South Carolina.

6 THE CLERK: What says the state?

7 MS. SHIPLEY: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. BAX: Please excuse the juror from the trial
10 of this case. Thank you.

11 THE CLERK: Have a seat in the back of the
12 courtroom, please.

13 Number 91.

14 JUROR NO. 91: I'm a manager (inaudible) the state.

15 THE CLERK: What says the state?

16 MS. SHIPLEY: Please present the juror.

17 THE CLERK: What says the defense?

18 MR. BAX: Please seat the juror in the trial of
19 this case.

20 THE CLERK: Have a seat in the jury box, please.

21 Number 154.

22 JUROR NO. 154: I'm a veterinarian

23 THE CLERK: What says the state?

24 MS. SHIPLEY: Please present the juror.

25 THE CLERK: What says the defense?

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1 MR. BAX: Please excuse the juror from the trial
2 in this case.

3 THE CLERK: Please have a seat back in the
4 courtroom.

5 Number 170.

6 JUROR NO. 170: Operations technician
7 International Paper.

8 THE CLERK: What says the state?

9 MS. SHIPLEY: Please excuse the juror.

10 THE CLERK: Please have a seat back in the
11 courtroom, please.

12 Number 265.

13 JUROR NO. 265: Hairstylist.

14 THE CLERK: What says the state?

15 MS. SHIPLEY: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. BAX: Please seat the juror in the trial of
18 this case. Thank you.

19 THE CLERK: Have a seat in the jury box, please.

20 Number 285.

21 JUROR NO. 285: I'm a social worker for Palmetto
22 Health Richland.

23 THE CLERK: What says the state?

24 MS. SHIPLEY: Please present the juror.

25 THE CLERK: What says the defense?

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1 MR. BAX: Please excuse the juror from the trial
2 in this case. Thank you.

3 THE CLERK: Have a seat in the back of the
4 courtroom, please.

5 Number 8.

6 JUROR NO. 8: Recovery specialist for a recovery
7 service.

8 THE CLERK: What says the state?

9 MS. SHIPLEY: Please excuse the juror.

10 THE CLERK: Have a seat in the back of the
11 courtroom, please.

12 Number 16.

13 JUROR NO. 16: Chemical Engineer.

14 THE CLERK: What says the state?

15 MS. SHIPLEY: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. BAX: Please excuse the juror from the trial
18 of this case. Thank you.

19 THE CLERK: Have a seat in the back of the
20 courtroom, please.

21 Number 236.

22 JUROR NO. 236: I'm the manager of a retail store
23 in Columbia.

24 THE CLERK: What says the state?

25 MS. SHIPLEY: Please present the juror.

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1 THE CLERK: What says the defense?

2 MR. BAX: Please excuse the juror from the trial
3 in this case. Thank you.

4 THE CLERK: Take a seat in the back of the
5 courtroom, please.

6 Number 44.

7 JUROR NO. 44: Director of a non-profit
8 organization.

9 THE CLERK: What says the state?

10 MS. SHIPLEY: Please present the juror.

11 THE CLERK: What says the defense?

12 MR. BAX: Please seat the juror in the trial of
13 this case.

14 THE CLERK: Please have a seat in the jury box.
15 Number 159.

16 JUROR NO. 159: I'm a supervisor with a
17 landscaping company.

18 THE CLERK: What says the state?

19 MS. SHIPLEY: Please present the juror.

20 THE CLERK: What says the defense?

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

23 THE CLERK: Have a seat back in the courtroom,
24 please.

25 Number 11.

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1 JUROR NO. 11: I work in the finance department at
2 Richland School District One.

3 THE CLERK: What says the state?

4 MS. SHIPLEY: Please present the juror.

5 THE CLERK: What says the defense?

6 MR. BAX: Please seat the juror in the trial of
7 this case.

8 THE CLERK: Have a seat in the jury box, please.

9 Number 209.

10 JUROR NO. 209: Computer programmer.

11 THE CLERK: What says the state?

12 MS. SHIPLEY: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. BAX: Please excuse the juror from the trial
15 of this case.

16 THE CLERK: Please have a seat in the back of the
17 courtroom, please.

18 Number 157.

19 JUROR NO. 157: I work at Sanders (sp) Theatrics.

20 THE CLERK: What says the state?

21 MS. SHIPLEY: Please present the juror.

22 THE CLERK: What says the defense?

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

25 THE CLERK: Have a seat in the back of the

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1 courtroom, please.

2 Number 205.

3 JUROR NO. 205: Retired media specialist from
4 Richland School District Two.

5 THE CLERK: What says the state?

6 MS. SHIPLEY: Please present the juror.

7 THE CLERK: What says defense?

8 MR. BAX: Please seat the juror in the trial of
9 this case.

10 THE CLERK: Please have a seat in the jury box.

11 THE COURT: All right. We now have the jurors who
12 will be seated for this case. I'm going to ask that the
13 remainder of you go back to your jury room for further
14 instructions.

15 (Jury panel exists courtroom at 3:30 p.m.)

16 THE COURT: Okay. I'm going to ask that these
17 potential jurors if you would be excused to your jury room
18 until the Court gets back with you.

19 (Jury out to jury room 3:31 p.m.)

20 THE COURT: Okay. As it understand it right now,
21 all the jurors who were not selected on this case have gone
22 to the jury room, but both clerks are here, Mr. Truett and
23 then, of course, our deputy clerk, but those jurors will
24 remain with us until this Court releases them; is that
25 correct, just in case we have Batson Motions or other

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1 issues; is that correct?

2 MR. TRUETT: Yes.

3 THE COURT: Okay. The potential jurors for this
4 case have not been sworn, but they are now in the jury room
5 for our purposes now.

6 There was one female that was motioning to me, wanting
7 to speak to the Court. State your jury number.

8 JUROR NO. 89: 89.

9 THE COURT: Okay. And I'm going to ask that you
10 take the stand as you have information you think is
11 important?

12 THE CLERK: Please raise your right hand.

13 (WHEREUPON, JUROR NO. 89, was sworn
14 to tell the truth.)

15 THE CLERK: Thank you. Please have a seat in the
16 witness stand. State your name?

17 THE COURT: And for purposes of this proceeding,
18 I'm going to ask that she not state her name.

19 THE CLERK: I'm sorry, Your Honor.

20 THE COURT: That's okay. That's okay. We'll all
21 trying to catch each other because of the process of this
22 courtroom.

23 Ma'am, you had just approached the bench right before I
24 had asked everybody to be excused who was not selected for
25 the jury. Do you have any information that you would like

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1 to shed light on with respect to any of your fellow jurors?

2 JUROR NO. 89: Yes, one juror -- I overheard him
3 on the phone state that he was going -- whatever it was, it
4 was going to be guilty.

5 THE COURT: Okay. And you said, he. So you're
6 indicating a male juror?

7 JUROR NO. 89: Yes.

8 THE COURT: Do you know if that juror was excused
9 to the jury room and was not selected for this case or was
10 that juror actually part of the jury panel that got to go
11 back to the jury room?

12 JUROR NO. 89: Part of the panel.

13 THE COURT: Okay. Can you describe the juror?

14 JUROR NO. 89: Black shirt, beige sweater.

15 THE COURT: Okay. Tell me when you overheard this
16 statement?

17 JUROR NO. 89: Prior to our first break, before
18 lunch.

19 THE COURT: Okay, so --

20 JUROR NO. 89: On the cell phone.

21 THE COURT: So that was prior to you all even
22 knowing what the case was about?

23 JUROR NO. 89: Right.

24 THE COURT: Because the Court only indicated what
25 the case was about when all jurors were in the room.

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1 JUROR NO. 89: Right.

2 THE COURT: Okay. So you need to set the scene
3 for us. You said prior to lunch?

4 JUROR NO. 89: Prior to lunch. It was what --
5 11:00 o'clock when we got into the jury room. And they were
6 on the cell phones when we were allowed to have phones. And
7 he was on the phone and said, whatever it was it was going
8 to be guilty.

9 THE COURT: Okay. He was on his cell phone
10 speaking to someone --

11 JUROR NO. 89: Someone -- yeah.

12 THE COURT: Okay. And you heard him speaking?

13 JUROR NO. 89: Yes.

14 THE COURT: Okay. Did he direct his comment at
15 all to you?

16 JUROR NO. 89: No.

17 THE COURT: You just overheard him speaking --

18 JUROR NO. 89: I just overheard.

19 THE COURT: -- as if someone else was on the other
20 end of that phone call?

21 JUROR NO. 89: Yes.

22 THE COURT: Okay. All right. Since then, have
23 you heard any other conversation by this gentlemen to
24 indicate any follow-up to that comment?

25 JUROR NO. 89: No.

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1 THE COURT: Okay. I appreciate you relaying that
2 to the Court.

3 I will also allow any other of the parties to question
4 her at this time.

5 MS. SHIPLEY: Could you describe him for us,
6 please. What did he look like?

7 JUROR NO. 89: He was the third juror on the end
8 in the front row.

9 MS. SHIPLEY: Okay. Thank you, ma'am.

10 JUROR NO. 89: You're welcome.

11 MR. SWERLING: You said he was seated in the front

12 --

13 JUROR NO. 89: Yes, he was. In the front.

14 MR. SWERLING: Did you say; is he Caucasian or
15 Afro-American?

16 JUROR NO. 89: Caucasian.

17 MR. SWERLING: Okay. I see --

18 JUROR NO. 89: The USC instructor.

19 MR. SWERLING: I'm sorry?

20 JUROR NO. 89: A USC instructor.

21 THE COURT: Any other questions of this juror?

22 MS. SHIPLEY: Nothing further from the state, Your
23 Honor. That appears to be -- based on her description that
24 possibly could be Number 36.

25 THE COURT: That's what my notes may indicate.

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1 MR. SWERLING: It looks like it.

2 THE COURT: Okay. All right. Thank you for your
3 honesty and forthrightness with the Court. If you can,
4 you're excused to your jury room, and you'll be announced
5 when you can be relieved of your duties for today.

6 JUROR NO. 89: Okay.

7 THE COURT: We appreciate it.

8 JUROR NO. 89: You're welcome.

9 (Juror No. 89 exits courtroom.)

10 THE COURT: Okay. At this time, it's the Court's
11 inclination to call this particular juror out to question
12 him about this information.

13 If you could ask Juror No. 36 to come out.

14 THE BAILIFF: Yes, ma'am.

15 (Juror No. 36 enters courtroom.)

16 THE COURT: I'm going to ask that you take the
17 witness stand right there, first.

18 Madam Clerk, would you swear him in.

19 (WHEREUPON, Juror No. 36, was sworn
20 to tell the truth.)

21 THE CLERK: Thank you.

22 THE COURT: All right, sir. Earlier to day
23 you-all were qualified for your potential qualification as
24 jurors for any of the trials in this case -- civil or
25 criminal or by another judge. Did you participate in that

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1 proceeding?

2 JUROR NO. 36: Yes.

3 THE COURT: Okay. And then prior then, thereto,
4 you were sent to your jury room and eventually a panel was
5 pulled for this particular case, and you were on that panel;
6 correct?

7 JUROR NO. 36: Correct.

8 THE COURT: Okay. At the questioning before your
9 jury selection after you-all were sworn, I asked you a
10 series of questions and some of those questions indicate did
11 you have any information about this case, did you have any
12 bias, opinion or prejudice about the case, and just have any
13 statements regarding the case; do you remember that?

14 JUROR NO. 36: Yes.

15 THE COURT: And I don't believe that you answered
16 in the affirmative at all on any of those; is that correct?

17 JUROR NO. 36: Correct.

18 THE COURT: All right. Some information has come
19 to me that someone may have overheard you speaking with
20 someone about this case; do you understand that?

21 JUROR NO. 36: I understand the statement.

22 THE COURT: Was there any point at which you were
23 in the jury room at which you were on a cell phone?

24 JUROR NO. 36: No, ma'am.

25 THE COURT: Did you ever speak to anybody on a

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1 cell phone while you were in the jury room?

2 JUROR NO. 36: No.

3 THE COURT: Okay. Did anyone ever call you?

4 JUROR NO. 36. No. I had it off the whole time.

5 THE COURT: Okay, so you never exercised by
6 putting that cell phone to your ear whether to check a
7 message or anything?

8 JUROR NO. 36: No.

9 THE COURT: Have you made any statements in this
10 courtroom at all regarding any of the cases in the
11 courtroom?

12 JUROR NO. 36: No.

13 THE COURT: Did you even know what cases you were
14 coming forward to hear, whether it be civil or criminal?

15 JUROR NO. 36: No.

16 THE COURT: Did you have any opinions about this
17 case?

18 JUROR NO. 36: No.

19 THE COURT: You are aware that these two gentlemen
20 are being tried for murder?

21 JUROR NO 36: Yes.

22 THE COURT: Okay. Did you form any express
23 opinions about this case?

24 JUROR NO. 36: No.

25 THE COURT: Did you mention any opinions to

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1 anyone?

2 JUROR NO. 36: No.

3 THE COURT: Do you have any opinions about the
4 case?

5 JUROR NO. 36: No. I -- I vaguely remember that
6 it was mentioned in the news.

7 THE COURT: This case, and you never indicated that
8 -- you heard me ask a question about that?

9 JUROR NO. 36: I had no idea where the incident
10 took place.

11 THE COURT: But you're telling me now that you did
12 hear something mentioned on the news?

13 JUROR NO. 36: Just that -- you know, that there
14 was an arrest made.

15 THE COURT: Okay, but I asked earlier specifically
16 about anyone of the jury panel hearing anything on the news,
17 because that information is very important to all of us here
18 about how much information any juror knows prior to going
19 into a case.

20 JUROR NO. 36: Well, I didn't really feel that it
21 would affect my ability to --

22 THE COURT: Okay, you understand that for all of
23 the questions that the Court asked, I need to receive the
24 information, and then it's the Court's judgment that makes
25 that determination, not yours; do you understand that?

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1 JUROR NO. 36: Yes, ma'am.

2 THE COURT: Okay. So I need all information --
3 you need to tell me all the details about what it is that
4 you heard on the news; just everything that might affect
5 your ability of going into this case with any more
6 information than any other juror might have. That's very
7 important to us. So tell me what it is that you know?

8 JUROR NO. 36: The only reason that it -- I have
9 any recollection of it was because it was on Hardscrabble
10 Road.

11 THE COURT: Okay. And did you become aware that
12 it was on Hardscrabble Road prior to me mentioning that in
13 one of my questions to your fellow jurors?

14 JUROR NO. 36: Until you mentioned it, no.

15 THE COURT: Okay, but when I mentioned it you were
16 aware that this particular incident took place on
17 Hardscrabble Road?

18 JUROR NO. 36: Uh-huh. (affirmative response.)
19 Yes.

20 THE COURT: Okay, and I do recall defendant's
21 request to voir dire from Taurus Watts -- I believe might
22 have been where that came from.

23 MS. JOHNS: Yes, Your Honor. Number one.

24 THE COURT: Okay. All right. I indicated that
25 this case stems from a shooting in June of 2007, at the H&J

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1 Club, also known as Chaser's Lounge on Hardscrabble Road,
2 and I specifically asked if any juror member had ever hear
3 anything about this case in the media, and then I added or
4 otherwise. So you had an affirmative response to that
5 question?

6 JUROR NO. 36: Yes.

7 THE COURT: Okay, and why didn't you indicate that
8 you knew anything about it?

9 JUROR NO. 36: I didn't think it was important.

10 THE COURT: Okay, but the Court was asking you
11 specifically did you know. Do you understand. And these
12 questions are very important because everyone, including
13 myself, and all parties in these proceedings are entitled to
14 full information from all jurors. It does not mean that you
15 would have necessarily been excused, but we are entitled to
16 know the information so that they can properly and
17 appropriately exercise any strikes in the case; do you
18 understand that?

19 JUROR NO. 36: Yes.

20 THE COURT: Is there anything else that you know?

21 JUROR NO. 36: No.

22 THE COURT: What specifically did you hear on the
23 news?

24 JUROR NO. 36: Just that there was a murder.

25 THE COURT: And you also indicated that you heard

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1 a murder on Hardscrabble Road. Was there anything else. I
2 want to make sure you're not leaving out any details.

3 JUROR NO. 36: No. I didn't.

4 THE COURT: Did you know who was alleged to have
5 committed the murder?

6 JUROR NO. 36: No.

7 THE COURT: Did you know what time it occurred or
8 the method by which the murder occurred?

9 JUROR NO. 36: No.

10 THE COURT: Okay. Did you know if there was more
11 than one person involved?

12 JUROR NO. 36: No.

13 THE COURT: Did you know any of the people who may
14 have been witnesses or anything?

15 JUROR NO. 36: No.

16 THE COURT: Did you even know where this area was;
17 the H&J Club or Chaser's Lounge?

18 JUROR NO. 36: I have no idea where it is.

19 THE COURT: Okay. Is there anything else that you
20 can indicate that you may know that you may not have
21 admitted or indicated to the Court earlier?

22 JUROR NO. 36: No.

23 THE COURT: Okay. And then as to any other
24 questions I may not have asked you; do you have any bias,
25 prejudice towards the state or the defendants in this case?

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1 JUROR NO. 36: No.

2 THE COURT: Have you made up your mind on the
3 subject matter of this case; meaning, a violent crime or
4 murder in this case at all?

5 JUROR NO. 36: No.

6 THE COURT: In terms of any opinions that you
7 render toward them?

8 JUROR NO. 36: No.

9 THE COURT: Do you understand that all jurors are
10 tasked with the understanding that they are to come to this
11 case giving the state the opportunity to present their case
12 and then if the defense chooses, because it does not have to
13 put up a case, they are innocent until proven guilty, if the
14 defense chose to put up a case then they -- you would give
15 them full opportunity to and then make up your mind?

16 JUROR NO. 36: Yes.

17 THE COURT: Counsel approach if you think there's
18 anything else the Court should ask.

19 (Off the record bench conference with counsel and the
20 Court.)

21 THE COURT: All right, sir, do you live or happen
22 to work around or have any reason to go around the area of
23 Hardscrabble Road?

24 JUROR NO. 36: I live in Lake Carolina.

25 THE COURT: Okay. Do you know where Chaser's

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1 Lounge or H&J Club is?

2 JUROR NO. 36: I have never seen it.

3 THE COURT: Okay. All right. At one point you
4 indicated that you heard this information on the news and
5 then another case you indicated that you heard that they
6 were arrested or somebody was arrested. So I'm just trying
7 to be a little more familiar with your responses, but I
8 don't want to put words in your mouth.

9 JUROR NO. 36: I was aware that someone was
10 arrested, but when these proceedings started I did not
11 recognize the name of either defendant.

12 THE COURT: Okay. And how did you become aware
13 that someone was arrested?

14 JUROR NO. 36: On the television.

15 THE COURT: Okay. Did you also hear of the
16 incident on the news or just that someone had been arrested
17 in connection with the incident?

18 JUROR NO. 36: It was together.

19 THE COURT: Okay, so one setting on the TV or --

20 JUROR NO. 36: Yeah.

21 THE COURT: -- or more than one time?

22 JUROR NO. 36: Just once.

23 THE COURT: Once on TV. Okay, you have your cell
24 phone with you?

25 JUROR NO. 36: Yes.

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1 THE COURT: Okay. I'm going to need to see it.
2 And I'm going to need for you to show the Court your call
3 directory for the time period 11:00 to 2:00 o'clock. And
4 you can step down. I'm going to ask all counsel to
5 approach.
6 (Juror No. 36 and counsel approach the bench with cell
7 phone.)

8 THE COURT: Sir, just so you can indicate for the
9 record, how do you get to the time of your calls, I see the
10 numbers.

11 JUROR NO. 36: I don't know. I've never checked
12 the time.

13 THE COURT: Okay, I've got a call from -- at 1:18
14 p.m. that you received. Okay. And 10:46 a.m. there's
15 another call. Oh, this is 10/2. That was the 1:18.

16 Okay. Thank you, sir. Okay. I'm going to ask you to
17 go to your jury room. Thank you very much. It doesn't
18 indicate that I've got received or dialed calls. Thank you.

19 JUROR NO. 36: Thank you.

20 MR. SWERLING: Judge, I think we'd just ask that
21 he not discuss this with --

22 THE COURT: Right. And let me ask you; have you
23 discussed this case at all with your fellow jurors?

24 JUROR NO. 36: No.

25 THE COURT: Okay. And I ask you not to discuss

1 the case with anybody throughout the trial, anyway. Thank
2 you, sir.

3 Okay. Any respective issues -- anything else?

4 MS. SHIPLEY: Not from state.

5 MR. SWERLING: Judge, I think he needs to be taken
6 off the panel. First of all, he wasn't candid with the
7 Court in his responses out here in voir dire. I'm not -- I
8 can't tell the Court whether or not at that particular time
9 I would have exercised a strike or not, but I would have
10 considered it, knowing that he knew about it, but I'm not
11 going to represent to the Court that I know I would have,
12 knowing that would have been part of the assessment. Second
13 of all, this woman came forward -- frankly, I can never
14 remember anybody coming forward and voluntarily giving that
15 kind of information. I think she was trying to do her civic
16 duty whatever she heard. She knew who it was, and it may
17 have been a conversation, but it concerns me because it
18 seems like she would have had no motive to come forward and
19 not tell the Court in camera about something she overheard
20 something this juror say.

21 THE COURT: Okay.

22 MR. SWERLING: And third of all, at this time he
23 is probably now fond of any of us in the courtroom after
24 going through it, which I think we needed to do. But I'd
25 ask the Court to exercise your discretion and excuse him

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1 from the panel. We still have a panel left, one more juror
2 or you could restore one strike to each of us. We still
3 have -- that's what I would request.

4 THE COURT: Okay.

5 MS. JOHNS: I would join with Mr. Swerling for all
6 his reasons.

7 THE COURT: All right. The Court is going to rule
8 that I have to strike this particular juror. My concerns
9 are that I really felt like I had to dig for this
10 information. While the person who came forward may have
11 been mistaken about the information it is clear that he
12 heard something, saw something and then did not give me that
13 information. And in his words, he didn't think that it was
14 important or he didn't think he was -- what have you, but
15 that was not his call. So I don't need him trying to direct
16 in my courtroom what is appropriate. So respectfully, I'm
17 going to strike that juror.

18 I think the best way to proceed is we still have the
19 balance of the jurors left. We can move who was the first
20 alternate into the panel and then allow you-all to proceed
21 with another alternate from the balance of the jurors.

22 Okay.

23 All right, so Madam Clerk, I'm going to ask that the
24 balance of the jurors be instructed to come back in.

25 MR. SWERLING: Judge are you going to bring him

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1 out?

2 THE COURT: Yes, I'll bring him out now.

3 Bring that juror out.

4 THE BAILIFF: Yes, ma'am.

5 MR. SWERLING: Judge you want to hold them --

6 THE COURT: Hold them up one moment. Just one
7 moment.

8 (Juror No. 36 enters courtroom.)

9 THE COURT: All right, sir, I've had enough time
10 to speak with the attorneys. I'm going to ask that you be
11 excused from the trial of this case. I do thank you for
12 being forthright as we came forward and asked you certain
13 other questions, but I will excuse you from the trial of
14 this case. You'll need to report to the jury room, and they
15 will give you instruction for the remainder of the week.

16 JUROR NO. 36: I apologize for not mentioning all
17 that.

18 THE COURT: All right. Thank you, sir.

19 (Juror No. 36 exits the courtroom.)

20 THE BAILIFF: Okay, bring them in.

21 (Jury panel enters courtroom.)

22 THE BAILIFF: The jury panel is all present, Your
23 Honor.

24 THE COURT: All right, ladies and gentlemen of the
25 jury, we're going to strike one more alternate for this

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1 case. So if you would listen as numbers are called.

2 THE CLERK: Number 66.

3 JUROR NO. 66: I'm a program analyst.

4 THE CLERK: What says the state?

5 MS. SHIPLEY: Please present the juror?

6 THE CLERK: What says the defense?

7 MR. BAX: Please excuse the juror from the trial
8 in this case.

9 THE CLERK: Please take a seat in the back of the
10 courtroom, please.

11 Number 85.

12 JUROR NO. 85: I work for Blue Cross Blue Shield.

13 THE CLERK: What says the state?

14 MS. SHIPLEY: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. BAX: Please seat the juror in the trial of
17 this case. Thank you.

18 THE CLERK: Have a seat in the jury box.

19 THE COURT: Ladies and gentlemen of the jury, if
20 you have not been selected I'm going to excuse you to your
21 jury room again, and just hold up a moment with respect to
22 jury issues and whether or not I'm going to need additional
23 alternates. And then we will release you accordingly.

24 Thank you all.

25 (Jury panel exits courtroom. at 4:30 p.m.)

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1 THE COURT: Do the parties have any issues with
2 respect to jury selection?

3 MS. SHIPLEY: None from the state, Your Honor.

4 MR. SWERLING: Defendant Wray has none.

5 MS. JOHNS: None for defendant Watts.

6 THE COURT: Okay. All right. I'm going to take a
7 break with you all. Then we can get as far as we can with
8 pre-trial motions, which I believe we can complete today.
9 What time would you all like to start in the morning with
10 opening and --

11 MS. SHIPLEY: 9:30 is fine with the state, Your
12 Honor.

13 MR. SWERLING: That's fine.

14 THE COURT: Okay. Bring those jurors out, and
15 I'll give them their instructions. Then we'll release them,
16 and then we'll take a break.

17 (Jury in at 4:34 p.m.)

18 THE BAILIFF: The jury is all present, Your Honor.

19 THE COURT: Okay. Ladies and gentlemen of the
20 jury. You-all have been selected to be jurors in this case.
21 I'm not going to swear you in at this time. I'm going to
22 release you, and we will start the case fresh in the
23 morning. So I'm going to ask that you report back to your
24 jury room at 9:30.

25 You will hear me say this several times during the

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1 trial of this case, and after you're sworn in I'll give you
2 some official instructions to let you know to proceed, but
3 you are not to discuss this case in any shape, form or
4 fashion with anyone. You are not to discuss the parties,
5 you are not to discuss the defense counsel or the state's
6 counsel. You are not to even discuss the type of case,
7 because a lot of times people will inject their opinions on
8 you just by mentioning any particular subject matter whether
9 you've asked them or not. And I need you to be very
10 educated about this case only by the evidence and facts that
11 you will hear in this courtroom. Your mind is to be made up
12 by what you hear here, not what you hear through TV or media
13 outlets or anything of that nature. And in response to
14 that, that you are not to look at TV, if you hear anything
15 about this case you are to turn that off. Same thing with
16 any news reports or media. you are also going to hear from
17 me throughout the trial, you are not to be tweeting,
18 twittering and letting anybody know what you're doing.

19 This is very sincere efforts that we need by you and to
20 be fair to all parties you cannot be letting somebody know
21 what's going on in your life at this juncture in time.
22 These are real people, real issues, and we need your real
23 attention with regard to this matter.

24 Thank you all for what has been a long day and very
25 deliberate proceedings, and we needed you to be comfortable

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1 as well as educated and informed under the decisions that
2 you have to make. I'll give you further instructions in the
3 morning. I'll remind you not to discuss the case.

4 Have a good evening.

5 (Jury out at 4:40 p.m.)

6 THE COURT: Okay. You all can be at ease for
7 about 15 minutes or so.

8 (Court in recess for short break)

9 (Court in session after short break.)

10 THE COURT: All right.

11 MS. SHIPLEY: Your Honor, on the Jackson verses
12 Denno matter, I believe that Ms. Johns indicated she will
13 not be requiring the state to put one of the hearings up.
14 Just so we can be on the same page. I'll let the court know
15 exactly the words we're planning on introducing as being
16 made by her client.

17 Your Honor, her client was Mirandized upon his arrest
18 on July 3, 2007, and after he invoked his right to remain
19 silent. He was taken to the crime scene unit over that
20 sheriff's department for major case prints to be taken. At
21 that time he made an unsolicited statement to Investigator
22 Gallegos, and he wrote in his notes that Watts felt it
23 strange why the other parties involved were not patted down.
24 He stated his friends were always checked for weapons at the
25 club. He stated during the fight the other side pulled out

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1 firearms. Investigator Gallegos indicated he did not say
2 anything further about the incident.

3 And that's basically that's the only --

4 THE COURT: Okay. Do you understand that, Ms.
5 Johns?

6 MS. JOHNS: Yes.

7 THE COURT: Okay. And you're not challenging that
8 statement?

9 MS. JOHNS: Not for its voluntariness, no.

10 THE COURT: All right.

11 MS. SHIPLEY: Your Honor, at this time the state
12 would call Ricky Jacobs.

13 THE CLERK: Raise your right hand.

14 (WHEREUPON, Ricky Jacobs, was sworn
15 to tell the truth.)

16 THE CLERK: Thank you. Have a seat in the witness
17 stand, and give the court reporter your name.

18 RICKY JACOBS - DIRECT EXAMINATION

19 BY MS. SHIPLEY:

20 Q Please state your name for the record, sir?

21 A Ricky Jacobs.

22 Q Mr. Jacobs, can you let the Court know where it is that
23 you work?

24 A At Chaser's Club on Hardscrabble Road.

25 Q And do you own that store, that business?

1 A Yes, I do.

2 Q Can you tell the judge what kind of business it is?

3 A It's a bar and restaurant.

4 Q Bar and restaurant?

5 A Yes.

6 Q I'm going to ask you to speak into the microphone. And
7 how long have you owned and operated that bar and
8 restaurant?

9 A Nineteen years.

10 Q Nineteen years. Do you and your family own it
11 together?

12 A Yes.

13 Q And so are you from the Columbia area?

14 A Yes.

15 Q Are you familiar with the people that frequent your
16 establishment?

17 A Yes.

18 Q And being an owner and operator of a nightclub and
19 restaurant, do you get to know people by faces only --

20 A Well --

21 Q -- where you only recognize them by face?

22 A Yes. Face, name. Yes.

23 Q I'm sorry. Could you repeat that?

24 A Face, name; yes.

25 Q Okay. And so you got to know the customers that

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1 frequent your nightclub by face and name?

2 A Right. Yes.

3 Q And is it true that sometimes you don't know their full
4 names?

5 A Yes.

6 Q I'm going to bring your attention to the early morning
7 hours of June 30, 2007; do you remember what happened that
8 night?

9 A Yes.

10 Q And, specifically, was that a Saturday night or Friday
11 night going into Saturday morning?

12 A Yes.

13 Q And how late does your nightclub stay open?

14 A Friday nights we close about 3:30.

15 Q Okay. On this occasion were you still open about 4:00
16 a.m.?

17 A I was closing up.

18 Q You were getting ready to close up?

19 A Yes.

20 Q And can you tell Judge Childs your routine when you
21 close up your bar; is there a particular place where you
22 park your vehicle?

23 A I normally park at my dad's house, which is across the
24 street from the business.

25 Q Okay, and so why is it you park your car at your dad's

1 house?

2 A For excessive parking, so people will park -- so I
3 won't taking up space.

4 Q Okay. So you park across the street at your dad's
5 house so you don't take up parking space from customers?

6 A Right. Correct.

7 Q And do you -- is that your routine every time you close
8 down?

9 A Well, when I open up, yes. That's the routine, yes.

10 Q And so when you closed the business this night did you
11 have to cross the street to go to your dad's house to get to
12 your car?

13 A Yes.

14 Q And can you tell Judge Childs why is it your bar was
15 closing down on this particular occasion?

16 A Well, an altercation, and I was going to just end it.

17 Q Okay. So there was an altercation, and you needed to
18 close your bar at that point?

19 A Yes.

20 Q And can you tell Judge Childs -- we're going to just
21 show -- Are you familiar with this diagram on State's No. 7;
22 have you seen this diagram before?

23 A Yes.

24 Q And I've shown this diagram to you?

25 A Yes, you have. Yes.

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1 Q Does it accurately depict the layout of the car wash
2 and the Hardscrabble Road and your nightclub?

3 A Yes.

4 Q Okay. And if you could, on this diagram, using this
5 pointer, show Judge Childs where your club is on this
6 diagram, State's No. 7.

7 A Right here.

8 Q Okay. What is right next to your nightclub?

9 A Car wash.

10 Q Car wash. And what about on this side; what's that
11 business right there?

12 A My dad's store.

13 Q Your dad's store. And what's underneath this roof area
14 right here?

15 A Gas pumps.

16 Q Gas pumps?

17 A Yes.

18 Q And at night is this place lit?

19 A Yes.

20 Q And are there lights on the street; are there street
21 lights?

22 A Security lights.

23 Q You have security lights?

24 A Right here.

25 Q And where are the lights on your property?

1 A Up under the canopy.

2 Q In the canopy. Okay.

3 A Under the canopy, yes.

4 Q And how would you characterize the lighting conditions;
5 is it bright?

6 A Yes.

7 Q Do you have any trouble seeing your parking lot at
8 night?

9 A No.

10 Q Now, on this occasion, can you tell Judge Childs, when
11 you were crossing -- getting ready to go get your car from
12 your dad's house, did you encounter the defendants, Taurus
13 Watts and Tremaine Wray, in the parking lot?

14 A Yes.

15 Q Okay. And did you -- where did you first encounter the
16 person that you knew at the time as Taurus; where did you
17 see him?

18 A Here, up in here.

19 Q In this area in here?

20 A Yes.

21 MS. SHIPLEY: And I'm going to turn it so the
22 defense can see it.

23 BY MS. SHIPLEY:

24 Q And again, did you say there is lighting all underneath
25 the canopy area?

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1 A Yes.

2 Q Okay. And where is your father's house located on this
3 map or if it's not on the map, where exactly -- how do you
4 get to your dad's house?

5 A It's right here.

6 Q Where the R is pretty much?

7 A Yes, pretty much.

8 Q Can you see part of the driveway on the diagram?

9 A Barely. Yes.

10 Q Barely. Okay, now, when you first encountered the
11 person you know as Taurus, what exactly did -- was there a
12 conversation between the two of you on that night?

13 A Yes.

14 Q Okay. What did you say to him when you saw him walking
15 towards the club?

16 A Told him the club was closing, to leave. I told him we
17 was closing now, to leave.

18 Q So you told him you were closing, and they needed to
19 leave?

20 A Yes.

21 Q What, if anything did he say to you when you told him
22 that?

23 A He said, -- well, he went back to his car.

24 Q And what car was he walking back to?

25 A Suburban.

1 Q And what color Suburban?

2 A Tan or champagne.

3 Q Tan or champagne color?

4 A Yes.

5 Q And where was this tan or champagne colored Suburban
6 parked?

7 A Up in here.

8 Q Up in that same general area where you encountered him?

9 A Yes.

10 Q Okay. Could you see a driver to that vehicle; to that
11 champagne colored Suburban?

12 A Yes.

13 Q And did you recognize that person?

14 A Yes.

15 Q And where had you seen him before?

16 A At the business.

17 Q At your nightclub?

18 A Yes.

19 Q And has you seen Taurus before at your nightclub?

20 A Yes, I have.

21 Q And approximately how many times have you seen each
22 individual before at your nightclub?

23 A For years.

24 Q For years?

25 A Yes.

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1 Q All right. So you've owned and operated this nightclub
2 for 19 years. Of those 19 years how many years do you think
3 you've seen each individual frequenting your club?

4 A I've seen them at least 25 years.

5 Q Longer than that --

6 A Yes.

7 Q -- longer than you've operated --

8 A Yes.

9 Q Where did you know them before your club?

10 A The store.

11 Q From the store?

12 A Yes.

13 Q Your father's store?

14 A Exactly.

15 Q And so is this store somewhere where people who live in
16 the area will go and purchase things?

17 A Yes.

18 Q Now, when you saw Taurus going back to the tan
19 Suburban, can you tell the Judge what, if anything, you saw
20 in his hand?

21 A Yes.

22 Q What did you see?

23 A A weapon, a pistol.

24 Q You saw a weapon in his hand?

25 A Yes.

1 Q And can you describe the weapon for us?

2 A (No response.)

3 Q Were you able to show Investigator McRae --

4 A Yes.

5 Q -- a picture of the weapon?

6 A Yeah, if I see a picture I can describe it. I mean, I
7 can point it out.

8 Q Okay. Did you make a note of what, if anything, Mr.
9 Taurus Watts was wearing at this time; do you remember what
10 you told the investigators he was wearing?

11 A A white t-shirt --

12 Q Uh-huh. (Affirmative response.)

13 A -- and jeans or something.

14 Q Okay. And what about -- could you see what Mr.
15 Tremaine Wray was wearing; could you tell from where he was
16 seated in the vehicle?

17 A He was out of the vehicle, also. He was standing out
18 the vehicle.

19 Q He was standing outside of the vehicle when you saw
20 him?

21 A Yes.

22 Q Okay. Do you recall giving a description to
23 Investigator McRae at the time?

24 A Yes.

25 Q Okay. Do you recall giving a height and or weight

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1 description to -- about Taurus to Investigator McRae?

2 A (No response.)

3 Q Do you remember how tall you said he was?

4 A Yeah, but I'm not sure whether I gave the weight or
5 not.

6 MS. JOHNS: Your Honor, either I can't hear, or I
7 can't understand him.

8 THE COURT: Okay. If you'll just put the
9 microphone a little closer to him.

10 MS. SHIPLEY: Okay.

11 A I don't --

12 BY MS. SHIPLEY:

13 Q And speak up.

14 A Okay.

15 Q Do you remember what description you gave to
16 Investigator McRae regarding height?

17 A I did give his height.

18 Q Okay, and what height do you remember giving him?

19 A Um -- I don't remember --

20 Q Okay, if Investigator McRae noted it -- would that be
21 -- if you told him something that night -- did you remember
22 giving him a description on height?

23 A Yes.

24 Q Okay. And would that height be five-ten to six feet --

25 MS. JOHNS: Your Honor, I object. She's leading

1 this witness. He's got to remember, then I would expect
2 that he would testify.

3 MS. SHIPLEY: Your Honor, I asked him if he
4 remembered. He said -- I don't remember. He said he knew
5 that he'd given a description, he just could not remember
6 what it was. So I'm now using this document to refresh his
7 memory.

8 MS. JOHNS: That's not proper foundation for
9 refreshing memory. He said he didn't remember. If she
10 wants to refresh his memory she should say, do you remember
11 giving the statement, here's your statement, and then he
12 would read it and then he would say, oh, I remember now.

13 THE COURT: You haven't shown him the document
14 yet?

15 MS. SHIPLEY: No, ma'am.

16 THE COURT: Okay.

17 MS. SHIPLEY: It's not in his written statement,
18 that's why I'm referring to -- the investigator's notes.

19 MS. JOHNS: Then I think she'll have to get that
20 from the investigator and not from this witness.

21 MS. SHIPLEY: Your Honor, a person who gives a
22 statement to another individual, and they don't recall what
23 it is, they know that they made the statement, the state is
24 allowed to go into will this refresh your memory. Just
25 because he didn't write it down -- he told another witness

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1 about it, but he said he remembers telling the other
2 witness, he just doesn't remember what it was at this time.

3 MS. JOHNS: And Your Honor, with regards to that,
4 I think that the document that Ms. Shipley is going to show
5 this witness is not a document that was created by this
6 witness. Therefore it's something that somebody else said
7 or had been noted, and I don't think that's proper.

8 THE COURT: That was my concern whether or not --
9 you said you don't have any document that he wrote it down
10 on to refresh his memory about what he wrote down, because
11 right now what we would have is something he gave to another
12 officer, and can only assume that other officer wrote down
13 what he told him, which this witness does not recall what he
14 told him specifically.

15 MS. SHIPLEY: All right. I'll just move on, Your
16 Honor.

17 BY MS. SHIPLEY:

18 Q Did you describe the height of the individual to the
19 investigator that night?

20 A Yes, I did.

21 Q Do you remember what it is now; do you remember what
22 that height was that you gave to the investigator?

23 A (No response.)

24 Q You don't remember?

25 A No.

1 Q Okay. But you did describe -- you testified earlier
2 that he was wearing a white t-shirt and jeans, correct?

3 A Yes.

4 Q Now, as to Tremaine, you indicated he was standing
5 outside the champagne in color, tan Suburban?

6 A Yes.

7 Q And do you remember if you -- what he was wearing that
8 night?

9 A Yes.

10 Q And what was he wearing?

11 A Which one?

12 Q Tremaine, the driver?

13 A I not sure. I think it was the white shirt also --
14 white t-shirt also.

15 Q Okay. And did you recognize them that night by their
16 face?

17 A Of course.

18 Q And did you remember Taurus' name that night, his first
19 name?

20 A Yes.

21 Q Could you remember his last name that night?

22 A That night, no. So much was going on at the time. I
23 really -- I mean, I was trying to -- handle business as
24 normal. So I mean, my main thing was trying to keep my
25 other customers safe and secure.

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1 Q Okay. So do you remember if you were able to give the
2 name Tremaine to law enforcement that night or to
3 Investigator McRae?

4 A Yes.

5 Q Now, did you know both of these individuals by name and
6 face from frequenting your club?

7 A Yes.

8 Q Okay. Later on do you recall going to the Sheriff's
9 Department on the 1st of July, 2007 at 1:30 in the afternoon
10 to give a written statement?

11 A Yes.

12 Q I'll show that to you to refresh your memory. Is that
13 your statement; do you see your signature on it?

14 A That's my signature. Yes.

15 Q Okay. And when you were giving the statement did you
16 tell the investigators whether or not you'd observed both
17 Taurus and Tremaine get into the tan SUV?

18 A Yes.

19 Q And what direction did you tell them that the car
20 drove?

21 A Towards Farrow Road.

22 Q Okay, and can you show that to Judge Childs, please?
23 Thank you. And while they were driving down Farrow Road --
24 first of all, who was driving the car?

25 A Tremaine.

1 Q And who was in the passenger seat?

2 A Taurus.

3 Q And did you see -- you indicated you saw Taurus with a
4 weapon; did you see him get back into the car with that
5 weapon?

6 A Yes.

7 Q Okay. When you observed the vehicle driving away on
8 Hardscrabble Road, down towards Farrow Road, where were you
9 standing?

10 A I was in the middle of the road. I was right here.

11 Q Okay. Getting ready to cross -- you were crossing the
12 street to go get your car?

13 A Crossing -- yes.

14 Q Okay. And what got your attention to that vehicle?

15 A I heard gunfire. Gunfires.

16 Q And could you see gunfire coming from the car, from the
17 tan Suburban?

18 A Yes.

19 Q And what side of the vehicle was it coming from?

20 A The driver's side.

21 Q The driver's side. And could you see which direction
22 the shots were being fired towards?

23 A Yes.

24 Q And what were they firing towards?

25 A Back this way, this direction.

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1 Q Okay, and what is this building here?

2 A The car wash.

3 Q So they were firing towards the car wash

4 A Yes.

5 Q All right. How many shots do you believe you observed
6 or heard?

7 A I mean, you --

8 MS. JOHNS: Your Honor, I object. Speculation. He
9 believes; what he thought he heard. Speculation.

10 BY MS. SHIPLEY:

11 Q How many shots did you hear?

12 A I mean, I'm not sure. I didn't count them. I mean it
13 was a number of shots.

14 Q Was it more than five?

15 A Oh, yeah. I know it was. I mean, I don't know if the
16 number of five came towards the business or away from the
17 business.

18 Q Okay.

19 A But I know I heard more than five.

20 Q And so you saw the tan Suburban firing shots towards
21 the car wash?

22 A Yes.

23 Q Now, did you have any problems, was anything
24 obstructing your view of that tan Suburban?

25 A No.

1 Q Were you eventually asked by Investigator McRae to look
2 at some photos?

3 A Yes.

4 Q And I'm going to show you what's been marked as State's
5 No. 6, and ask you if you can recognize this document?

6 A Yes.

7 Q Is that your signature on there?

8 A Yes.

9 Q And did you sign acknowledging that you had picked
10 photo number six on these photographic line-ups?

11 A Yes.

12 Q And I'm going to show you Page 2 of State's No. 6.

13 A All right.

14 Q When you were at the Sheriff's Department, can you
15 explain to Judge Childs how these pictures were presented to
16 you?

17 A At the time that he asked me to pick out Taurus, and I
18 did.

19 Q And did he suggest to you in any manner which one to
20 pick out?

21 A No.

22 Q And did you -- which photograph did you pick out?

23 A Number six.

24 Q And who is that a picture of?

25 A Taurus.

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- 1 Q And did -- again, no one suggested to you who to pick?
- 2 A No.
- 3 Q And did you sign this?
- 4 A Yes, I did.
- 5 Q And number six; was that the driver or the passenger of
- 6 the tan --
- 7 A Passenger.
- 8 Q -- Suburban. State's No. 5. Do you recognize this?
- 9 A Yes.
- 10 Q Do you see your signature on that?
- 11 A Yes.
- 12 Q And what picture did you pick off -- sign,
- 13 acknowledging that you identified, made an identification?
- 14 A Picture number four.
- 15 Q Number four. And who is that a picture of?
- 16 A Tremaine.
- 17 Q And did you sign and circle that photograph?
- 18 A I did.
- 19 Q And, again, did Investigator McRae suggest to you who
- 20 to pick out?
- 21 A No, he did not.
- 22 Q And who -- number four, Mr. Wray, what was he doing as
- 23 far as the tan Suburban; was he the driver or the passenger?
- 24 A The driver.
- 25 Q Okay. And were you also asked about the gun; do you

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1 recall looking at pictures of a gun and picking a gun out?

2 A Yes.

3 Q Okay. The two individuals that you saw at 4:00 a.m. on
4 June 30, 2007, leaving the nightclub in the tan Suburban and
5 firing shots; do you see them in the courtroom today?

6 A Yes.

7 Q And I'm going to ask you to identify the defendants.
8 Please start first with Tremaine Wray?

9 A The gentleman right there.

10 MS. SHIPLEY: Your Honor, please let the record
11 reflect he's identified Mr. Wray.

12 BY MS. SHIPLEY:

13 Q What kind of jacket is he wearing?

14 A A suit jacket.

15 Q What color?

16 A Gray.

17 Q And also, can you please, identify the individual that
18 you recognize as Taurus with the gun getting into the
19 vehicle?

20 A The gentleman right there with the red tie on.

21 MS. SHIPLEY: Beg the Court's indulgence.

22 BY MS. SHIPLEY:

23 Q Is there any question in your mind -- did you hesitate
24 at all when you were shown these photographs of the
25 perpetrators?

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1 A No.

2 MS. SHIPLEY: I have no further questions, Your
3 Honor.

4 THE COURT: Okay.

5 MR. BAX: Thank Your Honor. May it please the
6 Court.

7 RICKY JACOBS - CROSS EXAMINATION

8 BY MR. BAX:

9 Q Mr. Jacobs, first of all, good afternoon.

10 A Afternoon.

11 Q Just real briefly, in your direct testimony here today
12 you testified that you did give a description of Mr.

13 Tremaine Wray to the police that night. Is that correct?

14 A Yes.

15 Q You also testified that when asked if you gave Mr.
16 Wray's name to the police that night and you said, yes, that
17 you did. Is that correct?

18 A (Nods head in the affirmative.)

19 THE COURT: I need a verbal response, please.

20 A Yes. Yes, I did.

21 MR. BAX: Thank Your Honor.

22 BY MR. BAX:

23 Q Would it surprise you that if I said the police reports
24 don't indicate that you indicated a name until the next
25 morning of Mr. Tremaine Wray?

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1 A I gave his first name. I didn't know his last name.

2 Q Okay. Do you recall when that night -- obviously, this
3 happened around 4:00 in the morning; isn't that correct?

4 A Exactly.

5 Q Okay. And between the time of this shooting and the
6 time that you spoke to the police how much time lapsed, can
7 you recall?

8 A I can't recall.

9 Q You can't?

10 A Not exactly, no. Six, seven hours -- eight hours when
11 I talked to the investigator the next day.

12 Q Well, I'm asking when you talked to police that night;
13 how long was between the time of the shooting and when you
14 talked to police that night?

15 A That morning it was about three or four hours.

16 Q So you're saying you gave Tremaine's name about four
17 hours later?

18 A I gave the first name. Yes. I did not remember his
19 last name.

20 Q Okay.

21 A I didn't remember his last name at the time. No, I did
22 not.

23 Q So you didn't remember his name initially right when
24 they got there --

25 A First name I did. Last name I didn't.

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1 Q Okay. I'm a little confused. I'm sorry. Let me
2 clarify. When was the first time you gave Tremaine's name,
3 first or last to any police officer?

4 A Investigators -- it was that morning.

5 Q About what time?

6 A It had to be -- maybe 7:00, 8:00 o'clock, maybe.

7 Q Okay. So it would have been a number -- it would have
8 been a couple hours later?

9 A Yes, of course.

10 Q And I have another question for you Mr. Jacobs. You
11 have testified that you have known both defendants, and I
12 guess that would include Mr. Wray, for at last 25 years; is
13 that correct?

14 A Yeah, I would say.

15 MR. BAX: A moments indulgence, Your Honor.

16 That's all the questions at this time, Your Honor.

17 THE COURT: Okay.

18 MS. JOHNS: Thank Your Honor. Please the Court.

19 RICKY JACOBS - CROSS EXAMINATION

20 BY MS. JOHNS:

21 Q Mr. Jacobs, how tall is Taurus Watts?

22 A How tall is he? Really, I can't -- he's taller than I,
23 so I'd say about five-ten, five-eleven.

24 Q And how much does he weigh, sir?

25 A I have no idea.

- 1 Q You've known him for 25 years; is that correct?
- 2 A Close.
- 3 Q He did not have dreads that night, did he?
- 4 A Yes, he did.
- 5 Q He did?
- 6 A Yes.
- 7 Q Okay. How long were his dreads?
- 8 A I have no idea.
- 9 Q You have no idea?
- 10 A I mean, I don't know. They weren't that long. They
- 11 were like twists.
- 12 Q Twists.
- 13 A They weren't shoulder length.
- 14 Q They were shoulder length?
- 15 A They were not.
- 16 Q They were not shoulder length?
- 17 A Yes.
- 18 Q What time did he come to your club?
- 19 A I noticed him in the club about maybe 2:30.
- 20 Q Did you call the police, sir?
- 21 A No, I did not.
- 22 Q Did Mr. Wray have dreads?
- 23 A No, he didn't.
- 24 Q So you saw Mr. Watts at least one time in the club at
- 25 2:30; is that correct?

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1 A I wouldn't say exactly 2:30. I mean, I would say
2 roughly yes, 2:30 give or take.

3 Q Okay. So he was in the club; is that right?

4 A Yes, he was in the club.

5 Q That's your testimony is today --

6 A Yes.

7 Q -- that he was in the club?

8 A Yes.

9 Q And you saw him again, he was outside the club?

10 A Yes.

11 Q Did he arrive with Mr. Wray, to your knowledge?

12 A I have no idea.

13 Q Were you inside the club at all that night, sir?

14 A Most of the night, yes, I was.

15 Q Did you witness a fight inside the club, sir?

16 A No, it wasn't a fight. It was just an altercation. A
17 lot of yelling and pushing and shoving.

18 Q Did you witness the altercation, sir?

19 A Yes, I did.

20 Q Did you witness -- when you witnessed this altercation,
21 did you give that information to the police?

22 A Did I witness it? No, I told them what had started --
23 how things had started, yes. We didn't know the details as
24 far as that's concerned.

25 Q You told them how it started, is that right?

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1 A No. I don't know how it started. I told them what was
2 going on. The altercation inside and at that time I decided
3 to close my business.

4 Q So you did witness this altercation inside and you
5 relayed that information to the police?

6 A Yes, but that wasn't the main concern.

7 Q Okay. So you did?

8 A Yes.

9 Q Did you give a description of those people that were
10 involved in the altercation?

11 A No. They didn't ask. I didn't give it.

12 Q I think one of those people in that altercation had
13 dreads; isn't that right?

14 A Say again, please?

15 Q At least one person involved in that --

16 A Yes.

17 Q -- altercation had dreads; isn't that right?

18 A Yes.

19 Q Do you know who that person was?

20 A Yes.

21 Q Who was it?

22 A Bryan Johnson.

23 Q Anybody else in that altercation wear dreads like
24 Demuria Johnson?

25 A Was anybody -- no.

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1 Q So nobody else had dreads in that altercation?

2 A That I know of, no.

3 Q Did the victim have dreads?

4 A I -- no, I don't remember the victim. I didn't see the
5 victim.

6 Q Did one of your bouncers have dreads?

7 A Did one of my -- yes.

8 Q And what's his name?

9 A Shannon Boone. (sp)

10 Q What length?

11 A Longer than shoulder length.

12 Q Shorter --

13 A Longer than shoulder length.

14 Q Now, you referred to your dad's residence as being
15 across the street from the club; is that correct?

16 A Yes.

17 Q And your dad's house is right on the corner of Howard
18 and Hardscrabble; is that correct?

19 A Yes. It wouldn't be Howard but -- yes.

20 Q Okay. What is the name of the road?

21 A That would be Bethel Church.

22 Q Bethel Church Road?

23 A Yes.

24 Q Okay. Did that Bethel Church Road that we're speaking
25 of, is that a dirt road or is it a paved road?

1 A Dirt.

2 Q Okay, and does it have an outlet at the end of that
3 road?

4 A Yes.

5 Q Okay. So it's not a dead-end; is that right?

6 A No.

7 Q And you stated that -- hold on one moment -- that you
8 knew my client, Mr. Watts for years; is that right?

9 A Yes.

10 Q And you knew the name that night didn't you?

11 A Yes.

12 Q Okay. And you told the police his name; is that
13 correct?

14 A I did -- yes, his first name. Yes.

15 Q All right. Initially, when the police talked to you
16 you did not give his name did you?

17 A Didn't give the name, initially? Yes.

18 Q When they first talked to you, you did not give them
19 Taurus' name; isn't that correct?

20 A No, because we wasn't -- we weren't talking about the
21 names at the time. He was asking me what had happened and
22 what had occurred, and I explained what had occurred. At
23 the time, I was back and forth handling my business, as I
24 said earlier. I had to make sure that my customers in my
25 business were safe and secure. I had to make sure -- my

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1 workers were safe and secure. At the time I was running
2 back and forth handling my business, so I mean, no. Did I
3 give the name at the time initially, no, I don't think I
4 did. But eventually I did give the names and point out the
5 individuals.

6 MS. JOHNS: Beg the Court's indulgence one moment.

7 BY MS. JOHNS:

8 Q When you were shown this photo line-up, that's listed
9 as State's Exhibit No. 6 --

10 A Yes.

11 Q -- he told you to pick out Taurus; isn't that correct?

12 A No. He didn't tell me to pick out Taurus. He just
13 asked me is Taurus on this page, and I said, yes.

14 Q Is Taurus on this page?

15 A Yes.

16 Q Okay.

17 A And I pointed him out.

18 Q So you would have known -- he could have shown you any
19 picture, it didn't have to be this photo line-up they
20 provided you, you would have been able to pick out Taurus,
21 wouldn't you, from any photograph, wouldn't you?

22 A Yes.

23 Q Okay.

24 MS. JOHNS: I don't have anything further, Your
25 Honor.

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1 MS. SHIPLEY: Brief redirect?

2 THE COURT: Surely.

3 RICKY JACOBS - REDIRECT EXAMINATION

4 BY MS. SHIPLEY:

5 Q Mr. Jacobs, who is the person that told Investigator
6 McRae the name, Taurus, that night?

7 A (No response.)

8 Q Are you the person that gave that name to --

9 MS. JOHNS: I object, Your Honor. I ask that he
10 be allowed to answer it.

11 THE COURT: Answer the question.

12 A Uh -- I believe I did.

13 BY MS. SHIPLEY:

14 Q Okay, so --

15 A Yes.

16 Q -- speak into the microphone.

17 A I'm quite sure I did. Yes.

18 Q Okay, so you told Investigator McRae the name Taurus
19 that night?

20 A Yes.

21 Q And when he asked you to identify, in State's No. 6 --
22 can you look at that, please. Did he -- Please open it up
23 to the second page. What picture did you pick out; what
24 photograph did you pick on that page?

25 A Number 6. Right here.

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1 Q Okay. And why did you pick that photograph?

2 A Because this is Taurus.

3 Q Okay. Is that the person that you saw that night, that
4 you know as Taurus?

5 A Yes.

6 Q Did he suggest to you in any way which photograph to
7 pick out?

8 A No.

9 MS. SHIPLEY: No further questions, Your Honor.

10 MS. JOHNS: Brief follow-up, Your Honor.

11 RICKY JACOBS - RECROSS EXAMINATION

12 BY MS. JOHNS:

13 Q Was anybody else in that line-up that you know; do you
14 know any of those other guys?

15 A No.

16 Q Did you ever seen any of those other guys before?

17 A No.

18 MS. JOHNS: Nothing else, Your Honor.

19 THE COURT: All right. Any questions by Mr.

20 Swerling. Okay. All right. The witness can step down.

21 MS. SHIPLEY: State calls Investigator Don McRae.

22 THE CLERK: Please raise your right hand.

23 (WHEREUPON, Don McRae, was sworn to
24 tell the truth.)

25 THE CLERK: All right. Have a seat in the witness

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1 stand and give your name to the court reporter.

2 INVESTIGATOR MCRAE: Investigator Don McRae,
3 Richland County Sheriff's Department.

4 DON MCRAE - DIRECT EXAMINATION

5 BY MS. SHIPLEY:

6 Q Investigator McRae, can you please tell the Court where
7 you are employed?

8 A I'm currently employed with the Richland County
9 Sheriff's Department as a major crimes investigator.

10 Q And did you respond to a shots fired call on
11 Hardscrabble on June 30, 2007?

12 A I did.

13 Q Could you please tell the judge what time you got
14 there?

15 A Do you have my follow-up available?

16 Q Yes, sir.

17 A Just to refresh my memory. On June 30, 2007, I was
18 notified by Sgt. Eric Barnes of a shooting at the incident
19 location, H&J Club on Hardscrabble Road. I was notified at
20 5:08, and arrived on the scene at 5:40 in the morning.

21 Q And when you got there who was the first person that
22 you get into contact with?

23 A First person I talked to -- I met with the responding
24 deputies and Sgt. Barnes, who was the On-Call Sergeant for
25 that evening. The first actual person that I met with that

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1 was at the club at the time of the shooting was Ricky
2 Jacobs.

3 Q And can you describe the scene to Judge Childs, were
4 there a lot of people lingering around the parking lot;
5 describe the scene for her.

6 A When I arrived at the scene, Your Honor, there were
7 still some customers in the area. It was a secured scene.
8 In other words, the scene was secured by crime scene tape.
9 There was a little bit of initial confusion about what
10 exactly had transpired that night.

11 Q And what do you mean by a little confusion?

12 A People were a little less than cooperative to cooperate
13 with us initially when we first arrived on the scene, which
14 is pretty much the case sometimes in cases that I work.
15 People -- some people just don't want to be involved. Some
16 people just want to stand off and not be involved with
17 police officers.

18 Q And at one point, were you able to have contact with
19 Mr. Jacobs alone?

20 A Once everything kind of quieted down, Your Honor, I did
21 get the opportunity to take Mr. Jacobs off to the side and
22 speak with him, one-on-one, out of earshot of the other
23 people that were still lingering inside and outside of the
24 club.

25 Q And when you talked to Mr. Jacobs alone did he appear

1 to be more forthright with you?

2 A Mr. Jacobs and I knew each other from a previous
3 incident. Mr. Jacobs and I had built a somewhat of a
4 rapport on that first incident that I had worked at that
5 location. Mr. Jacobs felt comfortable speaking with me.
6 Especially, felt comfortable speaking with me once we were
7 out of earshot and sight of any other patrons or on-lookers
8 that were still in the area.

9 Q Okay. And when you did get him aside were you able to
10 figure out what had transpired at the club that night?

11 A Basic information, yes.

12 Q Okay. And did he clear up any confusion as to what
13 type of vehicle was used?

14 A He did.

15 Q Also, were you able to get any kind of description of
16 how many occupants were in that vehicle?

17 A I did.

18 Q And what color vehicle did he describe to you?

19 A He described a tan in color Suburban.

20 Q And what description did he provide of the front
21 passenger?

22 A The front passenger, Mr. Jacobs told me was a black
23 male, height range five-ten to six feet, 150 to 160 pounds.
24 He also informed me that that subject was wearing a white
25 t-shirt and jeans. And that the subject had some sort of

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1 twist, twisties in his hair.

2 Q All right. And at that point, were you able to get a
3 name of this individual from Mr. Jacobs?

4 A Once we got -- again, once we got away from any
5 on-lookers and anybody else who was still in the parking
6 lot, he did give me the first name only of Taurus.

7 Q And that was there at the scene when you arrived there
8 that night?

9 A I'm sorry?

10 Q Was that that night at the scene?

11 A Yes.

12 Q So you had the name of Taurus that -- those early
13 morning hours of June 30, 2007; is that correct?

14 A That is correct.

15 Q Now, the second individual that he described, can you
16 let us know what, if any, information he gave you concerning
17 that individual?

18 A Mr. Jacobs informed me that the second subject was a
19 black male. According to Mr. Jacobs he did not get a good
20 look at the subject, but he has seen him in the club before.

21 Q Did he indicate whether or not he would be able to
22 identify both subjects if he saw them again?

23 A He did.

24 Q Now, was Mr. Jacobs eventually able to provide you with
25 the first name of subject number two?

1 A He did.

2 Q And when was that?

3 A I received a call at approximately 9:15 that same
4 morning from Mr. Jacobs, who informed me that the last name
5 of the individual he knew as Taurus was either Watts or
6 Watson. Mr. Jacobs also informed me that the driver of the
7 Suburban, the tan in color Suburban was identified -- that
8 was described by Mr. Jacobs, his first name would have been
9 Tremaine. Mr. Jacobs that he informed me at this time that
10 he did not know the last name of the driver, but he would
11 let me know if he got any other information.

12 Q And during your investigation that night did you go
13 looking for a tan Suburban in the surrounding area?

14 A We did. In my experience in that club, Your Honor, I
15 know that a lot of the patrons that go to that club actually
16 live in and around that area. We actually drove through two
17 different subdivisions, one being Washington Heights, which
18 is a rock's throw away from the nightclub.

19 Q And were you able to spot a tan Suburban in the
20 driveway of that residence, of a residence in that
21 subdivision?

22 A If I recall, there -- we actually found two tan in
23 color Suburbans. One was actually hooked up to, I believe a
24 U-Haul. The second vehicle was backed up -- there was a red
25 Pontiac in the driveway -- I believe either in the driveway

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1 or just on the grass. Next to that Pontiac was a tan in
2 color Suburban, but the vehicle was backed up to where I
3 could not get a view of that license plate.

4 Q And so as a result of being unable to view the license
5 tag of that Suburban, what, if anything, did you do with
6 that Pontiac?

7 A I did go ahead and write down and obtain the South
8 Carolina tag to that Pontiac because it was pulled straight
9 in. That license plate was a South Carolina tag of [REDACTED],
10 [REDACTED] [REDACTED] (sic).

11 Q At that point were you able to find out who that
12 vehicle belonged to?

13 A I did. At the time, that vehicle was registered to
14 Nellie Walker Wray, at [REDACTED] in Columbia,
15 which was the location where that vehicle and the tan
16 Suburban were located.

17 Q And when you were able to find a last name and an
18 address to that Pontiac -- and you had the first name of
19 Tremaine, what did you do to find out if -- whether or not a
20 Tremaine lived at that residence?

21 A Once I got the last name of Wray from the registration
22 from the Pontiac, I actually ran in the database available
23 to the Richland County Sheriff's Department, the first name
24 of Tremaine. I did get a return with a Tremaine Wray and
25 within that database it listed his location at -- or his

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1 address as [REDACTED] in Columbia.

2 Q And so once you were able to get a name were you able
3 to put a photographic line-up together with both of those
4 individuals, Mr. Taurus Watts and Mr. Tremaine Wray?

5 A I did.

6 Q And can you explain how it is that you are able to
7 arrange a photographic line-up and what the goal is in
8 arranging your photographic line-up, and here's five and
9 six, State's No. 5 and No. 6.

10 A Your Honor, when I build a line-up I try to use similar
11 face characteristics, whether it be facial hair. I also try
12 to use, as close as I can, same hairstyles. I attempt to
13 use same skin tone, however, sometimes that does get a
14 little hard to do, but basically I don't necessarily look
15 for five other people that look like the person or the
16 subject. I'd look for five other people that are similar in
17 building my photo arrays.

18 Q And did you do so for both photographic line-ups?

19 A I did.

20 Q And did you have an opportunity to then present those
21 photographic line-ups to Mr. Jacobs?

22 A I did.

23 Q And can you tell Judge Childs the normal procedure that
24 you -- how often do you think show witnesses photographic
25 line-ups?

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1 A On an average, I would say I show a photographic
2 line-up two to three times a month.

3 Q And when you do so do you have a certain routine that
4 you follow?

5 A I do.

6 Q In presenting the photos to witnesses?

7 A I do.

8 Q And can you please go over that with Judge Childs?

9 A Your Honor, basically what I'll do is I'll initially
10 take a written statement from my witness, my victim, whoever
11 it may be that I'm actually taking the statement for in
12 preparation before I show the line-up. Once I get the
13 statement taken, what I'll do is I'll pull the photo
14 line-ups out. I'll set the pictures in front of the person
15 I'm showing the line-up to. Normally, I will ask is there
16 anyone in these pictures that you recognize.

17 Q And do you make it a habit of telling them the name
18 that you're looking for?

19 A Not normally, no.

20 Q And did you do so in this case?

21 A I honestly cannot remember, but I don't -- I would
22 never do that. I have never done it in the past, and I
23 can't see myself doing it this time.

24 Q All right. And so when you presented the photos to Mr.
25 Jacobs, did you suggest to him in any manner which

1 photograph to pick out?

2 A Absolutely not.

3 Q Okay. And at that point, did he hesitate in any fashion
4 when you -- when he made an identification in each
5 photographic line-up?

6 A No hesitation whatsoever.

7 Q And who did he identify in State's No. 5?

8 A In State's No. 5, he identified -- the picture is.
9 marked Picture Number Four. There is a number four above
10 the picture, and then below the picture are the words,
11 picture number sign four, which is the picture of Tremaine
12 Wray.

13 Q And again, did he hesitate at all in picking that
14 photograph?

15 A No, ma'am.

16 Q And did he appear certain that that was the individual
17 he saw --

18 A Yes, ma'am.

19 Q -- driving the vehicle that night?

20 A Driving the vehicle.

21 Q And, again, in his statement did you go over and
22 clarify this with him his written statement?

23 A I did.

24 Q And verified that this was indeed his identification?

25 A I did.

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1 Q Now, as to State's No. 6, which photograph, who did he
2 identify in that photographic line-up?

3 A In State's Exhibit No. 6, he identified picture number
4 six, the number sign six is written above the subject's head
5 --

6 Q And who is the subject?

7 A And that is Taurus Watts.

8 Q And again, did he have any hesitation in identifying
9 that photograph --

10 A No, ma'am.

11 Q -- as the driver or passenger of the vehicle?

12 A Passenger of the vehicle. No, ma'am.

13 Q And did you have him sign an affidavit swearing that
14 that's who he identified?

15 A I did. He signed, he provided his address and a phone
16 number that he could be reached at, and it was sworn and
17 notarized by myself.

18 MS. SHIPLEY: Now, Your Honor, at this time I have
19 no further questions as far as the Neil verses Biggers part.
20 But just out of efficiency can I go into the search warrant?

21 THE COURT: Okay. Yes.

22 BY MS. SHIPLEY:

23 Q Based on the -- you already explained on the record how
24 you were able to develop Tremaine Wray as a suspect?

25 A Yes.

1 Q You also testified that you were able to find an
2 address and an owner as to one of the vehicles at [REDACTED]
3 [REDACTED]?

4 A That's correct.

5 Q Did you eventually run the tag of the Suburban, tan
6 Suburban, and find out who that car was registered to?

7 A I did.

8 Q First of all, where was the tan Suburban parked when
9 you were able to look at the tag?

10 A It was actually parked behind the Out Back Steakhouse
11 on Two Notch Road.

12 Q And who works there?

13 A Tremaine Wray did at the time.

14 Q And when you were able to spot the vehicle there did
15 you run the tag?

16 A I did.

17 Q And what tag is it?

18 A (No response.)

19 Q And if I may just assist you on State's Exhibit No. 8;
20 is this a copy of the search warrant that you prepared in
21 this case?

22 A It is.

23 Q Okay. And what is the tag number on -- of the tan
24 Suburban?

25 A The tag number of that tan Suburban is South Carolina

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1 [REDACTED] [REDACTED] [REDACTED] [REDACTED]. It's a tan in color,
2 registered to Nellie Walker Wray of [REDACTED] in
3 Columbia.

4 Q And did you fill this affidavit out?

5 A I did.

6 Q And for purposes of this hearing, I'm going to need you
7 to read that affidavit verbatim.

8 A (No response.)

9 Q Read from your belief that the property --

10 A (Reading) -- reasons for belief that the property
11 sought is on subject premise on 6/30/2007, at approximately
12 4:10 hours, 04:10 hours Demuria Johnson was shot at the H&J
13 Club, 2820 Hardscrabble Road, Columbia South Carolina 29223.
14 Witnesses did identify the above listed vehicle as being at
15 the incident location and firing several shots from this
16 vehicle. One of these rounds from this vehicle did mortally
17 wound Demuria Johnson. A witness identified the driver and
18 passenger in the vehicle as subject was leaving the incident
19 location and has notified law enforcement with a statement
20 stating the gunfire that struck the victim came from this
21 vehicle at the incident location. The vehicle was spotted
22 by investigators at the residence of one of the suspects
23 identified by the witness as the driver of the vehicle that
24 fired the shots at the incident location.

25 Q Okay. And can you then explain what it was

1 specifically the property that was to be sought?

2 A Your Honor, we were looking for any forensic evidence
3 related to the murder of Demuria Johnson. Such as would
4 include but not limited to: Blood, hair, fibers,
5 fingerprints, etcetera. Any and all potential or relevant
6 evidence which would aid in the investigation of the murder
7 outlined -- outlined in the attached affidavit..

8 Q And was part of the forensics that you eventually was
9 obtained gunshot residue?

10 A It was.

11 Q Okay. And the return -- again, what date does the
12 shooting happen at the H&J?

13 A The shooting happened in the early morning hours of
14 June 30, 2007.

15 Q And can you look at the page of the return and do you
16 recognize the signature on that return?

17 A Which signature? The signature of the judge or the
18 signature of the person --

19 Q The officer executing the search warrant?

20 A Anna Clemmons

21 Q And on the top of that return what date was placed on
22 there.

23 A June 2, 2007.

24 Q Again this incident happened June 30th

25 A That's correct.

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1 Q So that would be a scrivener's error?

2 A That's correct.

3 Q And on the return did it indicate whether or not
4 gunshot residue was collected or trace evidence?

5 A On the inventory of property taken from this vehicle
6 would have been photographs, swabs, fingerprints, trace, MUG
7 cans, cigarette butts, and black head -- band -- head rag.
8 I can't quite read that bottom line.

9 Q Okay. And on what day did you -- were you sworn before
10 Judge Maurer for this search warrant?

11 A I swore under oath to Judge Maurer on July 1, 2007.

12 Q And what day was the search warrant returned to his
13 office -- on the return?

14 A On the return it's dated June 2, 2007.

15 Q No. I'm sorry. If you could read the bottom of the
16 page?

17 A I'm sorry. Judge Maurer dated this the 6th day of July,
18 2007, at 1:30 p.m.

19 Q And just for background information, did Mr. Jacobs
20 also give a description of another vehicle leaving the scene
21 and also firing a shot?

22 A He did.

23 Q And what direction did he indicate to you that that
24 shot was fired?

25 A Straight up in the air.

1 Q Okay, and how many times?

2 A One shot.

3 Q And also at this time were you privy to the ballistics
4 expert's opinion as to the projectile found at the scene and
5 how many were located?

6 A At what time?

7 Q By the time you got the search warrant?

8 A By the time I got -- I was.

9 Q Okay. And how many projectiles were located at the
10 scene?

11 A I believe there were 10.

12 Q Oh, those were shell casings.

13 A Oh, projectiles -- three. Projectiles there were
14 three.

15 Q And --

16 A Two at the scene and one was recovered from the
17 victim's pant leg.

18 Q Okay. And do those three match?

19 A They did.

20 Q And so as a result of the ballistics, were you able to
21 eliminate the shot from the Isuzu as being the shot that
22 killed the victim?

23 A Yes.

24 MS. SHIPLEY: Your Honor, that's all I have as it
25 relates to Neil verses Biggers and to search warrant

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1 matters.

2 THE COURT: Okay.

3 MR. BAX: And Your Honor, just for housekeeping,
4 I'm going to ask a few questions about the identification
5 for the photo line-up, and then Mr. Swerling is going to ask
6 some questions about the Chevy Suburban and the search
7 warrant.

8 THE COURT: Okay.

9 MR. BAX: Thank you.

10 DON MCRAE - CROSS EXAMINATION

11 BY MR. BAX:

12 Q Briefly, Investigator McRae, you testified, and I think
13 you testified based on some notes that you made that you
14 received a call about 9:00, 9:15 from Mr. Jacobs, and at
15 that time he indicated both that Mr. Watts -- well, both --
16 that Taurus -- his last name was Watts or Watson, and that
17 the driver's name was Tremaine; is that correct?

18 A Yes. About 9:00 or 9:15.

19 Q Okay.

20 A I can't say specifically, you know, --

21 Q Sure.

22 A -- that the clock struck 9:15 at the time the phone
23 rang, but around that time. Yes, sir.

24 Q But it was definitely a call, in other words, it didn't
25 happen there at the scene when you had that first talk with

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1 him out of earshot of the other individuals; is that
2 correct?

3 A For the --

4 Q When he gave you Mr. Wray's first name, Tremaine?

5 A Tremaine. That's correct, that's correct.

6 Q And he indicated at that time that he knew Tremaine; is
7 that right?

8 A Had -- which time?

9 Q When he called you there at 9:15 and gave you that
10 information?

11 A He actually told me earlier than that that he had seen
12 Tremaine in the club prior -- on prior occasions and knew of
13 him, but at that time could not remember his name.

14 Q Okay.

15 A Okay.

16 Q So at that time -- so earlier he indicated he could not
17 remember his name?

18 A That's correct.

19 Q Okay.

20 MR. BAX: A moment's indulgence, Your Honor.

21 That's the end of what I have to ask. Mr. Swerling may
22 want to ask him about the search warrant.

23 THE COURT: Okay.

24 DON MCRAE - CROSS EXAMINATION

25 MR. SWERLING:

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1 Q Investigator McRae, you took out the search warrant on
2 July 1st; is that correct, about 3:00 o'clock in the
3 afternoon?

4 A Yeah. It would have been July 1st. Yeah. That's the
5 date the judge signed it.

6 Q Okay. You also got an arrest warrant that day, too, or
7 instructed someone to get an arrest warrant for Mr. Wray
8 that day, as well?

9 A Okay.

10 Q Is that correct?

11 A Can I see a copy of the arrest warrant to make sure I
12 don't --

13 Q Okay, we'll get that copy to you in a minute. Did you
14 go ahead and actually and appear before Judge Maurer
15 yourself?

16 A I did.

17 Q Okay. And let me show you a copy of the search
18 warrant. Is that your affidavit for the search warrant?

19 A It is.

20 Q Okay. You -- were you sworn at that time?

21 A I was.

22 MR. SWERLING: Your Honor, I'd like to put a copy
23 of this in as a court's exhibit -- and can I substitute a
24 copy of this one at some point.

25 MS. SHIPLEY: Your Honor, I already have it marked

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1 as State's No. 8.

2 MR. SWERLING: Okay. I'm sorry. That's fine.
3 We'll leave it at that.

4 THE COURT: Okay.

5 BY MR. SWERLING:

6 Q Let me ask you something, would you look at State's
7 Exhibit No. 8, then, and would you tell me whether or not
8 you told Judge Maurer anything that's not contained in that
9 affidavit?

10 A Did I express anything to Judge Maurer --

11 Q Did you tell him anything this case that's not
12 contained in the four corner's of this affidavit?

13 A I don't recall. I mean, I would have stuck with the
14 facts of the case while discussing the case. However, I may
15 have made general conversation, but the facts of the case
16 would have been only discussed -- what was contained in the
17 affidavit.

18 Q So for the Court's benefit, Judge Child's benefit,
19 anything you told Judge Maurer would be contained within the
20 four corners of this affidavit?

21 A To the best of my knowledge, yes.

22 Q Now, this warrant was returned -- well, actually it was
23 -- what day was it executed? You actually went out to Out
24 Back?

25 A That's correct.

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1 Q And Tremaine Wray was also arrested that evening; is
2 that correct?

3 A At Out Back --

4 Q At Out Back?

5 A Yes.

6 Q And he was arrested in the Out Back; is that right?

7 A That is correct. He was arrested, actually, in the
8 kitchen area of the Out Back.

9 Q And he was working at that time?

10 A He was.

11 Q And the vehicle was in the parking lot?

12 A It was in the parking lot. The parking lot, I believe
13 is actually the property of Home Depot or one of the hotels
14 back there. I don't believe it's actually the Out Back
15 property that the vehicle was on.

16 Q Okay. So when Mr. Wray was taken into custody he was
17 not in control of the vehicle; is that correct?

18 A That's correct.

19 Q In fact, he was not even anywhere even close proximity
20 to the vehicle; is that correct?

21 A That's correct.

22 MR. SWERLING: Excuse me, Your Honor --

23 BY MR. SWERLING:

24 Q So he was arrested at Out Back in the kitchen on an
25 arrest warrant for murder; is that correct?

1 A That is correct.

2 Q And at the same time that he was being arrested in the
3 Out Back kitchen, his vehicle was being taken into custody
4 pursuant to a search warrant; is that correct?

5 A The vehicle would have been towed from the location
6 after his arrest. I don't -- that wouldn't have happened
7 simultaneously, but the arrest would have occurred and the
8 vehicle --

9 Q I guess I mean close. But the arrest warrant was
10 issued against him and then the vehicle was towed pursuant
11 to the search warrant?

12 A Can I see a copy of the arrest warrant?

13 Q This is a copy of the arrest warrant. Do you recognize
14 it?

15 A I do.

16 Q Okay. And it's dated July 1st, and this seemed to be
17 -- or appears to be served on July 1st, too?

18 A Correct.

19 MR. SWERLING: Your Honor, we'll put this in, if
20 that's all right.

21 THE COURT: Okay.

22 (Defendant's Exhibit No. 1, arrest
23 warrant, was marked and entered.)

24 BY MR. SWERLING:

25 Q Did you have anything to do with the actual taking of

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1 the vehicle into custody?

2 A No.

3 Q But you obtained the search warrant that authorized
4 them to take it?

5 A That's correct.

6 Q And who did you give that to with instructions to go
7 ahead and take the vehicle into custody?

8 A The search warrant would have been provided to the lab
9 after the vehicle was towed from the scene. This search
10 warrant wouldn't have been given to the person who did the
11 tow.

12 Q That did the tow?

13 A Right.

14 Q All right. So you personally did not participate in
15 the towing of the vehicle, but it was towed at your
16 instructions?

17 A That is correct.

18 Q Pursuant to the search warrant?

19 A Pursuant to the search warrant and the arrest warrant.

20 Q Okay. But there's no question that Mr. Wray was
21 arrested inside the Out Back, and the vehicle was in the
22 Home Depot parking lot; is that correct?

23 A Directly -- the part of the Home Depot parking lot that
24 was directly behind the Out Back, yes.

25 Q And is that a contiguous type of parking lot. It's

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1 separated where you can say it's Home Depot, you say it's
2 Out Back?

3 A It's shared.

4 Q Shared?

5 A From what it looks like because all the employees from
6 Out Back, when they go to work that's where they park.
7 There are reserved spots for them.

8 Q All right.

9 A Customers -- that is actually within the property
10 limits of the Out Back.

11 Q There are a number of retail establishments in that
12 area?

13 A There's a couple of hotels -- yes.

14 Q All right. The search warrant has a return on it June
15 2nd, which obviously isn't correct; is it not?

16 A Since I didn't get the search warrant until July 1st,
17 yes.

18 Q Did you-all -- did you-all perform some magic? I mean,
19 you actually don't know what date it was, but it does say
20 June 2nd?

21 A That is correct.

22 Q Okay. Mr. Wray, just so I understand, when you
23 arrested him in the Out Back and his vehicle was out there,
24 he was not in any close proximity to the vehicle at the time
25 of the arrest?

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1 A He was inside the Out Back and the vehicle was outside.

2 Q Okay.

3 MR. SWERLING: That's all. Thank you.

4 THE COURT: Any redirect or anything -- Ms. Johns,
5 do you have anything?

6 MS. JOHNS: Yes.

7 THE COURT: Okay. Go ahead.

8 DON MCRAE - CROSS EXAMINATION

9 BY MS. JOHNS:

10 Q Investigator McRae, you stated that you had already
11 received the names of the -- of the people who had allegedly
12 done the shooting prior to you developing the photo
13 line-ups; correct?

14 A That's I had the name prior to me developing the photo
15 line-ups?

16 Q Yes, sir?

17 A Yes, ma'am.

18 Q Okay. And when you arrived on the scene it was
19 daylight; is that right?

20 A I'm sorry?

21 Q When you arrived on the scene it was daylight, is that
22 right?

23 A Um --

24 Q 9:15, you said?

25 A When I arrived on the scene, I arrived at 5:40 in the

1 morning.

2 Q Oh, okay. Well -- It was starting to daybreak, right?

3 A I don't know what time sunrise was on June 30, 2007.

4 Q When you arrived on the scene did you have information
5 about the person who committed the shooting prior to your
6 arrival?

7 A Prior to my arrival did I have any information on who
8 did the shooting?

9 Q Yes, sir?

10 A No, ma'am.

11 Q After your departure you had the name of Taurus; is
12 that correct?

13 A Once I left the first time -- I was back and forth a
14 lot that morning. So with -- at one point that morning when
15 I left I did have the first name of Taurus.

16 Q Okay. When you left the scene and went to the scene
17 where the Isuzu Rodeo was stopped, you already had the name
18 Taurus; is that correct?

19 A I believe I did.

20 Q When you created the photo line-up, it wasn't that hard
21 to come up with an array of photographs because you already
22 had a name? So you already had a name and you put that name
23 in the database right?

24 A No.

25 Q All right.

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1 A I would have had to put his name in the database, but I
2 believe by the time I was searching for pictures for Mr.
3 Watts, I already had the last name of Watts or Watson.

4 Q Okay.

5 A Okay.

6 Q So from the database, let's just -- for purposes of the
7 judge --

8 A Yes, ma'am.

9 Q -- you can put the first name of Taurus in there and
10 run a data search from that database and come back with
11 picture of Taurus Watts, if he was in the database, right?

12 A (No response.)

13 Q Your run just one name, you can run Taurus and it will
14 give you some -- if he's in there, it will give you --

15 A If he's in there it will come back.

16 Q All right. Now, I'm going to ask you if you have
17 anything with you that would indicate when this photograph
18 was taken? I'm referring to State's Exhibit --

19 A When that photograph was taken?

20 Q Yes, sir.

21 A I couldn't tell you on the stand today, but that
22 picture would have had a date associated with it from that
23 database.

24 Q Okay. And based on State's Exhibit No. 6, if you look
25 at the photo listed as number six --

1 A Yes, ma'am.

2 Q -- it's obvious that that's a jail uniform; is that
3 correct?

4 A I'm sorry?

5 Q Obvious that that's a jail uniform; is that correct?

6 A No, ma'am. It does not state Richland County Detention
7 Center. It actually looks like a June shirt to me.

8 Q And none of the other photographs in this photo line-up
9 have that article of clothing on; correct?

10 A There are one, two, three, four others that actually
11 have a non-collared shirt on, but that specific style of
12 shirt? No, ma'am.

13 Q Taurus is the only one that has that specific style of
14 shirt on; is that right?

15 A Specific style?

16 Q Yes, sir.

17 A I mean, there's no collar. It's got a low neckline. So
18 I would submit to you counselor that the four others are
19 similar, however, they are different colors.

20 Q Okay. Now, this not a color photograph and you did not
21 show Mr. Jacobs a color photograph, did you?

22 A No, I didn't.

23 Q Okay. Are you familiar with the Richland County
24 Detention Center's uniform?

25 A I am.

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1 Q Okay. And would you agree that number six is
2 consistent with that uniform?

3 A I would.

4 Q And would you agree that the other five are
5 inconsistent with that uniform?

6 A I would.

7 MS. JOHNS: Your Honor, may I hand this up to the
8 Court?

9 THE COURT: Yes.

10 BY MS. JOHNS:

11 Q Did you do any other interviews on the scene other than
12 Mr. Jacobs?

13 A On the scene?

14 Q Yes, sir?

15 A I don't believe so.

16 Q Okay.

17 MS. JOHNS: I have nothing else, Your Honor.

18 DON MCRAE - REDIRECT EXAMINATION

19 BY MS. SHIPLEY:

20 Q Just so we're all clear. The time that you met with
21 the witness, Ricky Jacobs, at the scene, did he know the
22 name of the person with the gun that night? And you may
23 refer to your notes.

24 A Thank you. He knew the first name, Taurus.

25 Q Okay. He knew the name, Taurus; is that correct?

1 A That's correct. Actually, he knew a little bit more
2 information about Taurus.

3 Q What else did he know about Taurus?

4 A Mr. Jacobs also related to me that he hung around EL
5 Hunter Road, which is just right up the road, just up the
6 road on Hardscrabble Road, that's Farrow Road, he also told
7 me that he thought that he may stay on the dirt road off of
8 EL Hunter Road. Mr. Jacobs also informed myself that Taurus
9 went to the Townsmen Club off of Hardscrabble Road. All of
10 these areas are within close proximity of the club.

11 Q Okay. And he was familiar, clearly familiar with
12 Taurus; is that correct?

13 A Yes.

14 Q And then he called you back at 9:15 that same morning;
15 correct?

16 A Correct.

17 Q With the last name Watts or Watson; is that correct?

18 A Correct.

19 Q And so now you have the name Taurus Watts, correct?

20 A Correct.

21 Q And were you able to find a Taurus Watts in your
22 database?

23 A I did.

24 Q And were you able to find an address for Mr. Watts in
25 your database?

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1 A The 133 Abilene. That would have been what was on that
2 information sheet on that database.

3 Q And is that consistent with a dirt road off of EL
4 Hunter Road or in that area?

5 A In that area.

6 Q Okay.

7 A Abilene is not a dirt road in that area, but -- I
8 believe what Mr. Jacobs was actually referring to was
9 Ballington Road, which is a dirt road off of EL Hunter.

10 Q Okay. And so basically, this witness was familiar with
11 Taurus?

12 A Yes.

13 MS. SHIPLEY: No further questions.

14 MS. JOHNS: I don't have any recross, Your Honor.

15 THE COURT: All right. You can step down.

16 INVESTIGATOR MCRAE: Thank you, Your Honor.

17 MS. MCDUFFIE: Your Honor, state would call Lt.

18 Anna Elsey.

19 THE COURT: Okay.

20 THE CLERK: Please raise your right hand.

21 (WHEREUPON, Anna Elsey, was sworn
22 to tell the truth.)

23 THE CLERK: Thank you. Have a seat in the witness
24 stand and give the court reporter your name.

25 LT. ELSEY: Anna Elsey, E-l-s-e-y.

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1 ANNA ELSEY - DIRECT EXAMINATION

2 BY MS. MCDUFFIE:

3 Q Lieutenant, where are you employed?

4 A Richland County Sheriff's Department.

5 Q And were you employed there in June and July 2007?

6 A I was.

7 Q And was your name, last name Elsey at that time?

8 A It was Clemmons.

9 Q And on July 2, 2007, did you have a chance to come in
10 contract with a 1999 GMAC Suburban?

11 A I did.

12 Q And where was that?

13 A It was located in our secure forensic garage at 5623
14 Two Notch.

15 Q And when did that vehicle come into your secured
16 forensic garage?

17 A According to our records it was entered on July 1,
18 2007, at 5:21 by Investigator Livingston.

19 Q When did you come in contact with that vehicle?

20 A Monday morning on July 2nd.

21 Q And approximately what time?

22 A Around 10:00 o'clock.

23 Q And from the time that vehicle entered your garage
24 until you came in contact with it was it secured?

25 A Yes.

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1 Q Could the people -- could the public or anybody tamper
2 with it in any way?

3 A No. It's a secured location. Restricted access by
4 investigators and the lab.

5 Q And when you came in contact with that vehicle what was
6 the purpose of what you were doing?

7 A To execute a search warrant on the vehicle.

8 Q And did you have a copy of that search warrant?

9 A Yes.

10 Q And what exactly were you looking for in the vehicle?

11 A After contacting Investigators McRae and Gallegos, I
12 searched the vehicle for any forensic evidence related to
13 the incident that occurred on June 30th.

14 Q The search warrant specifically says search for
15 evidence will include, but not limited to blood, hair,
16 fibers, and fingerprints?

17 A That's correct.

18 Q What are some other -- some other forensic evidence you
19 typically look for when you execute a search warrant?

20 A Trace evidence such as GSR, gunshot residue, also
21 includes things such as photographs or swabs from the
22 vehicle. Anything that -- in this particular case it may
23 include a look for shell casings or anything related to this
24 specific incident.

25 Q Were you aware of whether or not a weapon had been used

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1 in this incident?

2 A I was advised that was a possibility; yes.

3 Q And is that one reason you would look for things like
4 shell casings or trace evidence?

5 A Yes.

6 Q And when did you execute the search warrant?

7 A On July 2nd.

8 Q And did you fill out a search warrant return?

9 A I did.

10 Q And what date did you put on the search warrant return?

11 A I put June 2nd.

12 Q And was that the correct date that you executed the
13 search warrant?

14 A No, it was not. It was a clerical error.

15 Q And on all of your paperwork that you filled out, what
16 date did you put on that?

17 A July 2nd.

18 Q The date you actually executed the search warrant was
19 what?

20 A July 2nd.

21 Q And what did you remove from the vehicle?

22 A I took photographs. Swabs, fingerprints and palm
23 prints, trace evidence, GSR. A MUG can that was empty,
24 cigarette butts and a black head rag.

25 Q And was that search warrant returned to Judge Maurer?

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1 A It was. I returned it on July 6th at 1:30 p.m.

2 MS. MCDUFFIE: Beg the Court's indulgence.

3 Nothing further, Your Honor.

4 THE COURT: Okay.

5 ANNA ELSEY - CROSS EXAMINATION

6 BY MR. SWERLING:

7 Q How are you doing?

8 A Okay.

9 Q Good. The search warrant was done on July 6th -- I'm
10 sorry, July 2nd and the return was on July 6th?

11 A That's right.

12 Q Okay. And this indicates you had a copy of the warrant
13 in the vehicle?

14 A That's correct.

15 Q So you had -- obviously had a copy of the search
16 warrant when you processed the vehicle; is that correct?

17 A That's correct.

18 Q And the vehicle was in the compound at the time that
19 you processed it or did you take it to another location?

20 A No, it was in our forensic garage, which is a different
21 location than the compound. It's at headquarters, and
22 that's where I processed it. In a secure location.

23 Q But everything that you removed here is listed on the
24 return was taken pursuant to the search warrant; is that
25 correct?

1 A Yes, sir.

2 MR. SWERLING: Judge, I want to make sure the --
3 had the return on it. That's all I have.

4 THE COURT: Okay.

5 MS. JOHNS: Nothing from the defense, Your Honor.

6 THE COURT: Okay. All right, ma'am, you can step
7 down.

8 LT. ELSEY: Thank you.

9 THE COURT: Anything else from the state?

10 MS. SHIPLEY: Not as to this matter. Your Honor,
11 we would like to have time to address Neil verses Biggers
12 and the search warrant.

13 THE COURT: You may do so now.

14 MS. SHIPLEY: Thank you, Your Honor.

15 Your Honor, the state's position is that the Neil
16 verses Biggers Hearing was not necessary because the
17 witness, Ricky Jacobs, testified that he was familiar with
18 both defendants from the 19 years he operated this club, the
19 25 years is what I think he ultimately said that he's
20 familiar with these individuals that frequent his nightclub.
21 He's familiar with faces or sometimes names or sometimes
22 full names. First names or full names. And that pursuant
23 to State verses McCord where the ruling of the Court was the
24 decision to admit an eye-witness identification is at the
25 trial court's discretion and will not be disturbed. Also

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1 that -- beg the Court's indulgence -- but if a person knows
2 another individual this hearing is not necessary.

3 Your Honor, the issue here -- the reason why I went
4 ahead with this hearing even though we were not required to
5 is that the first time Mr. Jacobs did not know the name of
6 Tremaine. So this hearing was more for the purpose of
7 Tremaine Wray's identification, but he is the one that came
8 forward with Tremaine Wray's name to Investigator McRae, and
9 as a result was able to positively identify Mr. Wray. He
10 has known Watts for many years. Knew him by name that
11 night. So we just put them both up for the purposes of this
12 hearing for the totality of the circumstances that you have
13 to make in this type of hearing.

14 Your Honor, the state submits that we have satisfied
15 all five factors of Neil verses Biggers. Mr. Jacobs
16 testified that he did have an opportunity to view both
17 subjects in the parking lot of his business. He indicated
18 that he was crossing the street and -- if I may just refresh
19 the Court's memory, he was at this corner when he
20 encountered them. He was getting ready to go across the
21 street to go get his car from his dad's place, and that this
22 the general area where he encountered them. He testified
23 that the lighting conditions were bright. There are a lot
24 of lights underneath this docking station, gas pumps, and
25 that there are also security lights in the parking lot.

1 That he had no problem seeing these individuals. Also,
2 that he was able to see what kind of clothes Mr. Watts was
3 wearing that night. He doesn't remember what Mr. Wray was
4 wearing. He thinks it might have been a white t-shirt, but
5 he had no problems giving a description to Investigator
6 McRae that night when he found him about 6:00 a.m., about
7 5:45 in the morning of the incident date, and that he was
8 able to give a height and weight description of the suspect.
9 He also indicated that he was paying a high degree of
10 attention, especially when shots got fired, he witnessed
11 them both get in the tan Suburban. He stopped in the road
12 and witnessed the tan Suburban go down the street, and he
13 saw -- observed shots coming from the driver's side of the
14 tan Suburban.

15 Your Honor, the witness' level of -- well, the accuracy
16 of his description is corroborated by Mr. McRae's notes.
17 Also the witness' level of certainty at the time of
18 identification. You heard from Investigator McRae and Mr.
19 Jacobs that he did not hesitate at all in identifying these
20 perpetrators. In fact, he is the one that provided the name
21 of Tremaine to investigators for them to develop a suspect,
22 and they went to diligent efforts to try to find out a last
23 name and ultimately were able to find the name Tremaine Wray
24 that happened to have the same address where they spotted a
25 car fitting the description provided by Mr. Jacobs that

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1 night. And so as a result he was able to develop a
2 photographic line-up and present it to Mr. Jacobs, and he
3 identified them immediately without hesitation. And he
4 testified that he never was suggested by Investigator McRae
5 who to pick out.

6 And as to the -- again, for purposes of this hearing
7 the whole issue was whether or not he knew Tremaine, because
8 he knew Taurus' name that night. Whether or not -- it's a
9 matter for Your Honor and a matter for a jury to determine
10 the credibility of each witness, but you heard Investigator
11 McRae testify that it's not his practice to tell a witness,
12 here, do you see Joe when they're looking for Joe. That is
13 not his practice, and Mr. Jacobs readily notified the
14 detective that he knew the name Taurus and was looking for
15 Taurus. He is the one that provided the name to the
16 investigators. Not -- usually it's the officers that are
17 privy to that information and know that information, but in
18 this case this witness is telling Investigator McRae who he
19 saw by name.

20 So basically, Your Honor, the state's position that the
21 standards for Neil verses Biggers have absolutely been met
22 as to both defendants and that a Neil verses Biggers Hearing
23 wasn't even necessary as to Taurus Watts. But regardless we
24 have satisfied those five factors for Your Honor to
25 determine the totality of the circumstances, and that there

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1 is no unduly -- that neither one of them was unduly
2 suggested, and that there was no danger of misidentification
3 in this case.

4 THE COURT: All right.

5 MR. BAX: Well, Your Honor, as to Neil v. Biggers
6 defendant Wray, we do not concede the issue, but we leave it
7 in Your Honor's discretion about this case. I would only
8 point out that on the issue of the identification and
9 opportunity, there was not really addressed. All that was
10 addressed by Officer McRae was that he didn't remember this
11 individual and that he did not get a very good look at him.
12 And then later on he called with the name. He doesn't
13 really indicate in the testimony where he got the name, how
14 he got the name, whether it was from people on the street or
15 through his own knowledge, but that's just the one thing I
16 wanted to point out on a factual basis. Thank you.

17 THE COURT: Thank you. Any response?

18 MS. MCDUFFIE: Your Honor, we would --

19 Investigator McRae testified too that Ricky Jacobs told him
20 that he didn't get a very good look, but he could pick them
21 out if he saw them again, which is, in fact, what happened,
22 Your Honor.

23 THE COURT: All right. The identification will be
24 let in.

25 MS. JOHNS: Your Honor, with regard to Mr. Watts,

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1 I'd like to be heard?

2 THE COURT: Sure. I'm talking about Mr. Wray.

3 MS. JOHNS: Oh, okay. Whenever you're ready, Your
4 Honor.

5 THE COURT: I'm ready.

6 MS. JOHNS: Your Honor, with regard to Mr. Watts,
7 Mr. Watts, based on testimony of Mr. Jacobs, has been known
8 by Mr. Jacobs for 25 years or longer. The first opportunity
9 that Mr. Jacobs had to discuss this with Investigator McRae
10 was sometime after police officers were already there. I
11 think Investigator McRae said something about getting to a
12 more isolated condition and that Mr. Jacobs could be
13 interviewed alone for some reason. Your Honor, there was a
14 description of -- well, Your Honor, here's the issue on this
15 particular matter in regards to the identification -- Neil
16 verses Biggers. Your Honor, I wasn't given an opportunity
17 to call any witnesses, and I'd like to call for limited
18 purpose Mr. Watts to the stand so that the Court can get a
19 full idea of his identification before I go into argument. I
20 don't know if that's something that you want to do now or
21 want to take a short minute.

22 THE COURT: Yeah. Fine

23 MS. JOHNS: I call Taurus Watts to the stand,
24 please.

25 THE COURT: Okay.

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1 THE CLERK: Please raise your right hand.

2 (WHEREUPON, Taurus Watts, was sworn
3 to tell the truth.)

4 THE CLERK: Thank you. Have a seat in the witness
5 stand and give the court reporter your name.

6 MR. WATTS: Taurus Watts.

7 TAURUS WATTS - DIRECT EXAMINATION

8 BY MS. JOHNS:

9 Q Mr. Watts, do you recall June 30, 2007?

10 A Yes.

11 Q Do you recall the early morning hours of the same date?

12 A Yes.

13 Q What kind of hairstyle did you have, Mr. Watts, on June
14 30, 2007, at 4:12 a.m?

15 A I had a low Afro.

16 Q Okay. And you turned yourself in on July 3, 2007; is
17 that correct?

18 A Yes.

19 Q And when you turned yourself in on July 3, 2007, what
20 hairstyle did you have?

21 A I had a low Afro.

22 Q Did you have any difficulty when you went to the
23 Sheriff's Department with regards to your description?

24 A Yes.

25 Q Please tell the Court what happened?

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1 A The officer -- it was a black female. I don't recall
2 her name, but I had my family member Willie Crosby with me.
3 And I had him turn me in. When I went down there to turn
4 myself in I didn't have my identification on me at the time.
5 But I had told the officer my name, and I told her that I
6 wanted to see the investigator that was on the case. She
7 told me Mr. McRae was on the case, but at the time she told
8 me I was not the person that she had on the photo that they
9 was looking for because the photo had dreads, a picture of
10 me when I had dreads in my head and hair on my face, fully
11 facial hairs. So she told me I wasn't the person. Now, I
12 told her I was the person and my cousin Willie can testimony
13 to that. But I waited. I could have just left because she
14 told me I wasn't the person so I could have just up and
15 left, but no, I told her I'll wait on the investigator. So
16 she called Mr. McRae, so I just waited on Mr. McRae to come,
17 but I could have left.

18 Q Okay. But you were there for the purpose of turning
19 yourself in; is that correct?

20 A Yes.

21 Q Okay. And did you at one time have dreads?

22 A Yes.

23 Q Okay, and when was that, sir?

24 A 2005, the beginning of 2006.

25 Q Okay, and you've seen the photograph that reflects your

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1 appearance -- that's been used in this case, which is
2 State's Exhibit No. 6, is that right; you've seen this
3 before, right?

4 A Yes.

5 Q Okay. And do you know when that photograph was taken?

6 A That photograph was taken the beginning of 2006. It
7 was either around the -- matter of fact, it was Superbowl
8 night so it had to be the end of January, 2006.

9 Q Superbowl night when you were arrested; is that right?

10 A Yes, I was arrested.

11 Q All right. And that's when that photograph was taken?

12 A Yes. That's when that photo was taken.

13 Q And you remember that night specifically because of the
14 Superbowl?

15 A Yes. I remember that night because of the Superbowl and
16 because I was injured because I had wrecked this guy truck
17 on the interstate.

18 Q And that was -- and subsequent to that wreck you were
19 arrested?

20 A Yes.

21 Q And what were you charged with?

22 A I was charged with driving under suspension. They
23 charged me with DUI and no seatbelt.

24 Q All right.

25 MS. JOHNS: I don't have anything further for Mr.

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1 Watts. Answer any questions that Ms. Shipley may have for
2 you.

3 MS. SHIPLEY: I don't have any questions.

4 THE COURT: All right. You can step down, sir.

5 You can continue with your argument.

6 MS. JOHNS: Your Honor, this picture that has been
7 used by the Sheriff's Department is clearly an old picture
8 that was taken in 2006. I know that Investigator McRae said
9 that in that particular photograph State's Exhibit No. 6,
10 there's not a date and time on there, but he does have the
11 ability to do that. Your Honor, that picture was taken in
12 2006. Mr. Watts testimony is that he did not have dreads at
13 the time of this incident. That is part of the description,
14 Your Honor, which actually goes against or is
15 counter-productive to the testimony of Mr. Jacobs. Mr.
16 Jacobs knows Mr. Watts. He's known him for 25 years. He
17 may have noticed that he had a dreadlock type of haircut,
18 but on that particular night, Your Honor, he did not have
19 that haircut.

20 Your Honor, in light of the fact that Mr. Watts did not
21 have that type of haircut, you know, it's questionable as to
22 whether or not the opportunity for Mr. Jacobs to see Mr.
23 Watts does fall within the five factors. I think the
24 testimony from Mr. Jacobs with regard to State's Exhibit No.
25 7 is that -- and I'll bring it to you a little closer, Your

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1 Honor, is that this particular shelter right here is a gas
2 -- is the area where the gas pumps are and to the left of
3 that gas pump, if you're on Hardscrabble Road, there's an
4 indication that the car, the SUV was parked over here, and
5 Mr. Jacobs said that he was crossing the street over to his
6 father's -- the direction of his father's residence right
7 here. So if he was crossing the street he is going to have
8 his back to the particular area even if there is lighting
9 over there. The lighting underneath the shelter right here
10 where the gas pumps are, Your Honor, illuminate that area,
11 and if Mr. Jacobs is looking behind him, then Mr. Jacobs is
12 looking into the light. So I would argue that the
13 opportunity to the view is distorted. I would also argue,
14 Your Honor, that with regards to giving a height and weight
15 description, Mr. Jacobs did not recall if he gave a height
16 or weight description. Your Honor, with regards to the
17 totality of the circumstances at the particular scene, Mr.
18 Jacobs takes the witness stand and he tells the Court that
19 he was concerned for his patrons safety, he is concerned
20 about security, and he had a lot of things going on. So I
21 think that in and of itself does shed some, you know, some
22 problems with this particular ID.

23 Your Honor, with regard to State's Exhibit No. 6. Mr.
24 Jacobs states that when he was given this particular
25 line-up, even though it was unnecessary, he was asked which

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1 one was Taurus. Also, Your Honor, with regards to this
2 particular line-up Taurus is the only one that is wearing a
3 jail uniform and it is a photograph of him when he was in
4 jail in 2006, regarding driving under suspension and no seat
5 belts.

6 Your Honor, with regards to the hesitation of the
7 identity of Mr. Watts, Mr. Jacobs did, in fact, admit to
8 hesitation because when he was first approached by law
9 enforcement he did not give the information with regards to
10 the description of who it was that was shooting -- who it
11 was that he saw. He gave a description of somebody he
12 thought it was, and that description involved deadlocks. My
13 client did not have deadlocks. I think that after some
14 conversations Investigator McRae had with Ricky Jacobs, it
15 was at some later point that Ricky Jacobs comes forward with
16 the name Taurus Watts. At the initial contact Investigator
17 McRae had with Mr. Jacobs, Mr. Watts was not identified.

18 Your Honor, based on those facts, Your Honor, I submit
19 Mr. Jacobs has not identified Mr. Watts, where the
20 identification was not doing justice, where the
21 identification was accurate, and for those reasons, Your
22 Honor, I ask that the identification be suppressed.

23 THE COURT: State?

24 MS. SHIPLEY: Your Honor, he was arrested on July
25 3rd, so we're going to have to take his word for it that

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1 that's how he was wearing his hair when he got arrested on
2 these charges on July 3rd. Regardless, Your Honor, the
3 witness's testimony is that the guy had short twists in his
4 hair, not deadlocks. I mean, the witness said he didn't
5 have long deadlocks, but he had twists.

6 Now, this again, goes to credibility of the witnesses
7 and this is an issue for the jury. Whether or not --
8 whether or not the description is accurate or not. Bottom
9 line, we didn't have to have this Neil verses Biggers
10 hearing as to Taurus Watts because Mr. Jacobs knows him and
11 has known him for 25 years. Whether he paid attention to
12 how he was wearing his hair styled that day is a question
13 for the jury. He had been identified from the photographic
14 line-up, had no hesitation, according to himself and to
15 Investigator McRae, and again, please remember, it is the
16 witness providing the names to law enforcement, not
17 vice-versa. It's not like law enforcement coming up to the
18 witness with a suspect that they've seen and ask him if he
19 recognizes them or not. This witness knows this
20 perpetrator, and saw him, and testified about his
21 opportunity to view -- I asked him whether or not he had
22 anything obstructing his view and Ms. Johns, is indicating
23 that he was concerned about his patrons and wasn't paying
24 attention. That was after the shots were already fired.
25 That's what made him concerned for his patrons. That was

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1 after the car was already gone and shots had already been
2 fired. He was paying attention. He testified he stopped in
3 the middle of the road to watch them shoot. And that he
4 saw, watched them get in the car, and watched Mr. Wray drive
5 away, and Mr. Watts was in the passenger side.

6 As so I'll submit to the Court that all five elements
7 under the totality of the circumstances there is no danger
8 of misrepresentation -- of misidentification in this case.

9 THE COURT: Any last words, Ms. Johns?

10 MS. JOHNS: No, Your Honor.

11 THE COURT: Okay. I need to look at that case
12 that you're referring to. McCord.

13 MS. SHIPLEY: Beg the Court's indulgence.

14 (Pause.)

15 MS. SHIPLEY: McCloud, not McCord. McCloud. My
16 mistake.

17 MS. MCDUFFIE: 260 S.E. 445.

18 THE COURT: Oh, okay.

19 MS. SHIPLEY: I got them mixed up. I apologize.

20 THE COURT: Oh, okay. I'll look at that.

21 (Pause.)

22 THE COURT: This case talks about specifically
23 where the victim knew the accused.

24 MS. SHIPLEY: It's the same thing. The witness --
25 whoever is doing the identification -- whoever it is,

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1 whether it's the victim or a witness.

2 THE COURT: Okay. But the reason you're having a
3 Neil v. Biggers is the fact that you're using the pre-trial
4 ID as the support for the ID --

5 MS. SHIPLEY: Yes.

6 THE COURT: Okay.

7 I'll allow it in. You've sufficiently presented
8 evidence on each one of those issues, and we do have
9 cross-examination that indicates there might be a
10 credibility issue, but that's a question for the jury.

11 MS. SHIPLEY: Thank Your Honor.

12 THE COURT: Okay.

13 MS. SHIPLEY: Your Honor, as for the search
14 warrant issue, I guess it's their motion so they have the
15 burden for this one.

16 THE COURT: Okay.

17 MR. SWERLING: Judge, I'll make this as brief as I
18 can. I think if you'll look at the search warrant, in the
19 affidavit for the search warrant -- you'll see that
20 particular issue and it is our position that the affidavit
21 for the search warrant is defective and therefore the search
22 is defective. The search warrant is defective and the
23 affidavit is defective. The affidavit for the search
24 warrant fails to set forth any information whatsoever to
25 establish probable cause in this case. I don't know if you

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1 have it in front of you, Judge, but it will probably be a
2 lot easier to see it --

3 THE COURT: Okay.

4 MR. SWERLING: Judge, in the affidavit, which is
5 signed by Investigator McRae, it merely states conclusionary
6 statements on the part of the investigator as to what he's
7 learned from this investigation. There is no one in the
8 affidavit identified whatsoever. It refers to witnesses in
9 the affidavit, but none of those witnesses are identified
10 nor is any information given to the magistrate so that the
11 magistrate can determine the reliability of those witnesses.
12 What you have here is basically some bare-bones allegation
13 which no magistrate could find probable cause from.

14 It says on June 30, 2007, Demuria Johnson was fatally
15 shot. Witnesses, unidentified, did identify the above
16 listed vehicle leaving the incident location firing several
17 shots from the vehicle. One of the rounds hit Demuria
18 Johnson. A witness, not identified, identified the driver
19 and passenger of the vehicle as subjects leaving the
20 incident location and has provided law enforcement with a
21 statement. The statement is not set forth. Statement that
22 the gunfire struck the victim came from this vehicle at the
23 incident location. The vehicle was spotted by the
24 investigator at the residence of one of the suspects.

25 My question here to the state is where does that set

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1 forth any probable cause that a mutual detached magistrate
2 can determine that that vehicle was used in a crime. You
3 cannot just make those bare-boned assertions. This is a
4 search warrant. It was the instrument that was used to
5 justify the search. Mr. Wray was in the Outback kitchen
6 when he was arrested. The vehicle was taken into custody by
7 law enforcement pursuant to this search warrant.

8 Your Honor, I'm not going to argue whether it was June
9 2nd or not, because I think that's -- I'm even going to
10 waste the Court's time, but it was the instrument that was
11 used to justify the search and the gathering of the evidence
12 as set forth on the return in the case.

13 I will give you a couple of cases, but I don't even
14 know if I need to get that far, but I will. A cardinal
15 principle of law and search warrant is you have to have an
16 affidavit that states probable cause. In State verses
17 Adolph, which is a case found at 441 S.E.2nd, 832 1994.
18 I'll quote this: The test of a magistrate in determining
19 when to issue a warrant is to make a practicable common
20 sense decision as to whether under the totality of the
21 circumstances set for in the affidavit there is a fair
22 probability that the evidence of the crime will be found in
23 a particular place. This includes consideration of the
24 veracity of the person supplying the information and the
25 basis of his or her knowledge. We're not talking about

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1 informants. We're talking about a witness. You have to set
2 forth veracity of the witness providing the information.
3 Certainly his name and the basis of his knowledge, which we
4 don't have here. As the reviewing court, this is the
5 Supreme Court stating this -- I'm sorry -- Court of Appeals.
6 As a reviewing Court our task is to decide whether the
7 magistrate had substantial basis for concluding probable
8 cause existed. I submit that it did not.

9 Another case that I wanted -- in State verses Smith,
10 which is 392 S.E. 2d 182, the Supreme Court stated the
11 affidavit is defective on its face, in this case. An
12 affidavit must contain sufficient underlying facts and
13 information in which a magistrate may make a determination
14 of probable cause. Mere conclusionary statement which give
15 the magistrate no basis from which to make a judgment
16 regarding probable cause are insufficient. His action could
17 not be a mere ratification of the bare conclusions of
18 others. Essentially, law enforcement. Another case which
19 addresses this issue is State verses Johnson, which is found
20 at 395 S.E. 2d 167. And in that case it says, the reviewing
21 courts will not defer to a warrant based on an affidavit
22 that is not provided by a magistrate with a substantial
23 basis for determining the existence of probable cause.
24 Sufficient information must be presented to the magistrate
25 to allow an official to determine probable cause. These

1 actions could not be a mere ratification of the bare
2 conclusions of others, based on setting forth the same
3 standard that I just quoted.

4 Judge, the bottom line is that the affidavit has no --
5 does not set forth probable cause because it does not
6 establish the reliability of the witness -- first of all, it
7 doesn't identify the witness. It doesn't establish the
8 reliability of the witnesses or the underlying basis for how
9 those witnesses knew the information. So therefore the
10 magistrate could not make a determination as to whether or
11 not the affidavit -- or could not have made a determination
12 that the affidavit contained sufficient information to
13 establish probable cause. Therefore the search has to be
14 suppressed, based on this information on cases in South
15 Carolina, which is basically elementary law.

16 The other thing I would point out to the Court is that
17 while the state may put in there their description of the
18 property sought as any forensic evidence related to the
19 murder of Demuria Johnson such as and would include, but is
20 not limited to blood, hair, fibers, and fingerprints,
21 etcetera. There is no such thing as etcetera in the Fourth
22 Amendment law. The Fourth Amendment requires that a warrant
23 be particularized. It must state with particularity the
24 description of the property sought and what's in this,
25 what's not contained in here are some of the items that are

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1 in the return that were taken. In particularly photographs,
2 swabs, trace -- they've got MUG can, cigarette butts, and
3 black head rag or something like that. Anyway, that
4 information is not contained, is not stated in any
5 particularity.

6 What it amounts to, Judge, is a general warrant where
7 we are not particular in describing the property you intend
8 to seize. That amounts to a general warrant which is
9 prohibited by the constitution. So for those reasons I
10 would like the opportunity to respond if the state has any
11 theory under which this affidavit has probable cause, and
12 I'd like to be able to respond to that.

13 THE COURT: State?

14 MS. SHIPLEY: Yes, ma'am, Your Honor. Your Honor,
15 it's the state's position, first of all, that this
16 defendant, Tremaine Wray does not have standing to challenge
17 the search warrant of this vehicle. It is registered to
18 Nellie Wray. And the defense has not established what
19 expectation of privacy that he has to this vehicle. So if
20 they'd like to address that first. Maybe that will --

21 THE COURT: Okay.

22 MR. SWERLING: He's driving the vehicle. It is a
23 vehicle he drives. It was the vehicle he drove there that
24 night. That establishes standing in and of itself. It's
25 not like the vehicle just appeared in the parking lot. He

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1 brought it there. And that is the vehicle he was driving --
2 not only that, but it is the vehicle he was driving,
3 supposedly, on the date of this offense. Is that the
4 vehicle they're saying was used in the offense. I believe
5 that estoppes the standing. If Your Honor has any questions
6 about that standing should be established more directly, but
7 I believe that is enough standing right there.

8 THE COURT: Okay. That's their contention.

9 MS. SHIPLEY: Your Honor, we -- the state's
10 position is that the affidavit of Investigator McRae to
11 Judge Maurer clearly does satisfy the probable cause
12 standard. If I can just read it in its entirety?

13 THE COURT: Sure.

14 MS. SHIPLEY: Just again, so -- there were parts
15 that were left out by Mr. Swerling.

16 On June 30, 2007, at approximately 04:10 hours, Demuria
17 Johnson was fatally shot at the H&J Club at 2820
18 Hardscrabble Road, Columbia, South Carolina, 29223.
19 Witnesses identified above vehicle leaving the incident
20 location and firing several shots from this vehicle. One of
21 these rounds from this vehicle did mortally wound Demuria
22 Johnson. A witness identified the driver and a passenger in
23 the vehicle at subjects leaving the incident location and
24 has provided law enforcement with a statement stating that
25 the gunfire that struck the victim came from this vehicle at

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1 that incident location. The vehicle was found by
2 investigators at the residence of one of the suspects
3 identified by witnesses as the driver of the vehicle that
4 fired the shots at the incident location.

5 Your Honor, there can't be more probable cause than
6 that. That explicitly states that it was this vehicle that
7 was witnessed leaving the scene, shooting, and that led to
8 the death of Demuria Johnson. And it's specific as to this
9 incident that night. It expressly states where it happened
10 and what time it happened. What date it happened, who was
11 killed and so forth. Now, as far as the name of the
12 witness, I -- I've got case law that requires -- that says a
13 witnesses name is required because Your Honor in most drug
14 search warrants they usually always confidential informants
15 providing information to law enforcement and their names are
16 never included in the search warrant. And so that is the
17 result of it. The bottom line is that there is plenty of
18 information contained in this affidavit where the magistrate
19 judge in this case obviously felt that there was enough
20 probable cause to where he signed off on this affidavit. So
21 I believe that the affidavit does meet the requirement for
22 the probable cause.

23 Your Honor, even if you find that the affidavit is
24 invalid for some reason there is no question that this
25 officer acted in good faith in relying on this search

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1 warrant that was signed by a magistrate judge. The law --
2 United States verses Leon -- it indicates that law
3 enforcement officers are not legal -- employers of legalize
4 writing skills. They are there to present the facts, to get
5 a search warrant, and when an issuing judge signs a search
6 warrant they are allowed to rely on that magistrate's
7 expertise because they are the ones that are required to
8 find probable cause. So even if you find that this
9 affidavit is invalid for any reason, which state is not
10 conceding that, we're just for argument purposes just
11 explaining that that behavior of this investigator clearly
12 shows that he didn't make exception. He goes to the
13 magistrate, first of all, to get a search warrant for this
14 vehicle. He has the vehicle towed to law enforcement, to
15 the forensic garage. He delivers the search warrant to Lt.
16 Elsey so that she can then use that search warrant to -- it
17 gives her authority to then execute it on the vehicle.

18 Beg the Court's indulgence.

19 The whole purpose of the exclusionary rule, if you were
20 considering even excluding the evidence obtained in this
21 case, is to deter police misconduct. It's not to punish for
22 the magistrate's error, if any.

23 And so, Your Honor, I believe that the record is
24 completely supportive of the fact that Investigator McRae,
25 if you should find that the affidavit was insufficient to

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1 support probable cause, acted in good faith and that a
2 magistrate clearly did find probable cause by signing it and
3 issuing it.

4 And then lastly, as to the particularity requirement, I
5 have some case law for co-counsel. I guess Ms. Johns --

6 MS. JOHNS: Well, Your Honor, if anybody doesn't
7 have standing it's my client.

8 THE COURT: Okay.

9 MS. SHIPLEY: And Your Honor, you're going to
10 notice in my file that you're not going to find any law
11 about the affidavit being invalid, because in my review of
12 the search warrant in preparation that never even occurred
13 in my mind. That is clearly an articulable affidavit for
14 probable cause. Anyhow, I've handed up State verses
15 Thompson, and United States verses Osborne, State verses
16 Sullivan, and State verses Fletcher.

17 And Mr. Swerling was indicating that the items sought
18 to be seized were not particularly described in the
19 affidavit. Your Honor, it's state's position that when
20 you're investigating a case where a car is witnessed
21 shooting into a parking lot where there are unarmed victims
22 and people running around, it is only logical for them to
23 investigate the vehicle for forensic evidence relating to a
24 shooting. That would include gunshot residue, ballistics,
25 casings, forensics, evidence of any kind would include

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1 fingerprint analysis, that would also include photographing
2 the vehicle. I have never seen a search warrant executed
3 where photographs were not taken in a case.

4 The case law that I relied on mostly, Your Honor, was
5 State verses Fletcher. In that case the defense sought to
6 suppress evidence that was seized at the residence of one of
7 the defendants in that case. And the search warrant
8 indicated that this was the residence where a 9 month old
9 child had been brutally beaten and abused to death. At that
10 point, Your Honor, the scope of the search warrant -- it did
11 not describe with sufficient particularity the property
12 which was to be seized, and they argued that the trial court
13 erred in refusing to suppress evidence resulting from an
14 invalid search warrant. Your Honor, in that search warrant,
15 and specifically, it said, any evidence of -- warrant in
16 this case was limited to evidence of abusive behavior
17 towards a child. It authorizes a search warrant only to
18 that particular crime.

19 In this case, Your Honor, it's clear the only evidence
20 they're seeking from that vehicle is evidence relating to
21 the crime where Demuria Johnson was killed on June 30, 2007.
22 They are not some rampant search for drugs or any other
23 evidence of different crimes. They particular -- they do
24 state with particularity that this is the crime we are
25 requesting the search warrant for. And therefore it was not

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1 fatally general in State verses Fletcher even when they said
2 any evidence of abusive behavior towards children, and the
3 logic behind supporting the search warrant in trial judge's
4 ruling was that requiring a more detailed description would
5 unreasonably thwart an investigation.

6 Law enforcement officers are not -- they don't have
7 crystal balls. They don't know what they're going to find
8 in executing the search warrant. They're hoping they'll
9 find everything they can, but -- another case cited in State
10 verses Fletcher, Your Honor, was State verses Osborne, which
11 I handed up to you, and that's basically upholding a warrant
12 authorizing the seizure of several described items and also
13 any other evidence relating to the armed robbery.

14 The case that I handed up concerning -- State verses
15 Sullivan, that was where a tax preparer's office was
16 searched and the search warrant basically indicated it was
17 going to authorize agents to seize quote copies of income
18 tax returns and documents relating thereto and book and
19 record reflecting income expenses relating to income tax
20 returns and on that return signed by law enforcement, they
21 seized five file cabinets, three trash cans, and the
22 contents and items from the defendant's desk. The defense
23 argued that that was too broad. The court completely
24 disagreed saying that a search warrant too technical might
25 require law enforcement to sift through records for an

1 extended period of time. There is no contention that the
2 search was not reasonable. Again, here Your Honor, there is
3 no contention that the search was not reasonable. They
4 searched for evidence relating to a shooting, gunshot
5 residue. The sole contention was that the search was too
6 broad. Rules relative to the search of an automobile are
7 somewhat relaxed in contrast to the search of a home. Not
8 all searches are prohibited. Only those which are
9 unreasonable are not permitted.

10 Therefore, Your Honor, it is universally recognized
11 that the particularity requirement must be applied with a
12 practical margin of flexibility depending on the type of
13 property to be seized, and a description of property will be
14 acceptable if it is as specific and the circumstances and
15 the nature of activity under investigation permits.

16 So the search warrant in this case practically mirrors
17 the search warrant of Fletcher and Osborne, as well as the
18 other case I handed up, Thompson, which was -- not Thompson,
19 it was just Osborne and Sullivan.

20 And then it said any forensic evidence related to the
21 murder of Demuria Johnson, such evidence would include, but
22 is not limited to blood, hair, fiber, fingerprints,
23 etcetera. Any and all potential relevant evidence which
24 would aid in the investigation of the murder outlined in the
25 attached affidavit.

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1 And so for those purposes and reasons, Your Honor, we
2 believe that this search warrant was valid, first of all, in
3 the affidavit itself. However, if you find that the
4 affidavit -- for some reason does not support probable cause
5 and that the magistrate signed it in error, then -- that the
6 officers acted in good faith on relying on the search
7 warrant being sufficient by the magistrate and that also
8 they clearly satisfied the particularity requirement as
9 stated in Osborne, Sullivan and Fletcher.

10 Beg the Court's indulgence. That is all from the
11 state, Your Honor.

12 THE COURT: Okay. Defense?

13 MR. SWERLING: Judge, I won't belabor the issue on
14 particularity. We've made an argument, and I'll stand on
15 that, but I will say that I do believe that the state is
16 completely in error on the probable cause set forth in the
17 affidavit. You look at this affidavit. Based upon what's
18 in this affidavit someone could have gone to Investigator
19 McRae and said Jack Swerling drove out of the parking lot.
20 He has dope in his car. He's going to his house, the dope's
21 going to be in his car. A witness told him that. There's
22 no magistrate in the world would go ahead and sign that
23 warrant. Your Honor wouldn't sign it. No circuit judge
24 would sign a warrant like that without establishing the
25 veracity of the witness and the basis for the witness

1 knowing that. Now, when I said the identity of the witness
2 certainly with informants we don't provide identity, but
3 what we're talking about is the veracity of the witness and
4 I don't know how the state gets around the mandate of the
5 Courts which says -- and this is not Jack Swerling on Fourth
6 Amendment.

7 When you look at the affidavit for search warrant and
8 the totality of the circumstances set forth in the
9 affidavit, there's a clear probability that that evidence of
10 a crime will be found in a particular place. This includes
11 -- this is the Court's mandate -- consideration of the
12 veracity of the person supplying the information and the
13 basis of his or her knowledge.

14 Now, where in that affidavit is there anything setting
15 forth the veracity of the witness that Mr. McRae was relying
16 on or that Judge Maurer was relying on? It's not there.
17 There is nothing there that sets forth that. So a search
18 warrant based on that is defective because the affidavit
19 does not set out probable cause. Now, with respect to the
20 Leon issue, South Carolina has never adopted the good faith
21 exception, ever, with respect to a search warrant where the
22 affidavit fails to set forth sufficient information that a
23 neutral, detached magistrate can make a finding of probable
24 cause. I will quote to you a couple of cases that talk
25 about that. Our Court has not gone that far. Our Supreme

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1 Court declined to -- this is in State verses Adolph. Our
2 Supreme Court declined to apply the good faith exception if
3 the underlying affidavit does not include sufficient
4 information to allow a magistrate to determine probable
5 cause. In Johnson, as here, the affidavit does not contain
6 any information regarding the reliability of the informant
7 or was there any corroboration. In this particular case it
8 was an informant, but the same standard applies with respect
9 to a witness. You have to establish the veracity of that
10 individual. With -- in State verses Johnson, the Supreme
11 Court rejected the good faith exception again. The state
12 argues that search may be validated by the good faith
13 exception as documented in United States verses Leon. In
14 Leon the Supreme Court held that the Fourth Amendment
15 exclusionary rule does not bar the admission of evidence
16 obtained by officers acting in reasonable reliance on a
17 search warrant which was issued by a detached and mutual
18 magistrate, but ultimately found to be invalid. The
19 dispositive issue here is whether sufficient information was
20 given to the magistrate to perform his neutral and detached
21 function rather than serve as a rubber stamp of the police.
22 Reviewing courts will not defer to a warrant based on an
23 affidavit that does not provide the magistrate with a
24 substantial basis for determining the existence of probable
25 cause. Sufficient information must be presented to the

1 magistrate to allow that official to determine probable
2 cause. His action cannot be a mere ratification. We have
3 already found that the affidavit alone does not include
4 sufficient information to allow a magistrate to determine
5 probable cause, therefore, the good faith exception may not
6 be employed to validate the warrant. That a South Carolina
7 rule. As Your Honor knows we have a higher standard there
8 with respect to searches than the United States government
9 has based on the privacy issue in our constitution, which
10 has been interpreted far broader than the United States
11 Constitution.

12 Judge, rarely have I seen an affidavit for a search
13 warrant I can say does not meet the criteria especially in
14 this day and age, but this one does not. It does not have
15 anything in there that anybody could say that establishes
16 the veracity of the person that the police are relying on
17 asked Judge Maurer to rely on. So I submit to you has to be
18 suppressed.

19 THE COURT: All right. Anything else by the
20 state?

21 MS. SHIPLEY: Yes, ma'am. All this information
22 that I can find about the veracity deals with confidential
23 informants that are used for drug deals where these are
24 snitches, that are in the drug dealing world, that clearly
25 their veracity is an issue. This involves eye-witnesses to

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1 a drive-by shooting. That is not applicable, Your Honor.
2 The veracity issue deals with confidential informants that
3 are feeding information to the police, and that's why there
4 has to be a finding of reliability that they're not just
5 setting somebody up. They have to have actual knowledge
6 that is detailed and so forth, and that has to be included
7 in the warrant for drug cases, but as far as an eye-witness,
8 such as Ricky Jacobs, that does not apply. The veracity
9 issue does not apply to just eye-witnesses to a crime.

10 MR. SWERLING: Your Honor, I'd like to see a case
11 that says that, because State verses Adolph says exactly the
12 opposite. Says -- includes the consideration of the
13 veracity of the person supplying the information and on the
14 basis of his or her knowledge. I mean, it's not limited to
15 just informants. You cannot just say a witness saw
16 something and expect a magistrate to go and issue a search
17 warrant based on that. A witness -- that just doesn't even
18 make sense. I mean, with the informant you have to go even
19 further, but you still have to -- with respect to a
20 witnesses establish the witnesses veracity. You can just
21 say he witnessed, and that's all they got in this affidavit
22 is a witness said it.

23 THE COURT: Yes.

24 MS. SHIPLEY: State verses Bellamy. Evidence of
25 past reliability is not usually required when information is

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1 provided by an eye-witness because unlike the paid informer,
2 an eye-witness does not ordinarily have the opportunity to
3 establish a record of previous reliability. This is dealing
4 -- again, there's a distinction between CIs, snitches, and
5 an eye-witness in the way that they should be treated in
6 determining a search warrant.

7 MR. SWERLING: Except in Bellamy, if I remember
8 correctly -- of course, I'd like to read it again, but it
9 talks about -- still you have to establish veracity, the
10 basis of the person's knowledge and veracity -- identify who
11 it is. It doesn't make any sense that you could go ahead
12 and get a search warrant based upon a witness said.

13 THE COURT: All right. Anything further? You can
14 -- I'm going to look at this overnight. I want to refresh
15 myself on these particular cases.

16 MS. SHIPLEY: If I -- if we may be given the
17 opportunity to do so as well.

18 THE COURT: Okay. All right. Anything further
19 for this evening?

20 MS. SHIPLEY: No, Your Honor.

21 THE COURT: And I apologize for your delays, and I
22 will do my best this week to not let people interrupt
23 you-all. Just be reminded that sometimes you-all are the
24 interrupters.

25 Okay. Thank you all.

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1 Oh, just so you all know. The State's proposed voir
2 dire and their witness list is Court's Exhibit No. 1, and
3 the Defendant's requested voir dire, both sets of
4 defendants, and their witness list are Court's Exhibit No.
5 2.

6 (Court's Exhibit No. 1, State's
7 voir dire and witness list, was marked and entered.)

8 (Court's Exhibit No. 2, Defendants
9 voir dire and witness list, was marked and entered.)

10 (This proceeding was recess for the evening 6:41 p.m.)

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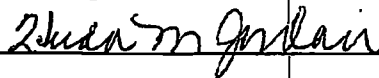
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CERTIFICATE

I, THE UNDERSIGNED HILDA M. JORDAN, CVR, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 5TH DAY OF MAY, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



HILDA M. JORDAN, CVR

COLUMBIA, SOUTH CAROLINA

MAY 23, 2010

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FIFTH JUDICIAL CIRCUIT
 COUNTY OF RICHLAND)

STATE OF SOUTH CAROLINA)
)
 PLAINTIFF,)
) 07-GS-40-5913
 VS.) 07-GS-40-5914
)
 TREMAINE WRAY AND TAURUS WATTS,)
)
 DEFENDANT.)
)
) VOLUME 2
)

OCTOBER 6, 2009
 COLUMBIA, SOUTH CAROLINA

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE MICHELLE CHILDS, JUDGE, AND A JURY

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

ATTORNEYS FOR THE STATE:
 VANESSA SHIPLEY, ESQUIRE
 JOANNA MCDUFFIE, ESQUIRE

ATTORNEY FOR DEFENDANT WRAY
 JACK SWERLING, ESQUIRE
 ARIE BAX, ESQUIRE

ATTORNEY FOR DEFENDANT WATTS
 THERESA JOHNS, ESQUIRE

HILDA M. JORDAN, CVR
 CIRCUIT COURT REPORTER

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1 THE COURT: Okay. Let's deal with the warrant
2 issue.

3 MR. SWERLING: Judge, the defendants aren't here.

4 THE COURT: I'm sorry. Did someone request them --

5 MS. MCDUFFIE: We were going to bring them up once
6 all the jurors got here so they jurors didn't see them bring
7 them down the hall.

8 THE COURT: Oh. Okay.

9 All right. Any issues that we need to take up. I know
10 we're still waiting on them, but do you-all anticipate
11 anything else other than that issue and then moving right
12 into opening? Okay.

13 And Mr. Swerling, I think you had walked out, but all I
14 did was make Defendant's voir dire and witness list a
15 court's exhibit, as well as the state's voir dire and
16 witness list.

17 MR. SWERLING: Okay.

18 MS. SHIPLEY: Your Honor, I suppose we could settle
19 the witnesses prior records while we're waiting?

20 THE COURT: Fine.

21 MS. SHIPLEY: If there's no objection.

22 MR. SWERLING: Can I have a minute. I want to look
23 at some of the state's cases, Judge.

24 THE COURT: Sure.

25 MS. SHIPLEY: Your Honor, I'm handing up case law

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1 that we intend to rely on for the search warrant.

2 THE COURT: Okay.

3 (Pause.)

4 THE COURT: Okay, the court is ready to proceed
5 with any additional information on the search warrant.

6 MS. SHIPLEY: Would you like to hear from the state

7 --

8 THE COURT: Yeah, just anything that you have in
9 addition to what has already been presented.

10 MS. SHIPLEY: Yes, ma'am. We did some research
11 when we broke for the day yesterday, and we came up with
12 some cases that are relevant to the distinction that needs
13 to be drawn by this court between a confidential informant,
14 the test for veracity and basis for knowledge for a
15 confidential informant is distinguishable from the test of
16 reliability of an eye-witness.

17 The first reason that the courts -- the cases that I've
18 handed up is because eye-witnesses to a crime -- first of
19 all, have first-hand knowledge. Also, they don't have a
20 record of snitching or providing information. They're not
21 paid like the confidential informant. The test, therefore
22 is different for a confidential informant -- excuse me, for
23 an eye-witness.

24 In State verses Bennett, Your Honor, the Supreme Court
25 found that here we do not have an unidentified informer, the

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1 magistrate was made aware of the affidavit -- the affiant
2 got his information from one who was an eye-witness to a
3 killing. The whole showing was sufficient to justify the
4 magistrate in granting the request by the officer for a
5 search warrant to seek and seize the weapon which has been
6 used to kill the victim in that case.

7 It defines probable cause, Your Honor, as based on
8 evidentiary facts. The evidence must be of sufficient
9 weight to establish probable cause and was required to be
10 such that would lead a man of prudence and caution to
11 believe the offense had been committed. And it must not be
12 so meager to constitute mere conclusions of the applicant
13 and an invasion of the judicial function of the magistrate.
14 It is -- It being enough if it is such to induce the issuing
15 officer to believe that the facts set forth exist or as
16 would lead a man of prudence and caution that the offense
17 has been committed.

18 Your Honor, the court also requires that reviewing
19 courts apply a factual approach, and this is not an abstract
20 approach. If the teachings of the court's cases are to be
21 followed and a constitutional policy served affidavits for
22 search warrants such as the one involved in Bennett must be
23 tested and interpreted by magistrate's in courts in a common
24 sense and realistic fashion. They are normally drafted by
25 non-lawyers in the mist of a haste of a criminal

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1 investigation. Technical requirements of elaborate
2 specificity once extracted under common law pleadings have
3 no place in this area. And in that case, Your Honor,
4 Bennett, the court held that the magistrate was justified in
5 issuing the search warrant and according the procedure of
6 the gun -- using that case was not proof of illegal search
7 and seizure and was admissible as evidence.

8 The next case we rely on is State verses Sullivan.
9 Again, this case involves an eye-witness rather than a
10 confidential informant. The court, first of all, said that
11 a magistrate's determination of probable cause for a search
12 warrant should be paid great deference by the reviewing
13 court. In an affidavit for a search warrant for an
14 apartment was not objectionable on the theory that
15 established credibility of informer where specific and
16 detailed information from personal observation were relayed
17 to the magistrate. The information, who was a manager of
18 the apartment was not motivated by financial remuneration
19 that acted as a concerned citizen and there was no evidence
20 that the information was supplied from ulterior motives or
21 rancor. Affidavits in support of search warrant should be
22 viewed in a common sense realistic fashion since they are
23 not meticulously drawn. It is uncontroverted, also, that an
24 affidavit can show probable cause even when based on hearsay
25 statements under the rule of Alveolar in Texas.

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1 Your Honor, the case continues to say there that when a
2 magistrate receives information -- this is drawing
3 distinction, by the way, of confidential informants verses
4 eye-witnesses. When a magistrate receives information that
5 contains hearsay upon hearsay, he need not categorically
6 reject double hearsay information, rather he is called upon
7 to evaluate the information as well as other information in
8 the affidavit in order to determine whether it can be
9 reasonably inferred that the informant had gained this
10 information in a reliable way. It continues to say
11 specificity of information accompanied by the absence of
12 ulterior motives has been held sufficient to constitute
13 reliability.

14 Here, Your Honor, there's been nothing shown or
15 elicited from the eye-witness on cross-examination by the
16 defense that he had any ulterior motive to report this
17 information to law enforcement. He was simply a bar owner
18 that witnessed a shooting in front of his business and
19 reported it to the police. Furthermore, not only have
20 citizen informants been distinguished between paid
21 informers, but it has been held that affidavits which fail
22 to fully meet the (inaudible) test may be sufficient if
23 circumstances show that it is likely to be as liable as one
24 which does not meet the test.

25 Again, it goes on to say that the case, the affidavit

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1 in that case clearly justified the issuance of the warrant
2 under the test. It continues to say that specific and
3 detailed information from personal observation was relayed
4 to the magistrate. The informer was not motivated by
5 financial remuneration, but acted as a concerned citizen.

6 Again, we have a manager of this night club who is not
7 getting paid as a confidential informant by any means.
8 There is no self-motive to provide information to law
9 enforcement.

10 Affidavits, again, are not meticulously drawn by
11 lawyers and they should therefore be viewed in a common
12 sense and realistic fashion. We are mindful that a
13 magistrate's determination of probable cause should be paid
14 great deference by the reviewing court.

15 The next case we rely on is State verses Driggers.
16 Again, distinguishing the difference between veracity verses
17 basis of knowledge of the eye-witness. This case
18 specifically says that an eye-witness is given a higher
19 credibility. The reliability may be inferred by a
20 magistrate because of its first-hand knowledge.

21 Here the affidavit of Don McRae indicates a witness
22 witnessed the shooting that night that resulted it the death
23 of Demuria Johnson at the Hardscrabble Road night club.

24 It continues to say that the Supreme Court adopted a
25 totality of the circumstances test in Illinois verses Gates

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1 (sp). The test of a magistrate in determining whether to
2 issue a warrant is simply to make a practical common sense
3 decision as to whether under the totality of the
4 circumstances set forth, including the veracity, basis for
5 knowledge for the person supplying the information there is
6 a fair probability that evidence of a crime will be found in
7 a particular case -- or place.

8 Your Honor, they were seeking forensic evidence related
9 to the shooting, which included GSR, which was collected in
10 this case, and which turned out to be positive.

11 Again, it says that the reviewing court, the task is to
12 decide whether the magistrate had substantial basis for
13 concluding that probable cause existed, and again the
14 reviewing court should give great deference to the
15 magistrate's determination. The case continues to
16 distinguish the fact that an eye-witness has first-hand
17 knowledge. Again, this case relies on State v. Sullivan.
18 Acknowledging courts have distinguished between affidavits
19 relying on eye-witnesses or victim informer and those
20 relying on paid informers and that the former being the eye-
21 witness and the victim informers may be sufficient to
22 establish probable cause even if affidavits do not
23 independently establish the credibility of the informant
24 when other circumstances show that the informant is likely
25 to be reliable.

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1 Again, hearsay -- is acceptable for a magistrate judge
2 to depend on when being told by an office that he's got a
3 statement from an eye-witness to the shooting, that
4 identified the subjects fleeing the scene in this particular
5 vehicle, and that their word is likely that evidence of this
6 shooting would be found in this vehicle whether it be
7 gunshot residue or ballistics. And in this case there was
8 gunshot residue.

9 Again, it goes on to say that a non-confidential
10 informant should be given a higher level of credibility
11 because he exposes himself to public view and to possible
12 criminal and civil liability and should the information
13 supplied prove to be false.

14 The officer in this case also indicated that he got a
15 written statement from the witness. Another factor that
16 this court relied on that this informant was reliable was
17 because he had a -- possessed a special relationship or
18 capacity to gain knowledge. In this case, Your Honor,
19 you've heard testimony from Ricky Jacobs that he is familiar
20 with the people that frequent his night club and that he was
21 familiar with the first name of one of the perpetrators and
22 had seen the other one before, however, he couldn't recall
23 his name right at the time. And he did provide his name in
24 a written statement and he signed it, to law enforcement,
25 which was therefore -- relied upon for probable cause in the

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1 search warrant in the affidavit.

2 And then last, the specificity of informants
3 information coupled with absence of ulterior motive has been
4 held sufficient to constitute reliability.

5 Again, Your Honor, this witness was able to articulate
6 two individuals, identify them, one by name, and indicating
7 he was familiar with the other one, just couldn't remember
8 his name. That they got into the tan Suburban and drove in
9 front of the carwash where low and behold where the victim
10 was standing and got shot.

11 Again, Mr. Jacobs is not a paid person. He is simply a
12 concerned citizen reporting a crime to law enforcement. He
13 was specific about the vehicle, the occupants, where the
14 shots were fired from in the car. He also, then, positively
15 identified both perpetrators and that -- after that was when
16 the search warrant was obtained. His information was
17 corroborated by the forensic evidence at the scene, such as
18 the number of shell casings and/or projectiles located.

19 And basically the last thing that this court in
20 Driggers found was that viewed in a common sense and
21 realistic fashion provided a substantial basis for the
22 magistrate's finding of probable cause and the magistrate's
23 issuance of a search warrant.

24 State verses Bellamy is the last case we will rely upon
25 for the argument that there is probable cause in this case,

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1 and in the affidavit. Is the Gates totality of circumstance
2 as it does away with that rigid two prong test of veracity
3 and basis of knowledge that is set forth in Aguilar because
4 this is a eye-witness, not a confidential informant. It
5 goes on to say that the Supreme Court wrote in Gates that it
6 did agree with the lower courts reasoning that Aguilar-
7 Spinelli element should be construed as an entirely separate
8 and independent requirement to be rigidly exactly in every
9 case, rather they should be understood simply as closely
10 intertwined issues that may be usefully -- that may usefully
11 illuminate the concept factual question, which is, whether
12 there is probable cause to believe that contraband or
13 evidence is located in a particular place. These are
14 relevant considerations in the totality of the
15 circumstances.

16 A deficiency in one of these elements may be
17 compensated for in determining the overall liability of a
18 tip by strong showing as to the other -- or by some issue of
19 reliability. And it provided examples, like a citizen. If
20 -- likewise if an unquestionably honest citizen comes
21 forward with a report of criminal activity which if
22 fabricated would subject them to criminal liability, we have
23 found rigorous scrutiny for the basis for this knowledge
24 unnecessary. Conversely, if we entertain some doubt as to
25 the informants motives, his explicit and detailed

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1 description of the alleged wrongdoing along with a statement
2 that the event was observed first-hand entitled this tip to
3 a greater weight than might otherwise might be the case.

4 Again, the duty of this court, Your Honor, is to simply
5 insure that the magistrate had a substantial basis for
6 concluding that probable cause existed, and therefore, Your
7 Honor, your question should be was there fair probability
8 that gunshot residue would be found in this tan Suburban
9 that Ricky Jacobs identified first-hand leaving the crime
10 scene and identified the occupants and which side the gun
11 was fired from and to which direction it was fired to.

12 Even if we entertain doubt as to motives -- informants
13 motives, his explicit and detailed description of the
14 alleged wrongdoing along with a statement of the event that
15 was observed first-hand entitles his tip to a greater weight
16 than might be otherwise -- might otherwise be the case.

17 So therefore on the basis of these cases, Your Honor,
18 we feel that you should apply the same standard of common
19 sense, practical -- the courts have found that these
20 affidavits are made by non-legal people that are in the
21 middle of a hasty criminal investigation and that the
22 rigorous test should not be applied, and, Your Honor,
23 basically at that point, Ms. McDuffie would have her
24 argument.

25 MS. MCDUFFIE: Further, Your Honor, if you do

1 find that the warrant -- that there was not probable cause
2 to issue the search warrant, we would argue that good faith
3 exception would apply to this, and South Carolina courts
4 have recognized the good faith exception in McKnight, Your
5 Honor, which we have handed up.

6 However, Your Honor, the courts have held that there
7 are two categories of cases that the good faith exception
8 does not apply. The state submits that neither one of those
9 is applicable to the present case.

10 The first category of cases where the good faith
11 exception does not apply is where that the search warrant
12 does not comply with the requirements of the South Carolina
13 Code 17-813-140, which outlines the process for the
14 issuance, execution, and return of the search warrant. Your
15 Honor, here this search warrant was properly issued,
16 executed, and returned. It complies with 17-13-140, the
17 code which deals with that issue. The officers performed a
18 search on the 26th of the month on a subjects property,
19 however, Your Honor, the judge did not sign the warrant
20 until he 28th of that month, two days after the search was
21 conducted. There the court held that because there was no
22 validly issued warrant under 17-31-40 (sic) no good faith
23 exception could apply because there was no way the officers
24 could be acting in good faith without a properly issued
25 warrant.

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1 The second category of cases, Your Honor, which we had
2 ended up would be Westin, Austin, and Adolph (sp) deal with
3 when there's not sufficient probable cause to render a
4 warrant sufficient. And all of those cases deal with either
5 some misrepresentation, mis-characterization on the part of
6 the police department, none of which is applicable here,
7 Your Honor.

8 In one of those cases, Your Honor, they had information
9 from a confidential informant, however, they characterized
10 that information as coming from an agent to the magistrate.
11 That misrepresentation the court found did not allow the
12 good faith exception to apply. In Adolph (sp), Your Honor,
13 the court -- the officers did not tell the court about the
14 reliability and the veracity of the informants information
15 and therefore the court held that because of the officers
16 failed to do that they could not justifiably rely on the
17 search warrant.

18 However, Your Honor, here our officers, they complied
19 with all the requirements of 17-13-140. They had not
20 misrepresented anything in the warrant to the magistrate,
21 Your Honor, and there's no reason that the good faith
22 exception should not apply when the officers had complied
23 not only with the letter, but the spirit of the law in every
24 way.

25 We submit that the good faith exception would apply,

1 Your Honor.

2 THE COURT: Thank you.

3 MR. SWERLING: I didn't get a copy of that.

4 MS. MCDUFFIE: I have a copy right here.

5 MS. SHIPLEY: We have them right here, Your Honor.

6 THE COURT: Okay. I don't think the Court got one
7 either.

8 MS. MCDUFFIE: And Your Honor, it also cited in
9 Cobert (sp) which is a 2009 case.

10 THE COURT: Okay, you have Cobert. Okay.

11 MR. SWERLING: If you could would indulge me for a
12 moment.

13 THE COURT: Sure.

14 (Pause.)

15 MR. SWERLING: Judge, with all due respect -- this
16 good faith exception under Leon in the South Carolina
17 courts, in fact, the case, as I thought I recalled, does not
18 -- refuses to address that and says specifically, even if
19 this court were inclined to adopt a good faith exception
20 akin to Leon, the exception does not apply here. There is
21 no case in South Carolina, as I represented yesterday, that
22 has adopted the good faith exception under Leon. The good
23 faith exception that Ms. McDuffie was talking to arose out
24 of the Sacks (sp) case, which is quite an old case, but that
25 was a case that relied on oral supplication beyond the four

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1 corners of the affidavit for a search warrant, and there was
2 a specific question asked by me of the Investigator McRae
3 yesterday as to whether or not he orally supplemented the
4 affidavit for the search warrant and he said, no.

5 So that's the only good faith exception, that's not a
6 Leon good faith, that's a Sacks good faith to allow oral
7 supplication of a warrant.

8 I mean, I -- the cases I cited to you yesterday, State
9 verses Cobert (sp), all say that South Carolina has not
10 followed a good faith exception where there's insufficient
11 information in an affidavit that a neutral, detached
12 magistrate can make a finding of probable cause.

13 Now, Judge, this is -- this is serious business, as you
14 know, because we can't just say because the police act in a
15 hurry and because they knew of an investigation that they
16 can circumvent or a magistrate can circumvent the Fourth
17 Amendment requirements. It's there for a purpose. There
18 are thousands of cases dealing with Fourth Amendment search
19 warrant issues. They are decided every single day, and our
20 court has not hesitated to decide those cases.

21 What I'd like to address first is Ms. Shipley's
22 statement that Ms. Jacobs is a reliable person, he owns the
23 bar, he witnessed the events, he has no motive in this
24 particular matter. He testified in the case, he gave a
25 written statement. He identified Taurus Watts and Tremaine

1 Wray afterwards. That's all well and good. I don't dispute
2 that. Fact of the matter is, that information was never
3 given to the magistrate. There was no information given by
4 Mr. McRae that Mr. Jacobs is the manager of the bar.
5 There's no information given by Mr. McRae to Judge Maurer
6 that he, the manager of the bar, Ricky Jacobs, witnessed it,
7 that he identified those individuals and he gave a written
8 statement or that reliably the specifics of the basis of his
9 knowledge as to what he observed. There is no information
10 given to the magistrate that he had no ulterior motive, that
11 he had nothing to gain in this thing. We don't even know if
12 you look at this affidavit as to who the witnesses are. On
13 one occasion says, a witness.

14 Do you have State's eight?

15 COURT REPORTER: Here is it.

16 MR. SWERLING: In there on one occasion it talks
17 about, witnesses did identify the above listed vehicle
18 leaving the incident location firing shots. Who are these
19 witnesses. They still have not been identified to you, Your
20 Honor. Certainly they were not identified to Judge Maurer.
21 Then it says, second paragraph, witnesses identified the
22 driver and passenger as subjects leaving the incident
23 location. Again, that information -- who is that witness
24 and what was presented to the magistrate. There's no
25 information in that of who those individuals were that he

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1 was identifying, how he identified -- the source of his
2 knowledge, where he was standing, was it hearsay information
3 given to him, was it first-hand knowledge. And then it goes
4 down and makes another general conclusionary statement that
5 witnesses identified one of the suspects as the driver of
6 the vehicle. It doesn't even identify in here who the
7 suspects are. So how could any of that information be
8 relayed to Judge Maurer. I mean, I don't disagree with what
9 Ms. Shipley said Mr. McRae's knowledge was, but the fact of
10 the matter, that information was never given to the
11 magistrate so that he could make a determination.

12 In addition, let me -- I can go through some of the
13 cases state was referring to here. Because there is a
14 different -- there is a difference between a confidential
15 informant and what's called a citizen informant. Okay, we
16 agree with that. Confidential informant has an experienced
17 law enforcement officer and is a basis -- based on his past
18 performance with law enforcement, if the proper
19 representations are made to the magistrate they can
20 establish his credibility and reliability so the judge can
21 make a neutral and detached evaluation of probable cause.
22 With a citizen informer it appears -- I would say for lack
23 of a better word -- a lessor requirement because the citizen
24 informant does not have to have the reliability established
25 as a confidential informant would, but if you look at any of

1 these cases dealing with citizen informants there are a
2 number of factors that have always been considered. One is
3 their relationship to the people involved. What is their
4 link to the people involved and you have to establish that
5 link. For example, statements against interest. A co-
6 defendant making a statement against another co-defendant.
7 There is that link there. He may not be a confidential
8 informant, but because of his unique relationship to that
9 individual and because he has given a statement against his
10 own interest that statement has reliability or has been
11 given reliability under the cases. His -- the opportunity
12 to observe the events in some of the cases, and I'll get to
13 them briefly. A witness was actually in the apartment when
14 the crime was being planned where he saw the weapons
15 involved, where discussions were being held concerning
16 participation in the crime. In each of these situation --
17 or there have been situations where the motive, where police
18 have established the citizen informant did not have a motive
19 to fabricate. In fact, had a reason not to fabricate
20 because that person identity being revealed subjected that
21 person to public scrutiny, civil liability and criminal
22 responsibility. So in every one of the citizen informant
23 cases that I can find even though they don't require this
24 past reliability or having given information in the past, it
25 does require in every one of those cases, some information

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1 being given to the magistrate to establish their veracity or
2 their reliability in another way.

3 Let's say -- I could, let's just talk about the first
4 case that Ms. Shipley has talked about, State verses
5 Bennett, which they say stands for the proposition that this
6 warrant is okay. Well, the problem with State verses
7 Bennett is that in State verses Bennett, Joe Lewis was shot
8 in the back, and then he went on to give some information
9 concerning Joey Bennett, who shot Robert Green with the same
10 pistol. The significance in this particular case is that
11 Joe Lewis was in a unique position to observe the events
12 because he, himself, was shot. Secondly, he is identified
13 in the case. He's identified in the affidavit for the
14 search warrant. So that the cases that talk about the fact
15 that a citizen informant is in a different position because
16 he identifies himself, is subject to public scrutiny, civil
17 liability and criminal responsibility, he is entitled to a
18 more -- a -- he is entitled -- I guess I'm trying to figure
19 out how to say it. His information is entitled to more
20 reliability by the magistrate who is being asked to issue
21 the search warrant. The court says here we do not have a
22 case of an unidentified informant. The magistrate was made
23 aware in the affidavit of the fact that the affiant got his
24 information from one who was an eye-witness to the killing.
25 The whole of the showing is sufficient to justify the

1 magistrate in granting the request of Lt. Lavern for a
2 search warrant to seek and seize the weapon. But in this
3 particular case, in the affidavit, the person who was giving
4 the information was identified. That's not what we have in
5 our particular case.

6 So I do not think that case assists the state
7 whatsoever.

8 The other case that the state was referring to is State
9 verses Sullivan. Again, significantly in this case, which I
10 do not think assists the state again, in fact, I think it
11 supports our position, as well, is that in this particular
12 case the source of the information, the citizen informant,
13 was identified as the manager of the apartment, was
14 identified as not be motivated by any financial remuneration
15 but acting as a concerned citizen. The informant was not
16 only named, but her prescribed position as a manager
17 indicated supervisory capacity, which could enhance both
18 opportunity and reliability of observation and there was no
19 evidence that that information was supplied due to self-
20 servicing motives or rancor. That's the second case in
21 South Carolina that I could find, as well, that talks about
22 the fact that if you're going to use a citizen informant you
23 have to name that person so that the judge can make a
24 determination as to the relationship of that individual and
25 whether that individual has an ulterior motive, and also by

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1 naming that individual it opens that person up to public
2 scrutiny, criminal liability -- criminal responsibility and
3 civil liability.

4 So that case, I do not believe helps the state either.

5 THE COURT: What was that last case?

6 MR. SWERLING: That is State verses Sullivan.

7 THE COURT: All right. Thank you.

8 MR. SWERLING: State verses Driggers doesn't help the
9 state either. State verses Driggers helps us, as a matter
10 of fact, because, again, in this particular case, which is
11 the third case in South Carolina that says that this person
12 who was mentioned in the affidavit was an eye-witness to the
13 events following a robbery. He did not keep his name
14 confidential, but exposed himself to public view and
15 possible liability if he gave the wrong information or was
16 later accused of some involvement in the crime. The
17 informant was living at the defendant's apartment, thus,
18 supporting the inference that the defendant had openly
19 discussed the robbery.

20 In this particular case, as I recall, the -- this
21 individual gave a statement and that statement was
22 incorporated in the officer's representation to the
23 magistrate. Here you have Jacobs gave a statement, but his
24 statement was never incorporated in, according to the
25 testimony, into the presentation that was made to Judge

1 Maurer.

2 So this is the third case that South Carolina requires
3 a citizen informant or a person similarly situation would be
4 required to go ahead and give his name in addition to all
5 these other facts and circumstances that I'm talking about.

6 We might be in a different position here had Mr. McRae
7 given Judge Maurer all the information about Jacobs. All
8 the information about the fact that he was the manager of
9 the club, he was standing in the parking lot, he knew Taurus
10 Watts, he knew Tremaine Wray. And he identified them and
11 gave a statement, but that's not what we have.

12 Now with respect to a couple of other cases, I believe
13 I discussed Driggers. One of the cases I was talking about
14 Your Honor, which creates that unique exception to -- when
15 you're dealing with people who are not informants is State
16 verses Robinson, but that's one of the situations that I was
17 talking about where the co-defendant implicated himself.
18 And, of course, there's clearly a lot of cases that says a
19 person or co-defendant who may not have any prior
20 relationship with the police and giving them information --
21 the reliability is established by the fact that he is giving
22 a statement against his own interest.

23 In State verses Bellamy, there's two opinions on that
24 case. The state -- the Court of Appeals opinion and also
25 the Supreme Court opinion affirming the Court of Appeals.

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1 The bottom line, again, in that respect to the citizen
2 informant, which we'll talk about the citizen informant. I
3 guess that's a good way to put it. Is the fact that that
4 particular person was identified in the affidavit for the
5 search warrant. Here in the affidavit it says Luther Spencer
6 Stanley, after being advised of his rights, then goes
7 through this whole description of the scenario under which
8 the description of which he believes there was criminal
9 activity and the fact that Bellamy was committing criminal
10 activity. That was presented to the magistrate, as well.

11 So of the four cases that appears that South Carolina
12 discuss citizen informants every one of them has required
13 the fact that in addition to providing specific information
14 details about what that person observed, what that person's
15 relationship is to the individuals and how that person came
16 about that information and the length of that information,
17 every one of them has required the fact that that individual
18 who is a citizen informant be identified and has been
19 identified, and that has been the significant factor in all
20 those cases, as well as, a number of cases from around the
21 country. It is just generally, uniformly accepted that the
22 reason that that is relied on as a victim or as a witness is
23 that that person identifies themselves, unlike a
24 confidential informant who is keeping his identity secret
25 and has to establish his reliability based on past

1 performance where witness or citizen informer does not or
2 victim informer does not have to do that because of their
3 unique relationship. But they have to be identified so --
4 every one of these cases talks about the fact that the
5 identification is critical because it subjects that person
6 to public scrutiny, civil liability and criminal
7 responsibility if they're not telling the truth.

8 So I don't find they're -- I don't find, have not found
9 any case dealing with this kind of situation where we have a
10 citizen informant, witness informant where a person is not
11 named and more information is not given. Again, had that
12 been given to the judge I probably would have sat down a
13 long time ago. That's not what we have here. The Fourth
14 Amendment is there for a particular reason. It protects
15 people against people, places, and things. And in this
16 particular case this warrant was just issued without any
17 underlying information from which a magistrate could make a
18 mutual and detached judgment about the probable cause in
19 this case. There is no case that would uphold this kind of
20 warrant. I have not found one case that upholds this kind
21 of warrant with the kind of information contained in it.

22 Again, I went through this whole argument yesterday,
23 Judge, about the fact of good faith. Judge, I guess I've
24 been kind of surprised over the years, every time that issue
25 has come up in a case the court declines to apply the Leon

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1 good faith exception. They just have not done it. There is
2 no case that applies it. And that case that they're refer
3 to does not apply it. It refers to it. But there's no case
4 that's ever been decided in South Carolina that applies the
5 Leon good faith exception. We don't follow it. We have a
6 higher standard under our state constitution and by our
7 state law than the United States Constitution or the federal
8 case law, and good faith does not apply in South Carolina
9 under these circumstances.

10 We respectfully ask the court to suppress the evidence
11 in this case. As I said yesterday, Your Honor, the fact
12 that Tremaine Wray was driving the vehicle on the night in
13 question. I mean, everybody agrees with that. The fact
14 that he was the one that was driving the vehicle on the
15 night that he was arrested, the night the vehicle was
16 impounded establishes standing, clearly. I mean, if you're
17 driving a vehicle on the highway, that vehicle could be
18 owned by anybody, but if you're stopped you have standing to
19 challenge the search. It doesn't make any difference who's
20 name the registration is in. It's the fact that you're
21 driving the vehicle. You have expectation of privacy. That
22 has even been applied to the passengers now, as of last
23 year, in the -- I think it was the Breeland or Beeland (sp)
24 case out of California where they established the fact that
25 a passenger now has the expectation of privacy where as the

1 court has refused, the U.S. Supreme Court had refused to go
2 that far -- Redland (sp) -- I'm sorry, that's the name of
3 the case -- where the court had previously refused to extend
4 the expectation of privacy to a passenger did so in the 2008
5 session of the U.S. Supreme Court.

6 If there's any question about that I will make a
7 Proffer that Ms. Wray will testify and Tremaine Wray will
8 testify that because he had no credit the vehicle was in her
9 name, but he drove the vehicle exclusively. So I do not
10 think -- I submit to the court that standing is just not an
11 issue in this case.

12 THE COURT: Thank you. State, do you wish to
13 respond?

14 MS. SHIPLEY: Your Honor, depending on your
15 ruling we will have further argument.

16 THE COURT: Okay. Well, I just want to know if
17 you want to respond to the distinctions between the
18 confidential informant and the citizen informant, and that
19 he is indicating that these cases, and I'll need to step
20 down to look at them in more detail, require that most of
21 the citizen informants have been named or that there be a
22 little more information about who the witnesses are in the
23 actual affidavit.

24 MS. SHIPLEY: Your Honor, the cases do indicate that
25 affidavits in those search warrants in those cases did

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1 actually name the witness, but it doesn't indicate that that
2 was a requirement. It just so happens -- I could not find
3 any law that says because they were named, then that
4 satisfies the reliability factor. My understanding in
5 reading the cases the most important thing was the
6 specificity of the information provided, and then the first-
7 hand knowledge by a witness to the crime. And that was what
8 I -- how I interpreted it in reading it that the most
9 important thing was Ricky Jacobs had first-hand knowledge.
10 He provided specific details about the perpetrators, the
11 vehicle, the shots fired and that the question that Your
12 Honor would be faced with, because it's clear that absent --
13 that you are to give great deference to the magistrate
14 judge, Judge Maurer, in finding probable cause in that your
15 question is, bottom line, in reviewing the probable cause in
16 this case, was there a fair probability that GSR, in this
17 case, would be found in this Suburban. And so -- but that
18 is the question, and my position is clearly when an officer
19 is telling a judge that we have an eye-witness that saw the
20 perpetrators get into this car, shoot at the direction of
21 the victim, the victim died as a result. That that is
22 sufficient probable cause to search that particular vehicle.
23 They identified the crime for which they were investigating.
24 So it was clearly a shooting, and they articulated what
25 evidence they were looking for and that would be putting

1 trace, GSR evidence. So the state's position is that
2 because the witness, although, he's not named, by name, the
3 officer did make it clear in his affidavit that this witness
4 observed the events of that night, identified the
5 perpetrators and the vehicle described in this affidavit and
6 in the search warrant.

7 THE COURT: All right. Anything else?

8 MR. SWERLING: No, Your Honor.

9 THE COURT: Let's just take a short break, and
10 then I'll come back with my decision.

11 (Court in recess for short break.)

12 (Court in session after short break.)

13 THE BAILIFF: All rise.

14 THE COURT: You-all can keep your seats.

15 Okay, the Court is left with the determination of
16 requiring and deciding whether or not the magistrate
17 essentially has a substantial basis for concluding that
18 probable cause existed and that we're not left with
19 conclusionary statements. The Court is also required to
20 give a certain deference to the magistrate's determination
21 of probable cause. I have reviewed the cases cited by the
22 state as well as defense and there are indications that
23 names have been used in affidavit, but I don't read the
24 cases as requiring the names, and I think that in this
25 circumstance, because we have there being an identification

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1 of the vehicle, particularly the vehicle leaving the scene
2 of the accident, an identification that shots were fired
3 from that vehicle and that such shots did cause the victim
4 to be wounded and then also the witness identified the
5 driver and the passenger as the particular subjects in this
6 particular vehicle then I find that there is a substantial
7 basis for concluding of an addition that a crime has been
8 committed from that particular passenger vehicle. So I'm
9 going to rule and not suppress any of the evidence from this
10 particular issue. I don't think I need to get to a good
11 faith requirement based on the Court's ruling in that
12 regard.

13 MS. SHIPLEY: Thank, Your Honor.

14 THE COURT: Okay. State?

15 MS. SHIPLEY: We're ready to proceed, Your Honor.

16 THE COURT: Okay. Defense? Anything further?

17 MS. SHIPLEY: We just need to settle a couple of
18 records --

19 THE COURT: Okay, go ahead.

20 MS. SHIPLEY: First witness will be Verda
21 Roberts, Your Honor. And reading her rap sheet, nothing
22 would be able to be used against her, in fact, the criminal
23 -- CDVHAN it was nol prossed or dismissed at prelims and she
24 has already expunged that from her record.

25 The next witness is Stephanie Boston, and she has no

1 record.

2 The third witness is Charlie Bates, and he does have
3 two convictions that are permissible to be used for
4 impeachment or to attack his credibility. That would be the
5 auto breaking in 2006, and a petit larceny.

6 James Lamont Goodwin has no criminal history --

7 MR. SWERLING: Could we catch -- I'm sorry, could
8 we catch up a little bit.

9 MS. SHIPLEY: I'm sorry.

10 MR. SWERLING: That's all right.

11 (Pause.)

12 MR. SWERLING: No disagreement yet with Boston or
13 Roberts. Who is the next one?

14 MS. SHIPLEY: Bates, and he has two convictions
15 that would be permissible. A 2006 auto breaking and petit
16 larceny.

17 And Your Honor, that ought to get us through until the
18 morning break, and we can worry about the rest of the
19 witnesses later.

20 THE COURT: Okay.

21 MR. SWERLING: I agree with the list.

22 THE COURT: Okay, and then you went to James Lamont
23 Goodwin?

24 MS. SHIPLEY: Yes, he has no record.

25 THE COURT: Okay. No record. Okay.

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1 MS. SHIPLEY: Also, just for the record, Your
2 Honor, all parties have stipulated to the internal chain of
3 custody of Richland County Sheriff's Department and SLED.
4 We did -- You presided over Tina Goff's testimony, since
5 she's out this week we'll read that into the record. She
6 transported the GSR to SLED in this case, but the rest of
7 that has remained at the Sheriff's Department. I just
8 wanted to put that on the record that it's my understanding
9 that the parties, all the parties have stipulated to the
10 internal chain of custody in the property room at the
11 Richland County Sheriff's Department and then once these
12 items got to SLED to stipulate to the chain of custody at
13 SLED.

14 THE COURT: Okay. All right. Anything further
15 from anyone before --

16 MS. SHIPLEY: Yes. At this time the state would
17 move to sequester all witnesses for the state and the
18 defense. That would include people who were here, they've
19 heard their name called. Mr. Jacobs will have to sit
20 outside. Ms. Boston and Ms. Roberts will have to sit
21 outside, please. Also, Mr. Davis, sit outside. And Nellie
22 Wray. And I believe on the defense, Darrell Wray --

23 MR. SWERLING: I'm just going to step out for a
24 second while we're --

25 THE COURT: Yes, you may.

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1 (Pause.)

2 MR. SWERLING: Judge, would you allow our
3 objections to be when one makes the objection the other one
4 would be joining in that without saying so unless they
5 specifically --

6 THE COURT: Any objection by the state?

7 MS. MCDUFFIE: No, Your Honor.

8 THE COURT: Okay. That's fine, if that will cut
9 down on a lot of -- in the trial.

10 Are the parties ready to proceed?

11 MS. SHIPLEY: Yes, ma'am.

12 MS. JOHNS Yes, Your Honor.

13 MR. BAX: Yes, Your Honor.

14 THE COURT: Jurors, please.

15 (Jury in at 10:53 a.m.)

16 THE BAILIFF: The jury's all present, Your Honor.

17 THE COURT: Thank you.

18 Ladies and gentlemen of the jury, thank you so much for
19 your patience. There are times that when we are in a trial
20 we will have certain matters of law that we have to take up
21 and sometimes we just can't anticipate how long that will
22 be, and so I apologize profusely. Please do not hold any of
23 that against any -- the state or the defense lawyers,
24 because those are just matters sometimes the court has to
25 take up, and we just have to be sure about our certain rules

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1 and things that we do.

2 I'm going to have the clerk swear you in and then we
3 will proceed with instructions on the case and proceed with
4 the case.

5 THE CLERK: Ladies and gentlemen of the jury,
6 please stand and raise your right hands to be sworn.

7 (WHEREUPON, the jury was sworn.)

8 (Jury sworn at 10:56 a.m.)

9 THE CLERK: Thank you.

10 THE COURT: Ladies and gentlemen of the jury, we
11 are about to proceed with the case of the State verses
12 Tremaine Wray and the State verses Taurus Watts. As I
13 indicated to you on yesterday, these are indictments for
14 murder. These are simply the formal instrument by which
15 this case is brought to trial. Both defendants have pled
16 not guilty, so they are exercising their constitutional
17 right to a jury trial. The state has the burden of proving
18 their cases that they are guilty beyond a reasonable doubt.
19 In the state of South Carolina no defendant is ever required
20 to prove himself innocent. So there will be a posture in
21 the case at which the defendants have to decide whether they
22 choose to testify or even put up a case because they don't
23 have any responsibility in doing so. That burden of proof
24 always remains with the state.

25 As you can indicate by the indictments or in any case

1 tried in this courthouse, this is a serious matter. So I
2 know a lot of us tend to watch TV, CSI, Law and Order, those
3 various types cases. Those are TV, this is reality. These
4 are serious issues, serious events right here in our
5 community in Richland County, and we will be describing
6 events with real people.

7 Every day as I take the bench, I understand that I am
8 affecting people's lives and liberties, and I take my role
9 seriously, and I am going to ask that you take that
10 responsibility upon yourself just as well.

11 I have to listen to facts and evidence and then make
12 certain determinations, but you are the most important
13 people in this room today because you are the sole judges of
14 the facts. In any trial you'll see different versions of
15 facts. At the end of the day it's your conclusions that
16 matter. That is your sole responsibility in this case to
17 offer the state a fair trial in listening to all evidence
18 and testimony and other facts that they present, and should
19 the defendants desire to do so to give them that same
20 opportunity, and then at some point you'll be asked to draw
21 your own conclusions. That is your sole province as the
22 sole judge of the facts.

23 My role is as the judge of the law, and there will be
24 an appropriate time in which I will instruct you on the law.
25 I will also have the responsibility of ruling on the

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1 admissibility of certain evidence. So certain times you
2 might hear the lawyers stand up and object to certain
3 evidence. Please listen to what my ruling will be on those
4 evidence. Also, there are times, just to give you an idea
5 of procedure, where the lawyers might object and I might ask
6 them to approach me at the bench. That is so that I can
7 hear certain things that you are not allowed to hear and
8 then make my rulings appropriately. Sometimes we may have
9 to send you to the jury room because we may have to create a
10 record with the court reporter so that she gets down
11 everything in their arguments, but to the extent that I have
12 to do that, that is just part of the trial. So just excuse
13 that.

14 The way the trial will proceed is that the state gets
15 to make an opening statement, as well as each of the
16 defendant's counsel. They get to tell you what they
17 perceive they will be able to show you will be the evidence
18 in this case. Then the state, because they have the burden
19 of proof, will put up their witnesses. You will have the
20 opportunity to review those witnesses. Both defendant's
21 counsel will have the opportunity to cross-examine those
22 witnesses. At some point, the state will conclude their
23 case. At the conclusion of the state's case the Court will
24 have to take up issues of law outside of your earshot, so I
25 will send you to your jury room. Then the defendant will be

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1 advised of his rights to determine whether or not he wishes
2 to testify or put up any case, because, again, he's innocent
3 until proven guilty. Then at that juncture, then we will go
4 forward with the defendant's case, if at all, and then I'll
5 have another opportunity to send you back to your jury room
6 because then I have to take up matters of law at the
7 conclusion of each parties case.

8 At the conclusion of the trial, then they are able to
9 present closing arguments, at which time they will try to
10 convince you and refresh you of the memory of the evidence
11 in the case and try to convince you of their side of the
12 case.

13 I need you to pay attention throughout the entire
14 trial. This case is expected to last throughout the week
15 and that there will be several pieces of evidence, and just
16 need to be careful and be deliberate, and observing all the
17 evidence as well as the testimony, because of it is
18 considered evidence.

19 To the alternates, I expect you to pay just as much
20 attention to the trial because there have been times when
21 you have to step in and be the main juror at times. So I
22 need to you to be just as much -- excuse me -- communicating
23 and participating.

24 With respect to communicating during the trial, you
25 should not speak to each other at all about the case. You

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1 can only speak about the case as a collective group with the
2 case is handed to you, and you'll know when that time and
3 opportunity will be.. I also ask that you not speak with
4 anyone in terms of home, friends, even about the subject
5 matter about what the trial is about, because, again, people
6 tend to inflect their own personal opinions on you just by
7 virtue of you mentioning a particular subject matter, and we
8 want you to make up your mind based on what is here. We
9 went through a lot of questioning, you know, to get just
10 general information from you and you are the ones who were
11 chosen to decide the fate, particularly, in this case.

12 I'm going to ask that you not be tweeting or be on My
13 Space or any of the communicative devices or let anybody
14 know what your responsibilities this week, because, again,
15 we need no outside influences. You are not to read anything
16 in the paper about this, listen to any media reports. Any
17 type of information, because anything you're relying on for
18 your decision will come in this courtroom. And that will be
19 the basis of your decision, so I'm going to require that.

20 These lawyers are very professional and very ethical.
21 As you might see them in the streets in terms of lunch or
22 anything like that, they know they're not supposed to speak
23 with you so don't take that against them as being rude.
24 I've also directed all courthouse personnel to not have any
25 communication with you other than basic issues like restroom

1 breaks or anything -- but nothing related to the case, not
2 anything what are they doing in there or what's the judge
3 doing, because they can't tell you if I'm arguing -- hearing
4 a motion or just anything -- strike up anything that might
5 be a conversation that could lead to something else. So I'm
6 just letting you know they are being rude to you. They have
7 been instructed that we have to make sure, you know, that
8 all these proceedings are just and fair to everybody
9 involved. So that is the rules of the game for everybody
10 involved in this proceeding.

11 I'm going to ask that you pay close attention to all
12 side and that you'll get your comfort breaks along the way
13 to the extent that you'll need something a little more
14 frequent than what I'm giving you, then just let a bailiff
15 know and we'll be happy to accommodate you. We will try to
16 run the trial as expediently as we can, but as I indicated
17 this morning, sometimes things get a little off track, but
18 they have to be heard. So I apologize in advance.

19 Thank you so much for your role as jurors. It is
20 extremely important in a democratic society where people can
21 be -- sit in judgment of their peers, and we're asking you
22 to take that responsibility very seriously.

23 Thank you so much, and I direct your attention to the
24 state.

25 MS. SHIPLEY: Your Honor, may we approach for one

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1 moment?

2 THE COURT: Yes.

3 MS. SHIPLEY: Thank you.

4 (Off the record bench conference with counsel and the
5 Court.)

6 THE COURT: I think we have an alternate sitting
7 with the main jurors. I think that Juror 11 and 85 might
8 need to switch. Who are the two alternates, raise your
9 hands?

10 (Alternates comply.)

11 THE COURT: You both are the two alternates? Okay,
12 what's your juror numbers?

13 JUROR NO. 205: I'm number 205.

14 THE COURT: Okay. Let me look at the list because
15 the -- Juror No. 205 is an alternate, and then Juror No. 85
16 should be an alternate.

17 JUROR No. 11: I'm number 11.

18 THE COURT: So 11 -- you went into the main set of
19 jurors -- I understand that 205 and 85 are the alternates;
20 correct?

21 MS. SHIPLEY: Yes, ma'am. 205 and 85 are the
22 alternates.

23 THE COURT: Who is 205?

24 JUROR NO. 205: I'm --

25 THE COURT: Okay. Okay. And then who's 85?

1 (Juror indicates by raising hand.)

2 THE COURT: Okay, you two need to switch. And
3 you'll always resume those seats on the back because you're
4 the alternates, because we have to clearly identify who our
5 alternates are.

6 (Juror 85 and 205 switch places.)

7 THE COURT: All right. Thank you.

8 Okay, is the state ready to proceed with opening
9 statements.

10 MS. MCDUFFIE: Friday, June 29, 2007, the friends
11 and family of Sgt. Travis Malone gathered in Columbia to
12 celebrate. They got together to celebrate honor, to
13 celebrate duty, to celebrate sacrifice in service to one's
14 country. They go together to wish Travis Malone good-bye.
15 To wish him a safe journey because he was being deployed to
16 Iraq that weekend. Travis and his good friend, James Lamont
17 Goodwin, and the victim in this case Demuria Johnson went
18 over to Travis's family's house in Columbia. Also present
19 with Travis's family was Stephanie Boston, Verda Roberts and
20 Charlie Bates. They hung out at Stephanie's house for a
21 while, drank, played cards.

22 And sometime in the early morning hours of June 30,
23 2007, they decided to go to the H&J Club on Hardscrabble to
24 continue celebrating. When they got to the bar Travis, the
25 victim and Lamont all went to the back deck, had a few

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1 drinks. Charlie saw a girl that he'd been seeing off and on
2 in the bar named Lisa. And they started talking and
3 dancing. Some other guys approached Lisa and a fight
4 ensued between Charlie and those men. Charlie got punched
5 in the face and knocked out. His mother, Verda Roberts also
6 got punched in the face and knocked out. Stephanie tried to
7 pick Verda up and as they were trying to leave the club they
8 started throwing beer bottles to keep people away from them.
9 They all managed to leave the club with Travis trying to
10 break up the fight.

11 The victim, Demuria Johnson, was not involved in this
12 fight whatsoever. He was outside when this went on. He
13 had nothing to do with what went on at the H&J Club that
14 night. As they were leaving the club they went to their
15 cars, they were parked at the car wash next door. Ladies
16 and gentlemen, during that time, these defendants got into
17 Tremaine Wray's Suburban and opened fire on a crowd of
18 people. They shot an M-11 or Uzi type firearm into a crowd
19 of people, and they struck an unarmed man, Demuria Johnson.
20 A man that had nothing to do with the fight that was going
21 on in the bar that night. But they sprayed that parking
22 lot, that area with gunfire, and they struck Demuria Johnson
23 in the leg. He bled to death that night because of these
24 defendants actions. The night that started out about
25 celebrating honor and service to one's country ended in a

1 senseless and tragic murder of Demuria Johnson at the hand
2 of these defendants.

3 Ladies and gentlemen, my name's Joanna McDuffie, and I,
4 along with Vanessa Shipley represent the state of South
5 Carolina for the Fifth Judicial Circuit.

6 It is our job to prosecute all crimes that are
7 committed in Richland and Kershaw Counties. We would like
8 to thank you in advance for your service. We know that
9 there are millions of other places you would rather be this
10 week than in this courtroom. But on behalf of myself, Ms.
11 Shipley, the state of South Carolina and the family of the
12 victim, Demuria Johnson, we thank you for your service and
13 your attentiveness.

14 As a result of Tremaine Wray and Taurus Watt's actions
15 on June 30, 2007, they are both charged with murder. In
16 South Carolina murder is defined as the unlawful killing of
17 another with malice aforethought. Malice is a legal term of
18 art. What it basically means is hatred, an ill will, a
19 gross recklessness for human life, a heart devoid of social
20 mischief -- I'm sorry -- a heart devoid of social duty and
21 fatally bent on mischief. Malice can be expressed or
22 implied. An example of expressed malice would be if I said
23 I'm going to kill you, and then I did. I'm expressing
24 malice. Or malice may be implied. Malice may be implied
25 from the use of a deadly weapon.

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1 South Carolina also has a principle called the hand of
2 one is the hand of all. Two or more people can be guilty of
3 murder even if there's only one gun, even if only one person
4 pulls the trigger. If those two people are together, they
5 are acting together, and they are aiding and assisting each
6 other each is guilty of the offense. The hand of one is the
7 hand of all or the act of one is the act of all.

8 We, as the state of South Carolina have the burden of
9 proof in this case. We must prove that the defendant
10 committed each element of the crime that they are charged
11 with beyond a reasonable doubt and we welcome that burden.

12 Proof beyond a reasonable doubt is proof that leaves
13 you firmly convinced of the defendant's guilt. It's not
14 absolute certainty. We're not required to produce proof
15 that overcomes every possible doubt. If, at the end of this
16 case you are firmly convinced of the defendant's guilt then
17 you must find them guilty.

18 Now, ladies and gentlemen, Judge Childs is the judge of
19 the law in this case. It is her job to determine what the
20 law is and how to apply it. However, ladies and gentlemen,
21 you are the judges and triers of the facts. It is your job
22 to determine the facts in this case. And that facts, that
23 evidence will come in two forms. The first will be
24 testimony under oath from the witnesses from this witness
25 stand. The second will be the physical evidence introduced

1 as evidence during this trial.

2 Ladies and gentlemen, during this trial you will hear
3 from Stephanie Boston, Verda Roberts and Charlie Bates.
4 They will tell you about the fight that occurred inside the
5 H&J Club that night. You will hear from James Lamont
6 Goodwin about how they were all going to their cars. They
7 were at their car in the car wash stall and gunfire erupted
8 from the street. How someone on the street on Hardscrabble
9 Road was shooting at them and the bullet struck Demuria
10 Johnson.

11 You'll hear from Ricky Jacobs, who owns the H&J
12 nightclub. He will tell you about how the fight broke out
13 in the club. He will tell you that he shut the bar down.
14 He was leaving the bar to go to his car when he saw Tremaine
15 Wray and Taurus Watts, two people he has known for over 20
16 years. He saw them going to the Suburban and coming back
17 towards the club. And he saw Taurus Watts carrying in his
18 hand a Mack 10 or Uzi style firearm wrapped in a white t-
19 shirt. He told them that the club was closed and to go
20 home. He will tell you how he saw them get into the
21 Suburban with Tremaine Wray as the driver and Taurus Watts
22 in the passenger seat. He will tell you how that Suburban
23 went on Hardscrabble Road in the direction of Farrow Road.
24 And how shots began to come from the driver's side of that
25 vehicle. He will also tell you how behind that vehicle was

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1 a white Isuzu Rodeo, and after the defendant started
2 shooting from their vehicle the passenger in the Rodeo fired
3 one shot into the air.

4 You will hear from officers from the Richland County
5 Sheriff's Department, officers who responded to the scene.
6 Officers who just a few minutes after the shooting were able
7 to find a white Rodeo and the two -- the driver and the
8 passenger of that vehicle and how they were eliminated as
9 suspects in this case.

10 You will hear from crime scene investigators who
11 processed the crime scene at the H&J bar and, also, who
12 performed a search warrant on Tremaine Wray's car.

13 You will hear from ballistics expert David Collins, who
14 will tel you that the 10 shell casings found at the scene
15 were all fired from one gun. There were also two
16 projectiles found at the scene and one that was recovered
17 from the hospital where Demuria Johnson was. You will hear
18 how those three projectiles all matched, as well.

19 You will hear from Michael Moskal, as well, a trace
20 expert in gunshot residue at SLED. He will tell you how the
21 defendant's car was positive for gunshot residue.

22 Finally, ladies and gentlemen, you will hear from Dr.
23 Clay Nichols. Dr. Clay Nichols is the forensic pathologist
24 in this case. He will tell you how as a result of the
25 gunshot wound Demuria Johnson bled out that night and he

1 died.

2 Ladies and gentlemen, you'll hear from Stan Smith, a
3 captain at the Richland County Sheriff's Department. He
4 will tell you how in just a couple of months he received a
5 call from a defense attorney who represented a client named
6 Brian Watson. Watson had been incarcerated on other charges.
7 Brian Watson came to his attorney and told him he had
8 information about this murder. That he disposed of the
9 murder weapon in this case. You will hear from Brian
10 Watson. You will hear from Jarrell Dansby, Tremaine Wray's
11 cousin, who Tremaine took the gun to to get rid of. You
12 will hear from Jarrell's ex-wife, Rashonda Simpson, who was
13 also present when this occurred, when the murder weapon was
14 disposed of.

15 Ladies and gentlemen, you will hear from the
16 investigators of the Richland County Sheriff's Department
17 who will detail their investigation and at the end of this
18 trial, we ask you ladies and gentlemen, you the jurors to
19 determine the truth. To return a verdict of guilty against
20 the defendants for the crime of murder.

21 Thank you.

22 THE COURT: Defense.

23 MR. BAX: May it please the Court, Your Honor.

24 THE COURT: Yes.

25 MR. BAX: Good morning, everyone. I guess we are

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1 still in the morning. Yes, we are. Good.

2 First of all, I would like to thank everybody on behalf
3 of my client, Mr. Wray. Obviously, we have two defendants
4 in this case today. And it is both their days in court.
5 Well, it's going to be more than one day, obviously.

6 First of all, I'd like to introduce our party. As I
7 said at the beginning of the case, I'm Arie Bax. I'm an
8 attorney in town with a solo practice. Actually, I practice
9 with my wife. Sitting at the far end of the table is Jack
10 Swerling, who also represents the defendant, Mr. Wray. He
11 also has a practice and we work together fairly closely.

12 Finally, Mr. Wray here is the defendant that we
13 represent, but not the only defendant in this case, but I
14 will allow Ms. Johns, his attorney to address Mr. Watts.

15 I'd like to thank you for going through what you've
16 gone through so far, and ask you to be patient for what
17 you're going to have to go through from here on out. It is
18 an extremely important duty that you're doing. And it's not
19 without it's on benefits on your part. This is, in my
20 opinion, one of the best ways to see how your country works
21 on a ground level basis. The jury selection process, first
22 and foremost, is what you've already been through and we
23 appreciate your patience through that. That process is to
24 insure that each person asserts the right to say I am not
25 guilty of what I've been accused of, which is something that

1 is protected under the United States Constitution, as well
2 as the constitution of this state, has a fair and impartial
3 jury. We believe that you are a fair and impartial jury and
4 that's why you're sitting here.

5 As the judge has told you it is a duty that is going to
6 require you to pay close attention. Obviously, we're going
7 to try to make that process as doable for y'all as possible.
8 I certainly know that paying attention for long periods of
9 time is hard to do. As an attorney I've gone through a lot
10 of schooling and it was not easy to sit there and pay
11 attention for hours at a time, and we will try to make sure
12 that you are not overburdened there, however, during the
13 time that we are presenting the court's business to you I
14 want to point out a few things. You are the triers of fact,
15 as the prosecutor, Ms. McDuffie has pointed out to you. And
16 that has some particulars that I want to point out. You're
17 not there in those seats to rubber stamp what the state does
18 and I think you know that. That's why you're on this jury.
19 You're there to look with a critical eye everything that is
20 presented to you. You're here to listen to the witnesses
21 that are presented to you by either party and just them not
22 just on the words that come out of their mouths, but by
23 their body language, by their eyes and using your common
24 sense.

25 We all are out there in Columbia. We go to

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1 restaurants, we go to the bank, we all go and drive the
2 streets. We all have common experiences as South
3 Carolinians, as residents of Richland County, and that's why
4 you are the triers of the facts and not a governmental panel
5 that sits on every case because you have that commonality
6 with everyone that lives here in this area to be able to
7 judge what's true and what's not true.

8 We all know that people communicate with more than
9 words. They communicate with their body language. They
10 communicate with the things that they don't say. The things
11 that they leave out. This is experience that all of you
12 have from you daily lives. When you communicate with
13 others. It's like when I'm talking to my daughter I'm
14 always careful to look at her and see what is she not
15 telling me, and I love her, but just like with everyone
16 else, communication is a tricky thing.

17 And so there's credibility there. And I want you all
18 to remember when you're witnessing, when you're listening to
19 the witnesses, think about that credibility. Think about
20 motivation, think about nervousness, attitude. All those
21 things that you would almost unconsciously take into
22 consideration when you're going through your daily lives.
23 When you're going through what you go through on a daily
24 basis. That's the same thing that you're going to do here.

25 I want to point out, also, that the jury system in this

1 country, as the judge has told you, is extremely important.

2 We can't operate this, we can't operate the civil system or
3 the criminal system of justice without you the jury.

4 Because as we've said, you are the deciders in any given
5 case, and it's particularly important in a case where an
6 individual has been accused of a crime, because as you well
7 know their liberty is at stake, and that is an extremely
8 important thing, because I know all of you know your own
9 liberty is an extremely important thing to you. It is to
10 me, and it is to everybody in here. So remember that.

11 Remember that liberty when you're thinking about the facts
12 of the case. You are the buffer zone between the government
13 and any individual. You are the protection. You are the
14 only obstacle between the government, local or federal, in
15 this case state government, from taking this person's
16 liberty away. Obviously, our laws indicate that when it's
17 justified it must be done, but only when it's justified and
18 only when all the elements, every single one of the elements
19 of what someone has been accused of are met and met to
20 y'all's satisfaction.

21 As the solicitor told you reasonable doubt, firmly
22 convinced. You will be charged at the end of this case by
23 the judge about the law. She is the final word on that
24 before you here in this courtroom, so listen carefully to
25 what she says and take it seriously.

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1 Reasonable doubt is a real thing. It means that if
2 there's anything that you see as being a problem with the
3 case, if there is any reasonable doubt that you have, if you
4 are not firmly convinced you cannot find the defendant in
5 this case guilty. The solicitor in this case pointed out
6 some facts, she told you the story that they intend to
7 produce to you, however, they have not actually produced
8 that story. Our arguments are not evidence in this case.
9 So you have not been presented any evidence as of yet. None
10 of the things that you hear from the lawyers is evidence
11 until you hear it from a witness who has been sworn to tell
12 the truth and has gotten on this stand or who has given some
13 piece of evidence that you can hold in your hand and look
14 at. Until that time, there are no facts in the case.

15 So remember, you are going to hear things -- they have
16 told you what you are going to hear, but think about what
17 you are not going to hear. She has stated that you are
18 going to hear, according to their presentation, that Mr.
19 Johnson, the victim in this case, had nothing to do with the
20 fight inside of the H&J club. You are also going to hear
21 that the defendants in this case had nothing to do with the
22 fight inside the club, as well. You are going to hear that
23 there is an entirely different set of people that have this
24 fight with the party that went with the victim to this club
25 that night. You're going to hear that those people had a

1 beef, based on what happened in the club, and you are going
2 to hear that none of that had anything to do with the
3 defendants in this case. You are also going to hear that
4 the defendants didn't know any of these people who were
5 there with Mr. Johnson. Many of those from Orangeburg or
6 St. Matthews, as you were told at the beginning of the case,
7 and you are going to hear that no one in Mr. Johnson's party
8 knew either of these individuals.

9 Now, my client, as well as Ms. Johns client has pled
10 not guilty. That is their right. And I want you to think
11 and be aware of the fact that that means that they are
12 attesting, standing with risk of their own liberty to say
13 I'm not guilty of what I've been accused of. It is a right
14 that every American has, and it's an important right. I
15 know you will pay attention and I know you will render the
16 true verdict in this case.

17 Thank you.

18 THE COURT: Ms. Johns.

19 MS. JOHNS: Thank you, Your Honor. May it please
20 the Court.

21 I'm sitting way over on the other end over there and
22 it's hard for me to see you. I feel like I'm especially
23 smaller because of the number of the people in the
24 courtroom, so I'm just going to open up your view a little
25 bit to my side of the courtroom, and I want you to obviously

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1 have an opportunity to look and evaluate my client as well.

2 Ladies and gentlemen of the jury, my name is Theresa
3 Johns. I represent Taurus Watts, who sits over here in this
4 white shirt beside our investigator, Gary Clark. Mr. Watts
5 and I have known each other since July of 2007, and from
6 that date he has presented himself with one version of this
7 story and that story is Ms. Johns, I'm not guilty. As a
8 result of that relationship and my job in defending him, he
9 is asserting his right to a trial by jury. What that means
10 is that he has come into Court after two years, and he is
11 going to speak to you or at least have you hear his side of
12 the case.

13 Now, the prosecutor, Ms. Vanessa Shipley and Ms. Joanna
14 McDuffie, are very, very fine people. And I have absolutely
15 nothing but nice things to say about them. They are very
16 professional, they are very ethical, and they take their job
17 very seriously. And as for the officers at the Richland
18 County Sheriff's Department, I've known many of them for 19
19 years. I respect each and every one of them for doing their
20 job. They do it with heart, they do it with passion, and
21 they do it with true commitment. We're here today not to
22 attack their investigation or attack their reason for
23 arresting Taurus Watts or attack reasons for arresting
24 Tremaine Wray, for that matter. What we're here for today
25 is we're here for you to determine a dispute between the

1 state and the defendants. That dispute is you're guilty
2 verses I'm not guilty. There isn't anybody that is going to
3 settle that argument except the 12 of you. So
4 congratulations No. 11, and congratulations No. 85 for
5 making the switch. I want to welcome you here.

6 I'm excited about being here. I want you to decide the
7 truth in this case.

8 Now, what you've heard from the state, as Mr. Bax has
9 stated, they have presented a story to you that they intend
10 to present, and this story is not to be based on passion and
11 it's not to be based on prejudice. What that means is when
12 you come into this court and you are selected out of a
13 hundred and some people here we didn't want anybody that's
14 going to be on this jury that had any prior -- let's say
15 run-ins with the police. Anything criminal, because they
16 might have a bias against the police. We didn't want
17 anybody to come here who was extremely prosecutorial in
18 nature, because if they were that way then they may be
19 biased in that way. We wanted 12 individuals to come into
20 this courtroom who had the ability to sit on a jury and use
21 their individual critical thinking skills to determine
22 whether or not the state can prove their case beyond a
23 reasonable doubt. And if not, whether they can acquit my
24 client, Mr. Watts, and to do either one is a huge
25 responsibility for each and every one of you.

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1. Now, that responsibility is an individual decision that
2 you make. You're going to have to decide for yourself.
3 You've already heard from the judge that you cannot
4 influence each other during the trial of this case, but once
5 the judge gives you the authority to conversate or converse,
6 and have this discussion about what each of you heard, you
7 are going to sit as an individual juror with an individual
8 number and defend your individual opinion, and collectively
9 as a group you will then decide the fate of my client,
10 Taurus Watts.

11 Now, this whole case in June of 2007, June 30th, the
12 state is right, the state's right. It's based on loyalty
13 and we're talking about the sergeant who served in the
14 military, who was out partying that night. We have a
15 witness, Ricky Jacobs, who is the owner of that club. But
16 the fact that Mr. Malone is in the service doesn't give him
17 any more credibility than anybody else testifying in this
18 case. You have to decide that upon yourself. The fact that
19 he's a serviceman does not bolster his ability to tell the
20 truth or heightens his witness ability any more than anybody
21 else. You're going to have to make that determination based
22 on their credibility and the witnesses.

23 So all those things being said, Travis Malone, Sgt.
24 Malone who is serving his country is just another witness.

25 Investigator Don McRae, when he gets up here and

1 summarizes his investigation isn't to be given any more
2 credibility granted because he carries a badge.

3 If you believe that the testimony of a police officer
4 deserves more credit than the testimony of a lay witness,
5 then you should have stood up and said so at the beginning
6 of this process.

7 So what I'm asking you to do is come in here and have a
8 blank slate. Have an open mind. Have an open heart. Don't
9 judge this case on an opening statement by the state or
10 opening statement by me. You have the critical thinking
11 skills to listen to the evidence in this case, and to make a
12 decision based on the evidence in this case.

13 Now, what happened on July 30th is a simple story.
14 Simple American story. You've got young people, they go
15 out, they stay past midnight. What did your grandmother
16 tell you? Nothing good happens after midnight. And in this
17 American story there's always a female involved. And this
18 female that was involved in this particular case, her name
19 is Lisa Johnson. And she lives in that area on Hardscrabble
20 Road, whereas Charlie Bates, the guy pursuing her does not
21 live in that area. In fact, he lives all the way -- or was
22 from all the way near St. Andrews area. They may have
23 picked him up from Columbia. I'm not sure about that
24 particular fact, but he doesn't live in the Hardscrabble
25 area. So he was there and a girl that he was interested in

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1 that he had a relationship with off and on for three years
2 was in that club. And when there is another man pursuing
3 your woman, jealousy is invoked. And as a result of that
4 pride is involved and gets injected into it, and on this
5 particular night there is a very big fight in that bar. In
6 that bar there are punches thrown. There were beer bottles
7 thrown, there was bleeding, there was chaos. There was a
8 gun, there was a DJ, there was bartenders. There was
9 excessive drinking, there was drugs, and anything else you
10 want to add to that mix you can. This was a Friday night at
11 4:00 o'clock in the morning. And there were over 50 people
12 in this night club. Okay. There's the stage set for you.

13 Now, as Mr. Bax has said, there is going to be
14 testimony about that fight. Is there going to be testimony
15 that either of these two gentlemen were involved in that
16 fight? No. If there is, then you need to critically decide
17 whether or not that testimony is based on an individual eye-
18 witness or if that testimony is based on hearsay, because
19 once the fight happened -- it's dark inside, after it gets
20 chaotic, the lights come on, the DJ turns off his music,
21 shots are fired and people are running. It is chaos.
22 People are jumping in their cars, people are jumping over
23 fences, people were falling down in the parking lot, and
24 when Richland County gets there that's when their
25 investigation opens up, and what happens when their

1 investigation opens up is people have to at that point, then
2 get a hold of their emotions, sober up enough to communicate
3 what they think they saw.

4 So we get to the point where we have a "sole eye-
5 witness". That alleged eye-witness is going to be Ricky
6 Jacobs, and he is the owner of this night club. Actually,
7 he's not really the owner. His father owned it, he had a
8 partner. It's a long history. Ultimately, Ricky is in
9 charge of this club on this particular night.

10 Now, I want you to think about this when the evidence
11 is presented. I want you to think about Mr. Jacobs
12 opportunity to see what was going on. His opportunity to
13 hear what was going on. His motive in knowing what was
14 going on. His motive in cooperating with the police
15 department. His bias in anything with regard to any
16 information he may have given that night.

17 Now, I want you to use your credible thinking skills to
18 judge the credibility of Ricky Jacobs, because that's really
19 the only eye-witness that the state will put up for you.

20 There are 59 witnesses that the state has listed in
21 this particular case. That does not include any witnesses
22 that we may want to present, okay. That's how serious this
23 case is, and out of those 59 witnesses we have one alleged
24 eye-witness. So that will be critical. Please pay
25 attention to that. Out of the 59 witnesses there are a

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1 number of them that come from the sheriff's department, and
2 there are a number of them that come from SLED, and a number
3 of them from the Coroner's Office. All of these witnesses
4 will -- are witnesses to something, but they are not
5 witnesses to the act. So I want you to keep that in mind
6 when they testify they'll be summarizing what they did as a
7 result of what somebody told them or what somebody coming in
8 and giving an interview, what -- a call they got over the
9 radio, but none of the sheriff's department were witnesses,
10 and none of what they say should be given more credit by the
11 fact that they carry a badge. You're just -- they'll be
12 testimony from an expert witness. Judge will instruct you
13 what an expert witness is and whether that expert witness
14 should be given more credibility than another witness. No,
15 that expert witness can only testify to their expertise. It
16 doesn't mean what they're saying is more true. You still
17 have to decide that, okay.

18 Now, what this case will break down into at the end is
19 59 plus witnesses that are going to tell you what they think
20 they saw and what they did as a result. After that, what we
21 have to deal with is the law. And the law is, and I've
22 stated it twice now, and I'll state it again, as it is this
23 important, no man accused is presumed guilty. No man
24 accused is presumed guilty.

25 So when you walked into this room yesterday and you

1 knew you had jury service, and you were thinking about all
2 the other things you could do and you heard that this case
3 is a murder case. You probably hesitated and thinking, Oh,
4 my Lord. But this case is so serious and we're taking it
5 all the way to a jury trial, because, my client, Mr. Watts,
6 is a man that cannot be presumed guilty at this point.

7 So if you want to judge him you can't even start doing
8 that until after the judge tells you you can start
9 deliberating. You can't even make a decision about him
10 until after the case is over. Even if you have one you're
11 not even supposed to get there yet, because even as he sits
12 there, he's presumed innocent.

13 He's wearing -- for example, the judge the robe the
14 judge is wearing is a robe that he is also wearing that that
15 robe protects him from any prejudice or bias. He's cloaked
16 with the robe of innocence, and that's how you have to look
17 at Mr. Watts. As hard as that might be, because he's
18 accused of murder, that's how you have to look at him.

19 If you think by the mere fact that somebody who has
20 been arrested is guilty you should have stood up yesterday
21 and said so. And if any of you are feeling that way you
22 have an obligation to Mr. Watts, and Mr. Swerling, Mr. Bax,
23 and the state of South Carolina to do that.

24 Now, when it comes down to the law other than the
25 presumption of innocence, we have a state who must prove

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1 this case beyond reasonable doubt. That's plain and simple.
2 You know, convinced, firmly convinced. A doubt, beyond
3 reasonable doubt. It's a simple definition. It's a doubt
4 that you have that you can articulate, that you can give a
5 reason for. That's all it is. Don't make it any harder
6 than it's common definition, because when you try to do
7 that, that in and of itself is telling you you have a doubt.
8 You're looking for a reason to explain this doubt, you have
9 one. And in this case, it's our proposition that you don't
10 have a doubt.

11 The hand of one is the hand of all. That's the state's
12 theory of my defendant, of my client. Okay. The hand of
13 Mr. Wray is also the hand of Mr. Watts, or because the state
14 wasn't witnesses, the hand of Mr. Watts, is the hand of Mr.
15 Wray.

16 How can that be possible when you only have a gun that
17 they describe as a Mack 11 Uzi. You'll hear testimony about
18 a Mack 11 Uzi. It is an automatic weapon, which it fires
19 its bullets out of it's barrel, there is a shell casing that
20 dispenses from the weapon and it goes to the right and up in
21 the air.

22 There can only be, only be one shooter of that
23 particular weapon, and we don't even know who that shooter
24 is. We don't even know, we won't even know what kind of
25 weapon it was, but in order to have a hand of one is the

1 hand of all theory, you have to have two people acting in
2 concert. Acting in concert with each other. With the
3 tactic understanding that you're going to commit a crime,
4 that this is what the plan is, brother, this is what the
5 plan is, and if you don't have that tacit understanding
6 between two people there is no hand of one, hand of all.
7 There is no accomplice.

8 I'll give you another example of that. If I have a
9 problem with somebody that I'm in a relationship with and I
10 jump in my car and I put my daughter in the passenger seat
11 with me and I drive towards that person, and I have the
12 intent to run over that person and I do that, that is not
13 the hand of one, the hand of all. If I jumped in the car
14 with Mr. Wray, and he had an intent that I don't have, and I
15 happen to be a passenger, I'm not responsible for his
16 intent. I'm merely present, okay. So this mere presence
17 where a crime is committed is not enough to convict.

18 So things you have to decide. One, you have to decide
19 first if the crime what was committed was even committed by
20 either of them, passenger, driver or some other person. And
21 what the state has told you is that an Isuzu Rodeo that was
22 also stopped, and what they didn't tell you in their opening
23 statement is that within this Isuzu Rodeo they found live
24 rounds, three, that belonged to a 9 millimeter weapon, and
25 there is eye-witness testimony that's going to come from Mr.

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1 Jacobs that says that he did witness somebody from that
2 Rodeo shoot a gun and when they stopped this vehicle they
3 would three live weapons (sic) they're not going to present
4 to you again. So how do we know what gun it was. That's
5 something the state is going to have to prove to you.

6 So we have the story of loyalty and jealousy. We have
7 speculation of 58 witnesses and probably 59 with Ricky
8 Jacobs, and we have the law of reasonable doubt.

9 Now, ladies and gentlemen, I'll be the first to admit
10 to you, I was not there either. Nobody in this courtroom
11 was there, as far as eye-witnessing the crime that may have
12 been committed, but I am up here and I am fighting for my
13 client, Mr. Watts. I have a certain personality about
14 myself, I'm very passionate. Please don't take that the
15 wrong way. I am not tapping individual people like the
16 investigators or anybody of that nature. I'm just trying to
17 make a point. Please do not hold that against Mr. Watts..
18 You might take that -- maybe I might say something that
19 might be -- but please don't hold that against Mr. Watts.

20 I ask each and every one of you to consider devoting
21 the next few days of your life to this case. That's how
22 important it is. I know you've already been told by both
23 the state and by counsel for Mr. Wray. In the end, when you
24 determine credibility of the witnesses and their opportunity
25 to be witnesses and understand fully the events of June 30,

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1 2007, at 4:12 in the morning or 4:00 o'clock in the morning.

2 I submit to you that there will be many doubts. And with
3 regard to that doubt, if you have the slightest inclination
4 that something isn't right in this case, my client should
5 get the benefit of that that makes you hesitant, of that
6 that nudges you, because that is our rule when you go to a
7 jury trial.

8 And although we have had many people serve our country,
9 my father was a serviceman for 25 years, the service that
10 you're doing to your country during the next few days rises
11 to a level that is unappreciated in many ways, but I want
12 you to know that you were selected because of your ability
13 to think critically, because of your ability to think fair,
14 because of your ability to come in here without bias. And
15 I'll trust you with that.

16 Thank you.

17 THE COURT: Okay. State may proceed with your
18 first witness.

19 MS. SHIPLEY: Thank Your Honor. May it please the
20 Court. At this time state calls Verda Roberts to the stand.

21 THE CLERK: Place your left hand on the bible and
22 raise your right hand.

23 (WHEREUPON, Verda Roberts, was
24 sworn to tell the truth.)

25 THE CLERK: Thank you. Have a seat in the witness

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1 stand, and give the court reporter your name.

2 VERDA ROBERTS - DIRECT EXAMINATION

3 BY MS. SHIPLEY:

4 Q State your name for the record, ma'am?

5 A Verda B. Roberts.

6 Q Ms. Roberts, can you tell the jury a little bit about
7 yourself; where are you from?

8 A Here in Richland County.

9 Q Born and raised?

10 A Yes, ma'am.

11 Q What part of town do you live in?

12 A Off of Monticello Road.

13 Q Can you tell the jury a little bit about the members of
14 your family; do you have a sister?

15 A Yes, I do.

16 Q What's her name?

17 A Stephanie Boston.

18 Q And you have a brother?

19 A Yes, I do.

20 Q And who is that?

21 A Travis Meyers.

22 Q And is he also known as Travis Malone?

23 A Malone, I mean, excuse me.

24 Q Now, Mr. Malone, can you tell the jury a little bit
25 about what he does for a living?

1 A He in the service.

2 Q The U.S. Army?

3 A Yes, ma'am.

4 Q Can you tell the jury where he is currently serving?

5 A He is in Iraq.

6 Q Ms. Roberts, when was Mr. -- Sgt. Malone, your brother,
7 sent to Iraq, deployed to Iraq?

8 A Last year.

9 Q Do you recall whether or not you and your family went
10 out with Sgt. Malone and his friends to celebrate him -- or
11 to wish him well to go back to Iraq?

12 A Yes, ma'am.

13 Q Would that have been June 30, 2007?

14 A Yes, ma'am.

15 Q Can you tell the jury a little bit about what you were
16 doing the night of June 29, Friday night June 29, 2007 into
17 the morning hours of June 30, 2007?

18 A We was at my sister's house. They came up to visit us.

19 Q Okay. And when you say they came up to visit us, who
20 was they?

21 A My brother, Travis, it was Hank and it was Lamont.

22 Q And Hank, what is his given name?

23 A His birth name?

24 Q Yes, ma'am?

25 A Oh, I'm not for sure. We call him Hank.

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1 Q Okay. Is it Demuria Hank Johnson?

2 A That last name Johnson, yes, ma'am.

3 Q And who was the other friend with your brother?

4 A Lamont.

5 Q Lamont?

6 A Uh-huh. (Affirmative response.)

7 Q And his last name?

8 A I don't know Lamont name.

9 Q Okay. And what part of town or Columbia or South
10 Carolina were they coming to visit from?

11 A From St. Matthews.

12 Q From St. Matthews?

13 A Yes, ma'am.

14 Q And why is it your brother grew up in St. Matthews and
15 you grew up in Richland County?

16 A Well, I'm from down there, too, but my momma -- when
17 her and my daddy separated she brought us up here.

18 Q Okay.

19 A So I been up here ever since I been five years old.

20 Q And what about Travis?

21 A Travis been born down there. We don't have the same
22 mother. We have the same father.

23 Q Okay. Now, as a result of Travis then, was he raised
24 with Demuria Johnson, the person you know as Hank --

25 A Yeah.

1 Q -- and Lamont?

2 A He grew up with them. Yes.

3 Q All right. Now, you indicated you were at your sister,
4 Stephanie's house; what time do you think it was that you-
5 all got together?

6 A I'm going to say it was about 10:00. They came up here
7 about 10:00, 10:30.

8 Q At night?

9 A Yes.

10 Q And where did Stephanie live back then?

11 A Off of Monticello Road in Ridgewood.

12 Q Was she pretty close to where you lived?

13 A No. I'm out farther.

14 Q Further down?

15 A Yes.

16 Q Now, can you tell the jury how long it was -- how long
17 did you stay at Stephanie's house that night?

18 A We stayed there until we got ready to go to the club on
19 Hardscrabble. Out there on Hardscrabble.

20 Q Okay. Do you remember what time it was when you got to
21 the club on Hardscrabble?

22 A It should have been between 1:00 or 2:00. 1:30 or
23 something like that.

24 Q Okay. So it was early in the morning hours the next
25 day?

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1 A Yeah.

2 Q Okay. Can you tell the jury how many cars y'all rode
3 in and who was in each car?

4 A We rode in two cars. I rode in the first one. I have
5 a truck, a white Envoy, and my brother had a rental car.
6 Travis was driving the second, the rental car.

7 Q And do you remember what kind of plates, license plates
8 were on the rental car; what state they came from?

9 A I'm not for sure.

10 Q Okay. Now, you indicated you were driving a white SUV
11 Envoy?

12 A Yes, ma'am.

13 Q Who was riding with you?

14 A My sister, Stephanie.

15 Q And you indicated that your brother Travis had rented a
16 car?

17 A Yes, ma'am.

18 Q Who was in the car with him?

19 A Him, Hank, and Lamont, and my son, Charlie.

20 Q And is that Charlie Bates?

21 A Yes.

22 Q Now, when you got to the club -- first of all, where is
23 the club located?

24 A Off of Hardscrabble Road in Richland County.

25 Q Can you tell the jury, just to orient them, what main

1 road would cross -- what's the next road that crosses
2 Hardscrabble, so they know?

3 A Farrow Road.

4 Q Farrow Road. Now, when you got to the club, do you
5 remember where it was that you parked when you arrived?

6 A I parked in the car wash, the first set of the car
7 wash. The car wash right next door to the club.

8 Q Okay. And just to orient the jury I'm going to show
9 you a diagram and ask you if you had a chance to look at it.
10 Do you recognize this, ma'am?

11 A Yes, ma'am.

12 Q And does this accurately depict the night club and the
13 car wash?

14 A Yes, ma'am.

15 Ms. Shipley: Your Honor, at this time we would
16 seek to introduce State's No. 7 into evidence.

17 MR. SWERLING: No objection.

18 MS. JOHNS: No objection.

19 THE COURT: Okay. Admitted.

20 (State's Exhibit No. 7, diagram,
21 was marked and entered.)

22 BY MS. SHIPLEY:

23 Q Ms. Roberts, I'm going to hand you a pointer, if you
24 could, and you're going to need to speak up for the court
25 reporter, but if you could just orient the jury. You

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1 indicated that Hardscrabble Road is close to Farrow Road; is
2 that correct?

3 A Yes, ma'am.

4 Q Can you show the jury which direction do you need to
5 travel in to reach Farrow Road.

6 A Okay, this way. (Indicating.)

7 Q Okay.

8 A Yes, ma'am.

9 Q And tell the jurors where the club is?

10 A It's right there. (Indicating.)

11 Q All right, and what's next door to that club?

12 A Well, that's the car wash right here.

13 Q Okay, and is that where you parked that night?

14 A Yes, ma'am.

15 Q And which stall did you park in?

16 A In the first stall. The very first stall right there.

17 Q And describe for the jury, when you pulled in how did
18 you park and where did your brother park?

19 A Okay. Well, we went all the way around, and I faced my
20 truck to the road on Hardscrabble Road. He parked behind me
21 at the back. So I was in front and he was directly in back
22 of me.

23 Q And I'm going to show you two more pictures, Number 12
24 and 13. Can you look at these and let me know if that
25 accurately depicts the stall that you parked in that night?

1 A Yes, ma'am.

2 Q And if you could look at the second photograph?

3 A That's it.

4 Q Okay. Does that accurately depict the stall that you
5 parked in that night?

6 A Yes, ma'am.

7 Q Thank you, ma'am.

8 MS. SHIPLEY: Your Honor, the state would seek to
9 introduce 12 and 13 into evidence.

10 MR. SWERLING: No objection.

11 MS. JOHNS: No objection.

12 THE COURT: Okay, it's admitted.

13 MS. SHIPLEY: Okay, it's admitted.

14 (State's Exhibit No. 12,
15 photograph, was marked and admitted.)

16 (State's Exhibit No. 13,
17 photograph, was marked and admitted.)

18 MS. JOHNS: That's 12 and 13?

19 MS. SHIPLEY: Yes, ma'am, 12 and 13.

20 BY MS. SHIPLEY:

21 Q All right, Ms. Roberts, if you could just point on this
22 photograph which stall you parked in?

23 A This one right here.

24 Q Okay. Am I pointing at the right direction?

25 A Yes, ma'am.

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1 Q And you indicated that you pulled your Envoy through
2 the stall facing Hardscrabble Road?

3 A Yes, ma'am.

4 Q And who parked behind you?

5 A My brother, Travis.

6 Q Now, once you guys parked your vehicles, tell the
7 jurors what you did next?

8 A We parked. When there -- each of us waited until we
9 got out and we proceed in there together.

10 Q Okay. And how many times do you believe you've been at
11 this night club before?

12 A I've been at it a couple -- several times.

13 Q So you're familiar with --

14 A Yes, ma'am.

15 Q -- the people there?

16 A Yes, ma'am.

17 Q Are you familiar with the owner or operator, Ricky
18 Jacobs?

19 A Yes, ma'am. I speak to them every time I go in; him
20 and his mother.

21 Q Okay. Now, when you were in there did you see -- did
22 you or your son or anybody see any of the people you were
23 acquainted with?

24 A No, not then.

25 Q Okay. Tell the jury what happened when y'all came into

1 the night club?

2 A Well, we came in. We sittid there a while and then
3 this commotion started between this girl named Lisa Johnson
4 and my son because he dated her.

5 Q Okay. And when was the first time that you saw Lisa
6 Johnson?

7 A She -- we had done been in there at least about 45
8 minutes to an hour before she walked in.

9 Q Okay. And did you notice her come in at that time?

10 A Well, when I seen her walked in, that's when I knowed
11 that she was there.

12 Q Okay. And tell the jurors what happened after she
13 arrived; did you see her with any party in your group?

14 A No. She didn't come with us.

15 Q Okay.

16 A No, ma'am.

17 Q And where was it you saw her -- did she at any time
18 dance with your son?

19 A No, not right then. They was having some words.

20 Q Okay. What happened next after they were having words?

21 A Then -- they -- it was Charlie and Jalicca was having
22 some words and some other guy, because he went behind her
23 and started dancing with her.

24 Q Who did?

25 A Charlie.

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1 Q Okay.

2 A He was dancing with Lisa, then him and the other boy
3 had some words.

4 Q Okay. Do you remember what this other boy looked like?

5 A He was dark skinned with some dreads.

6 Q Okay. And describe his height for the jury?

7 A I'm five-six, so he's -- he should have been like five-
8 eight. He's taller than me.

9 Q Okay. And you indicated he had dreads?

10 A Yes, ma'am.

11 Q Okay. And how long were his dreads?

12 A Shoulder length, a little bit up above the shoulder,
13 shoulder length.

14 Q At that point, tell the jurors, do you remember
15 anything about his clothing?

16 A No, they were dark.

17 Q Okay. Tell the jurors what happened once the man with
18 the dread locks approached your son who was dancing with
19 Lisa?

20 A They had a couple of words and then -- I just know that
21 a fight just broke out and then --

22 Q And did you see Hank involved in any way?

23 A Not right then, no, because him and Charlie -- Charlie
24 and the guy was having some words, then Lisa, she pushed,
25 she pushed each of them out the way, then they collided,

1 they hooked back up together.

2 Q Okay.

3 A Then that's when everything went haywire.

4 Q Okay. What do you remember happening after they hooked
5 up, like you indicated?

6 A Well, I looked back, I seen my son, his lip was laying
7 open, and I looked at the boy, and I said, you hit my boy,
8 you hit my boy. He hit me and knocked me out. I was out
9 for a few seconds.

10 Q And who -- you indicated you were out for a few
11 seconds, when did you come back; who was helping you?

12 A My sister picked me up off the floor.

13 Q Okay. And when you got back up, who did you see around
14 you?

15 A I seen the guys -- we was swinging -- we was swinging
16 to get out, we was fighting. I was fighting for my life to
17 get out the club, because feel like right then the whole
18 club was against us. My sister said, come on, come on. We
19 was trying to make it to the door to get out.

20 Q Okay. And did you do anything to -- you indicated you
21 were trying to protect yourself. Did you do anything while
22 you guys were leaving?

23 A I was throwing bottles. I was one of them throwing
24 bottles, trying to get out.

25 Q Okay. And do you remember seeing Hank or your brother

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1 Travis or Lamont Goodwin at any time during this
2 altercation?

3 A No, not when I was trying to get out the club. No.

4 Q Did you see them at all involved in trying to break up
5 the fight?

6 A Before then, I guess they was asking what was going on
7 at the time. Before then -- it was everything happened so
8 fast, but when I got out the door, that's when I seen Hank,
9 he was on the wall. When I made it out the club, Hank was
10 on the brick wall, Hank was telling us to come on. He was
11 telling us to come on.

12 Q Okay. And did -- did everybody come on, as he asked?

13 A Yes, we was running. About time before we got to the
14 brick wall that's when we heard the shots.

15 Q Okay, and tell the jurors where y'all went when you
16 started hearing the shots.

17 A We heard the shot, we jumped across the brick wall. We
18 ran -- I ran directly in front of my truck, and I opened up
19 my truck --

20 Q Okay.

21 A -- and I was so scared I didn't get in my truck because
22 I was scared the bullets was going to come through the
23 windshield. I ran and hid up under my truck. My brother
24 jumped on top of me.

25 Q Did you know where Charlie was at that time?

1 A No. We made sure all of us was together, but after
2 then I made sure -- I said, everybody behind us, everybody
3 was behind us. We told everybody to hit the ground, hit the
4 ground. Oh, Jesus, that's when I heard -- stopped hearing
5 the shots a little bit and I told everybody to jump in their
6 vehicle and let's go. So when the shots stopped a little
7 bit that's when we jumped in the vehicle and we left.

8 Q And did you tell them where to meet you?

9 A No. Not right then. I just told them to follow me,
10 follow me. Let's go to the Waffle House. We went to the
11 Waffle House, but my brother told me at the time he was
12 trying to stop my vehicle because I was steady driving
13 because I was driving so fast he was trying to stop me. We
14 got to the Waffle House, because Travis is not familiar with
15 the roads.

16 Q Okay.

17 A We went past the hospital, but the hospital is right
18 there by the Waffle House.

19 Q Which hospital are you talking about?

20 A Providence Northeast.

21 Q Okay. So you passed the hospital and where did you end
22 up?

23 A At the Waffle House. We went to the Waffle House and
24 my brother jumped out, he say, Hank been hit, sister. I
25 said, well, here's a hospital right here. Turn around

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1 follow me. So we -- I told him, I say, pull directly in
2 front of the hospital and don't stop. Pull directly in
3 front the hospital. So we jumped out, all us grabbed Hank.
4 We grabbed Hank and we proceed to take him in the hospital,
5 and that's when they had him and we let him go.

6 Q And at that point did the hospital staff take over --

7 A Yes, ma'am.

8 Q -- in taking care of Hank.

9 A Yes, ma'am.

10 Q And you indicated that you were leading because your
11 brother is not familiar with this side of town?

12 A No, he's not.

13 Q And to your knowledge had Hank ever been in this club
14 before?

15 A No.

16 Q What about Lamont?

17 A No.

18 Q So this was there first night there?

19 A Never been there.

20 Q Now, you indicated that you were then at the hospital.
21 Did you have any contact law enforcement while you were at
22 the hospital?

23 A Well, they came up. They came up.

24 Q And did you talk to a police officer about --

25 A The shooting. Yeah.

1 Q -- or an investigator about what you remembered that
2 night?

3 A Yes, I did.

4 Q Eventually, were you asked to give a written statement
5 about what you remember happening that night?

6 A Yes.

7 Q And did you give a statement to law enforcement?

8 A Yes, I did.

9 Q I'm going to show you a document, State's -- well,
10 actually it's -- do you recognize this three page document;
11 is that your signature on there?

12 A Yes, ma'am.

13 Q And is that the statement you gave to the police?

14 A Yes, ma'am.

15 Q And just reading from the top of it, the date and time
16 that you gave?

17 A Okay. Yes, ma'am.

18 Q The date and time that you gave the statement to the
19 police?

20 A Yes, ma'am.

21 Q What date is it?

22 A June 30th, '07.

23 Q Okay. So the date of the incident --

24 A Uh-huh. (Affirmative response.)

25 Q -- and what time was that that you gave the statement?

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1 A At 4:00 a.m.

2 Q 4:00 a.m.?

3 A Yes.

4 Q Okay. Thank you, ma'am. Do you also recall being
5 asked about being able to identify or trying to identify the
6 man with the dreads that hit you?

7 A Yes, ma'am.

8 Q I'm going to show you a document and ask you if you
9 recognize this?

10 A Yes, ma'am.

11 Q And do you remember who showed you those pictures?

12 A Yeah.

13 Q And who was the officer that showed you those pictures?

14 A It's a man with Richland County.

15 Q Okay. And did you -- what were you asked to do with
16 those pictures?

17 A To identify which one that hit me in the eye.

18 Q And were you able to identify which one hit you in the
19 eye?

20 A Uh-huh. (Affirmative response.) Between one and four.

21 Q Okay.

22 A Because both of them at that time, but --

23 Q Okay.

24 A -- I noticed his dread locks, one was dread locks was
25 shorter than the one I picked out. And number four, I know

1 they was different because they were a little longer than
2 that one.

3 Q Okay, and so you were unsure between one and four --

4 A One and four, yes.

5 Q -- is that correct? And did you sign that form --

6 A Yes, ma'am.

7 Q -- indicating the same?

8 A Uh-huh. (Affirmative response.)

9 Q Okay.

10 MS. SHIPLEY: Your Honor, at this time, the state
11 needs to introduce State's Exhibit No. 14 into evidence.

12 THE COURT: Okay.

13 (State's Exhibit No. 14, photo
14 lineup, Ms. Roberts, was marked and entered.)

15 BY MS. SHIPLEY:

16 Q And Ms. Johnson, again, which ones -- excuse me, Ms.
17 Roberts, which one did you pick between?

18 A One and four, but that one there, number four.

19 Q All right. So you were between one and four. You are
20 certain that it's four?

21 A Yes, ma'am.

22 Q Had you ever seen that individual before that night?

23 A No, ma'am.

24 Q Do you remember whether or not you observed Lisa
25 Johnson with that man that night?

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1 A Well, she was standing up talking to a few of them.

2 Q Okay, and did she -- Lisa Johnson appear to be familiar
3 with the other people that were fighting your son?

4 A She knows them, yes, ma'am.

5 Q Okay. Do you know what part of town Lisa Johnson lives
6 in in relation to the night club?

7 A She stay over there by Hardscrabble; she stay in
8 Washington Heights.

9 Q And how is it that you're familiar with where she
10 resides?

11 A Because I done gone to her house a couple of times to
12 get my son.

13 Q And your son did date her at a certain time?

14 A Yes, he did.

15 Q And, in fact, do you recall taking law enforcement to
16 her house that night?

17 A Yes, I did.

18 Q And showing them where she lives?

19 A Yes, I did.

20 Q And how many people do you think were attacking your
21 son while he was dancing with Lisa Johnson?

22 A It looked to be about five of them.

23 Q Okay. And you indicated that when you first heard the
24 shots you were in the parking lot getting ready to get in
25 the cars?

- 1 A I was jumping across the --
- 2 Q The brick wall?
- 3 A -- the brick wall. Yes, ma'am.
- 4 Q And you indicated that you got to your car, but then
- 5 you had to duck; is that correct?
- 6 A Yes, ma'am.
- 7 Q Could you tell which direction the shots were coming
- 8 from?
- 9 A Front wards.
- 10 Q Front wards --
- 11 A Yes.
- 12 Q Would that be from the road?
- 13 A From the road, right. Yes, ma'am.
- 14 Q Could you tell -- were you able to see any cars that
- 15 the shots were coming from?
- 16 A No, ma'am.
- 17 Q And do you remember approximately how many shots you
- 18 heard?
- 19 A It was more than one gun.
- 20 Q And do you recall how many shots you heard from any
- 21 gun; do you know how many shots were shot with any gun?
- 22 A It was more than five to me.
- 23 Q More than five shots?
- 24 A Yes, ma'am.
- 25 Q But you don't know how many shots you heard from each

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1 one; do you know?

2 A No, ma'am.

3 Q Would it be fair to characterize the events as being
4 chaotic that night?

5 A Yes.

6 Q And, again, this was late in the morning hours;
7 correct?

8 A Yes.

9 Q How many people do you believe were in the club at this
10 time of night?

11 A It was crowded. They had a nice little crowd up in
12 there.

13 Q Okay. Could you give us an approximation of how many
14 people could have been there?

15 A No, not really, but it was a nice crowd.

16 Q Okay. And you indicated that you've been to this night
17 club on a few occasions; is that correct?

18 A Yes, ma'am.

19 Q The people that frequent this club, are they mostly
20 from that neighborhood?

21 A Yes.

22 Q And so the people, is it fair to say, that the people
23 there are acquainted with one another?

24 A Yes.

25 MR. SWERLING: Objection, Your Honor. She doesn't

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1 know. She's asking her to draw conclusions from facts that
2 are not in evidence.

3 THE COURT: Sustained.

4 BY MS. SHIPLEY:

5 Q Did anyone in your group; Charlie Bates, Lamont
6 Goodwin, Demuria Johnson, yourself, or Stephanie Boston,
7 have a gun on their person at any time that night?

8 A No, ma'am.

9 MS. SHIPLEY: Beg the Court's indulgence.

10 BY MS. SHIPLEY:

11 Q I'm going to show you some pictures, State's 9, 10, and
12 11. Do you recognize these pictures?

13 A Yes, ma'am.

14 Q And what are those pictures of?

15 A Pictures of me.

16 Q And what night or day?

17 A The same night of the incident when the guy hit me in
18 my eye.

19 Q And does that -- what do those pictures show?

20 A Yes, ma'am.

21 Q What do they show?

22 A My eye.

23 Q Okay. Is that how you looked that morning?

24 A Yes, ma'am. It swoll up.

25 MS. SHIPLEY: Your Honor, state seeks to introduce

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1 9, 10, and 11?

2 MR. SWERLING: No objection.

3 MS. JOHNS: No objection.

4 THE COURT: Okay.

5 (State's Exhibit No. 9, photo of
6 Ms. Roberts, was marked and entered.)

7 (State's Exhibit No. 10, photo of
8 Ms. Roberts, was marked and entered.)

9 (State's Exhibit No. 11, photo of
10 Ms. Roberts, was marked and entered.)

11 MS. SHIPLEY: May I publish it to the jury, Your
12 Honor?

13 THE COURT: Yes, you may.

14 BY MS. SHIPLEY:

15 Q And before I do so, State's No. 9; whose blood is that
16 on your shirt?

17 A That's Hank's.

18 Q Ms. Roberts, thank you very much, and please answer any
19 questions from the defense.

20 VERDA ROBERTS - CROSS-EXAMINATION

21 BY MR. SWERLING:

22 Q Good morning, Ms. Roberts.

23 A Good morning.

24 Q I'm Jack Swerling.

25 A How you doing.

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1 Q Let me see if I can recall a couple of areas. First of
2 all, I want to go to the last area first. When you were on
3 the road in front of the club you heard this more than one
4 gun shoot; is that correct?

5 A Yes.

6 Q And there were several shots from each gun?

7 A Yeah.

8 Q They were together?

9 A Shooting, yes.

10 Q Together, they were shooting, and the -- and you can
11 tell, I suppose, from the sound of the gun, the sound of the
12 shot. So you heard multiple shots from different guns?

13 A Uh-huh. (Affirmative response.)

14 Q Is that right?

15 A Yes.

16 Q Could you estimate whether it was five, 10, 15 or 20
17 shots?

18 A I'd say more than five.

19 Q More than --

20 A It was more than five shots.

21 Q But you didn't see anybody doing the shooting or --

22 A I was busy running for my life.

23 Q Sure. I understand that. When you were in the club,
24 your son, Charlie, was there and he had know Lisa for some
25 time; correct?

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1 A Yes.

2 Q And, in fact, they had dated for a while?

3 A Yes.

4 Q But they weren't dating any longer; is that correct?

5 A Off and on.

6 Q They were dating off and on still?

7 A They were messing with each other, yes.

8 Q Messing. And I won't go into what that means, but they
9 were still seeing each other; is that right?

10 A Yes.

11 Q Now, when he came up -- he was in the club, and she did
12 not come with you, and as I understood your statement, he
13 actually came up behind her and started dancing?

14 A Yeah.

15 Q She didn't want that?

16 A Yeah. He was talking to her and they was dancing.

17 Q He was dancing behind her?

18 A Yeah. She was talking to him. They were talking back
19 and forth for a while.

20 Q Didn't she push him away?

21 A She pushed both of them.

22 Q Both of them.

23 A When they started arguing.

24 Q Didn't she push your son away?

25 A Yes, both of them.

1 Q I said, my question to you --

2 A Oh, okay.

3 Q -- didn't she push your son away?

4 A Yes.

5 Q Because she did not want to be messing with your son;
6 isn't that true?

7 A Not to my knowledge.

8 Q Why'd she push him away, then?

9 A Because they both him and the guy was arguing. The
10 other guy was arguing.

11 Q So --

12 A She was in between both of them.

13 Q She was in between both of them?

14 A Yes, she was.

15 Q So one was getting aggravated with the other because
16 one was messing with her --

17 A I don't know what it started from. I wasn't over there
18 listening to them.

19 Q All you could do was observe that your son was behind
20 her dancing and this guy came up and there was some
21 discussion; isn't that correct?

22 A Yes.

23 Q So in one case she turns and pushes your son away, but
24 then she pushes the other guy away as well?

25 A Yes.

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1 Q When you push somebody away it's an indication that you
2 really don't want anything to do with them, isn't it?

3 A Yeah, that, too.

4 Q All right. Now, you spoke with -- do you remember you
5 spoke with Heidi Scott at the hospital --

6 A Uh-huh. (Affirmative response.)

7 Q -- you told her the person that was involved in this
8 fight with your son -- of course, you don't know what
9 actually led to the fight, I suppose?

10 A No, I don't.

11 Q You didn't hear what went on?

12 A No, I didn't.

13 Q But clearly the argument was between this fellow and
14 your son?

15 A Yes.

16 Q And you told Heidi Scott at the hospital that you heard
17 people referring to the individual that you described with
18 dreads, as Chris; do you recall that?

19 A I don't know -- not me, because I don't know him.

20 Q I didn't say you knew him. What I said was, didn't you
21 tell Heidi Scott at the hospital when she asked you some
22 questions that you thought you heard some people call him
23 Chris?

24 A No.

25 Q You didn't tell her that?

1 A No. You're talking about my sister, not me.

2 Q Pardon?

3 A You're talking about my sister. I don't know nothing
4 about no Chris. I don't know him by no name.

5 Q I didn't say you knew anybody. I'm saying you heard
6 people referring to this individual as Chris.

7 A No.

8 Q Okay. All right. I'll move on from that. The person
9 that you saw involved in this altercation had dreads; is
10 that correct?

11 A Yes.

12 Q And did this particular person who had dreads, punched
13 you in the face?

14 A Yes, he did.

15 Q And that was after your son and he -- he and your son
16 were in a fight and he drew blood on your son?

17 A Yes.

18 Q Is that correct? You stepped up and then he punched
19 you?

20 A Yes, he did.

21 Q Knocked you down?

22 A Knocked me out for a few seconds.

23 Q And where did this individual go after he knocked you
24 down; did you see where he went?

25 A They were steady swinging and throwing bottles and

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1 stuff in the club. That's the only thing I can tell you.

2 Q This individual, can you describe his height, his
3 weight?

4 A He's taller than me. He's kind of big and skinny like.

5 Q Skinny?

6 A Yeah.

7 Q And you gave that description to Investigator McRae
8 when you went down to give him a statement; right?

9 A Yes.

10 Q And he showed you this photographic line-up, what we
11 call a photo line-up?

12 A Yes.

13 Q Which is State's Exhibit No. 14; is that right?

14 A Yes, sir.

15 Q Now, you just told the jury when you looked at it one
16 and four looked familiar?

17 A Yeah.

18 Q And I think you just told the jury that four was the
19 most familiar; is that correct?

20 A Yes.

21 Q Is that correct? Both of these guys look fairly thin
22 in the face?

23 A Uh-huh. (Affirmative response.)

24 Q But they both have dreads?

25 A One dreads is longer than the other one.

1 Q But they both have dreads?

2 A Yes.

3 Q Okay. But when you spoke to Mr. McRae, that was not
4 how you recalled it that day. You actually told Mr. McRae,
5 did you not, that the one that looked most familiar to you
6 was number one?

7 A Yes, I did, because at the time, I was hit in my eye I
8 couldn't hardly see.

9 Q But today, it's number four?

10 A No, when I identify -- I went back through, I looked at
11 it again, and I kept -- he is taller and darker. The guy
12 was darker than me.

13 Q I'm just trying to ask it one step at a time.

14 A Okay.

15 Q So I'm kind of slow. What I'm asking you is the day
16 you gave the statement on July 7th --

17 A Uh-huh. (Affirmative response.)

18 Q -- you said the individual who was most familiar to you
19 was the person in picture number one?

20 A Uh-huh. (Affirmative response.)

21 Q Today you told the jury it was number four; is that
22 correct?

23 A Yes.

24 Q Which one is it?

25 A Number four.

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1 Q Okay. The one today?

2 A Yes.

3 Q So what you told the police two years ago wasn't
4 correct?

5 A Yes. I identify just from my --

6 Q When did you come to that decision?

7 A I been came to that decision, because he was darker
8 than me.

9 Q But when did you tell anybody about that decision, just
10 curious --

11 A I kept --

12 Q Excuse me. You have two different people identified?

13 A I know, but I kept looking at the picture, because when
14 I told them that I couldn't hardly still see out this eye.
15 And still can't to this day.

16 Q That's fine, but you do agree that in your signed
17 statement --

18 A Yeah.

19 Q -- Ms. Shipley showed you, you said it was number one?

20 A Yeah.

21 Q You do agree with that?

22 A Yeah. I understand what you're saying.

23 Q Now, the individual you described as having dreads, you
24 did not know his name?

25 A No.

1 Q But you indicated that Lisa -- and Lisa is who?

2 A Lisa Johnson.

3 Q Lisa Johnson is the young lady who is in between the
4 two guys?

5 A Uh-huh. (Affirmative response.)

6 Q Is that right? She knows who he was?

7 A Yeah, she knows.

8 Q And you told the police that?

9 A Yeah.

10 Q That she knew?

11 A Yeah, uh-huh. (Affirmative response.)

12 Q So the real fight was between this guy with the dreads
13 and your son. And then the fight was between this guy and
14 you; is that correct?

15 A No. I just asked him why he hit my son and he hit me.

16 Q Well, when he hit you that was a fight?

17 A Yeah, and then everybody jumped in.

18 Q But he was the one that was the --

19 A Started it.

20 Q -- provoked the situation or was the recipient; I don't
21 know who started the thing, but he was the one who was
22 fighting with your son and he was the one who turned around
23 and hit you?

24 A Yes, sir.

25 Q Is that correct?

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1 A Yes.

2 Q Okay.

3 MS. JOHNS: May it please the Court?

4 THE COURT: Certainly.

5 VERDA ROBERTS - CROSS-EXAMINATION

6 BY MS. JOHNS:

7 Q Ms. Roberts, you said that after you got hit that you
8 fell to the ground --

9 A Fell to the floor.

10 Q -- is that correct?

11 A Yes, ma'am.

12 Q And when you fell to the ground what did you see?

13 A I didn't see nothing because I was out.

14 Q Okay. And you were out for what, five or ten minutes?

15 A Yeah, my sister got me up off the floor and shook me
16 until I woke back up.

17 Q And during those five or ten minutes, you didn't know
18 what was going on did you?

19 A Huh-uh. (Negative response.)

20 Q Okay. When you did get up, you stated that you threw
21 some beer bottles?

22 A I threw some bottles to make it to the door.

23 Q So when you were throwing these beer bottles, you were
24 throwing them at this guy, number four; you were throwing
25 them at him?

1 A To try to make it out the door. I was just throwing to
2 make it out the door so I can get to my truck.

3 Q Okay, and your sister, did she throw bottles, too?

4 A She probably did. I don't know.

5 Q Okay. Did you hit this guy?

6 A I don't know.

7 Q Was your son throwing beer bottles, too?

8 A My son wasn't in there. I didn't see my son any more.

9 Q Okay. You didn't see him any more. Okay. So if you
10 did throw beer bottles -- did you hit anybody?

11 A I don't know.

12 Q Now, after you got outside your sister was basically
13 underneath you; is that what you're saying?

14 A No, I didn't. I said after we got outside, Hank was on
15 the brick wall telling everybody to come on all of us.

16 Q Now, I want you to take this pointer and point out
17 exactly, for the jury, where the brick wall is?

18 A There's the brick wall right there. (Indicating.)

19 Q Okay. And it goes from the street --

20 A Uh-huh. (Affirmative response.)

21 Q -- all the way, where?

22 A To the back -- but we was right in here.

23 Q Okay.

24 A And when we was coming out the club we jumped cross to
25 get to my truck right there.

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1 Q Okay. Now, when you pointed right there, you said when
2 you were coming out the club, you pointed to this shelter
3 thing right there. Is that where the club is?

4 A Well, there's a door right in here. It's a door that
5 you go in. There's a door.

6 Q And is there any other door to -- facing --

7 A Yeah.

8 Q -- that building?

9 A Yeah.

10 Q Where is that at?

11 A It's two doors that go to the restaurant and one to --
12 you come into the club. That's where you park at under that
13 -- there was gas pumps.

14 Q All right. So two front doors?

15 A Yes.

16 Q Okay. Back door?

17 A Yeah.

18 Q Okay. Where's the back door.

19 A Okay. The back door is the patio.

20 Q Okay. And you've been out on that patio before?

21 A Yes.

22 Q Okay. And when you jumped that wall you saw people
23 jumping off that patio, too, right?

24 A Huh-uh. (Negative response.)

25 Q Okay. When you came and jumped off that wall you just

1 -- how far down was it?

2 A When I jumped off the brick wall?

3 Q Yeah.

4 A The brick wall ain't but so high.

5 Q Okay.

6 A And you going to jump right there and come across it
7 and go to the car wash.

8 Q Okay. I have nothing else. Thank you.

9 THE COURT: Okay.

10 MS. SHIPLEY: Brief redirect, Your Honor.

11 THE COURT: Sure.

12 VERDA ROBERTS - REDIRECT EXAMINATION

13 BY MS. ROBERTS:

14 Q You were asked by Mr. Swerling about Lisa pushing your
15 son and pushing Mr. Johnson -- excuse me, the guy with the
16 dreads?

17 A Uh-huh. (Affirmative response.)

18 Q Was she doing that at the same time?

19 A She just did like that. (Indicating.)

20 Q To both of them at the same time?

21 A Yeah. That's how she did it.

22 Q So did it appear to you that she was trying to break
23 them up?

24 A Well --

25 MR. SWERLING: Objection.

1 BY MS. SHIPLEY:

2 Q What did you observe?

3 A She was pushing them.

4 Q Now, you were also asked about the fact that once your
5 son and this guy with the dread locks started fighting did
6 other people in the club get involved as well?

7 A Yes, ma'am.

8 Q How many other people do you think got involved?

9 A It was like, more than five. Looked like it.

10 Q Okay. Do you remember what all these people looked
11 like?

12 A No.

13 Q And so could you identify those other people?

14 A I can just identify the one that hit me in my eye.

15 Q You were also asked by Ms. Johnson -- Ms. Johns how
16 long you were out. Do you know how long you were out when
17 you got punched?

18 A No. No more than five minutes or seconds or something
19 like that because she shook me.

20 Q Five minutes or seconds?

21 A Five minutes at the most.

22 Q And so when you wake up is the fight still going on?

23 A Yes.

24 Q And also you were asked about the brick wall, just to
25 help explain it to the jury, how tall is this brick wall?

1 A It's not that high.

2 Q Okay. I'm going to show you a picture, State's No. 15.
3 Does that accurately show how high --

4 A That's it.

5 Q -- the brick wall is?

6 A Right there.

7 Q Okay.

8 MS. SHIPLEY: Your Honor, we'd like to introduce
9 15, at this time.

10 MS. JOHNS: No objection.

11 THE COURT: All right.

12 (State's Exhibit No. 15, photo of
13 brick wall, was marked and entered.)

14 MS. SHIPLEY: Thank Your Honor.

15 BY MS. SHIPLEY:

16 Q And so you just jump over, you step up on and climb
17 over?

18 A Yeah.

19 Q You don't have to hike up it or anything?

20 A No, ma'am.

21 Q Okay.

22 MS. SHIPLEY: Your Honor, may I publish it to the
23 jury?

24 THE COURT: Yes, you may.

25 BY MS. SHIPLEY:

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1 Q And you did not see anybody jumping off this patio in
2 the back?

3 A No, ma'am.

4 Q You were also asked about the shots coming -- the shots
5 that you heard?

6 A Yes, ma'am.

7 Q And I believe you testified you were running for your
8 life?

9 A Yes, ma'am.

10 Q Are you sure, do you know how many shots total that you
11 heard?

12 A No, ma'am.

13 Q And do you know how many shots you heard from each gun?

14 A No, ma'am.

15 Q Thank you.

16 MS. SHIPLEY: No further questions.

17 THE COURT: Ma'am, you can step down and be
18 excused.

19 MS. ROBERTS: Thank you.

20 THE COURT: State, you may call your next witness.

21 MS. MCDUFFIE: State calls Stephanie Boston.

22 MR. SWERLING: Judge, one second?

23 THE COURT: Yes.

24 (Pause.)

25 THE CLERK: Place your left hand on the Bible and

1 raise your right.

2 (WHEREUPON, Stephanie Boston, was
3 sworn to tell the truth.)

4 THE CLERK: Thank you. Have a seat in the witness
5 stand, and give the court reporter your name.

6 MS. BOSTON: Stephanie Boston.

7 STEPHANIE BOSTON - DIRECT EXAMINATION

8 BY MS. MCDUFFIE:

9 Q Good afternoon, Stephanie.

10 A Hi.

11 Q Stephanie, where are you from?

12 A Columbia.

13 Q And where were you raised?

14 A Richland County.

15 Q Do you have any siblings?

16 A I have two sons.

17 Q Do you have any brothers and sisters?

18 A Oh, yeah. Two brothers, two sisters.

19 Q And is one of your brothers Travis?

20 A Yes.

21 Q And is another Verda?

22 A Yes.

23 Q And back in June of 2007, where were you living?

24 A Woodbriar. I can't remember them address, but I was
25 staying on Woodbriar Street.

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1 Q And on June 29, 2007, did Stephanie and Travis and your
2 family come over to your house?

3 A Yes.

4 Q And what was that for?

5 A Because Travis was from Iraq, and we was just
6 celebrating that he made it home.

7 Q And was he also getting ready to go back again?

8 A Uh-huh. (Affirmative response.)

9 Q On the 29th of June 2007, what were y'all doing that
10 night?

11 A Drinking, playing cards, Spades. Taking pictures.

12 Q How long were you at your house that night?

13 A Well they came right before it got dark and we played
14 cards for about three hours.

15 Q And you said "they" came; who came to your house?

16 A Travis, Hank, and Lamont.

17 Q And Hank and Lamont are who; are they friends of
18 Travis, are they friends of yours?

19 A Yeah.

20 Q And had you met either Hank or Lamont before this
21 night?

22 A Yes, ma'am.

23 Q About how many times have you met them before?

24 A About three times.

25 Q And did y'all leave your house at any point in time

1 during that evening?

2 A Yes.

3 Q Where did y'all go?

4 A To the club.

5 Q And where is the club?

6 A Off of Hardscrabble Road.

7 Q And I'm going to show you what's already in evidence at
8 State's Exhibit No. 7. Do you recognize that?

9 A Uh-huh. (Affirmative response.)

10 Q And using this pointer, show the jury where the club
11 is?

12 A Right over in there.

13 Q And in that area there's a club. Is there anything
14 else over there?

15 A The dirt road. This is Hardscrabble right here.

16 Q And where did y'all park when you got there?

17 A We parked in the -- where you wash cars at.

18 Q Is that next door to the club?

19 A Yes.

20 Q And what stall in the car wash did y'all park in?

21 A The first one. I can't hardly see this because I'm
22 kind of like far-sighted, and I can't see small stuff.

23 Q That's fine. This is State's Exhibit No. 12. Is that
24 the car wash that y'all parked in?

25 A Yeah, right here.

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1 Q I'm showing the jury. This is where y'all parked?

2 A Uh-huh. (Affirmative response.)

3 Q And what car were you riding in that evening?

4 A My sister's truck.

5 Q And how did Travis and Charlie and Hank and Lamont get
6 there that night?

7 A By Travis.

8 Q And whose car was it?

9 A Travis.

10 Q What kind of car was it; do you remember?

11 A I don't know the name brand of the car. I just know if
12 was kind of tan brown type of car.

13 Q And when y'all got there where did Travis park his car?

14 A Behind us.

15 Q Behind y'all?

16 A Yes.

17 Q In the same car wash stall?

18 A Yeah.

19 Q What did y'all then do after you parked your cars?

20 A We went into the club.

21 Q What did y'all do when you got into the club?

22 A Went to the bar and got a drink.

23 Q And did you see anyone else you knew there that
24 evening?

25 A I saw a lot of people because I been going to the club

1 about eight years.

2 Q And you got a drink at the bar and saw some people you
3 knew. Where were y'all seated when you first came in?

4 A We didn't sit down.

5 Q Where were you?

6 A At the bar, the first bar as you come in the door.

7 Q And do you know a woman by the name of Lisa Johnson?

8 A Uh-huh. (Affirmative response.)

9 Q After you got there did you see her at the club?

10 A She came a little after we got there.

11 Q And what was she doing?

12 A Walking around, hanging like you do at the club.

13 Q Did -- are you aware of whether or not she and Charlie
14 had a relationship, off and on?

15 A Uh-huh. (Affirmative response.)

16 Q And did you see them talking that night?

17 A On and off.

18 Q And at some point in time did a fight break out in the
19 club?

20 A Uh-huh. (Affirmative response.)

21 Q Did you see what started the fight?

22 A Lisa came with another guy and I guess Charlie got mad
23 and Charlie and the guy started with words, and the next
24 thing I know Charlie threw the drink and a fight broke out.

25 Q So Charlie threw a drink at the guy?

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1 A Uh-huh. (Affirmative response.)

2 Q And do you know who this guy is?

3 A I know him from seeing him a lot.

4 Q And where would you see him?

5 A At the club or on Washington Park Road where Lisa stays
6 at, that road.

7 Q In Washington Heights?

8 A Yeah.

9 Q And where did she live in Washington Heights?

10 A I don't know which house, but I know he stayed on that
11 road.

12 Q And where did Lisa stay on that road?

13 A About 11 houses down on the right.

14 Q And was he -- if you turned on that road from
15 Hardscrabble was his house before or after hers?

16 A Before.

17 Q Towards the beginning or the middle or the end by Lisa?

18 A I guess -- I used to always see him at the beginning of
19 the road. Sometimes he used to come down to Lisa house when
20 we would be down there cooking out. I'd see him at the
21 club.

22 Q And what name did you call him by or that you know him
23 as?

24 A I know Chris.

25 Q Any other names that you know him by?

1 A They said his name was Brian. So I don't know. I just
2 know him when I see him.

3 Q And that's the person you saw Charlie throw a drink at
4 and then a fight started?

5 A Yeah.

6 Q And what was the next thing that happened after that?

7 A Everybody start fighting.

8 Q And did anything happen to Verda?

9 A Yes. He punch her in the eye.

10 Q And what happened?

11 A And we started throwing bottles at him.

12 Q Did Verda fall down?

13 A Yeah, I caught her.

14 Q And what happened next?

15 A That's when the little bouncers or whoever, the little
16 security guards came and start getting everybody cleared out
17 the club. And we walked out the club and everybody was
18 talking about what happened, how the fight started and this
19 and that. That's when Hank got out the car, he was standing
20 beside the car and we was walking towards where we was
21 parked and he was like, what's going on, what's going on.
22 And we was telling him that we been in a fight in the club,
23 whatever, whatever, and he was like, y'all let's just go.
24 Let's just go. So as we was getting into the -- Travis and
25 them getting in their car, we getting into my sister car,

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1 gunshots.

2 Q And do you know where the gunshots were coming from?

3 A I couldn't really remember. I know it was coming from
4 off of Hardscrabble Road.

5 Q Coming from that direction?

6 A It had to, because it wasn't coming behind us. It
7 wasn't behind us. The shots came like --

8 Q In front of you?

9 A Yeah.

10 Q After you all started hearing the shots what did y'all
11 do?

12 A We jumped in the car and Hank was like, I'm hit.

13 Q And what happened next?

14 A Charlie, Lamont, and Travis put Hank in the car.

15 Q And then what happened. So Travis stopped at the
16 Waffle House on what -- that's Farrow Road.

17 Q Y'all stopped at the Waffle House?

18 A Yeah.

19 Q And when y'all pulled out of the car wash at the club
20 which way did you go?

21 A We went left.

22 Q Towards what road?

23 A That's Farrow Road, right?

24 Q So you went left towards Farrow Road?

25 A Yeah.

1 Q And y'all stopped at the Waffle House?

2 A Yeah.

3 Q And why did y'all stop at the Waffle House?

4 A Because Travis didn't know where the hospital was. He
5 was in the front of us. So he stopped to ask her where was
6 the nearest hospital, and that Hank was bleeding a lot, he
7 was losing a lot of blood. So my sister, Verda, was like
8 just straight up it's a hospital, just straight up the
9 street, and we went to the hospital and they took him out
10 and we took him in the hospital.

11 Q And did some police officers come to the hospital that
12 morning?

13 A Yes, ma'am.

14 Q And did you talk to a female police officer?

15 A Yes, ma'am.

16 Q Investigator Heidi Scott?

17 A I can't remember her name. I know she was a female.

18 Q I'll show you what's this three-page document. Do you
19 recognize this?

20 A This is my statement.

21 Q And is that your signature at the bottom of the pages?

22 A Yes, ma'am.

23 Q And what is the date and time of that statement?

24 A June 30th, '07, what, 7:35.

25 Q June 30, 2007, at 7:35 in the morning?

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1 A (No response.)

2 Q And did you tell Investigator Scott about the
3 individual that you saw that punched Verda and that you knew
4 him by what you thought was Chris?

5 A Yes, sir. (Sic.)

6 Q And you told her about what happened that night with
7 the fight and the shooting and the things of that nature?

8 A Yes, ma'am. I told her everything that I could
9 remember.

10 Q And did you ever see the person that was shooting at
11 y'all?

12 A No.

13 Q But the shots were coming from where; what area?

14 A The road. He had -- like I said, he had to be shooting
15 in the -- towards the front of us because where we was
16 parked at, ain't no way they could have shot, you know what
17 I'm saying, from behind. It had to be coming from the
18 street.

19 Q And about how many shots did you hear?

20 A Over three.

21 Q But you don't know how many?

22 A No.

23 Q But it was at least three?

24 A Yeah.

25 Q And do you know if it was one gun or multiple guns?

1 A Sound like to me it was more than one gun.

2 Q Do you know how many guns?

3 A It was -- it wasn't the same shot.

4 Q And could you tell which gun shot how many times?

5 A No. I can't.

6 MS. MCDUFFIE: Beg the Court's indulgence.

7 BY MS. MCDUFFIE:

8 Q Let me show you what's in evidence as State's Exhibit
9 14.

10 A Uh-huh. (Affirmative response.)

11 Q Do you see the person you know as Chris in that -- in
12 this State's Exhibit No. 14?

13 A Uh-huh. (Affirmative response.)

14 Q And what number is he?

15 A 44526.

16 Q And up here is written what number?

17 A 36996.

18 Q And that's picture number what?

19 A Four.

20 Q So picture number four, that's the person you knew as
21 Chris?

22 A Uh-huh. (Affirmative response.)

23 Q And that's the person who was in the fight at the club
24 that night?

25 A Uh-huh. (Affirmative response.)

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1 Q And when Verda got punched about how long was she out,
2 about five minutes, a couple seconds; do you know?

3 A I can't say because I caught her. When he punched her
4 she fell back on me.

5 MS. MCDUFFIE: Nothing further.

6 STEPHANIE BOSTON - CROSS-EXAMINATION

7 BY MR. SWERLING:

8 Q Hey, Ms. Boston. I'm Jack Swerling. How are you.

9 A I'm fine. How are you.

10 Q Good. Did you and Verda Roberts discuss that
11 photograph that was just shown to you?

12 A No.

13 Q So you -- when was the first time you saw that?

14 A When the investigators, solicitors showed it to us.

15 Q Which was when?

16 A Last time we had to come to court.

17 Q So -- were you Ms. Roberts together when they showed it
18 to you?

19 A No.

20 Q And they showed it to you separately?

21 A Yeah.

22 Q You told Ms. Roberts that you picked out number four?

23 A No, I ain't told her nothing.

24 Q Did she tell you who she picked out?

25 A No.

1 Q At the club, from what I understand, how long had you
2 been there when all this happened?

3 A Not really an hour.

4 Q Everybody drinking?

5 A Yeah.

6 Q Everybody -- four or five of you actually drinking
7 together?

8 A Five of us were together.

9 Q Five together.

10 A When you got there you saw Lisa; is that right?

11 A No. She wasn't there yet.

12 Q Oh, she got there after you?

13 A Uh-huh. (Affirmative response.)

14 Q Lisa and Charlie had been seeing each other from time
15 to time?

16 A Yeah.

17 Q Or they had dated in the past?

18 A Yeah.

19 Q They weren't dating then?

20 A No.

21 Q In fact, they had broken up some time ago?

22 A I guess.

23 Q Okay, far as you know?

24 A Uh-huh. (Affirmative response.)

25 Q Lisa was dancing and Charlie came up behind her and was

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1 hugging her; is that right?

2 A No. She wasn't dancing.

3 Q Well, then he was just hugging her from behind?

4 A Yeah. He was to the side talking.

5 Q So they weren't dancing. Was he hugging her behind or
6 from the front; do you remember?

7 A From the side.

8 Q From the side?

9 A They was like side by side.

10 Q This guy named -- you said it was Chris?

11 A Yeah.

12 Q That you told Investigator Scott about at the hospital;
13 is that right?

14 A Yeah.

15 Q You now say it was also known as Brian. When did you
16 first come up with the name Brian, because that's not in any
17 of your statements is it?

18 A Somebody said he name was Brian.

19 Q After that night?

20 A Uh-huh. (Affirmative response.)

21 Q Not that night. So you never told the police that.
22 You said the guy's name was Chris?

23 A Yeah, I was giving him a name that I thought his name
24 was, but it wasn't Chris.

25 Q Okay, but later on -- do you remember if it was

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1 somebody in law enforcement who told you his name was Brian?

2 A No.

3 Q Do you know who it was?

4 A It was in the street.

5 Q Somebody in the street. All right. Now, the person
6 that looked like the person who got into it with Charlie,
7 you said was number four?

8 A Uh-huh. (Affirmative response.)

9 Q Okay. He's fairly thin. Got a thin face and dreads in
10 his hair; is that right?

11 A Uh-huh. (Affirmative response.)

12 Q Dreads or plaits; is that right?

13 A Uh-huh. (Affirmative response.)

14 Q I don't know if this has been published to the jury or
15 not, but that's the guy who was in the fight?

16 A Uh-huh. (Affirmative response.)

17 Q As far as you can tell?

18 A Uh-huh. (Affirmative response.)

19 Q Now, from what I understand, the actual fight started
20 when Charlie threw a drink in his face?

21 A Uh-huh. (Affirmative response.)

22 Q Is that right?

23 A Uh-huh. (Affirmative response.)

24 Q And after Charlie threw a drink in his -- do you know
25 what prompted that?

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1 A What?

2 Q Do you know what prompted the guy with Charlie throwing
3 a drink in the guy with the dreads face?

4 A Because he was over there and he and Charlie had words.
5 I guess it was about Lisa. I couldn't hear what they was
6 having words for, because I was beside the speaker. But
7 next thing I know, Charlie threw the drink, fight broke out.
8 I ran over there -- and everybody stopped fighting.

9 Q Okay. And this guy and Charlie got into it?

10 A Uh-huh. (Affirmative response.)

11 Q And then your sister Verda got into it --

12 A Uh-huh. (Affirmative response.)

13 Q -- with the guy with the dreads, she was trying to help
14 her son?

15 A Yeah.

16 Q And then he turned around and punched her in the face;
17 is that right?

18 A Uh-huh. (Affirmative response.)

19 Q The whole fight at that time was between your sister
20 and Charlie and Verda; is that right?

21 A No, I ain't going to say that. All of us was fighting.

22 Q Who else was fighting?

23 A All us was fighting.

24 Q Which is who?

25 A Me, Charlie, Verda Mae, Lamont and Travis.

1 Q So everybody was fighting?

2 A Uh-huh. (Affirmative response.)

3 Q Now, when you went to the hospital, you talked to Heidi
4 Scott at the hospital, remember that when everybody was
5 waiting around?

6 A Uh-huh. (Affirmative response.)

7 Q Investigator Scott, interviewed you, took some notes;
8 is that correct?

9 A I believe that was her name.

10 Q That's when you told her the person's name was Chris?

11 A Uh-huh. (Affirmative response.)

12 Q And you told her you thought Chris was the one
13 responsible for the shooting?

14 A I told her that?

15 Q Uh-huh. (Affirmative response.)

16 A Is that the statement I got?

17 Q Let me see if this refreshes your memory. Right here.

18 A Where at?

19 Q Where it says, talked to Stephanie Boston.

20 A I don't see where you pointed at?

21 Q Do you see where it says talked to Stephanie Boston?

22 A Huh-uh. (Negative response. Okay. Right here?

23 Q That she thought the person involved in the fight was
24 the person responsible for the shooting.

25 A Oh, he has something to do with shooting. That's where

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1 the fight started about.

2 Q Well, my question was, and I guess the answer is that
3 you told Heidi Scott the person in the fight with the dreads
4 that's in that picture was responsible for the shooting;
5 correct?

6 A Well, yeah.

7 Q Now, when everybody went outside you said that you
8 heard shots from several weapons?

9 A At least two.

10 Q At least two?

11 A Uh-huh. (Affirmative response.)

12 Q And there was at least three shots?

13 A Uh-huh. (Affirmative response.)

14 Q You couldn't tell exactly how many shots, but you're
15 saying at least three, and there were at least two weapons?

16 A I'm saying it didn't sound like the same gun.

17 Q Did not sound like the same gun?

18 A Huh-uh. (Negative response.)

19 Q And they were coming from different directions?

20 A I would had to be coming from the front of us where we
21 was parked at.

22 Q Okay. So both weapons, whatever you heard, was coming
23 from the front of you?

24 A Yeah.

25 Q But do you know, can you tell the jury whether or not

1 those gunshots were coming from a vehicle or from someone
2 standing somewhere or --

3 A I can't tell you that.

4 Q You have no idea. So it could just as easily come from
5 someone who is standing rather than someone in a vehicle; is
6 that correct?

7 A I can't tell you that.

8 Q I said, just as easily could have. You don't know
9 which it was, a vehicle or somebody standing?

10 A No. No.

11 Q Correct?

12 A No.

13 Q You don't know whether or not it was to the right or
14 left of the club or across from the club or -- but you do
15 know it was coming towards you --

16 A Uh-huh. (Affirmative response.)

17 Q -- and not from behind you?

18 A Uh-huh. (Affirmative response.)

19 Q Is that correct?

20 A Uh-huh.

21 Q Thank you. That's all I have.

22 MS. JOHNS: Please the Court?

23 THE COURT: Yes.

24 STEPHANIE BOSTON - CROSS-EXAMINATION

25 BY MS. JOHNS:

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1 Q Ms. Boston, you mentioned security. Can you tell us a
2 little bit more about the security; you've been in this club
3 before, right?

4 A Uh-huh. (Affirmative response.) Yes.

5 Q And you mentioned something about security in the club?

6 A Well, they -- you know, they got guys out there that
7 they have for security or whatever.

8 Q Well, where do they -- what do they do, describe --
9 when you walk up to the club what do you see?

10 A They search you, ask you for your ID.

11 Q Uh-huh. (Affirmative response.)

12 A I guess they there to prevent any trouble at the club.

13 Q Which door are they at, the door at the kitchen or --

14 A The door as you enter the front.

15 Q Okay. And how many are there?

16 A It varies. Some nights they have two, some nights they
17 have three.

18 Q Do you know what their names are?

19 A No.

20 Q How often do you go to the club?

21 A I haven't been there since this happened.

22 Q Okay. Before this, how often did you go to the club?

23 A I used to go like every other weekend.

24 Q And do they get to know you?

25 A Who?

1 Q Security, they got to know you every other weekend?

2 A They learned your face.

3 Q After a while they stop asking for your ID?

4 A They know your face.

5 Q And they've seen you there before, they've searched you
6 before?

7 A Yes, ma'am.

8 Q You said they searched you to let you in, right?

9 A I didn't say that.

10 Q Did they?

11 A No, you have to show your ID.

12 Q Okay. Now, they check your pocketbook?

13 A Yes.

14 Q How often do they do that?

15 A Well, they check my pocketbook every time I went.

16 Q Every time.

17 A Uh-huh. (Affirmative response.)

18 Q And so was there anytime that they didn't check your
19 pocketbook?

20 A I can't say that.

21 Q Was there anytime that they didn't check your ID?

22 A I can't say that.

23 Q Okay. Well, what did this security guy look like?

24 A I'm mean, which one you're talking about?

25 Q Well, start with the biggest one?

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1 A He big, brown skin, got low haircut. Then the other
2 one short, brown skin. Then the other one is kind of tall.

3 Q Okay. The first one, big, brown skin, short haircut.
4 Next one was short, brown skin. What kind of haircut?

5 A I guess it was like a low haircut, too.

6 Q Okay. And then the other one?

7 A He was taller.

8 Q Tall. Complexion?

9 A Brown.

10 Q Hair?

11 A I can't remember.

12 Q Did you know any of them by name?

13 A No.

14 Q Do you know who Sherman is?

15 A Yes.

16 Q What does Sherman look like?

17 A Brown skin, low haircut. Sometimes he'll be dressed.
18 Sometimes he won't be dressed.

19 Q Do you know the guy who sits at the door that falls
20 asleep all the time?

21 A No.

22 Q Did you ever see him?

23 A No.

24 Q Now, when -- the times that you've been to the club,
25 have you always been there with your sister?

1 A No.

2 Q Okay, you've been there with other girls, before?

3 A Me and Lisa or me and my friend, a guy.

4 Q Okay. When you've been there with Lisa, did Lisa's ID
5 get checked?

6 A Yes.

7 Q Okay. And did her purse get searched?

8 A Lisa don't ever carry a purse in the club.

9 Q She doesn't carry a purse. So if you don't carry a
10 purse you don't get searched.

11 A They don't search your purse. They take the thing and
12 go over you?

13 Q The little thing?

14 A The metal detector or whatever the little thing they
15 take to check you?

16 Q So it's like a wand like downstairs on the first floor?

17 A Yeah.

18 Q Now, I'm going to show you State's Exhibit No. 14,
19 which are these pictures?

20 A Uh-huh. (Affirmative response.)

21 Q Anywhere on these picture do you see Mr. Wray sitting
22 beside Jack Swerling; is the one, number four, is that Mr.
23 Wray?

24 A No.

25 Q Is number four; is that Mr. Watts?

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1 A No.

2 Q Anybody in this picture that's Mr. Watts?

3 A Who's Mr. Watts?

4 Q Okay. Never mind. I'll withdraw that.

5 A I don't know these people by name.

6 Q Okay. Have you seen this guy, Chris, aka, Brian, since
7 the shooting?

8 A Uh-huh. (Affirmative response.)

9 Q When was the last time you've seen him?

10 A The last time we came to court.

11 Q Would that be May or last week.

12 A No. The last time we been to -- supposed to been going
13 to court.

14 Q The time before this. Did you speak to him?

15 A No.

16 MS. JOHNS: Beg the Court's indulgence, Your Honor.

17 Okay, that's all I have. Thank you.

18 THE COURT: Yes.

19 STEPHANIE BOSTON - REDIRECT EXAMINATION

20 BY MS. MCDUFFIE:

21 Q Ms. Boston, about how many people were fighting in the
22 club?

23 A I can't tell you.

24 Q One to five?

25 A Yeah.

1 Q One to 10?

2 A I can't -- I really can't say. It was a big old fight.

3 Q And Mr. Swerling asked you about a statement that

4 Investigator Scott's report that said you thought the

5 person, Chris, who was in the fight was responsible for the
6 shooting?

7 A I really don't remember that statement. I really
8 don't.

9 Q Do you know who was responsible for the shooting?

10 A I wish I did.

11 Q Did you see the person who was shooting at y'all?

12 A No.

13 MS. MCDUFFIE: Nothing further, Your Honor.

14 MS. JOHNS: Nothing further.

15 THE COURT: Okay. You can step down and be
16 excused. Thank you.

17 MS. BOSTON: Thank you.

18 MS. SHIPLEY: State calls Charlie Bates.

19 THE CLERK: Place your left hand on the Bible and
20 raise your right hand.

21 (WHEREUPON, Charlie Bates, was
22 sworn to tell the truth.)

23 THE CLERK: Thank you. Have a seat up there in the
24 witness stand. Tell the court reporter your name.

25 MR. BATES: Charlie Bates.

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CHARLIE BATES - DIRECT EXAMINATION

1

2

BY MS. SHIPLEY:

3

Q Good afternoon, Mr. Bates.

4

A How you doing.

5

Q Mr. Bates, can you tell the jury a little bit about yourself. What part of Columbia are you from?

6

7

A Columbia. Ridgewood, North Main, Monticello, parts like that.

8

9

Q Okay.

10

A Yes, ma'am.

11

Q And who is your mother?

12

A Verda Roberts.

13

Q And who is Stephanie Boston to you?

14

A My aunt.

15

Q Do you have an uncle that's in the army?

16

A Yes, ma'am.

17

Q And who is that?

18

A Travis.

19

Q Can you tell the jury if you're familiar with your uncle's friends from St. Matthews?

20

21

A Yes, ma'am. I wouldn't say I'm as close as he is with them, but we've got a good relationship.

22

23

Q Okay. And who are those friends?

24

A Lamont and Hank.

25

Q Okay.

1 A Yes, ma'am.

2 Q And do you know their given birth names?

3 A I just know them by Lamont and Hank.

4 Q Okay.

5 A Yes, ma'am.

6 Q So they are good friends with your uncle, Travis?

7 A Yes, ma'am.

8 Q On June 30, 2007, or the night of June 29, 2007, do you
9 recall being with your uncle that night?

10 A Yes, ma'am.

11 Q And who was with him?

12 A Me, my uncle, Lamont, Hank, my auntie, and my momma.

13 Q Okay. And tell the jury where it was that you all
14 first met together?

15 A We met at my auntie house, first. We was having a
16 little party. I think it was for my cousin, Hank -- I'm not
17 sure. It was -- I just know we was having a party at my
18 auntie's house.

19 Q And were you drinking at your auntie's house?

20 A Yes, ma'am.

21 Q What else were y'all doing?

22 A Just mingling, talking with each other.

23 Q Okay.

24 A Yes, ma'am.

25 Q And at one point in the evening did you all decide to

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1 leave your auntie's house?

2 A Yes, ma'am.

3 Q And where did you guys go?

4 A We decided to go to the nightclub.

5 Q Okay, and which nightclub did you go to?

6 A The club.

7 Q Had you ever been to the Club before?

8 A Yes, ma'am.

9 Q And what street is that one?

10 A Hardscrabble.

11 Q How often have you been to the Club?

12 A Probably like -- I can count on my hand. Probably
13 about five, maybe six, seven times.

14 Q Okay. And who would you go to the nightclub with in
15 the past?

16 A My momma, my auntie, or a lady friend of mine.

17 Q And which lady friend is that?

18 A Lisa.

19 Q Lisa what?

20 A Johnson.

21 Q And did you date Lisa Johnson?

22 A Yes, ma'am.

23 Q For how long?

24 A Off and on for about four years.

25 Q Okay, and where did Lisa Johnson live in relation to

1 the club or the nightclub?

2 A Off Hardscrabble in Washington Heights.

3 Q In Washington Heights?

4 A Yes, ma'am.

5 Q And did you become acquainted with any of Lisa's
6 friends from that neighborhood?

7 A No, ma'am.

8 Q I'm going to bring your attention to -- eventually you
9 made it to the club; is that correct?

10 A Yes, ma'am.

11 Q Do you remember what time it was when you all arrived
12 there?

13 A I know it was late. I'm going to say 11:00, maybe
14 12:00. Probably a little later. I'm not sure, though.

15 Q You're not sure?

16 A Yes, ma'am.

17 Q Were you paying attention to the time?

18 A No, ma'am.

19 Q And can you tell the jury where it is that you all
20 parked when you got there?

21 A At the car wash.

22 Q And in which part of the car wash?

23 A In the beginning of the first slot of the car wash.

24 Q Okay. And are you familiar with the map that's hanging
25 behind you?

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1 A Yes, ma'am.

2 Q Do you see the car wash on that map?

3 A Yes, ma'am.

4 Q Okay. I'm going to ask you to point that out for the
5 jury, please.

6 A (Indicating.)

7 Q What part of the car wash were y'all parked at?

8 A I was in the back with my uncle. My momma was in the
9 part in front of us. We stopped in the same car wash thing,
10 though.

11 Q Okay.

12 A Yes, ma'am. (Affirmative response.)

13 Q Okay. So who was riding with your mother that night?

14 A Just her and my aunt.

15 Q Okay. What kind of car does your mom drive?

16 A She had an all white Envoy, GMC Envoy.

17 Q And what kind of car did -- you said you were in the
18 car behind, correct?

19 A Yes, ma'am.

20 Q Whose car was that?

21 A My uncle car.

22 Q Okay.

23 A Yes, ma'am.

24 Q And I'm going to show you pictures, State's No. 16.

25 Does that look like your uncle's car?

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1 A Yes, ma'am. I just remember it was a Chevy; Yes,
2 ma'am.

3 Q Okay.

4 MS. SHIPLEY: Your Honor, state seeks to move
5 State's 16 into evidence.

6 MR. STERLING: No objection.

7 THE COURT: Okay.

8 (State's Exhibit No. 16, photo of
9 car, was marked and entered.)

10 MS. SHIPLEY: May I publish it to the jury, Your
11 Honor.

12 THE COURT: You may.

13 BY MS. SHIPLEY:

14 Q This is the car your uncle was driving that night?

15 A Yes, ma'am.

16 Q And who was riding in this vehicle?

17 A Me, my uncle, Lamont, and Hank.

18 Q Okay. So there's four individuals in there?

19 A Yes, ma'am.

20 Q Tell the jury what it is -- what you did after you
21 parked?

22 A After we parked we talked for a little second before we
23 walked into the club, but eventually after we all parked we
24 walked into the club.

25 Q Where did you go inside the club when you first got

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1 there?

2 A We went to the entrance at the beginning of the club.

3 Q And you're welcome to use that pointer so you can show
4 the jury.

5 A Yes, ma'am.

6 Q Thank you.

7 A We walked across the brick wall to the entrance of the
8 club.

9 Q What did you do once you got to the club?

10 A Once we got in the club we went -- all met at the back,
11 I think, for a little minute before we went to the dance
12 floor. Get everybody, make sure everybody had a little
13 drink. We was feeling okay. When we first walked in we
14 just wanted to make sure everybody was comfortable.

15 Q Okay.

16 A Yes, ma'am.

17 Q And so you went to the back, you said, is there an
18 outdoor patio?

19 A Yes, ma'am.

20 Q Okay. And tell the jury, eventually -- you said you
21 went to the dance floor?

22 A Yes, ma'am.

23 Q While you were at the dance floor area did you run into
24 anybody you knew?

25 A No, ma'am.

1 Q Okay. Did you ever see Lisa Johnson that night?

2 A Yes, ma'am.

3 Q When did you run into her; how long had you been in the
4 club by the time you see her?

5 A I had done been to the club, probably, about five -- a
6 good five, maybe 10 minutes before she had came.

7 Q All right.

8 A Yes, ma'am.

9 Q Did you know she was going to be coming there?

10 A At first I didn't know, ma'am, but after I had got a
11 warning that she was coming, yes, ma'am.

12 Q So did you know she was coming or not?

13 A Not at first I didn't; no, ma'am.

14 Q Now when you see her there was she with anybody?

15 A No, ma'am.

16 Q What, if anything happened next between the two of you?

17 A Us. We was on the dance floor. I seen her, first we
18 stay on the back patio for a little minute, but after I gets
19 -- everybody was okay on the back patio we decide to go
20 dance a little bit. So we made it to the dance floor.

21 Q You and Lisa Johnson went to the dance floor?

22 A Yes, ma'am.

23 Q And where did everybody else go?

24 A My mom was -- she was on the dance floor, too. My aunt
25 -- I think the majority of us was on the dance floor.

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1 Q Okay.

2 A Yes, ma'am.

3 Q What about Hank and Lamont and Travis.

4 A It blur with me for a second, because I remember Hank
5 wasn't feeling too good in the club, and he left out the
6 club.

7 Q Uh-huh. (Affirmative response.)

8 A But a little bit after, he came back in and him and my
9 momma was on the dance floor dancing a little bit.

10 Q Okay.

11 A Yes, ma'am.

12 Q Now, tell the jury what happened while you were dancing
13 with Lisa Johnson?

14 A While I was on the dance floor dancing with Lisa
15 Johnson, I'm behind her dancing. She got her back to me,
16 I'm behind her dancing, two males approached me while me and
17 her was dancing on the dance floor.

18 Q And do you remember -- first of all, are you familiar
19 with other people that go to this dance club?

20 A No, ma'am. That's not my side of town. I don't know
21 nobody on that side of town.

22 Q Okay. And you said two males approached you?

23 A Yes, ma'am.

24 Q Can you please describe those two males for the jury?

25 A I don't -- I just remember one male was short, kind of

1 cocky, like. They didn't -- one had on like a collar shirt.

2 I -- I get kind of blurry with that.

3 Q Okay. Do you remember giving a statement to the police
4 on June 30th --

5 A Yes, ma'am.

6 Q -- the day of this incident?

7 A Yes, ma'am.

8 Q Would it help you to refresh your memory what you told
9 them that day?

10 A It probably would, yes, ma'am.

11 Q Okay. I'm going to show you a document. Do you
12 recognize this?

13 A Yes, ma'am.

14 Q And what is that?

15 A This is my statement I gave.

16 Q Okay. Take your time to refresh your memory of the
17 description of the people you described.

18 A I can't really give -- I don't really remember how they
19 faces was. I'm trying to focus more on what they had on and
20 how their hair. I know they both had low haircuts.

21 Q Okay.

22 A That's all I really know.

23 Q I'm going to show you -- just to assist you in this
24 matter.

25 A Yes, ma'am.

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1 Q Where you describe the individuals, starting right
2 there. Can you read that handwriting; is that your
3 handwriting, first of all, or is that the officer's?

4 A I think this was the officer's.

5 Q Okay.

6 A Yes, ma'am. It says, one was about six-two --

7 MR. SWERLING: Your Honor, the question is does it
8 help him refresh his memory. He can't read it and say does
9 it refresh his memory and then ask him.

10 THE COURT: Correct.

11 MS. SHIPLEY: Your Honor, I asked him if he could
12 read his statement to refresh his memory.

13 THE COURT: Sure. That's fine, but I think -- just
14 make sure you're not reading it to us.

15 MR. BATES: Yes, ma'am.

16 THE COURT: Read it to yourself, okay.

17 A Yes, ma'am.

18 BY MS. SHIPLEY:

19 Q Well, how did you describe the first guy?

20 A That one of them was like six -- kind of tall, white t-
21 shirt.

22 Q All right.

23 A Yes, ma'am.

24 Q And did you describe his build?

25 A Kind of stocky like. Both of them -- both stocky like

1 shapes.

2 Q Okay.

3 A Yes, ma'am.

4 Q And so, was one taller than the other?

5 A Yes, ma'am.

6 Q And tall was the tall one; how tall do you think he
7 was?

8 A He was a little taller -- the one in the white shirt
9 was a little bit taller than the one that had on the collar
10 shirt.

11 Q Okay. And you indicated; could you give us an
12 approximate age of these individuals?

13 A I'd say probably early 30s.

14 Q Now, what happened when these two individuals
15 approached you and Lisa on the dance floor.

16 A While we was on the dance floor, the first -- I thought
17 they was maybe walking, but the more and mor they kept
18 walking towards us on the dance floor I seen that they was
19 approaching us. So I jumped in front of her thinking -- at
20 first I didn't know what was going on, but I jumped in front
21 of her, I pushed her to the side and I jumped in front of
22 her. So they -- they got in my face, so while they was in
23 my face, I was about to exchange words with them gentlemen,
24 but before I got a chance to exchange words, my uncle pushed
25 me out the way and they started having words with the

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1 gentlemen, my uncle and probably Lamont and Hank. They
2 start having words with the gentlemen. Yes, ma'am.

3 Q Okay. What happened after that?

4 A After that it just broke loose in the club. Everything
5 went crazy.

6 Q Did you get struck at any point?

7 A Yes, ma'am.

8 Q And where -- what part of your body did you get struck?

9 A On the left side of my face.

10 Q Okay.

11 A Top lip.

12 Q And when you got struck did it cause you to bleed?

13 A Yes, ma'am, real bad.

14 Q Okay. Did you see anything happen to your mother?

15 A I knew she got hit, but I was -- after I went hit I
16 went blurry. It went blurry a little bit. I wasn't sure if
17 I done got hit with a bottle or anything. I just seen a lot
18 of blood coming. I wasn't sure if it was a main artery or
19 anything. So I grabbed my face, and I just start making it
20 towards the door.

21 Q Okay.

22 A Yes, ma'am.

23 Q And so as soon as you got hit you started making it
24 towards the door?

25 A Yes, ma'am.

1 Q And do you know -- can you give us an approximation of
2 the number of people from that club got into the fight with
3 your group?

4 A I would say it was us against the whole club.

5 Q Okay. And could you identify all the people in that
6 club?

7 A No, ma'am.

8 Q Tell the jury what happened when you got out of the
9 club?

10 A Once I made it out the club it was so -- it was so much
11 ruckus going on.

12 Q Was it chaotic?

13 A Yes, ma'am. I just remember once I made it outside the
14 club, I ran -- the first person I ran into was Hank.

15 Q Where was Hank when you ran into him?

16 A I think he -- he probably looked like he was coming
17 from the car.

18 Q Okay.

19 A Because he was sitting in the car, because he started
20 going hysterical once he seen my face.

21 Q Really?

22 A Once he seen all the blood coming from my mouth, he was
23 going crazy. Man, what happened to you. What's going on.
24 He couldn't believe it. So after I seen him going crazy, I
25 seem my momma coming from out the club holding her face.

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1 She done been hit, too. So it was just going real crazy.

2 Q Then what happened; where did you guys go from there?

3 A Well, once we made sure that everybody was out the
4 club, once I seen that my momma, my aunt, and everybody was
5 outside the club we started making our way back to our
6 vehicles.

7 Q Okay.

8 A On our way making -- going to our vehicles, guns
9 started going off.

10 Q And you indicated guns; did you hear more than one gun?

11 A It sounded like the same gun to me.

12 Q Same gun.

13 A Yes, ma'am.

14 Q And how many shots did you hear from this gun?

15 A A lot.

16 Q A lot?

17 A Yes, ma'am.

18 Q Just give --

19 A More than five.

20 Q Okay.

21 A Yes, ma'am.

22 Q And were you guys able to take cover any where?

23 A Me and -- I remember my aunt and my momma, they was a
24 little closer by her vehicle. Me, Lamont and Hank be by my
25 uncle car. I -- Lamont was on the left side. Me and Hank

1 was on the passenger side. So only thing I remember me and
2 Hank throwing the Trav door open. I jumped in the front
3 seat and I jumped in the back. When Hank jumped in the
4 front, he had told me he had done been hit.

5 Q So before you even get in the car Hank told you --

6 A While we jumping in the car. I guess he could have
7 been while we outside the car, too, but while we was moving,
8 making our way to the inside of the car, that's when I
9 realize -- that's when he told me he done been struck.

10 Q Struck by a bullet?

11 A Yes, ma'am.

12 Q And from what direction were the bullets coming from?

13 A I couldn't tell you.

14 Q Okay.

15 A Yes, ma'am.

16 Q Were you -- what were you focused on at this time?

17 A Just making sure we were safe. Getting out of them
18 bullets path.

19 Q All right.

20 A Yes, ma'am.

21 Q And while the shots were being fired you were in the
22 stall already?

23 A We were in the middle of the washer -- where you wash
24 the cars at.

25 Q Okay. I'm going to show you a photograph, and if you

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1 could just point, State's 13.

2 A Yes, ma'am.

3 Q Can you just point to where y'all were standing first
4 when you hear the shots?

5 A When we first heard the shots, me and Travis -- not
6 Travis, Hank was on this side.

7 Q Okay, and just point right there.

8 A Yes, ma'am.

9 Q Okay. Am I pointing at the right direction?

10 A Yes, ma'am.

11 Q And so before Hank gets in the car with you, you hear
12 him say I've been hit?

13 A I've been hit. Yes, ma'am.

14 Q Tell the jury what happened after you guys got in the
15 car?

16 A Well, after we jumped in the car, I'm telling everybody
17 -- Lamont finally made it in. My uncle holding my momma
18 down. They finally get up off the ground. They jump in the
19 truck. My momma and them skid off. We took off right
20 behind them. Me and Hank -- I'm the only person know that
21 he done been hit. So I'm telling everybody Hank done been
22 shot, Hank done been shot, Hank done been shot. So we drive
23 past Providence Hospital. On our way after we leave
24 Hardscrabble Road we drive past the hospital. Well, I guess
25 ain't nobody believe that he -- by me saying he done been

1 shot until they really seen him losing focus in hisself, and
2 so we met up at the Waffle House to get my momma and to let
3 them know we going back to the hospital. That he done been
4 shot. So we turned around real fast and went to Providence
5 Hospital.

6 Q Okay. And when you get to Providence Hospital what do
7 y'all do for Hank?

8 A Me, Lamont, and Travis carried -- my momma, my auntie,
9 we all started trying to carry him in the hospital.

10 Q Okay. And did you eventually find out that he didn't
11 make it.

12 A While we was carrying him in the hospital, man, he
13 passed out in our arms. So right then and there we knew
14 something was wrong. We knew something was wrong right then
15 and there.

16 Q Okay. Eventually did the doctors or law enforcement
17 tell you that he didn't make it.

18 A Yes, ma'am, the doctors came right back out soon as
19 they got him in the back and told us that he was gone.

20 Q Okay.

21 A Yes, ma'am.

22 Q And you remember being approached by law enforcement
23 that night to talk to them about what you remember?

24 A Yes, ma'am.

25 Q And you gave your statement on June 30th; is that

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1 correct?

2 A Yes, ma'am.

3 Q And when you heard the shots, can you describe the
4 speed of the shots?

5 A They right behind each other. One after the other,
6 boom, boom, boom, boom, boom, boom. It was coming. It was
7 coming.

8 Q Okay. May I see your statement, please.

9 A (Passes statement to Ms. Shipley.

10 Q Thank you.

11 A Yes, ma'am.

12 Q While you were at the hospital did you also talk to
13 anybody on your phone?

14 A Yes, ma'am.

15 Q And who was that?

16 A Lisa.

17 Q Lisa Johnson?

18 A Yes, ma'am.

19 Q Did you tell her what had happened to your friend?

20 A Yes, ma'am.

21 Q And do you recall how many shots you heard that night?

22 A I don't know how many it was. I just know that it was
23 repeated amount of shots.

24 Q Okay. Would it help you to refresh your memory by
25 reading your statement, what you told police how many shots

1 you heard that night?

2 A I'll read over it. Yes, ma'am.

3 Q Okay. And, again, read it to yourself.

4 A Yes, ma'am.

5 Q And let me know when you're ready to answer.

6 A Yes, ma'am.

7 Q How many did you say to the police?

8 A I said 10 or more, but it was coming so fast I couldn't
9 tell.

10 Q Okay.

11 A Yes, ma'am.

12 Q Also, Mr. Bates, you have been in trouble in the past;
13 is that correct?

14 A Yes, ma'am.

15 Q And isn't it true that in 2006, you were convicted of
16 auto breaking and petit larceny?

17 A Yes, ma'am.

18 Q And that was the year before this incident happened; is
19 that correct?

20 A Yes, ma'am.

21 MS. SHIPLEY: Beg the Court's indulgence.

22 BY MS. SHIPLEY:

23 Q And do you know who was responsible for the shooting
24 and killing of Demuria Johnson?

25 A No, ma'am.

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1 Q No further questions.

2 A Yes, ma'am.

3 Q Please answer any --

4 THE COURT: Yes.

5 CHARLIE BATES - CROSS-EXAMINATION

6 BY MR. SWERLING:

7 Q Mr. Bates, how you doing. I'm Jack Swerling.

8 A How you doing, Mr. Swerling.

9 Q A few follow up questions. How long had you been at
10 the club when this started?

11 A Probably about a good 20 minutes, if that.

12 Q Drinking, everybody was drinking, having a good time,
13 partying?

14 A Yes, sir.

15 Q Okay. Now, you and Lisa dated each other at one time;
16 is that right?

17 A Yes, sir.

18 Q You all were not dating at that time?

19 A Yes, sir.

20 Q Is that correct?

21 A No. We were dating at that time.

22 Q You were dating at that time?

23 A Off and on. Like we wasn't in no relationship, but we
24 was messing around.

25 Q Well, I want to ask you this, I guess I'm a little bit

1 confused; when you -- you were talking to her, right?

2 A Yes, sir.

3 Q Were you hugging her, were you dancing with her?

4 A We was just dancing; yes, sir.

5 Q You were not hugging her?

6 A No, sir.

7 Q Didn't she kind of indicate to you that she really did
8 not want to dance or be with you that evening?

9 A No, sir.

10 Q And you're sure about that?

11 A Yes, sir.

12 Q So she was a willing participant in your dancing and
13 talking?

14 A I was supposed to have came to her house before I came
15 to the club. Yes, sir.

16 Q Now, you said you got approached by two people?

17 A Yes, sir.

18 Q All right. And you described them, the statement you
19 gave the police, you actually have no independent
20 recollection of that at all?

21 A No, sir.

22 Q All right. Now, you have no idea how -- what kind of a
23 description you gave to the officer?

24 A I don't remember what I gave him, but it's been so long
25 ago, it's still kind of blurry to me.

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1 Q So it is blurry to you, what happened that night?

2 A Yes, sir. To a certain extent.

3 Q You described two people coming up to you?

4 A Yes, sir.

5 Q And what did they say to you when they came up to you?

6 A They was just approaching me.

7 Q Okay, so they never said anything?

8 A No, sir.

9 Q Nobody ever did anything to you?

10 A No, sir.

11 Q So did you push Lisa out of the way?

12 A No, sir. I just moved to the side. I stepped in front
13 of her.. I stepped in front of her. Yes, sir.

14 Q And tell me -- it doesn't make sense to me. They
15 didn't say anything to you, they hadn't said anything to
16 her, but yet you stepped in front of her when they were
17 walking towards you.

18 A Yes, sir.

19 Q There were a lot of people in the club.

20 A Yes, sir. I guess -- I seen the way they was looking
21 at me while I was dancing with her. They was coming towards
22 us while I was on the dance floor with her.

23 Q Did you know them?

24 A No, sir. I never seen them in my life.

25 Q Was there any kind of conversation with them?

1 A Not from me, no, sir.

2 Q Was there any kind of conversation between them and
3 Lisa?

4 A Not at that time, no, sir.

5 Q Did you and they get into some sort of argument?

6 A When we did get into the argument, like I say, my uncle
7 shoved me to the side and they got into a little dispute.
8 Before I could even get into it with the fellow, I guess my
9 uncle had been watching me from a little distance, so they
10 shoved me to the side and they got into it with the fellows?

11 Q Okay.

12 A Yes, sir.

13 Q Did you ever actually get into a verbal argument with
14 these individuals?

15 A No, sir. I was trying -- once my people pushed me to
16 the side then we were just trying to figure out what was
17 going on then and there.

18 Q Well, could you enlighten me and the jury as to what
19 was the discussion about if there had not been anything
20 prior?

21 A Tell you the truth, I don't know. I guess they asked
22 what was going on. We was trying to figure out what was
23 going on. When the two gentlemen approached me, I seen -- I
24 was just mingling with a female. I don't know what it was
25 about. So when my people seen they was approaching me while

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1 I was on the floor with her, they seen all that from a
2 distance. I don't know where they was. Yes, sir.

3 Q So you have no idea why they were coming towards you --

4 A No, sir.

5 Q -- or if they were coming towards you?

6 A If that. Yes, sir.

7 Q You have no idea whether they were coming towards you
8 or not; is that right?

9 A I guess so. Yes, sir.

10 Q And someone -- you said your uncle pushed you out of
11 the way?

12 A Yes, sir.

13 Q Before you actually found out what it was -- you didn't
14 do anything?

15 A Yes, sir. When me and the gentlemen got ready to
16 exchange words and I said, like I said, I moved Lisa and I
17 was in front of her when they was approaching. When they
18 got close enough to me, I was right there. So we in each
19 other's face and we getting ready to exchange words. I
20 really don't even know what we was talking about. I just
21 know my people moved me to the side and they got into it
22 with them. Once my uncle pushed me to the side, my momma
23 grabbed me and say, Charlie come here. My momma grabbed me
24 and she said, no, baby, it ain't -- not all that. You know
25 what I'm saying. So while I'm talking to my momma I

1 couldn't really see what was going on with them because I'm
2 trying to talk to my momma, plus make out what was going on
3 and make sure my momma was okay, too. Yes, sir.

4 Q I guess what I'm trying to find out, there was no
5 altercation between you and these guys. There were no
6 words?

7 A I couldn't make no observation. They had moved me to
8 the side. They moved me, and it was between my uncle and
9 then, then. And they started. They really got off the
10 chain with my uncle and them started, you know what I'm
11 saying. Exchanging words. Seems like it got really worse
12 then.

13 Q When did you throw the glass with the drink in their
14 face?

15 A I poured a drink, I didn't throw a drink. I didn't
16 throw one. I think after I had done got hit I threw my
17 drink, yes, sir.

18 Q So after you got hit you threw the drink?

19 A Yes, sir.

20 Q Well, how did you get hit if you're not in the --

21 A And that's the -- I don't know. I'm standing there
22 next to my momma. I don't know. I don't know.

23 Q Do you know who hit you?

24 A No, sir.

25 Q All right. Didn't have to be one of those two guys?

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1 A I don't know.

2 Q Didn't have to be one of those two guys, did it?

3 A I don't know. Yes, sir.

4 Q Were you intoxicated?

5 A Yes, sir. We was drinking. Yes, sir.

6 Q Well, my question was were you intoxicated?

7 A Yes, sir.

8 Q So you get pushed out of the way but yet you're over
9 with your mom, and you have not thrown a drink, but somebody
10 just punches you. You have no idea who?

11 A I don't know who it was. Yes, sir.

12 Q And then you threw your drink at the guy after that?

13 A No. I threw my drink. I can't say when. I ain't even
14 going to say I threw it. I think I poured it. I don't
15 think I threw my drink.

16 Q So you didn't throw your drink at anybody?

17 A No, sir. No, sir.

18 Q And so you got hit, where?

19 A I don't even know if I got hit. I could have got cut
20 or anything. I don't even remember.

21 Q You don't remember if you got hit?

22 A Or cut. Yes, sir.

23 Q You don't even know if you got hit?

24 A Yes, sir. I got hit, because you can tell I had got
25 hit.

1 Q You don't remember?

2 A I don't remember what -- how I got hit. Yes, sir.

3 Q You must have been three sheets to the wind?

4 A It wasn't there. It came from somewhere. I don't
5 know.

6 Q Okay. Well, let me ask you this, then, you don't
7 remember getting hit, you don't know who hit you. Did you
8 throw any punches?

9 A Not that I can recall?

10 Q Who else got hit besides you?

11 A My momma. My momma.

12 Q Was that after you got hit?

13 A I think so.

14 Q Did you continue to engage in a fight with these other
15 people?

16 A No. After I seen I was bleeding, and I didn't know
17 where it was coming from, like I said, could have been a
18 main artery. I didn't know. I started making my way
19 outside the club.

20 Q Okay, now, your mom and your aunt were with you, right?

21 A No. I ain't seen them --

22 Q I'm talking about when you got hit?

23 A My momma was by me, but after I got hit I didn't see
24 her no more.

25 Q You didn't see her any more. Did you see her get hit?

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1 A No, sir.

2 Q So you do not remember -- did not see or don't remember
3 her getting hit?

4 A I remember her getting hit, but I didn't see her get
5 hit.

6 Q You got -- you remember her getting hit because of what
7 you saw afterwards or did you see it?

8 A Because I seen her coming out holding her face.

9 Q That's what I'm saying, that you saw it afterwards?

10 A Yes, sir.

11 Q Is that right? All right. How long after this
12 altercation took place did y'all step outside or get
13 outside?

14 A We was going outside while it was going on.

15 Q Now, the guys that you described, one of them had
16 dreads, right?

17 A Uh, I ain't said nothing about no hair.

18 Q Huh?

19 A I don't remember saying anything about no hair.

20 Q Well, I didn't say you did. Look at No. 4. Does that
21 look like the guy that you got in the altercation with?

22 A He was one of the dudes.

23 Q He was?

24 A Yes, sir.

25 Q Okay. Does he have dreads?

1 A Yes, sir.

2 Q Do you know his name?

3 A No, sir.

4 Q Has anybody shown you this before?

5 A Yes, sir.

6 Q Okay. So you did know one of the persons. You
7 identified one of the people from that photograph?

8 A That wasn't one of the two gentlemen that approached
9 me, now.

10 Q That was not one of them?

11 A No, sir. He was one of the men that ran up after when
12 it started getting out of hand. He was one of the ones that
13 ran up, I guess, taking up for the gentleman that approached
14 me. Yes, sir.

15 Q Okay. So was this the guy that hit you?

16 A I don't know. I know he the one hit my mother.

17 Q If some people said that's the one that hit you would
18 you deny that?

19 A I couldn't say he did, I couldn't say he didn't.

20 Q No. I'm saying your mother and your aunt said that
21 person number four is the person that hit you, would you
22 deny that?

23 A No, sir, because I don't know.

24 Q If your mother and your aunt said that was the person
25 that came up to you when you were dancing with Lisa or when

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1 you were with Lisa, would you deny that?

2 A Yes, sir.

3 Q You would?

4 A Yes, sir. I remember him. And I would remember if
5 that's the one that approached me.

6 Q Well, I didn't ask you if you remembered him. I asked
7 you if your mother and Ms. Boston testified that number four
8 was the person that came up to you and interfered with you
9 and Lisa, and was the one that you threw a drink at and then
10 punched you, would you deny that?

11 A Yes, sir.

12 Q All right. So you get outside; correct?

13 A Yes, sir.

14 Q Let me see if I understand something. Where were you
15 on this chart here?

16 A When I first went outside?

17 Q State's Exhibit No. 7. Yeah.

18 A When we first go outside, we make our way to the front
19 of the club. We leave out the club making our way to the
20 front of the club.

21 Q And the car was where?

22 A Our vehicles was in the first slot right here.

23 Q Were you altogether?

24 A Yes, sir.

25 Q Okay. Now, you described to Investigator McRae, two

1 series of shots; did you not?

2 A No, sir.

3 Q Let me ask you to look at your statement here. See if
4 down at the bottom there, didn't you say that when you left
5 the club the shooting started and then you got down and the
6 shooting started again?

7 A And the shots kept coming. So I don't know --

8 Q See where it started -- where it began?

9 A The shots kept coming. I can't read this.

10 Q Is this your handwriting?

11 A No, sir.

12 Q Okay. Did you say, my mom was -- you signed this
13 statement didn't you?

14 A Yes, sir.

15 Q My mom was holding me back, then all left out of the
16 club and the shooting started. We ducked down and ran to
17 the cars. When we got to the cars the shooting began again.

18 MS. SHIPLEY: Objection, Your Honor, leading. Like
19 you asked me not to.

20 MR. SWERLING: No. I can though, prior and
21 consistent statement.

22 THE COURT: Correct.

23 Go ahead.

24 BY MR. SWERLING:

25 Q Did you say that?

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1 A I don't remember saying that because the shooting.
2 didn't never stop. From the time I was leaving outside the
3 club, making it from the outside the club to the car, the
4 shooting didn't stop.

5 Q Is this your statement?

6 A Uh --

7 Q Did you signed your statement?

8 A I signed it. Yeah.

9 Q Did I read it correctly?

10 A Yes, sir, you read it correctly.

11 Q Said, the shooting began again and my uncle's friend
12 got shot as we were getting in the car. Do you agree that's
13 what the statement says; is that correct?

14 A Yes, sir.

15 Q That was two years ago since it happened; correct?

16 A Yes, sir.

17 Q Now, you told the solicitor you remembered at least ten
18 shots; is that correct?

19 A Yes, sir.

20 Q And there was more than one gun; correct?

21 A I don't remember more than one gun.

22 Q Okay. Could you hear different sounds coming?

23 A No, sir. Every time one shot left another one was
24 coming right behind it.

25 Q So you tell me -- I just want to make sure so everybody

1 gets a fair assessment here. Are you saying the statement
2 is incorrect that the shooting stopped and started again?

3 A I don't remember it stopping and start again. I just
4 remember it keep coming. The shots keep coming.

5 Q So are you saying that the statement is wrong?

6 A It might be. Yes, sir.

7 Q Okay. Can you say that you only heard one gun shoot?

8 A I can't say that.

9 Q Or that there was more than one gun?

10 A It could be possible. Yes, sir.

11 Q All right. Do you have any idea where the shots were
12 coming from?

13 A No, sir.

14 Q Do you remember speaking to my investigator, Mr.
15 McDougall back in March of 2009?

16 A I don't remember. I probably did. Yes, sir.

17 Q Do you remember telling him that the shots sounded like
18 they were coming from behind the club?

19 A Yes, sir.

20 Q Not from Hardscrabble Road, but from behind the club;
21 correct?

22 A No, sir. I mean, I wasn't sure. I just told him I
23 wasn't sure it was coming from somewhere?

24 Q But you did tell him --

25 A No, sir. I said it could have been coming from the

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1 back of the club. Yes, sir.

2 Q Could have been coming from the back of the club?

3 A Yes, sir.

4 Q That's what the sound sounded like?

5 A Yes, sir.

6 Q When Mr. McRae was -- I think it was Mr. McRae that
7 took your statement or Mr. Barnes took your statement? When
8 Mr. Barnes took your statement he asked you, given the
9 environment you were in would you say -- would you say --
10 who would you say was doing the shooting. Answer: The same
11 dudes in the club where we were having the altercation with.
12 Do you remember telling him that?

13 A I guess so. Who else would do it. Yes, sir.

14 Q That's what I'm asking you?

15 A Yes, sir.

16 Q Is that who you're saying did it?

17 A I don't --

18 Q The court reporter's got to get it down. Maybe I can
19 get an answer?

20 A Oh, I was just shaking my head because I don't
21 understand what's on the paper. I'm not saying that that's
22 who did it because I don't know that that was them, but I'm
23 saying it could have been them.

24 Q Well, this is Mr. Barnes, he asked you the question.

25 Who would you say was doing the shooting? Answer: The same

1 dudes in the club who we were having the altercation with.

2 A I guess so. The same people we was having the
3 altercation with. Yes, sir.

4 Q You're not changing that now from your statement two
5 years ago, are you?

6 A No, sir.

7 MR. SWERLING: If the Court would indulge me one
8 moment.

9 THE COURT: Yes.

10 BY MR. SWERLING:

11 Q In all fairness, you don't know who did the shooting,
12 do you?

13 A No, sir.

14 Q And you told them that night as well?

15 A Yes, sir.

16 Q But you were saying that it was from the environment
17 that it was the two guys that were in the altercation?

18 A I didn't say it was the two guys. I don't know who it
19 was.

20 Q I'm trying to be fair with you. You don't know who did
21 the shooting?

22 A No, sir.

23 Q But you told the police that it was the same dudes in
24 the club we were having the altercation with?

25 A It could have been the same ones. That's what I'm

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1 saying.

2 Q You don't know who they were?

3 A Yes, sir.

4 Q Correct?

5 A Yes, sir.

6 MR. SWERLING: Thank you. That's all I have.

7 MS. JOHNS: Thank Your Honor. Please the Court.

8 CHARLIE BATES - CROSS-EXAMINATION

9 BY MS. JOHNS:

10 Q Mr. Bates, I'm Theresa Johns.

11 A How you doing, Ms. Johns.

12 Q You said that you guys -- you, particularly, you don't
13 frequent this club?

14 A No, ma'am.

15 Q It's not on your side of town; right?

16 A No, ma'am.

17 Q And the only reason you were over there is because
18 you'd been there before with your lady friend, Lisa; right?

19 A Yes, ma'am.

20 Q And you've been to your lady friend, Lisa's, house
21 before in Washington Heights; right?

22 A Yes, ma'am.

23 Q And you'd been there for a cook-out; right?

24 A No, ma'am.

25 Q You haven't. Okay.

1 A For a cook-out, no, ma'am.

2 Q All right. Then you haven't been there for a cook-out?

3 A No, ma'am.

4 Q And you were dating her off and on for three years?

5 A Yes, ma'am.

6 Q All right. Now, you told Ms. Shipley that you didn't
7 know that Lisa was coming; is that right?

8 A At first I didn't, but I had got a warning at the club
9 that she was coming. Yes, ma'am.

10 Q You got a warning in the club?

11 A Yes, ma'am.

12 Q Who warned you?

13 A My auntie. They had done talked on the phone.

14 Q So your aunt warned you that Lisa was coming; right?

15 A Yes, ma'am.

16 Q Would you agree that if somebody warned you of
17 something that that means that danger or trouble might be
18 amiss?

19 A No, ma'am, because she know how we -- if we ain't
20 together I might be mingling with another female. Just --
21 you got watch yourself when you be in an environment like
22 that. Yes, ma'am.

23 Q So when you went to the club you knew there was a
24 possibility that Lisa could have been there; is that right?

25 A Yes, ma'am.

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1 Q And y'all were not in a good situation in your
2 relationship; isn't that right?

3 A We was in a good thing. Yes, ma'am.

4 Q You were seeing somebody else; right?

5 A Yes, ma'am.

6 Q And she was seeing somebody else; right?

7 A Oh, I guess so. I couldn't say. Yes, ma'am.

8 Q That's kind of a dangers that you take when you have --
9 when you're dating somebody and you're not -- you're not
10 excluding everybody else; right?

11 A Yes, ma'am.

12 Q So you're uncle, Travis and Hank and Lamont were in the
13 club and they pushed you aside after you threw the drink;
14 right?

15 A No, ma'am.

16 Q No. Okay, so somebody pushed you aside?

17 A My uncle, Lamont and Travis did. Yes, ma'am. I mean,
18 my uncle, Hank and Lamont did.

19 Q Okay. Your uncle, Hank and Lamont pushed you aside,
20 and then you got hit in the face?

21 A I got hit in the face while me and my momma had me.
22 When the altercation first started, no, I did not get hit in
23 the face. That's when everybody was trying to figure out
24 what was going on. What -- the more and more people was
25 trying to figure out what was going on, the more and more it

1 got out of hand.

2 Q And you said that when you got out the door the
3 shooting began again?

4 A The shooting -- when I got out the door the shooting
5 began again?

6 Q Well, on your statement, you said that the shooting
7 began again. Mr. Swerling just went over this with you?

8 A Well --

9 Q Ducked down. The shooting began again.

10 A (No response.)

11 Q All right. Let me back up.

12 A Yeah, please.

13 Q You're inside the club, there is an altercation going
14 on. It's between you and Lisa and other people get
15 involved; fair enough?

16 A I guess. Yes, ma'am.

17 Q You get hit in the face at some point --

18 A Uh-huh. (Affirmative response.)

19 Q -- somehow. Don't know if it was a fist or knife or
20 whatever --

21 A Uh-huh. (Affirmative response.)

22 Q -- your mom helps you or tells you to leave or let's
23 go; right?

24 A No. Can we back up a little bit first. See, I guess,
25 we're running over each other. Before I got hit, that's

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1 when me and my momma was together. After I got hit I didn't
2 see my mother no more.

3 Q Okay.

4 A Yes, ma'am.

5 Q So after you got hit you didn't see your mother again?

6 A Yes, ma'am.

7 Q So at some point you're leaving the club; is that
8 correct?

9 A Yes, ma'am.

10 Q You're walking out the door?

11 A Yes, ma'am.

12 Q All right. Who follows behind you?

13 A Well, I'm -- nobody was behind me while I was walking
14 out the club. While I'm looking at the door of the club I
15 see my momma and my auntie. My auntie and my momma come out
16 the door.

17 Q So you look behind you, right, and you see your auntie
18 and --

19 A Helping my momma.

20 Q -- your mother --

21 A Yes, ma'am.

22 Q -- coming out of the door, and you're in front of them?

23 A Yes, ma'am.

24 Q And you see Hank coming from the car?

25 A Yes, ma'am.

1 Q Towards the club?

2 A Yes, ma'am.

3 Q He's concerned about you?

4 A Yes, ma'am.

5 Q What's wrong, what's happening?

6 A He came right to me. Yes, ma'am.

7 Q Now, did you see any altercations outside the club --

8 A No, ma'am.

9 Q -- whether it involved you or not?

10 A No, ma'am.

11 Q Okay. And could you describe that parking lot, the car
12 wash parking lot that particular night. How many cars --
13 let me refer to State's Exhibit No. 6. Okay, you see that?

14 A Uh-huh. (Affirmative response.)

15 Q Okay. How many cars are parked in this parking lot?

16 A It wasn't that many on this particular night. I don't
17 mean it was a packed night. This night I'd say they'd
18 probably be like three, maybe three cars out there.

19 Q Okay. Well, show us where the cars were parked, then?

20 A I think it was a car -- if I recall right it was a car
21 -- because we was inside there. There was a car parked
22 straight, right there; you know what I'm saying?

23 Q Uh-huh. (Affirmative response.)

24 A I'm not sure, but it was a couple of cars out there
25 other than our vehicles. It was a long -- I know it was a

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1 car right there.

2 Q Okay.

3 A Yes, ma'am.

4 Q What'd that car look like?

5 A I'm not sure, but I do know it was one out there.

6 Q And you guys were parked inside the bay; is that right?

7 A Yes, ma'am. Last one.

8 Q Okay, and you were kind of double parked, one behind
9 the other?

10 A Yes, ma'am.

11 Q And the white Envoy was in front?

12 A Yes, ma'am.

13 Q And the -- the car that he rented, the Chevrolet, was
14 behind?

15 A Yes, ma'am. Behind the Envoy. Yes, ma'am.

16 Q Okay. Tell me about the security when you walked into
17 the club that night; what did they do to you?

18 A They check you down.

19 Q What did they do?

20 A They got a little metal detector they go up and down
21 your clothes with.

22 Q Okay. Did you have to show your ID?

23 A Yes, ma'am.

24 Q Okay.

25 MS. JOHNS: Beg the Court's indulgence.

1 I don't have anything further. Thank you, Your Honor.

2 THE COURT: Any redirect?

3 MS. SHIPLEY: Yes, ma'am.

4 CHARLIE BATES - REDIRECT EXAMINATION

5 BY MS. SHIPLEY:

6 Q Mr. Bates --

7 A Yes, ma'am?

8 Q -- I'm going to ask you to read, in order to give the
9 whole context of your statement --

10 A Yes, ma'am.

11 Q -- you can now read it out loud. Starting from here,
12 and continue.

13 MR. SWERLING: Tell me where he's going to start?

14 MS. SHIPLEY: Starting second page --

15 A Where my momma was holding?

16 BY MS. SHIPLEY:

17 Q Uh-huh. (Affirmative response.)

18 A My momma was holding me -- I don't know what this
19 saying. My momma was holding me back, then we all left out
20 of the club and -- I don't know what that's saying. We
21 started -- something -- shooting restarted. I don't recall
22 saying that.

23 Q Okay. So you told investigators on June 30th that the
24 shooting started, we ducked down, ran to the cars, got to
25 the cars the shooting began again. My uncle's friend got

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1 shot and we -- when we were getting in the cars?

2 A Yes, ma'am. But I don't remember telling them that.

3 It restarted -- because it didn't stop when it was coming.

4 Q So why -- just explain to the jury what you remember.

5 A Yes, ma'am.

6 Q You're outside, you're looking for your mother.

7 Describe what happens next?

8 A Well, once we all make sure we was outside of the club,
9 while we was in front of the club, once we all made sure we
10 as all outside, done made it outside the club, we started
11 making our way back. While we making our way back to the
12 car it starts while we walking. So we running, trying to
13 get everybody not stampeding over each other trying to make
14 sure we okay, while we running trying to get in the car.

15 Q So by that point, are you -- when is it that you hear
16 Hank say, I've been hit?

17 A Once me and him -- because everybody else was outside
18 the cars on the ground laying almost up under the car. Me
19 and Hank was the only two inside the cars. Yes, ma'am.

20 Q And that is in the stall of the carwash?

21 A Yes, ma'am.

22 Q Now, when you were having this altercation with the two
23 men approaching you while you're with Lisa --

24 A Yes, ma'am.

25 Q -- how many people -- you indicated on cross-

1 examination that more and more people were getting involved;
2 is that correct?

3 A Yes, ma'am.

4 Q Tell the jury how many people you believe you saw that
5 night, that you did see that night getting involved?

6 A It was us against the whole club.

7 Q And how many people do you think were in the club that
8 night?

9 A Thirty, 40, maybe 50 people. It was us against a whole
10 lot of people that night.

11 Q And before you walked into that club that night, you
12 indicated on cross-examination by Ms. Johns or direct --
13 cross-examination by Ms. Johns that you were searched by
14 security?

15 A Yes, ma'am.

16 Q You did not have any guns on you?

17 A Oh, no, ma'am. No, ma'am.

18 Q Thank you, Mr. Wray (sic).

19 A Yes, ma'am.

20 MR. SWERLING: Your Honor, I'd just like to ask one
21 follow up?

22 THE COURT: Sure.

23 CHARLIE BATES - RECROSS EXAMINATION

24 BY MR. SWERLING:

25 Q Mr. Bates, I just want to clarify something, because

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1 it's kind of a broad statement.

2 A Yes, sir.

3 Q When you say it was you against the whole club, you
4 have no idea how many people in the club were actually
5 engaged in the fight did you?

6 A I just seen how many people there approached us. Yes,
7 sir.

8 Q But you can't make a statement that everybody in the
9 club started fighting?

10 A No, sir.

11 Q That's not what you're saying?

12 A No, sir.

13 Q All right. Thank you.

14 A It was a lot of people, though. Yes, sir.

15 MS. JOHNS: Your Honor, just briefly.

16 CHARLIE BATES - RECROSS EXAMINATION

17 BY MS. JOHNS:

18 Q You said there were about 30 or 40 people in the club,
19 right? When I was asking you questions a minute ago you
20 said there were only three cars in the parking lot at the
21 car wash --

22 A In there where we was. There's a lot of places around
23 the club where you can park. The parking lot where we was
24 there wasn't nothing but like our cars, who was parked with
25 us, the car in front of us, whoever was driving that, and

1 there was probably one more, two more cars out there.

2 Q Okay.

3 A Yes, ma'am. There's plenty of other places around
4 there to park. Yes, ma'am.

5 Q Okay. I just wanted to get that straight?

6 A Yes, ma'am.

7 Q The carwash parking lot is what you're saying, right?

8 A Yes, ma'am. It wasn't nothing but us. Yes, ma'am.

9 Q About three cars?

10 A Yes, ma'am.

11 THE COURT: Anything further?

12 MS. JOHNS: No, ma'am.

13 THE COURT: Okay.

14 Ladies and gentlemen, we're going to go -- sir, you can
15 step down, please.

16 MR. BATES: Yes, ma'am. Thank you.

17 THE COURT: We're going to go ahead and recess for
18 lunch. I'm going to ask that you report back to your jury
19 room at 3:00 p.m., and then I'll remind you not to discuss
20 this case in any shape, form, or fashion.

21 (Jury out at 1:41 p.m.)

22 THE COURT: Any issues that need to be taken up by
23 the Court?

24 MR. SWERLING: No, ma'am.

25 MS. SHIPLEY: I think we do have one matter that we