

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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1 need to address now as the next group of witnesses.

2 The over ten year old convictions of Ricky Jacobs.
3 Your Honor, I received a letter from Mr. Swerling on May 18,
4 2009, asking -- putting me on notice that defense intended
5 to go into prior convictions of Ricky Jacobs over 10 years
6 old, that being possession of cocaine offense, November 30,
7 1995, and two fraudulent checks from July 23, 1996. Your
8 Honor, it's the state's position that those convictions
9 exceed the 10 year window as required by 609(b), and I do
10 have some case law that I could pass up, that I'd like to
11 argue to the Court at the appropriate time.

12 THE COURT: You can do so, now.

13 MS. SHIPLEY: Thank you, Your Honor.

14 The first case I relied upon -- beg the Court's
15 indulgence. State verses Johnson, cited at 609-S.E. 2d 520.
16 The question or issue in the case was did the trial court
17 apply the proper legal standard in calculating the 10 year
18 limit under Rule 609(b).

19 Your Honor, I don't believe there's any question that
20 these convictions -- clearly, the year is 2009. Clearly
21 exceeding the 10 year window. However, further discussion
22 was discussed in the case about the balancing test required
23 by the court to be applied in deciding whether to allow
24 those types of convictions that exceed a 10 year window into
25 evidence. It's cites the Colf Balancing Test. And it

1 requires basically to consider -- the trial judge should
2 consider the following factors: Number one, the impeachment
3 value of the prior crimes. Number two, the point in time of
4 the conviction and the witnesses subsequent history. Number
5 three, the similarity of past crime and the charged crime --
6 Four, the witnesses testimony. Five, the centrality of the
7 credibility issue. After the Court conducts the balancing
8 test, the judge must make a determination and articulate on
9 the record the specific reason for the ruling.

10 Your Honor, it is the state's position that the drug
11 offense that Mr. Swerling seeks to use from November 30,
12 1995, violates State verses Bryant. Drug possession is not
13 probative of truthfulness. There is a test that this court
14 or the Supreme Court applied to State v. Bryant, which is
15 cited at 633 S.E. 2d 152, and, again, it's the same test
16 that I just recited earlier about the impeachment value of
17 the prior crime, the point in time of the conviction and the
18 witnesses subsequent history. I can tell you, Your Honor,
19 there are no drug convictions since that day, November 30,
20 1995 on Mr. Jacobs rap sheet. The only offense it would be
21 permissible to go into within the 10 year window is a
22 fraudulent check conviction. That's all that's on his
23 record in the last 10 years.

24 THE COURT: Okay.

25 MS. SHIPLEY: And you have -- that said the

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1 violation of narcotic laws are generally not probative and
2 if they don't involve dishonesty their probative value
3 should be weighed against prejudicial effect prior to their
4 admission under Rule 609(a)1. Basically, Your Honor, the
5 rule is for convictions over 10 years old, the conviction is
6 presumed inadmissible. So it is the state's position that
7 because this is a drug possession it is not probative for
8 truthfulness.

9 As to the two counts of fraudulent checks from 1996,
10 Your Honor, as I indicated, Mr. Jacobs already has a
11 conviction that defense can use to attack his credibility.
12 It's the fraudulent check from February 8, 2000, and so
13 there is no probative value for them to go into a crime that
14 occurred more than 10 years ago when they have at their
15 disposal a conviction from 2000, clearly within the 10 year
16 window that they can rely on to impeach him or challenge his
17 credibility. Also, fraudulent checks have been considered
18 crimes of dishonesty by the courts. That would be probative
19 for him to go into the 2000 conviction. That there is no
20 need -- that it would be more prejudicial than probative for
21 him to go into convictions that exceed the 10 year window.
22 And it would be prejudicial to the witness.

23 Thank you, Your Honor.

24 THE COURT: Okay. You said drugs in '95,
25 fraudulent checks occurred when?

1 MS. SHIPLEY: '96, July 23, 1996.

2 THE COURT: And what occurred in 2000?

3 MS. SHIPLEY: The 2000 one was a fraudulent check,
4 which is the only conviction that can be used against Mr.
5 Jacobs.

6 THE COURT: Okay.

7 MS. SHIPLEY: Within the last 10 years.

8 THE COURT: Okay. All right.

9 MR. SWERLING: Judge, the standard Ms. Shipley
10 announced -- of course, you have to look at the subsequent
11 history and, of course, the fact is, Mr. Jacobs, four years
12 after the first offense in 1996, had a subsequent --
13 actually, two 1996, had a fraudulent check -- fraudulent
14 check charges and they are crimes of moral turpitude. They
15 go to dishonesty under the new standard. I would submit
16 that he had another one in 2000 clearly makes the ones from
17 1996 more probative. The fact that someone has one
18 conviction as opposed to two or three, certainly we should
19 be able to explore the fact that they had two or three,
20 which makes their testimony less credible than one who had
21 only one conviction, and he did not -- he was not conviction
22 free. He actually had the same charge. With respect to the
23 drug charge he -- the court date was November 30, 1995. He
24 was placed on probation for two years. Which means that his
25 probation did not expire until November 1997, so he was on

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1 probation at the time of this offense. That makes it
2 admissible under Rule 609.

3 MS. SHIPLEY: No, Your Honor, it's actually the day
4 of testimony, the time of conviction to the time of
5 testimony and we are now in the year 2009.

6 MR. SWERLING: Well, that means the state could
7 delay a trial -- that rule doesn't make a whole lot of
8 sense, because the state could delay a trial past the 10
9 year period of a conviction and then we couldn't use it.

10 I think that's how -- Your Honor, has to weigh whether
11 the probative value outweighs the prejudicial effect and
12 clearly it does. If you're on the probation at the time of
13 the crime in November of 2007, then it's probative of your
14 -- your testimony, the credibility of your testimony.

15 THE COURT: Okay. What you're saying is that when
16 he was on probation -- he was on probation at the time of
17 the '96 offenses?

18 MR. SWERLING: Correct.

19 THE COURT: Okay. Okay.

20 MR. SWERLING: The 90 -- he was convicted -- I'm
21 sorry.

22 THE COURT: Convicted in '95 --

23 MR. SWERLING: -- '95. He was on probation in
24 November of 1997. Ten years from November of 1997 would be
25 the period that I would say is the 10 year period that is

1 applicable in the case, which includes the crime that was --
2 that occurred in 2007. I made a mistake, and I apologize if
3 I did. I'm saying it's 10 years -- that date is inclusive
4 of the 10 years when you use the conviction -- probation,
5 the fact that he was on probation for two years. It starts
6 from that period.

7 THE COURT: Okay. But then, also, he had two
8 fraudulent checks in '96 that was while on probation?

9 MR. SWERLING: That would have been on probation as
10 well. And, in fact, he has fraudulent checks, as well,
11 which makes it even more probative. Matter of fact, Your
12 Honor, in the federal system you get hit with even more
13 points if you're on probation when the crime takes place --
14 you get more points if you're on probation when you commit
15 another crime, as well as, the crime that you commit is
16 within two years of your being off probation. So it all has
17 a very probative value even in the federal system, as it is
18 used against you in points.

19 THE COURT: Okay. Anything further from the State?

20 MS. SHIPLEY: Your Honor, the rule for 609 is the
21 date of the conviction verses the date of the testimony.
22 Not the date they become a witness. We are in the year
23 2009. This conviction was well over 10 years ago. Even if
24 you were to conclude the '97 sentence that ended in 1997,
25 we're still in 2009, so that's over the 10 year limit, and

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1 it's -- the burden is on the moving party to overcome the
2 presumption that these convictions over 10 years old are
3 inadmissible, because they are too remote. They are
4 presumed inadmissible according to State verses Bryant, at
5 633 S.E. 2d 152. It says that the moving party basically
6 creates a presumption that those convictions are
7 inadmissible placing the burden on the moving party to
8 overcome this presumption and then it states what the test
9 is; the impeachment value of the prior time. It goes on to
10 define the violations of narcotic laws are generally not
11 probative of truthfulness. So I will argue that the drug
12 conviction is not probative for impeachment value for the
13 defense. The point in time of the conviction and the
14 witnesses subsequent history. He has had no convictions for
15 drugs since that conviction date. The similarity of the
16 past crime, the charged crime. Again, I just refer to that
17 no drug conviction since that '95 conviction. The important
18 of the witnesses testimony and the centrality of the
19 credibility issue. Again, drug convictions are not
20 probative of truthfulness. So the state would argue that
21 the drug conviction should not be admitted under 609(b).

22 As to the fraudulent check, Your Honor, one of the
23 cases that I pulled indicated that if there's charges
24 already -- for instance, he's got a 2005 fraudulent check
25 conviction. That is a crime of dishonesty. They are not

1 able to attack his credibility or believability with that
2 conviction. So they are getting the benefit of that
3 conviction to challenge his credibility.

4 THE COURT: Did you wish to be heard, Ms. Johns?

5 MS. JOHNS: Yes, Your Honor. First, I know that
6 I'll have to say, on the record, that I join in with Mr.
7 Swerling's objection, but I'd like to add, Your Honor, that
8 based on the standard that Ms. Shipley has pointed out to
9 the Court you've got to look at the impeachment value of
10 this prior crime of possession of cocaine, and the reason
11 that it's important in this case, Your Honor, is that we're
12 dealing with a night club that was open at 4:00 o'clock in
13 the morning. In an environment like that, Your Honor, there
14 is alcohol and there is a propensity of use of drugs during
15 this time of the day. I'm not saying that there's a
16 prejudice that all clubs are open at that time of night have
17 that propensity, but considering the environment in looking
18 at the alcohol beverage license and the time of day, I think
19 that you have to consider the impeachment value of this
20 particular crime.

21 Also, Your Honor, it's not just that there's a
22 similarity of past crime, because that doesn't apply to Mr.
23 Jacobs, but what happens here is that we're looking at the
24 importance of Mr. Jacobs testimony specifically, and his
25 eye-witness to an alleged shooting from a vehicle. When you

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1 consider the importance of the witness's testimony and
2 you're considering whether or not -- this is not
3 automatically presumed exempt.

4 I think we have to look again at the totality of the
5 circumstances in which this environment may produce some
6 sort of valuable impeachment testimony. It does bring a
7 credibility issue, Your Honor, regardless of whether he has
8 been convicted or has been charged with a narcotic offense.
9 I don't think that that's probative that there -- you know,
10 that there's not a narcotic environment, it just shows that
11 he's not been convicted.

12 So if you're looking at the standard, I think the Court
13 needs to understand the value of the impeachment of this
14 particular crime, considering the totality of the
15 circumstances at the environment at the time of this crime,
16 this murder that allegedly occurred. And the importance of
17 this witness, Your Honor, is probably more important and any
18 other witness in this particular case because he's the only
19 eye-witness. And I think that does go to show credibility,
20 and I would ask that this case -- that these prior crimes be
21 allowed in and the standard of burden of proof of -- that is
22 required by --

23 THE COURT: Anything further?

24 MS. SHIPLEY: Yes, ma'am. In dealing with what Ms.
25 Johns said about the environment of the night club and the

1 propensity for drug use, that issue is actually addressed in
2 State verses Bryant, which cites United States verses Smith.
3 A conviction of drug possession beyond the basic crime
4 itself is not probative of truthfulness.

5 Your Honor, the whole point about allowing these types
6 of crimes that are over 10 years old is to attack the
7 credibility, the truthfulness of a witness. And this case
8 clearly states, citing State verses Cheeseborough, that the
9 foundation of narcotics laws are generally not probative of
10 truthfulness. So if anything, Your Honor, the fraudulent
11 check charges from 1996 would be probative of truthfulness,
12 however, the drug conviction is not probative of
13 truthfulness, whatsoever.

14 MS. JOHNS: Your Honor, we're not offering it for
15 truthfulness. We're offering it as a possible reason to
16 bias in this particular case. I wouldn't offer it on behalf
17 of Defendant Watts as to Mr. Jacobs truthfulness. I'd be
18 offering it as a potential for bias.

19 MR. SWERLING: If it's -- Your Honor, if it's not
20 probative of truthfulness it would never be admitted. That
21 what 609 allows is impeachment. So, I mean, that argument
22 -- I frankly don't understand it, because it's got to be
23 going towards truthful if it's allowed at all under 609.

24 Now, Your Honor, just one case, State verses Colf, you
25 might want to take a look at it.

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1 THE COURT: The cite --

2 MR. SWERLING: 525 S.E. 2d 246. It's got a five
3 prong analysis.

4 THE COURT: Right.

5 MR. SWERLING: We submit it's admissible under
6 that. Clearly cocaine conviction is something we think from
7 1995, clearly is admissible on the issue of his truthfulness
8 when you also take into consideration the fraudulent check
9 charges.

10 THE COURT: All right. Anything further?

11 All right. I'll let you know when we come back.

12 (Court at recess for lunch break)

13 (Court in session after lunch break.)

14 THE COURT: All right. Are the parties ready for
15 the Court's ruling?

16 MS. SHIPLEY: Yes, ma'am.

17 THE COURT: Okay. As I read 609 under the second
18 portion of it deals with essentially crimes involving
19 dishonesty and false statement. I believe -- I don't think
20 the solicitor really disputed that, that the check charges
21 would fit there. So those I'm going to allow in.

22 When we go to the drugs, they don't fit under State v.
23 Bryant, as a crime of dishonesty in and of itself, so that
24 will kick me back to the analysis of probative verses
25 prejudicial under State v. Colf, since I indicate under

1 impeachment value possession of drugs alone are not related
2 to veracity so the impeachment value is low, just on that
3 element.

4 In terms of the time of the conviction and subsequent
5 history I do find that that is probative of veracity in
6 terms of truthfulness because we've got the '95 conviction
7 and then the check charges following thereafter while on a
8 period of probation, which you have the opportunity to not
9 commit more crimes and then more crimes are committed.
10 Under the third prong, similarity of offenses, these
11 offenses are not similar to each other. So it's not
12 prejudicial within itself. I think that prong is
13 indicating, for example, the person had a weapons charge and
14 then we're here on a weapons charge, then that charge would
15 be too close in terms of offenses. Importance of the
16 witnesses testimony. This is -- and I find, quite frankly,
17 this is where I find that the issues are more crucial,
18 because obviously when we dealt with the search warrant and
19 we had lots of issues raised by the defense about the
20 witnesses not being particularly indicated on the actual
21 search warrant itself, however, they are tied to the
22 affidavit by the officer, which gave rise to the information
23 that lead to the search. So in that regard I think it is
24 probative. Same thing with centrality of the credibility
25 issue. Credibility here is critical. We've got several

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1 witnesses and one witness or many are really going to give a
2 key to this issue.

3 Also, under importance of witnesses testimony, as I
4 read the case law, it indicates is putting that issue before
5 a jury going to be a deterrent to a particular witness
6 testifying, and because I understand this is a possession of
7 cocaine offense, right?

8 MS. SHIPLEY: Yes.

9 THE COURT: As opposed to trafficking or smuggling
10 that makes you some kind of lynchpin -- excuse me, kingpin
11 or something, I don't think that drug conviction in and of
12 itself is going to be a deterrent, therefore, based on my
13 analysis I'm going to allow it in.

14 MS. SHIPLEY: Thank Your Honor.

15 THE COURT: Okay.

16 Anything further?

17 MS. SHIPLEY: No.

18 THE COURT: Okay. I have one issue --

19 MS. MCDUFFIE: Before we bring the jury in can you
20 just say on the record that the next couple of witnesses?

21 THE COURT: Okay. That's fine.

22 MS. MCDUFFIE: Lisa Johnson, Your Honor. There a
23 2000 fraudulent check. That will be the extent of it.

24 Your Honor, in terms of Ms. Johnson, I'm showing an
25 October of 2000 fraudulent check.

1 MS. SHIPLEY: And then, Your Honor, as far as Brian
2 Johnson, I'm showing a 2005 malicious injury to personal
3 property over \$1,000 and ABHAN, as well. And then a 2008
4 distribution of crack and a 2008 possession of ecstasy.

5 It's a possession -- a distribution of crack cocaine
6 and possession of ecstasy from 2008. In addition to that he
7 has an '05 malicious injury to personal property over \$1,000
8 and conviction for assault and battery of a high and
9 aggravated nature, at the same time. And this is in
10 reference to Brian Johnson.

11 THE COURT: Okay.

12 MR. SWERLING: What about resisting arrest?

13 MS. SHIPLEY: I had to be more than one year, that
14 carries over one.

15 MR. SWERLING: I apologize Judge --

16 THE COURT: Go ahead.

17 MR. SWERLING: -- I just didn't see this one.

18 THE COURT: That's okay.

19 MR. SWERLING: You're saying malicious injury to
20 property from 2005; right?

21 MS. SHIPLEY: Correct. In --

22 MR. SWERLING: So in '05 --

23 MS. SHIPLEY: -- and an ABHAN and a malicious
24 injury over \$1,000. Those both carry more than a year. And
25 then the 2008 distribution of crack and possession of

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1 ecstasy. Both a particular schedule -- I asked what
2 schedule it was as to the ecstasy.

3 MR. SWERLING: Okay. That was Schedule I on
4 December 11, 2008?

5 MS. SHIPLEY: Yes, sir.

6 MR. SWERLING: I mean, I agree with that. The
7 existing arrest is it more than one year or a year?

8 MS. SHIPLEY: Zero to one.

9 THE COURT: Zero to one.

10 MR. SWERLING: He got probation. You don't get
11 that in magistrate's court.

12 MS. SHIPLEY: Beg the Court's indulgence.

13 MS. MCDUFFIE: Resisting arrest carries over 30
14 days is a general sessions --

15 MR. SWERLING: Yeah.

16 THE COURT: Okay.

17 MR. SWERLING: I'm just not sure what the penalty
18 is on that?

19 THE COURT: Right.

20 MS. MCDUFFIE: Maximum is one year.

21 MR. SWERLING: One year?

22 MS. SHIPLEY: He got one year suspended to six
23 months probation. So obviously the max is one year
24 suspended.

25 THE COURT: Okay.

1 MS. SHIPLEY: So that's magistrate.

2 MR. SWERLING: No, it's not magistrate.

3 MS. SHIPLEY: I mean, it's not -- does not carry
4 more than one year for purposes of 609.

5 MR. SWERLING: That two drug convictions? Right,
6 two drug convictions?

7 MS. SHIPLEY: Yes, sir. One -- the distribution of
8 crack is from September 25, 2008. And then the possession
9 of ecstasy is from November 11, 2008 -- December 11, 2008.

10 MS. MCDUFFIE: That's all from the state, Your
11 Honor.

12 THE COURT: Okay. All right.

13 So any disputes to the records that may come in?

14 MS. SHIPLEY: I think we're all in agreement.

15 THE COURT: Okay. Sounds great.

16 One matter. Generally at the beginning of the trial
17 I'll talk about note taking and I forgot to do that here.
18 There is one gentleman who is taking notes. And we can
19 handle it one of two ways; we can just not let anybody take
20 notes or offer to all jurors and then just do a caveat
21 instruction about from henceforth you have to rely on your
22 memory regardless of the notes, anyway. Otherwise, I will
23 have to take his pad from him. I didn't realize until we
24 got to the end of the extensiveness of the witnesses. I
25 thought most of these were chain witnesses, but when you all

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1 mentioned how many witnesses were there that night, I would
2 have been inclined to allow them to take notes, just because
3 of all of the --

4 MS. SHIPLEY: Your Honor, I think that's fair,
5 since one has already been taking notes, that all of them
6 get that opportunity. It is a long trial.

7 THE COURT: Well, and the other thing is we're
8 early enough in the trial that I don't think that -- they
9 couldn't remember what they've heard thus far.

10 Any objections?

11 MR. SWERLING: Judge, I have no objections as long
12 as you give them that admonition that it's their memory, not
13 the notes.

14 MS. JOHNS: I agree, Your Honor, with Mr. Swerling.

15 THE COURT: Bailiffs, I need for y'all to get the
16 note pads.

17 MS. SHIPLEY: For purposes of scheduling, Your
18 Honor, due to the late hour of the day, we're going to do
19 our best to get through a total of five more witnesses.

20 THE COURT: Okay.

21 MS. SHIPLEY: The last one being a deputy. So if
22 we could at least get that deputy done, we'd appreciate it
23 --

24 THE COURT: Sure.

25 MS. SHIPLEY: -- if we could work a little after

1 five?

2 THE COURT: Yeah, that's fine.

3 MS. SHIPLEY: Okay.

4 THE COURT: And they've been great on the cross-
5 examination, no duplicities, so, okay.

6 Anything we can be taking up while we're waiting;
7 anything else y'all want to take up. More records you want
8 to settle?

9 MS. MCDUFFIE: Your Honor, the deputy we were going
10 to call is Ryan Galinski. He has a dash-cam video of the
11 stop of the other -- the 2001 Isuzu Rodeo. We were only
12 going to show a portion of the video. The video in its
13 entirety is over two hours long.

14 THE COURT: Okay.

15 MS. MCDUFFIE: If the defense would want the entire
16 video played, we would just have him come in the morning and
17 not do it this afternoon.

18 THE COURT: Okay. But, do you have your video
19 edited and marked and all that?

20 MS. MCDUFFIE: We have the entire video. We have
21 not deleted anything for evidence in any way.

22 THE COURT: Oh.

23 MS. MCDUFFIE: We will show just the first few
24 minutes of it.

25 THE COURT: Okay. That will be fine. But you're

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1 just saying that if they want to do the completeness -- let
2 them do it tomorrow?

3 MS. MCDUFFIE: Just have him come once.

4 THE COURT: Oh, him come once. I see what you're
5 saying.

6 MS. SHIPLEY: I think there's a portion of the
7 video -- just speculating that there a portion of the video
8 tape that the defense will probably want to play involving
9 Investigator McRae. We do plan on showing that portion of
10 the video when he testifies at the end of the case.

11 THE COURT: Oh, at the end of the case.

12 MS. SHIPLEY: Right. Because he does have a
13 conversation with the passenger and driver of the Isuzu
14 Rodeo.

15 THE COURT: Okay.

16 MS. SHIPLEY: We weren't intending on doing it
17 because there's a lot of down time between the stop and by
18 the time McRae gets there.

19 THE COURT: Okay.

20 MS. SHIPLEY: So rather than playing the whole
21 video we were just going to speed forward to his portion
22 unless he testifies -- for purposes of the responding
23 officer that made the stop, we were only going to show up
24 until -- about 20 minutes of the tape.

25 THE COURT: Okay. Do you all have any response to

1 make to that?

2 MR. SWERLING: Well, Judge, we were going to --
3 there are parts that we would want in. So I'm mean, we're
4 going to probably offer the whole thing.

5 THE COURT: Okay.

6 MR. SWERLING: We're discussing that.

7 THE COURT: So essentially your office is going to
8 have to come back twice if you want to put him up --

9 MS. SHIPLEY: All right. Well, maybe we should
10 just stop after the fourth witness and call him in the
11 morning?

12 THE COURT: Okay.

13 MS. SHIPLEY: Is that okay with everybody?

14 MR. SWERLING: Yeah, that's fine.

15 THE COURT: Yes. Anything else you can think of.
16 I apologize for this delay, but let's make it efficient.

17 Yes?

18 MS. JOHNS: Your Honor, while we have the time, I
19 would like to go ahead and clarify the record of my client.

20 THE COURT: Sure. I appreciate it.

21 MS. JOHNS: What I have, Your Honor, is a
22 conviction for failure to stop for blue light.

23 THE COURT: And that's within the last 10 years, I
24 assume?

25 MS. JOHNS: Yes, Your Honor.

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1 MS. SHIPLEY: We also show a possession of crack
2 charge from December 17, 2004. That carries more than a
3 year that is within the 10 year period.

4 MS. JOHNS: What was that sentence on that? Pled
5 to possession of controlled substance -- and transferred --
6 I've got default --

7 MS. SHIPLEY: I'll have to research that.

8 THE COURT: Okay. All right. And do the same with
9 respect to Mr. Wray.

10 MS. SHIPLEY: We have a 2003 assault and battery of
11 a high and aggravated nature. He got five years suspended
12 to five years probation.

13 THE COURT: Okay. All right.

14 THE CLERK: Do you want me to have them come in and
15 then give them the pads?

16 THE COURT: Yes. Have them come in first. Yes.

17 Okay. Jurors are coming.

18 MS. MCDUFFIE: Your Honor, Deputy Galinski has not
19 -- if the Clerk could send word down there that he would be
20 under subpoena and would need to appear.

21 THE COURT: So ordered. You all can deliver the
22 message. Okay.

23 (Jury in at 3:28 p.m.)

24 THE BAILIFF: Jury is all present, Your Honor.

25 THE COURT: Okay. Ladies and gentlemen of the

1 jury, thank you again for your patience. We are being
2 efficient. We are taking up legal matters, but one of the
3 things that I forgot to tell y'all at the beginning of the
4 trial is my decision as to whether or not you all can take
5 notes. I do note that one gentlemen is taking notes, and
6 so what I'm going to do is offer the rest of you all to be
7 able to take notes a well. It is totally up to you as to
8 whether you wish to take notes, but if I have one person
9 taking notes the entire jury has to have the opportunity to
10 do so. I'm going to remind you that your memory shall serve
11 as what you have learned in this trial from the evidence and
12 testimony. Do not rely on your notes as, you know, the
13 critical point as to whether something was admitted into
14 evidence or something was said.

15 We all know that we paraphrase, so I'm going to ask you
16 to rely on your memories and not let the notes serve as a
17 substitute in any way for what you believe you have heard in
18 this trial. You will need to keep your pads to yourselves.
19 Make sure you put your name on your particular legal pad so
20 that you'll pick up only your pad.

21 (Note pads passed out to the jury.)

22 THE COURT: Okay. State you can call your next
23 witness.

24 MS. MCDUFFIE: Your Honor, state calls James Lamont
25 Goodwin.

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1 THE CLERK: Please place your left hand on the
2 Bible, raise your right hand.

3 (WHEREUPON, James Lamont Goodwin,
4 was sworn to tell the truth.)

5 THE CLERK: Thank you. Have a seat in that witness
6 stand and give the court reporter your name.

7 MR. GOODWIN: My name is James Lamont Goodwin.

8 JAMES LAMONT GOODWIN - DIRECT EXAMINATION

9 BY MS. MCDUFFIE:

10 Q Good afternoon.

11 A Good afternoon.

12 Q You commonly go by Lamont?

13 A Yes, ma'am.

14 Q And Lamont, where are you from?

15 A I'm from St. Matthews, South Carolina.

16 Q And is that where you were raised?

17 A Yes, ma'am.

18 Q And do you still currently live in St. Matthews?

19 A Yes, ma'am.

20 Q Do you know Travis Malone?

21 A Yes, ma'am.

22 Q How do you know Travis Malone?

23 A He is my close friend from school.

24 Q And about how long have you known him?

25 A Since about sixth grade.

1 Q And about how old are you right now?

2 A I'm 27.

3 Q And do you know the victim in this case, Demuria
4 Johnson?

5 A Yes, ma'am.

6 Q And what did y'all call him?

7 A We called him Hank.

8 Q And how long had you known Hank?

9 A I've known Hank since about ten years old.

10 Q And y'all grew up together?

11 A Yes, ma'am.

12 Q Friends all through school?

13 A Yes, ma'am.

14 Q And you remained friends after you finished school?

15 A Yes, ma'am.

16 Q On June 29, 2007, do you recall what you were doing
17 that day?

18 A Yes. We -- Travis was going back to Iraq, so we had a
19 party with his family to send him off.

20 Q And where did y'all come to meet his family?

21 A We come to Columbia.

22 Q And are you familiar with the area that you were in in
23 Columbia?

24 A No, ma'am.

25 Q Had you met his family before?

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1 A This was my first time to met them.

2 Q And where did you go in Columbia?

3 A We were at their house for a second, and then we all
4 decided to go out to a bar.

5 Q And do you remember which bar y'all went to?

6 A It was H&J's bar.

7 Q And had you ever been to the H&J Pub before?

8 A No, I hadn't.

9 Q And since June 30, 2007, have you ever been back there?

10 A No, ma'am.

11 Q On June 30, 2007, do you remember what time you got to
12 the H&J club?

13 A Not exactly.

14 Q Was it early in the evening, early in the morning?

15 A It was late in the evening.

16 Q And how did you get to the H&J club?

17 A We drove behind each other.

18 Q Y'all followed someone?

19 A Yes, ma'am.

20 Q And whose car were you in?

21 A I was in the car Travis had.

22 Q And who else was in the car with you and Travis?

23 A It was me, Travis, Hank, and his nephew.

24 Q And what car were y'all following?

25 A We was following his sister.

1 Q And do you remember what kind of car that was?

2 A I don't know. I think it was like a van.

3 Q And when y'all got to the H&J club, do you remember
4 where y'all parked?

5 A Yes, ma'am. There was a car wash and we parked in the
6 stall.

7 Q And do you remember which direction you were facing in
8 the stall?

9 A Yes, ma'am. Facing towards the road.

10 Q And that would be Hardscrabble Road?

11 A Yes, ma'am.

12 Q And after y'all got to the club what happened next?

13 A We just went in the club, we had a couple of drinks.

14 Q Where did you go in the club?

15 A They have like a deck and they have a main part of the
16 building. So we was in between.

17 Q You were in both places?

18 A Yes, ma'am.

19 Q And who were you with mostly?

20 A We were back and forth. Me and Hank was together and
21 Travis.

22 Q And at some point during the night did a commotion
23 start at the club?

24 A Yes, ma'am.

25 Q And did you see how that started?

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1 A I came out to the deck of the club, and I guess some
2 guys started to get into it with Charlie, and I didn't know
3 what it was about.

4 Q And what happened after some guys started to get into
5 it with Charlie?

6 A Well, just a lot of commotion that he was in.

7 Q And what were you doing during this?

8 A We were trying to get Charlie out of there. There were
9 a lot of guys in there. I didn't know anybody from that
10 area, so I didn't know who was who.

11 Q And what was Hank doing during this time?

12 A He was trying to get him out, too.

13 Q And what was Travis doing?

14 A Same thing.

15 Q And were you able to get Charlie out of the club?

16 A Yes, ma'am.

17 Q And who was with you outside of the club?

18 A Me and Hank and we realized everybody wasn't out at the
19 same time. So we went back and tried to get them out. Let's
20 go.

21 Q So did you actually go back into the club?

22 A No, ma'am.

23 Q So where did y'all go to try and get everybody?

24 A Right at the -- it's a brick wall curb at the car wash.

25 Q I'm going to show you State's Exhibit No. 15; is that

1 what you're referring to?

2 A Yes, ma'am.

3 MS. MCDUFFIE: Your Honor, permission to publish?

4 THE COURT: Yes.

5 BY MS. MCDUFFIE:

6 Q So y'all went to the brick wall area?

7 A Yes.

8 Q And when you got there you saw the other members of
9 your party?

10 A Yes, ma'am.

11 Q And what happened after that?

12 A Well, like I said, I guess they got into a fight.

13 Travis sister, I see that she had blood, and he had like a
14 busted lip or something.

15 Q What was Hank doing during this time?

16 A Well, he was also trying to tell them to get out of
17 there.

18 Q So y'all were at the brick wall and started heading
19 back towards the cars?

20 A Yes, ma'am.

21 Q And what happened next?

22 A After that we heard gunshots.

23 Q And do you know which direction the gunshots were
24 coming from?

25 A They came from the road.

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- 1 Q And that's Hardscrabble Road?
- 2 A Yes, ma'am.
- 3 Q On State's Exhibit No. 7?
- 4 A Yes, ma'am.
- 5 Q And did you see who was shooting?
- 6 A I didn't actually see who was shooting.
- 7 Q But you know that the shots were coming from
- 8 Hardscrabble Road?
- 9 A Yes, ma'am.
- 10 Q And what did y'all then do?
- 11 A Well, everybody, like, got to the cars.
- 12 Q And who's car did you get into?
- 13 A The car Travis was driving.
- 14 Q And do you remember which seat you sat in in the car?
- 15 A I was behind the passenger seat.
- 16 Q And where was Hank sitting?
- 17 A Hank was sitting in the passenger seat.
- 18 Q In the front passenger seat?
- 19 A Yes, ma'am.
- 20 Q And where was Charlie sitting?
- 21 A Charlie sitting next to me.
- 22 Q In the rear of the vehicle?
- 23 A Yes, ma'am.
- 24 Q And what happened next?
- 25 A We drove off. Then we went to the Waffle House parking

1 lot to let them know that Hank was shot. So we went to the
2 hospital, followed them to the hospital.

3 Q About how many -- do you recall how many shots you herd
4 at the H&J club that night?

5 A I can't say exactly. I think like three or four shots.

6 Q But multiple shots?

7 A Yeah.

8 Q And did it -- do you know if it sounded like it was
9 coming from one gun or multiple guns?

10 A I sounded like one gun.

11 Q And what direction were the shots coming from?

12 A They were coming from the road.

13 Q And after you all got Travis sister at the Waffle House
14 where did y'all then go?

15 A To the hospital.

16 Q And you helped the victim into the hospital?

17 A Yes, ma'am.

18 Q Did you stay at the hospital that morning?

19 A Yes, ma'am.

20 Q And did the police show up at the hospital that
21 morning?

22 A Yes, ma'am.

23 Q And then you went back to St. Matthews?

24 A Yes, ma'am.

25 Q Did the police ask you to give a statement in this

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1 case?

2 A Yes, ma'am.

3 Q And did you ever meet with any police officers?

4 A I didn't meet with them.

5 Q The I think the first time you met with anyone was when
6 Ms. Shipley and I came to see you at your house in St.

7 Matthews --

8 A Yes, ma'am.

9 Q -- a couple months ago?

10 A Yes, ma'am.

11 MS. MCDUFFIE: Beg the Court's indulgence.

12 BY MS. MCDUFFIE:

13 Q The gunshots you heard outside the H&J club were they
14 slow, were they quick; what did they sound like?

15 A Well, they didn't last long, so I'll say quick.

16 Q Was there a lot space in between them?

17 A No, ma'am.

18 MS. MCDUFFIE: Nothing further, Your Honor.

19 THE COURT: Defense?

20 MR. SWERLING: Excuse me, one minute.

21 THE COURT: Sure.

22 (PAUSE.)

23 JAMES LAMONT GOODWIN - CROSS-EXAMINATION

24 BY MR. SWERLING:

25 Q Mr. Goodwin, in actuality, they actually tried to talk

1 with you, the people from the sheriff's department, didn't
2 they?

3 A Yes, sir.

4 Q The investigator tried to talk with you at the
5 hospital?

6 A I don't know --

7 Q You don't know his name, but he tried to talk to you at
8 the hospital and you wouldn't talk to him?

9 A Yes, sir.

10 Q And Investigator McRae came down to St. Matthews along
11 with Investigator Gallegos, I think that's how you pronounce
12 his name. They were trying to find you, but they couldn't
13 find you; isn't that true?

14 A I don't know about that, sir.

15 Q You don't remember them coming down there?

16 A I remember when they came to my house.

17 Q You remember that?

18 A Yes.

19 Q I'm talking about Investigator McRae, over here, left a
20 message with your family to give him a call. You never
21 called him back did you?

22 A I'm not sure.

23 Q You're not sure?

24 A I never got that message.

25 Q Well, if you never got that message?

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1 A No, sir.

2 Q You're not telling the jury that the sheriff's
3 department didn't try and investigate this case and get a
4 statement from you right up from the time of those events,
5 are you?

6 A No.

7 Q Huh?

8 A No.

9 Q And you're saying you're not aware of the fact that Mr.
10 McRae came down there to St. Matthews to try and interview
11 you and went to your family home?

12 A No, sir.

13 Q You never contacted the sheriff's department then, is
14 that right?

15 A No, sir.

16 Q You never tried to give them a statement.

17 A No, sir.

18 Q The only time you gave a statement was when Ms. Shipley
19 and Ms. McDuffie came down?

20 A Yes.

21 Q How long ago was that?

22 A I'm not sure, before the trial first started.

23 Q Within the last month or two?

24 A No, sir.

25 Q Before that?

1 A Yes, sir.

2 Q I just want to get a little bit more information about
3 what happened. You were at the club, there's five of you;
4 correct?

5 A Yes, sir.

6 Q Were you drinking that night?

7 A Yes, sir.

8 Q How long had you been there?

9 A At the club with them, a couple hours.

10 Q You were there a couple hours before anything happened?

11 A Yes, sir.

12 Q Nobody was bothering you?

13 A No, sir.

14 Q You weren't bothering anybody?

15 A No, sir.

16 Q What was the first thing that happened that you recall
17 that created some sort of incident?

18 A Well, when we -- when I came off the patio to come into
19 the club and I guess they were getting into it about the
20 girl. I don't know.

21 Q Well, what did you see?

22 A I just saw a commotion.

23 Q A what?

24 A Commotion.

25 Q Okay. Well, where was Charlie?

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1 A He was right there.

2 Q He was in the middle of the commotion?

3 A Yes, sir.

4 Q Okay. And did you see -- do you know Lisa Johnson --

5 A No, sir.

6 Q -- the girl he was supposed to be dating at some time?

7 A No, sir.

8 Q Okay. Did you see him with a young lady?

9 A No, sir.

10 Q Did you see this guy, here, number four on this photo
11 ID. This is State's Exhibit No. 14, number four. Did you
12 see him in there in the confrontation with Charlie?

13 A To be honest, sir, if I did I don't remember. I never
14 seen these people before in my life.

15 Q Okay. Did you see a guy with dreads or plaits in a
16 fight or confrontation with Charlie?

17 A There were several guys with dreads.

18 Q Well, that doesn't really answer my question. Did you
19 see a guy with plaits or dreads in the confrontation with
20 Charlie?

21 A Yeah.

22 Q You did?

23 A Yeah.

24 Q And do you recognize the person I just showed you in
25 that photo spread?

1 A No, sir.

2 Q But the guy that was fighting with Charlie and the
3 others was a guy who had dreads and plaits -- wore plaits --
4 I don't know which is the proper word -- is that correct?

5 A Yes.

6 Q Is that right?

7 A That's right.

8 Q Did you see Charlie -- did you actually get in there
9 before any punches were thrown?

10 A Well, I really didn't see what kind of punches. It was
11 a small club, there was a lot of people.

12 Q So did you see Charlie throw a punch?

13 A No.

14 Q Did you see anybody throw a punch at Charlie?

15 A Just like I said.

16 Q Did you see anybody throw a punch?

17 A I got -- somebody swung at me.

18 Q But you never got punched?

19 A No.

20 Q Did you see the guy with dreads or anybody else punch
21 Verda Roberts?

22 A No, I didn't see that.

23 Q And you were right there?

24 A Yeah, I was right there.

25 Q You didn't see any of this?

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1 A I was watching out for myself, also.

2 Q You didn't see any of this?

3 A I didn't see a lot of action -- I didn't --

4 Q Well, I'm talking about the people you were with.

5 Those are the people that would matter most to you?

6 A Yes, sir.

7 Q Is that right?

8 A Yes, sir.

9 Q So what you're telling the jury is that you don't
10 remember Charlie getting in a confrontation with anyone,
11 throwing a punch or getting hit?

12 A I saw a lot of guys coming at Charlie. I did not see
13 him get hit.

14 Q You didn't see him throw a glass or a drink at anybody?

15 A No. I can't remember --

16 Q But you did see a guy with dreads in the middle of the
17 fight; is that right?

18 A Yeah.

19 Q In the confrontation?

20 A Yes, sir.

21 Q And you did not see Verda Roberts get hit?

22 A No, sir.

23 Q You were standing right with all these folks; is that
24 right?

25 A Yes, sir.

1 Q Would it be fair to say that you were pretty high that
2 night, intoxicated, and that's why you don't remember?

3 A I don't remember. I didn't know anybody there.

4 Q Well, you knew the people you were with?

5 A Yeah.

6 Q Those would be the people that are important to you?

7 A Yes, sir.

8 Q So what I'm asking you is how is it that you don't
9 remember seeing anything or who was doing what, and these
10 were the people you were very close with.

11 A I was really watching Charlie.

12 Q But you haven't described much of what Charlie did
13 either?

14 A Yeah.

15 Q So if you were watching Charlie, tell the jury what you
16 remember Charlie doing?

17 A I remember Charlie getting into it with these guys.

18 Q Which guys?

19 A I don't know.

20 Q What'd they look like?

21 A They were black.

22 Q They were black. Well, that's helpful.

23 A They were black.

24 Q Well, what did they get into; describe what happened?

25 I mean if you were there that night and you remember what

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1 happened and you're testifying in front of this jury and
2 you've never given a statement, tell the jury what you
3 remember?

4 A I remember seeing a lot of guys coming at Charlie.

5 Q Coming at Charlie?

6 A Yes, sir.

7 Q So he had a lot of people on him; jumping on him?

8 A Yes, sir.

9 Q You didn't do anything to help him?

10 A Yes, I was trying to get him out of there.

11 Q Trying to help. You didn't see him get hit, you didn't
12 see him throw a punch?

13 A I didn't actually see him get hit, but I know he was
14 hit because I saw his mouth later.

15 Q Huh?

16 A I saw his mouth bloody. I never saw who hit him.

17 Q And you were not intoxicated, so you have a distinct
18 recollection of what happened there that night?

19 A I can't say I wasn't intoxicated. I was drinking.

20 Q Was drinking. Well, let's see what happens when you
21 get outside, because you really don't know what happens
22 inside the club except there's a bunch of people coming at
23 Charlie, okay. So let's talk about what happened outside.
24 You get outside and where did you go?

25 A I go to -- across that thing and go to the car.

1 Q Where; can you point out on here somewhere, where you
2 were?

3 A The car was at the car wash. I was at the car wash.

4 Q Where's the car wash?

5 A Right here.

6 Q All five of you go there?

7 A Yeah. Well, first it was me and Hank over there. And
8 we realized they was still at the club and by the time we
9 get to the wall they were right there.

10 Q They were on their way where?

11 A Coming to the car.

12 Q So you and who else -- ran out of the club?

13 A Yes.

14 Q And you found out that the others had not run out of
15 the club yet, so you started going back and they were
16 meeting you or coming towards you?

17 A Yes, sir.

18 Q Is that right?

19 A Yes, sir.

20 Q And where were you when the shooting started?

21 A I was right here. (Indicating.)

22 Q Now, they asked you where'd the shooting come from.
23 You really have no idea where the shooting came from do you?

24 A I could tell it was coming from the road.

25 Q Where on the road?

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1 A It had to come from somewhere over here. (Indicating.)

2 Q And -- but how do you know it was on the road and was
3 not on the other side of the road. I mean, can you tell the
4 jury based upon your, what seems to be an intact
5 recollection of what happened, can you tell whether the
6 shots came from here, these bushes, these bushes, this
7 house, over here or some car driving down the road; you have
8 no idea do you?

9 A I know they came from right here. (Indicating.)

10 Q Where?

11 A Right here. (Indicating.) From that area.

12 Q Which area? You can stand up and point to it?

13 A Okay. I know it came from over here. Somewhere in
14 this area here.

15 Q So you're not saying it came from a vehicle?

16 A No.

17 Q You have no idea if it came from a vehicle, right?

18 A I can't say that.

19 Q Could have been someone standing over in that area;
20 isn't that right?

21 A That's right.

22 Q And you know the sound of gunfire?

23 A Yes, sir, I was in the military.

24 Q And you did hear several different shots, didn't you,
25 several kinds of shots?

1 A I heard like four shots. Sounded like it came from the
2 same weapon.

3 Q Sounded like it came from the same weapon or you're
4 sure it came from the same weapon or could you be doubted --
5 doubt as to whether it came from the same weapon?

6 A Could be doubt.

7 Q Fact of the matter is, you really don't know, do you,
8 how many shots were fired?

9 A Not exactly.

10 Q And the fact is you also do not know how many weapons
11 were being fired; isn't that true?

12 A That's true.

13 Q Fact of the matter is you really don't know the exact
14 location from where those weapons were being fired; isn't
15 that true?

16 A Not exactly.

17 Q And there's no statement that you could go to, since
18 you did not cooperate with police, there's no statement you
19 could go to as to what your recollection would have been
20 that night; isn't that true?

21 A That's true.

22 Q So whatever you're testifying to is what you have
23 decided in the last two years as to what you recall of that
24 situation; correct?

25 A Yes, sir.

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1 Q And the fact is, you don't recall a whole lot; isn't
2 that true?

3 A What I told you is what I recall.

4 Q I know. That's what I said. Do you agree that it's
5 not a whole lot of detail?

6 A (No response.)

7 Q Do you agree that you don't have a lot of detail about
8 what happened inside the club?

9 A I agree with that.

10 Q And do you agree that you don't have a lot of detail
11 about what happened outside the club?

12 A Yes, sir. I agree to that.

13 MR. SWERLING: That's all I have.

14 THE COURT: All right.

15 MS. JOHNS: Thank Your Honor. Please the Court.

16 JAMES LAMONT GOODWIN - CROSS-EXAMINATION

17 BY MS. JOHNS:

18 Q Mr. Goodwin, my name is Theresa Johns. Let's refer to
19 this arial view of the scene which is State's Exhibit No. 7,
20 and please tell the jury -- that blue area --

21 A Yes, ma'am.

22 Q -- what is that, do you know what that blue area is?

23 A I guess that's like the other side of the club.

24 Q The other side of the club?

25 A I see the club right here, and the patio.

1 Q Okay. So the blue roof then would be the other side of
2 the club, right?

3 A (No response.)

4 Q The blue area that looks like a blue roof?

5 A I see that now.

6 Q You see that?

7 A Yes, ma'am.

8 Q That would be the other side of the club?

9 A I don't know.

10 Q Okay. You've never been there before; right?

11 A That was my first time, yes, ma'am.

12 Q All right. But next to that blue area, that blue roof
13 coming towards you to the left of the diagram there's
14 another roof there; what's underneath that roof?

15 A That's the club.

16 Q Okay. And as an extension of the club in that
17 photograph is there a sun deck back there?

18 A Yes, ma'am.

19 Q That you call a patio?

20 A Yes, ma'am.

21 Q And that's where you went to hang out; right?

22 A Yes, ma'am.

23 Q Okay. And when you were out there on that patio how
24 many people were out there with you?

25 A Well, we was there a long time, so people coming out

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1 and leaving.

2 Q Okay. Was it -- well, did you have to say, excuse me,
3 to get through or were there places to sit down?

4 A There was places to sit down.

5 Q Okay. So when you first got there you say the club was
6 -- had a good crowd; is that fair to say?

7 A Yes, ma'am.

8 Q Now, did you guys immediately find a parking place?

9 A Yes, ma'am.

10 Q And when you went into the club you say you had a
11 pretty good parking place right next to the club, right?

12 A Yes, ma'am.

13 Q In that first stall?

14 A Yes, ma'am.

15 Q Okay. And when you entered the club you entered by
16 going over that wall; is that correct?

17 A Yes, ma'am.

18 Q All right. And when you entered the club, what did you
19 notice about this particular club when you went in, what did
20 you do?

21 A There was a little bar right there, so we went over.

22 Q Okay. Did they check your ID?

23 A Yes, ma'am.

24 Q What else did they do?

25 A We just went in.

- 1 Q You just went in?
- 2 A Yes, ma'am.
- 3 Q Okay. But you had to show somebody your ID?
- 4 A I can't remember.
- 5 Q All right. How old are you?
- 6 A I'm 27.
- 7 Q All right. When you went on that back deck who from
- 8 your party is with you?
- 9 A All us was out there at one point.
- 10 Q Okay. You were there for two hours; is that right?
- 11 A Yes, ma'am.
- 12 Q And before that where were you, at a party?
- 13 A Well, we was at Travis sister house.
- 14 Q Were you playing cards?
- 15 A Yes, ma'am.
- 16 Q Drinking?
- 17 A Yes, ma'am.
- 18 Q What were you drinking?
- 19 A It's hard to remember.
- 20 Q And like Mr. Swerling said you don't recall many of the
- 21 details that happened inside that club do you?
- 22 A I recall what happened.
- 23 Q What you relayed to the jury?
- 24 A Yeah, but I saw it.
- 25 Q But, again, would you agree that it's not very

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1 detailed, right?

2 A It was a fight, a fight that lasts less than a minute.
3 It's really not much detail to give.

4 Q You're concerned for Charlie, right?

5 A Yes, ma'am.

6 Q Yet you were outside with Hank and you left Charlie in
7 the bar didn't you?

8 A Yeah. We told him to come over. We got him almost out
9 and it could have been a fight some more. His lip was
10 busted.

11 Q Okay. But nonetheless, you said you were out there
12 with Charlie and Hank and the rest of these people came out
13 after you?

14 A Yes, ma'am.

15 Q So you really didn't say with Charlie did you?

16 A Not the whole time.

17 Q And you didn't really stay with Hank the whole time did
18 you?

19 A No, me and Hank was pretty much the whole time.

20 Q The whole time. Okay, so when you were trying to help
21 Charlie out, then Hank was there helping Charlie out, also;
22 is that right?

23 A Yes, ma'am.

24 Q So Hank was involved in the fight; right?

25 A Yes, ma'am.

1 Q How many guns did you see inside that club that night?

2 A Guns?

3 Q Yes, sir.

4 A I didn't see any guns there.

5 Q How many cars were outside in that parking lot when you
6 attempted to leave?

7 A It was a car parked beside us and a car parked behind
8 us at that time.

9 Q So in that car wash area how many cars were there when
10 you got there?

11 A I didn't take the time to count the cars.

12 Q Can you estimate?

13 A I can't estimate.

14 Q Okay. How about when you left?

15 A When we left it was full.

16 Q It was full. How many people were in the club?

17 A I didn't take the time to count the people.

18 Q Would you say there was more than 10?

19 A Yes, ma'am.

20 Q More than 20?

21 A Yes, ma'am.

22 Q More than 30?

23 A Yes, ma'am.

24 Q Did they have a DJ that night?

25 A Yes.

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1 Q You do not know this area at all other than the fact
2 that you pulled in as a passenger into that first stall;
3 isn't that right?

4 A Yes, ma'am.

5 Q You didn't take a walk down the road did you?

6 A No, ma'am.

7 Q You didn't cross the street did you?

8 A No, ma'am.

9 Q Okay.

10 MS. JOHNS: Beg the Court's indulgence, Your Honor.

11 THE COURT: Sure.

12 MS. JOHNS: I don't have anything further.

13 THE COURT: Okay.

14 JAMES LAMONT GOODWIN - REDIRECT EXAMINATION

15 BY MS. MCDUFFIE:

16 Q Lamont, what was Hank doing during the fight?

17 A Me and Hank was trying to break them up. We weren't
18 actually trying to fight. We were trying to get them out.

19 Q And had you seen any of the people in this bar before
20 except for Hank and Travis?

21 A No, never seen them before.

22 Q And when was the first time you met Verda, Stephanie,
23 and Charlie?

24 A That night.

25 Q And you had never seen them before this night either?

1 A No, ma'am.

2 Q And how many people in that bar that night had dread
3 locks?

4 A It's hard to say, a lot.

5 Q More than five?

6 A Approximately more than five.

7 Q And about how many people were in this fight?

8 A It was like the whole club was in the fight.

9 Q And when you left the club and you heard the gunshots,
10 what direction were the gunshots coming from?

11 A They were coming from the road outside the club.

12 Q Any question in your mind about that?

13 A No, ma'am.

14 Q Were they coming from behind you?

15 A Yes. I remember looking at the patio, and I was hoping
16 the gun didn't come off the patio at us and hit us. While I
17 was looking at the patio, I heard -- I could tell that the
18 gunfire wasn't coming from there.

19 Q Was there shooting coming from the patio?

20 A No, ma'am.

21 Q was there shooting coming from the other side of the
22 car wash?

23 A No, ma'am.

24 Q Where was the only place you recall there being
25 shooting?

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1 A I was standing like this so I could hear it coming from
2 right here. (Indicating.)

3 Q And that's the area of Hardscrabble Road?

4 A Yes, ma'am.

5 Q And you have no idea who was shooting do you?

6 A No, ma'am.

7 Q And you don't remember all the details about the fight
8 that night do you?

9 A No, ma'am.

10 Q And when you got to the hospital you were informed that
11 Hank has passed away; correct?

12 A Not at first.

13 Q But after a while they informed you?

14 A Yes, ma'am.

15 Q Okay. And then the investigators came, Investigator
16 Barnes, and he asked you if you'd talk to him?

17 A Yes, ma'am.

18 Q And did you want to talk to him that night?

19 A No, not that night.

20 Q Why not?

21 A I was kind of upset, and the investigator was getting
22 Hanks family to come to tell them. I was out there the
23 whole time. Then when we -- I took that personally. I
24 should have told them that night. I really didn't know
25 anything.

1 Q And you were upset because you weren't a relative the
2 hospital wouldn't give you any further information?

3 A Yes, ma'am.

4 Q And you were waiting for his family to come?

5 A Yes, ma'am.

6 Q And when Ms. Shipley and I called you, you invited us
7 to come to St. Matthews to your home?

8 A Yes, ma'am.

9 Q And you told us what you're telling the jury?

10 A Yes, ma'am.

11 Q And are you ever going to forget the night that your
12 best friend was murdered?

13 A No, I'll never forget that.

14 MS. MCDUFFIE: No further questions, Your Honor.

15 JAMES LAMONT GOODWIN - RE-CROSS EXAMINATION

16 BY MS. JOHNS:

17 Q Mr. Goodwin, when you were at the hospital you made a
18 conscious choice not to give a statement; is that what
19 you're saying?

20 A They didn't really come to me asking for a statement.

21 Q They didn't?

22 A They were talking to everybody taking down notes.

23 Q They were. And you didn't volunteer any information?

24 A No, ma'am.

25 Q And did you see other people at the hospital that were

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1 also at the club but not involved in your party?

2 A Yes, ma'am?

3 Q You did?

4 A Yes, ma'am.

5 Q And you knew that there had been gunshots fired; is
6 that right?

7 A Yes, ma'am.

8 Q And you knew that your friend, Hank, had taken a shot
9 somehow; right?

10 A Yes, ma'am.

11 Q And then you knew that he died; correct?

12 A Yes, ma'am.

13 Q And even after you learned that you didn't volunteer to
14 go to Sgt. Barnes or Investigator McRae and say, let me tell
15 you what I heard; you didn't say I heard shots coming from
16 the roadway?

17 A I didn't think about that when my best friend just got
18 murdered.

19 Q You didn't think whether to tell them whether you heard
20 shots coming from the patio; right?

21 A At that point, it didn't matter where the shots come
22 from at that time, to me.

23 Q All right, and you didn't tell them that somebody sung
24 at you, either, did you?

25 A No.

1 Q Okay. In fact, you just didn't get involved?

2 A Yes, ma'am.

3 Q Thank you.

4 THE COURT: All right, sir, you can step down and
5 be excused.

6 MS. SHIPLEY: Your Honor, at this time the state
7 calls Jalicca Johnson.

8 (WHEREUPON, Jalicca Johnson, was
9 sworn to tell the truth.)

10 THE CLERK: Thank you. Have a seat in the witness
11 stand and give the court reporter your name.

12 MS. JOHNSON: Jalicca Johnson.

13 JALICCA JOHNSON - DIRECT EXAMINATION

14 BY MS. SHIPLEY:

15 Q Ms. Johnson, can you tell this jury where you're from?

16 A Columbia, South Carolina.

17 Q And what part of Columbia do you reside in?

18 A The Northeast area.

19 Q Is that a neighborhood -- do you live in Washington
20 Heights?

21 A Yes.

22 Q Okay. Can you tell us the name of your street. You
23 don't have to give us the number, but just the street?

24 A Briarcliff Drive.

25 Q Briarcliff Drive.

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1 A Yes.

2 Q And is that in close proximity to the club or the H&J
3 on Hardscrabble Road?

4 A About a mile.

5 Q About a mile. Okay.

6 A Half mile.

7 Q Half mile. So it's pretty close?

8 A Yes.

9 Q I'm just going to ask you to look at this diagram and
10 see if this is an accurate depiction of the H&J club and the
11 car wash on Hardscrabble Road; do you recognize that, does
12 that accurately depict the area?

13 A Right here?

14 Q Yes, ma'am.

15 A Well, it look like it.

16 Q And the H&J with the patio and the deck behind it --

17 A Oh.

18 Q -- and the car wash right here; does that accurately
19 depict the area?

20 A Yeah.

21 Q Okay. Do you know the defendant, Taurus Watts?

22 A Yes.

23 Q And can you tell the jury how you are related to him?

24 A His sister has son of my brother.

25 Q Okay. So your sister has a child that would be your

1 nephew; correct?

2 A Yes.

3 Q And your nephew's mother is the defendant's sister?

4 A Yes.

5 Q So basically, he is your nephew's uncle?

6 A Yes.

7 Q Okay. And what nickname does he go by?

8 A Who?

9 Q Mr. Watts?

10 A I just call him Taurus.

11 Q Okay. Does he also go by T?

12 A Not him. I don't know Taurus.

13 Q Okay. I'm going to bring your attention -- by the way,
14 do you know Mr. Wray?

15 A I know him, but not real good, because he younger than
16 I am.

17 Q Okay. Does he live on the same street as you do; on
18 Briarcliff?

19 A No.

20 Q Okay. And do you know a guy named Brian Johnson?

21 A Yes.

22 Q And I'm going to ask you to look at this picture and
23 let me know -- am I pointing out Mr. Johnson, Brian Johnson?

24 A That look like -- he look different now.

25 Q Okay. Is his hair longer now?

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- 1 A Yeah.
- 2 Q Okay, but is this Brian Johnson with shorter dreads?
- 3 A I think so.
- 4 Q Okay. And does Mr. Johnson live on Briarcliff?
- 5 A I don't think so. I think he parents do.
- 6 Q Okay. Do you know him from the neighborhood?
- 7 A Yes.
- 8 Q And from the club?
- 9 A Sometimes.
- 10 Q Sometimes, okay. Do you also know an individual by the
- 11 name of Chris Crosby?
- 12 A Yes.
- 13 Q And can you describe him for the jury, please; what's
- 14 he look like?
- 15 A Dark skin, kind of heavy set.
- 16 Q How many pounds you think he might weigh?
- 17 A About 300. I don't know.
- 18 Q Okay. And how tall would you say he is?
- 19 A I don't know.
- 20 Q Okay. Do you remember giving a statement to the police
- 21 on June 30, 2007?
- 22 A Yes.
- 23 Q Would that help you refresh your memory of what you
- 24 told them that night?
- 25 A No. I know what I told them.

1 Q Okay. Well, I'll just give this to you to refresh your
2 memory. I'm going to refer you to Page 4 of your statement.

3 MR. SWERLING: Well, Your Honor, she said she
4 didn't really need that.

5 MS. SHIPLEY: I haven't finished my question, Your
6 Honor.

7 THE COURT: Okay.

8 MR. SWERLING: Now, she's saying refer to her
9 statement.

10 THE COURT: Right --

11 MS. SHIPLEY: I ask Your Honor if I may proceed?

12 THE COURT: Go ahead.

13 MS. SHIPLEY: I'm asking the witness to refer to
14 Page 4 of her statement.

15 BY MS. SHIPLEY:

16 Q I asked you earlier if you could describe Chris Crosby?

17 A Huh?

18 Q If you could read your statement. I'm asking you to
19 refresh your memory on your description you provided to law
20 enforcement on June 30th.

21 A I said he was tall.

22 Q Okay. Well, how tall is he?

23 A I don't know if he's 5-10 or 11 or not. They asked me
24 was he five-eleven, and I said, I guess so.

25 Q Okay. And you indicated his weight just now?

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- 1 A Yeah, about -- he a big boy.
- 2 Q All right, and what about his hair?
- 3 A I don't know.
- 4 Q Well, how does he carry his hair?
- 5 A I don't know what to tell you. He probably had a hat
- 6 on. I don't know.
- 7 Q Okay.
- 8 A I don't see him that much.
- 9 Q All right. Now, on the night of -- the early morning
- 10 hours of June 30th, do you remember going to the club that
- 11 night?
- 12 A Yes.
- 13 Q Can you tell the jury approximately what time you
- 14 arrived there?
- 15 A It was a little bit after 3:00.
- 16 Q Three in the morning?
- 17 A Uh-huh. (Affirmative response.)
- 18 Q And where did you park when you got there?
- 19 A By the phone booth.
- 20 Q By the phone booth?
- 21 A Uh-huh. (Affirmative response.)
- 22 Q And the jurors don't know where the phone booth is so
- 23 I'm going to ask you to use this pointer and just show them
- 24 on this diagram where the phone booths are at the H&J?
- 25 A Near this road.

1 Q Okay, and would these islands right here be it?

2 A I don't know -- probably right here.

3 Q And do you remember if you parked behind any other
4 vehicles?

5 A Yeah, it was another car.

6 Q Another car. Do you remember what the other car looked
7 like?

8 A No, huh-uh. (Negative response.)

9 Q Do you remember giving a description of that car to law
10 enforcement that night?

11 A Yeah, I think a white car. I'm not sure.

12 Q A white car. Do you know if it was like a sedan or an
13 SUV, do you know anything or remember that at all?

14 A A small car like a Chrysler.

15 Q A Chrysler.

16 A About the same size.

17 Q Okay. Now, when you got inside the club can you tell
18 the jury who you ran into that night?

19 A I ran into Charlie.

20 Q Charlie?

21 A Uh-huh. (Affirmative response.)

22 Q And did you and Charlie used to have a relationship
23 together?

24 A Yes.

25 Q How long did you guys date?

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1 A Off and on for a couple of years.

2 Q Couple of years.

3 A Uh-huh. (Affirmative response.)

4 Q And did you become familiar with his family as a result
5 of dating him?

6 A Well, I knew his family before I met him.

7 Q Oh, okay. And how did you know them?

8 A Because me and his aunt was good friends.

9 Q Okay. And which aunt would that be?

10 A Stephanie.

11 Q Stephanie Boston?

12 A Uh-huh. (Affirmative response.)

13 Q Did you know his mother, Verda Roberts?

14 A Yeah, I know her.

15 Q And when you got there did you run -- you said you ran
16 into Charlie; is that correct?

17 A Uh-huh. (Affirmative response.)

18 Q And what did you and Charlie do when you ran into each
19 other?

20 A He told me that his mom and them were on the patio.

21 Q Okay, and when he told you his mom and them were on the
22 patio what did you do?

23 A I went in the bathroom because I had to use the
24 restroom.

25 Q Okay.

1 A But I stood in there for a while.

2 Q Okay, and did you eventually go the patio --

3 A Yes.

4 Q -- to meet your friend, Stephanie Boston?

5 A Uh-huh. (Affirmative response.)

6 Q Okay. And did you meet any other people that were with
7 them that night?

8 A Yeah, there was a couple of people out there.

9 Q Okay. Did you know the three men that were with them
10 that night?

11 A No.

12 Q So that was the first time that you met them that
13 night?

14 A Yes.

15 Q Were you introduced to them that night?

16 A Yes.

17 Q Okay. Who introduced you to the three men?

18 A Stephanie.

19 Q Stephanie?

20 A Uh-huh. (Affirmative response.)

21 Q And just so the jurors are clear when you came to the
22 H&J club that night you and Charlie were not dating,
23 correct?

24 A Huh-uh. (Negative response.)

25 Q All right. Now, after you were introduced by Stephanie

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1 to the rest of the family do you recall where everybody went
2 after that?

3 A Went back inside.

4 Q Okay. Where exactly inside did y'all go?

5 A Everybody went back inside, but I went to the bar.

6 Q To the bar?

7 A Yeah, by myself.

8 Q Okay, and can you tell the jury a little bit about what
9 happened when you went to the bar by yourself?

10 A I was approached by an unknown man.

11 Q Okay. And did this man make advances towards you?

12 A Yes.

13 Q And did he introduce himself to you?

14 A Yes.

15 Q And what did he say his name was?

16 A He didn't. He said his nickname had some letters. I
17 told them I thought it was T-something, but I couldn't
18 remember.

19 Q Okay. And you thought it was T?

20 A Uh-huh. (Affirmative response.)

21 Q Okay. Now, the man who approached you who you think
22 you heard his name was T, did you -- could you provide a
23 description to the jury, please?

24 A Short, five-five to five-seven.

25 Q Okay. How much do you think he weighed?

- 1 A Not very much, maybe 140 pounds, maybe.
- 2 Q Okay. And could you describe his hair cut, please?
- 3 A Short.
- 4 Q And do you remember what color shirt he was wearing?
- 5 A White.
- 6 Q White t-shirt?
- 7 A Uh-huh. (Affirmative response.)
- 8 Q At that point, did you continue talking to this man at
- 9 the bar?
- 10 A No.
- 11 Q Where did you go next?
- 12 A I went and stood up by the dance floor.
- 13 Q By the where, I'm sorry?
- 14 A By the dance floor.
- 15 Q And when you went to the dance floor, who came up to
- 16 you next?
- 17 A Charlie.
- 18 Q Charlie?
- 19 A Uh-huh. (Affirmative response.)
- 20 Q And when he came up to you did you want to dance with
- 21 him?
- 22 A No. He didn't ask me to dance, he just stood behind
- 23 me.
- 24 Q Oh, okay. So he was not dancing with you?
- 25 A No.

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1 Q And were you in the mood to talk to Charlie at this
2 point?

3 A No.

4 Q And if anything -- why didn't you want to hang out with
5 Charlie that night?

6 A I just didn't.

7 Q Okay. While you were standing with Charlie by the
8 dance floor?

9 A Yeah, the same guy.

10 Q The same guy?

11 A Uh-huh. (Affirmative response.)

12 Q The one that had introduced himself as T?

13 A Yes.

14 Q All right. And can you tell the jury what if anything
15 you said or motioned to that man as he approached you?

16 A Yeah, I did like -- like don't talk to me.

17 (Indicating.)

18 Q Like this? (Indicating.)

19 A Uh-huh. (Affirmative response.)

20 Q And did you get -- when you did that did Charlie react?

21 A Well, he said that he was being disrespectful.

22 Q Okay. And did you see what Charlie did next?

23 A What you mean?

24 Q Well, did the guy continue approaching you even though
25 you went like that? (Indicating.)

1 A Yes.

2 Q Okay, and what happened next?

3 A I guess they had some words or something. I guess that
4 when he said you're being disrespectful or something.

5 Q Uh-huh. (Affirmative response.)

6 A And he kept right on.

7 Q And so Charlie threw the drink on the guy?

8 A Yes.

9 Q Okay. And what happened when Charlie threw the drink
10 on the guy?

11 A I motioned for his mom to come over there.

12 Q Verda Roberts?

13 A Yeah.

14 Q Okay. And did she come over?

15 A Yes.

16 Q And what happened next?

17 A It was just so much going on at that point I couldn't
18 tell you.

19 Q All right. Do you remember your friend Brian coming
20 also?

21 A Yeah, everybody was fighting.

22 Q Everybody was fighting?

23 A Uh-huh. (Affirmative response.)

24 Q Did you see Ms. Verda Roberts get punched by anybody?

25 A No.

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1 Q You didn't see her get hit?

2 A No.

3 Q Did you see anybody hit Charlie?

4 A No.

5 Q Did you notice any injuries on Charlie's face at any
6 point that night?

7 A Not that night.

8 Q Not that night?

9 A Huh-uh. (Negative response.)

10 Q You said not that night. Did you eventually see
11 injuries on his face?

12 A It was after that, maybe a month or two months.

13 Q Okay. So he still had an injury?

14 A He had cut lips.

15 Q Okay. So tell the jury how it is that you and Brian
16 know each other?

17 A Well, I knew Brian when he was a little boy, his
18 parents lived down the street from my house.

19 Q And did he go to the same school as you?

20 A No, I think he younger than I am. He probably went to
21 the same school, but I was before that.

22 Q Years apart?

23 A Uh-huh. (Affirmative response.)

24 Q All right, and when you first came into the club before
25 the fight ever happened, did you see Brian in the club?

1 A I think Brian was standing in the bar.

2 Q He was standing by the bar?

3 A Uh-huh. (Affirmative response.)

4 Q When you were approached by the person who said he was
5 T?

6 A Yes.

7 Q Now, when Brian came when the fight started between
8 this T individual and Charlie, did you hear Brian say
9 anything about this individual, about who he was siding with
10 in this situation?

11 A No. He was saying that he knew the guy. His home boy.

12 Q His home boy?

13 A Yes.

14 Q And at that point, did he try -- did he get involved in
15 the fight?

16 A It was so many people doing so many different things.
17 I was trying to tell him to stop. So I just got out the
18 way.

19 Q Okay. And you didn't want to get hurt?

20 A Yeah, and the bouncer was throwing people out, and a
21 lot of people left out ahead of us, because they threw some
22 people out.

23 Q Okay. And how many people would you say got involved in
24 this altercation at the club?

25 A A lot.

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1 Q A lot?

2 A Uh-huh. (Affirmative response.)

3 Q And of those people, how many people do you think had
4 dread locks that night?

5 A You know, it was dark in there. I don't know.

6 Q Okay. Did you have to hold Brian back at one point?

7 A Yeah. I told him he didn't need to get in trouble.

8 Q Okay. And after -- you remember if Brian came out of
9 his shirt at any point when you were trying to hold him
10 back?

11 A Yeah. And I held onto his arm.

12 Q And you held onto his arm?

13 A Uh-huh. (Affirmative response.)

14 Q Now, during this time you stated that bouncers were
15 already kicking people out?

16 A Yes.

17 Q And by the way, when you first got there did you get
18 searched by the bouncers, the security, or ID'd by security.

19 A Yeah, it was a female.

20 Q A female did check your ID?

21 A Yeah.

22 Q And you don't typically carry your pocketbook into the
23 club?

24 A No. I left it in the car.

25 Q And so at this point you're still holding Brian back,

1 did you hear anything about gunshots?

2 A No, not at that point.

3 Q Okay. Tell the jury when it is the first time you hear
4 gunshots?

5 A There was a handful of us still up in there, and I got
6 my keys and was ready to go home. And that's when I heard
7 gunshots when I was trying -- getting to the door. I was
8 going out through the kitchen.

9 Q Okay. And I don't think we're familiar with where the
10 kitchen is? I'm going to ask you to point that out for us,
11 please?

12 A Well, both the doors right beside each other. The
13 kitchen is right here.

14 Q Okay. So it's in the adjacent building, in this side
15 where the carports for the gas tanks?

16 A Yes.

17 Q So is there a way to go from the night club through to
18 this side at night?

19 A This is the entrance to the night club, this is the
20 entrance to the kitchen.

21 Q And so you used the kitchen exit. Okay, so tell the
22 jury again when it is that you first hear shots at this
23 point?

24 A When I was heading to the door.

25 Q Heading towards this door right here?

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1 A I'm still inside.

2 Q Okay, you're still inside when you heard the shots..

3 Where was Brian Johnson?

4 A I think he was in the club. I'm not sure.

5 Q I believe you testified that you had held him back and
6 he came out of his shirt.

7 A I think he was in the club, but I got my keys so I can
8 get out of there.

9 Q All right. Would there have been enough time for him
10 to leave before you?

11 MS. JOHNS: Your Honor, I object. That calls for
12 speculation. She saw or she didn't.

13 BY MS. SHIPLEY:

14 Q Where did you leave Brian Johnson.

15 A When I got my keys he was still in there. When I get
16 my keys I was out.

17 Q Okay.

18 A What startled me was when I heard the gunshots.

19 Q All right. Let me make sure I understand. You got
20 your keys, correct?

21 A Uh-huh. (Affirmative response.)

22 Q You're heading to go to your car?

23 A Yes.

24 Q You don't even make it outside and you hear gunshots?

25 A Yes.

1 Q Had you just left Brian Johnson?

2 A I don't know.

3 Q At that point, describe for the jury the rate of the
4 shots that you heard?

5 A Real fast.

6 Q Real fast. And could you tell this jury how many shots
7 you may have heard that night?

8 A No.

9 Q Why not?

10 A Because it was too fast.

11 Q Too fast to count?

12 A Uh-huh. (Affirmative response.)

13 Q Had you ever heard anything like it before?

14 A No.

15 Q And did anybody accompany you to your car?

16 A No.

17 Q And when you got to your car which way did you leave?

18 A What you mean?

19 Q Which route did you take to go home?

20 A On Hardscrabble back to my house.

21 Q Okay. So if you're parked in the parking lot of the
22 H&J, did you have to turn left or right on Hardscrabble to
23 go home?

24 A Which way is towards Farrow Road?

25 Q This would be heading towards Farrow Road and that

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1 would be heading towards out further. Do you remember what
2 route you took to go home?

3 A Oh, I went straight home.

4 Q Okay. So you would have had to take a left?

5 A Yes.

6 Q All right. And where was Brian when you left?

7 A I don't remember.

8 Q Would it help to refresh your memory if you read your
9 statement that you provided to police on June 30th?

10 A Uh-huh. (Affirmative response.)

11 Q I'm going to refer you to the bottom of Page 3. The
12 very last question on that page.

13 A Uh-huh. (Affirmative response.)

14 Q I got my keys. He was still there. When I got my keys
15 I don't know where he went.

16 Q Okay. Do you remember being asked where was Brian when
17 you left and what your answer was?

18 MR. SWERLING: Your Honor, it's got to be -- to
19 refresh her memory -- if it doesn't refresh her memory, then
20 that's the end of the inquiry.

21 THE COURT: That's correct.

22 MS. SHIPLEY: I'll proceed, Your Honor.

23 BY MS. SHIPLEY:

24 Q Who else was in the bar when you left?

25 A Chris was there. I can't remember. It was a hand-full

1 of people in there.

2 Q Okay. And where were Verda, Charlie, and Stephanie?

3 A Gone.

4 Q They had already gone?

5 A Uh-huh. (Affirmative response.)

6 Q Do you know how long they had been gone for from inside
7 the bar?

8 A Give or take, maybe 10, 15 minutes, 20 minutes at the
9 most. It wasn't a long period of time.

10 Q It wasn't a long period of time?

11 A No.

12 Q And were you paying attention to the time this night?

13 A No.

14 Q Okay. Did you see anybody outside the club or near
15 Hardscrabble Road when you were leaving, driving home?

16 A I don't remember.

17 Q Where there any other cars parked around --

18 A There were still cars out there.

19 Q There were still cars?

20 A Uh-huh. (Affirmative response.)

21 Q And again, this was early morning hours -- how crowded
22 was the area?

23 A What you mean?

24 Q Were there a lot of cars there or --

25 A It was a good many cars there?

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1 Q Still a good many cars?

2 A Uh-huh. (Affirmative response.)

3 Q Okay. Now, when you left the bar did you talk to
4 Stephanie Boston again?

5 A When I got home.

6 Q When you got home. And did you hear what had happened
7 to their friend?

8 A Yes.

9 Q And did you also speak with Charlie Bates that night?

10 A No, I didn't listen.

11 Q I'm just asking yes or no, did you talk to him?

12 A He called me, but I didn't talk to him.

13 Q Okay. And in 2000 -- sorry, October of 2000, you were
14 convicted of one count of fraudulent check, correct?

15 A October what?

16 Q 2000, the year 2000?

17 A I don't know if that --

18 MS. SHIPLEY: Beg the Court's indulgence.

19 BY MS. SHIPLEY:

20 Q I've got to ask you a couple more questions, Ms.

21 Johnson. The night or the morning you provided the
22 statement to the police, do you remember them coming to your
23 house, a female officer and Investigator Gallegos?

24 A Yes.

25 Q And do you remember being reluctant to talk to them

1 that morning?

2 A Yeah. I was shocked they knowed where I stayed at.

3 Q Okay.

4 A And I didn't have anything to do with it, so why were
5 they coming to my house.

6 Q Isn't it true you were scared to talk to them?

7 A No, I was not scared to talk to them.

8 MR. SWERLING: Your Honor, object to leading.

9 THE COURT: Sustained.

10 BY MS. SHIPLEY:

11 Q All right. Do you recall telling Investigator Gallegos
12 that they were going to get you killed?

13 MR. SWERLING: Objection.

14 A No.

15 MR. SWERLING: I just objected. And you sustained
16 the objection. That's a leading question and it's
17 prejudicial. And I -- I object to it. I'd like to be heard
18 on it.

19 MS. SHIPLEY: I'll rephrase the question.

20 THE COURT: All right. Thank you.

21 BY MS. SHIPLEY:

22 Q When the officers --

23 THE COURT: Hold on one second.

24 MS. SHIPLEY: Yes, ma'am.

25 THE COURT: The jury is to disregard both the

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1 question and answer in that line of questioning.

2 MS. SHIPLEY: All right. Thank you.

3 THE COURT: Thank you.

4 BY MS. SHIPLEY:

5 Q When the officers came to your house that morning were
6 you pleased to see them?

7 A No, I was not.

8 Q Did you want to talk to them?

9 A No, I didn't.

10 Q Did you eventually talk to them?

11 A Oh, I talked to them, then. I just didn't know why
12 they would be coming to my house.

13 Q Okay. Did you go to the Richland County Sheriff's
14 Department with them?

15 A Yes, I did.

16 Q And did you give them a written statement?

17 A No. I don't think I give them a written statement.

18 Q The statement that you've been referring to, the four
19 page statement?

20 A They asked me questions.

21 Q Okay. And you signed the statement; correct?

22 A Yes.

23 Q Okay. Now, at that time when you were at the Sheriff's
24 Department, were you asked -- you were allowed to go back
25 home; correct?

1 A (No response.)

2 Q After you gave your statement you left?

3 A Yes.

4 Q All right. On July 6, 2007, at 5:00 p.m. did you
5 return to the Sheriff's Department?

6 A What --

7 Q To talk to Investigator McRae?

8 A I -- I don't remember.

9 Q Do you remember giving him a name of who T was?

10 A No, I still don't know T.

11 Q Okay.

12 MS. SHIPLEY: Your Honor, may we approach?

13 THE COURT: Yes, you may.

14 (Off the record bench conference with counsel and the
15 Court.)

16 THE COURT: Ladies and gentlemen of the jury, I'm
17 going to allow you all to have a short recess. I remind you
18 not to discuss the case.

19 (Jury out at 4:28 p.m.)

20 MR. SWERLING: Judge, first, I indicated I wanted
21 to put something on the record. The question was and the
22 response. I have the question was, did you tell somebody
23 you didn't want to cooperate because you'd get killed.
24 First of all, I objected to the question right before then
25 as leading. That again was another leading question

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1 following up with the question you had sustained. In
2 addition, I believe the solicitor should not have injected
3 that in the trial. If the witness has responded that way
4 we'd be in a different posture and I could object at that
5 point, but for the solicitor to have asked that question and
6 inject that at trial is obviously prejudice to these
7 defendants, that she was afraid of these defendants or --
8 which is suggestive. I think it's very difficult to get a
9 fair and impartial trial and I move for a mistrial.

10 MS. JOHNS: I join that, Your Honor.

11 THE COURT: Okay.

12 MS. SHIPLEY: Your Honor, I asked the witnesses if
13 she recalled identifying T is Taurus or if she had provided
14 identification of who T was. She denied doing that. So at
15 that point is when I asked the question about identifying --
16 first of all that she was reluctant to talk to police on the
17 morning of June 30, 2007, and that she was afraid to
18 cooperate.

19 MR. SWERLING: The questions about Taurus were
20 later. That has nothing to do with the questions that were
21 asked at that particular time. That's not a time frame to
22 what we're dealing with here. The comment about you were
23 afraid because you were afraid of getting killed had nothing
24 to do with identifying people. That was the last series,
25 the last question that was asked.

1 MS. SHIPLEY: Your Honor, you gave an instruction
2 to the jury to disregard. It's been cured.

3 MR. SWERLING: I submit it has not been cured. I
4 submit you can't inject into the trial someone -- that
5 someone is afraid because they thought they were going to
6 get killed, when that person has not said that. And that's
7 a comment by the state. That's not even a comment by the
8 witness. So I mean, I think it's even more egregious and
9 more prejudicial because it's not a comment by the witness,
10 it's a comment by the solicitor. That you thought you were
11 going to get killed.

12 MS. MCDUFFIE: Your Honor, that is an incorrect
13 statement by Mr. Swerling. That is a statement that this
14 witness made to Investigator Gallegos and Investigator Heidi
15 Scott, which is reflected in both of their case notes, which
16 has been provided to the defense.

17 MR. SWERLING: Well, I'm not doubting that it's in
18 the statement. That's not the point. You can't -- when the
19 objection is sustained about leading and you follow up with
20 the next question that is more prejudicial than was even
21 sustained, you're injecting into the trial that particular
22 comment. You haven't asked the witness why the witness
23 didn't comment or want to cooperate with the police. That
24 would have been the subject of a different objection. I'm
25 objecting because the solicitor brought it up.

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1 MS. SHIPLEY: Your Honor, the witnesses never
2 answered it and you immediately sustained his objection, and
3 you corrected, instructed the jury to disregard both
4 questions. And that was cured.

5 MR. SWERLING: Well, I don't think it can be
6 disregarded. I'm sorry. I just --

7 MS. JOHNS: Your Honor, I don't think the bell can
8 be unrung, at this point. And even though there was an
9 objection made and sustained, the state continued to go
10 into, you know, her basically not wanting to cooperate
11 because she -- they were going to get her killed. I think
12 that's highly prejudicial to both of these defendants, Your
13 Honor, and I join in the motion for a mistrial.

14 MS. SHIPLEY: Your Honor, the state had a good
15 faith basis to ask that question. It is in the discovery
16 that she was reluctant to cooperate because she was fearful
17 of being killed. And she told the investigators, you're
18 going to get me killed, and I was trying to establish that
19 she was reluctant in going with investigators to the
20 headquarters to give her statement.

21 MS. JOHNS: Then she should have asked, why were
22 you reluctant, which would have warranted maybe another
23 objection, but at least it wouldn't have been something that
24 is interjected by the state that would cause a mistrial.

25 MS. SHIPLEY: The witness's answer was she wasn't

1 reluctant, that she didn't want -- she didn't have anything
2 to add to what happened that night. Her response was she
3 didn't have any information.

4 THE COURT: This statement about whether or not she
5 was going to get killed, was that written somewhere?

6 MS. SHIPLEY: Yes. It's written in Investigator
7 Gallegos notes.

8 THE COURT: Okay.

9 MS. SHIPLEY: And also in Heidi Scott's notes.
10 They were both together when the statement was made and --
11 it's all been turned over in discovery in their written --

12 THE COURT: And the statement that you're having
13 her look at is something that she wrote and signed off on or
14 is that separate and apart from this?

15 MS. SHIPLEY: The actual written statement that
16 she's been referring to, she did sign that statement. Yes,
17 ma'am.

18 THE COURT: Okay. So that's separate and apart
19 from the one that you're talking about?

20 MS. SHIPLEY: Right. She did not write in her
21 written statement that she told them that, y'all are going
22 to get me killed. That was said verbatim, verbally in the
23 car on the way to give her five page written statement. But
24 I did ask, specifically, asked, you were reluctant to
25 cooperate with the police isn't that true, and she said, I

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1 didn't have any information. I was upset that they were at
2 my house. I didn't know how they knew to find me at my
3 house. I then followed -- because she was denying,
4 essentially, reluctant for another reason, and the real
5 reason is the discovery that I turned over to the defense
6 that she did not want to cooperate because she was fearful
7 of getting killed.

8 MR. SWERLING: But she did cooperate. So what's
9 the probative value to that comment. I'm just trying to
10 search my mind as to what the probative value of that is in
11 injection that into the trial is. She did give a statement.

12 MS. SHIPLEY: Because initially at the beginning of
13 my questioning of her I asked her if the defendant went by
14 the name T and she denied that.

15 MR. SWERLING: That's a different -- two different

16 --

17 MS. SHIPLEY: I was getting there, Your Honor.

18 MR. SWERLING: We're talking about two different
19 parts of this transcript here. We're talking about the
20 point when she asked her the fact that you didn't cooperate
21 is because you thought you were going to get killed. That
22 has nothing to do with T. That came way -- several
23 questions later.

24 THE COURT: Okay.

25 MR. SWERLING: I mean the transcript can -- you can

1 easily go back to that, but I know for sure that that
2 comment about that question was made unrelated to the issue
3 about T, because those questions came right before we asked
4 the jury to go out.

5 MS. SHIPLEY: The point of the line of questioning
6 was to establish that she's not being forthright about this
7 defendant Watts nickname.

8 MR. SWERLING: Again, that had nothing to do with
9 it whet he comment was made. I'm not sure --

10 MS. SHIPLEY: But my point is I was leading to
11 that. That's why it was relevant. He asked why it's
12 probative, that's why it's probative. I was trying to
13 establish that she was not being forthright about the
14 nickname of Taurus Watts, which is T.

15 MR. SWERLING: You can't --

16 MS. SHIPLEY: And she gave that information to
17 Investigator McRae on July 6, 2007 --

18 MS. JOHNSON: That's not true.

19 MS. SHIPLEY: -- at 5:15.

20 THE COURT: Ma'am, you can't be part of this
21 procedure.

22 Okay, go ahead.

23 MS. SHIPLEY: I just said that was the statement
24 she made to him on July 6, 2007, at 5:15.

25 MR. SWERLING: Judge, I -- this is -- when she

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1 asked the question when she made the statement that you were
2 afraid because you thought you were going to get killed,
3 that was unrelated to the issue about whether T was Taurus
4 Watts. It had nothing to do with it. That was not asked
5 until several questions later when Ms. Shipley asked to
6 approach the bench. And that's when we asked that the jury
7 go out, but it was several questions prior to that when I
8 stood up and objected, and said that I wanted to put
9 something on the record. So I'm trying to figure out at
10 that particular time what was the probative value for making
11 that statement. Not only was it objectionable, the Court
12 had already sustained my objection to leading to the follow
13 up questions. What was the probative value?

14 MS. SHIPLEY: And I'm trying to establish the
15 probative value, Your Honor. At the very beginning of the
16 question, line of questioning of this witness, I asked her
17 how she knew Taurus Watts and whether he goes by the
18 nickname T and she denied it. So I knew later on I was
19 going to have to reach this crossroads in the line of
20 questioning, and as I did, I realized she was not going to
21 even concede that she was fearful of cooperating as she had
22 indicated to Gallegos and Scott, the investigators that
23 transported her to headquarters.

24 MS. JOHNS: That makes it egregious, Your Honor,
25 because the state is admitted that they are trying to

1 insinuate that this witness is going to get killed if she
2 gives information that she's saying is not true. That this
3 is not the T that she spoke to. I don't know if it'll help
4 the Court, but the statement that they're referring to is
5 not a handwritten by Ms. Johnson, it is a typewritten
6 statement that is signed by Ms. Johnson. I don't know if
7 that helps the Court or not, but the state just admitted
8 that they are trying to insinuate and interject into this
9 trial something that did not occur. By her stating, so
10 you're basically not cooperating because you're still afraid
11 you're going to get killed is highly prejudicial, Your
12 Honor.

13 MS. SHIPLEY: That is absolutely not what I was
14 saying, Your Honor. I had asked the witnesses at the very
15 beginning -- we can go back to the very beginning of her
16 testimony. I specifically asked her if Taurus Watts goes by
17 the nickname T. And she said, no. So I knew that she had
18 told Investigator McRae on July 6, 2007, at 5:15 that she
19 identifies T as Taurus Watts. That is the nickname that was
20 used. And so I knew that she was not going to concede that
21 she was not cooperative, and she -- when I asked her why you
22 were reluctant she said because they showed up at my house.
23 I wanted to know what they were doing at my house. That was
24 completely the line and the rationale of my questioning was
25 to reach -- and that's when I approached the bench to get

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1 guidance from the Court because I didn't want any more
2 objections yelled out, because I know that I have to
3 establish the foundation, but I just wanted to bring it to
4 your attention that I was getting ready to ask her what was
5 contradicting her according to the notes by Investigator
6 McRae. And it was documented in Investigator Gallegos notes
7 that she was -- that y'all are going to get me killed. That
8 she was not -- she was reluctant to cooperate at the
9 beginning. Needless to say, Your Honor, when you sustained
10 the objection, she didn't answer the question and you
11 instructed the jury to disregard, and it's in Your Honor's
12 discretion whether or not to grant a mistrial. She denied
13 it actually -- we'll have to play back the transcript. I
14 believe she denied it, so that cured anything.

15 MR. SWERLING: What's not cured is the fact that it
16 was the solicitor that made the statement. That's the
17 problem. That's what we're objecting to is that the
18 solicitor made the statement, not the witness. Had the
19 witness made the statement it would have been another issue,
20 another objection. We would have approached the bench,
21 asked that the jury go out, but the solicitor made the
22 statement. It wasn't something elicited from this witness.
23 That's what troubles me more than anything. How do you get
24 that out of the jury's mind?

25 MS. SHIPLEY: Your Honor, I am allowed to -- to

1 challenge a witness when they are -- just like Mr. Swerling
2 was able to challenge Stephanie Boson and Verda Roberts from
3 Heidi Scott's notes, if you remember that. He went into
4 specifics of what they told the investigator, and even read
5 it from the investigators report. That is proper
6 questioning. I was doing the same thing.

7 MR. SWERLING: Well, you can't.

8 MS. SHIPLEY: Why can't the solicitor do the same
9 thing as the defense?

10 MR. SWERLING: Because it's -- you know that,
11 you've been trying cases long enough. The rules are
12 different for the defense. When you are impeaching a
13 witness or doing a prior inconsistent statement allows me to
14 do that. The solicitor can't do that on direct examination.

15 MS. SHIPLEY: Yes --

16 MR. SWERLING: You can impeach, but that was not an
17 impeachment question that was a statement.

18 MS. SHIPLEY: It was impeachment.

19 MR. SWERLING: Not when you make the statement that
20 you were afraid because you thought you were going to get
21 killed.

22 MS. SHIPLEY: You have to inform the witness the
23 substance of the statement that they made in order to give
24 them an opportunity to reject --

25 MR. SWERLING: We're talking about two different

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1 things. It's not the same thing. I'm -- this is not the
2 same issue, and the rules are different. The defense on
3 cross-examination, just like the solicitor on cross-
4 examination can impeach a witness, can go ahead and ask
5 about prior inconsistent statements, can read directly from
6 his statement and say, didn't you tell so and so on such and
7 such a date XYZ, but you don't do that on direct examination
8 until you are in a position where you have to impeach your
9 witness, which is allowed. But that's not what happened
10 here and there was no foundation to impeach the witness and
11 what the solicitor said was not impeaching. It was just --
12 I mean, it had nothing to do with what the witness was
13 answering, it was what the solicitor was stating.

14 THE COURT: Ms. McDuffie.

15 MS. MCDUFFIE: Your Honor, under Rule 607, any
16 party may impeach a witness, including the party calling the
17 witness. Your Honor, further, we submit the question Ms.
18 Shipley asked in order to impeach with a prior inconsistent
19 statement she informed her of the time and place and to whom
20 the statement was made and she was informing her of the
21 substance of the statement which this witness then denied
22 making, Your Honor, on the record, before Your Honor
23 sustained the objection. Your Honor, we believe the
24 foundation of the question was proper. Under Rule 607, we
25 are allowed to impeach our own witness, and further, we may

1 impeach using a prior inconsistent statement under 613(b).

2 MR. SWERLING: I don't have any doubt they are
3 entitled to do it at the right time under the appropriate
4 circumstances. But going ahead and making a statement, did
5 you tell the police that you were going to get me killed,
6 was not proper impeachment. It wasn't even the time for
7 impeachment. There was nothing to impeach at that point.
8 She was just doing her direct examination. The witnesses
9 had not denied anything, so what was the impeachment.

10 MS. SHIPLEY: Your Honor, I asked the witness,
11 isn't it true you were not happy to see the police at your
12 house. She said, yeah, because I wanted to know --

13 MR. SWERLING: She said, yes. So what's the
14 impeachment?

15 MS. SHIPLEY: She said -- No. I said, isn't it
16 true that you were reluctant with the police and she said, I
17 was upset that they were at my house, how they found me out,
18 and where -- that I had any information to add, and at that
19 point, Your Honor, she's not being forthright, and that she
20 told these people, I don't want to cooperate because I don't
21 want to get killed. Y'all are going to get me killed. That
22 was the reason that she was not cooperative.

23 MR. SWERLING: According to the solicitor own
24 statement, she didn't want the police there, she was not
25 happy about the police being there. So what was to impeach,

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1 and the way it was asked it was not impeachable. It's a
2 statement by the solicitor.

3 MS. SHIPLEY: She was denying the fact that she --
4 the real reason that she had informed the investigators,
5 which is in their notes, as why she was not cooperative, she
6 did not want to go with them.

7 MR. SWERLING: She didn't ask her that.

8 MS. SHIPLEY: We'll just have to read the record.

9 THE COURT: Okay.

10 MS. SHIPLEY: But under the rule 607 and 613, the
11 state is allowed to impeach their own witness.

12 THE COURT: Okay. Y'all be at ease for about five
13 minutes, and we'll come back.

14 (A short break was taken.)

15 (Court in session after short break.)

16 THE COURT: Okay. I've listened to these arguments
17 intently, and I'm not going to declare a mistrial. I
18 believe I've entered a curative instruction. The only thing
19 I'm willing to do further is to restate that precautionary
20 statement to the jurors, but at this point I'll leave that
21 up to the defense, because I don't know if they want any
22 further emphasis on it.

23 MS. JOHNS: I prefer not to emphasize the issue.

24 THE COURT: Okay. All right. Thanks.

25 MR. SWERLING: The same, Your Honor.

1 THE COURT: Okay. Jurors, please.

2 And Ms. Shipley --

3 MS. SHIPLEY: Your Honor, we did approach about the
4 statement July -- I articulated the date, time, to whom it
5 was made.

6 THE COURT: I think you need to redo it just
7 because there's been a little break.

8 MS. SHIPLEY: Okay.

9 MS. JOHNS: We're supposed to be heard on that,
10 proffer --

11 THE COURT: I'm sorry. Madam Clerk, just catch
12 them. Thank you.

13 Let's see what you're trying to do first.

14 MS. SHIPLEY: Yes, ma'am.

15 Shall I proffer it now?

16 THE COURT: Yeah, that will be fine.

17 MS. SHIPLEY: Okay.

18 THE COURT: Ma'am, I'll remind you that you're
19 still under oath.

20 MS. SHIPLEY: I'm just going to wait for them to
21 shut the door.

22 THE COURT: Sure.

23 PROFFER:

24 Q Ms. Johnson, my question to you was if you remembered
25 going back to the Sheriff's Department on July 6, 2007; do

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1 you remember that question?

2 A Huh-uh. (Negative response.) I don't remember.

3 Q Do you remember going back to the Sheriff's Department?

4 A No, I don't.

5 Q You don't remember going back?

6 A No.

7 Q So you don't recall going to see investigator --

8 A I remember both the officers, but I don't know if it
9 was the day they took me. It's been so long ago.

10 Q Okay. So on June 30th, you went with officers to the
11 headquarters; correct?

12 A I'm not sure about the date.

13 Q Okay, the day you gave this five page statement. Does
14 it say June 30th on there?

15 A Yeah.

16 Q Okay. What time does it say it was taken at; does it
17 say?

18 A 11:54.

19 Q All right. And that's when you signed that statement
20 that was typewritten; correct?

21 A Yeah.

22 Q Six days later on July 6, 2007, do you recall going
23 back, being called back to headquarters by Investigator
24 McRae?

25 A No, I don't.

1 Q You don't remember that?

2 A No, I don't.

3 Q So you don't remember making any statements to them
4 about the identity --

5 A I don't remember going back. I just don't remember it.

6 Q Okay.

7 MS. SHIPLEY: Beg the Court's indulgence.

8 BY MS. SHIPLEY:

9 Q Did you ever tell Investigator McRae the identity of
10 the person named T?

11 A Yeah.

12 Q You did? And what was that name?

13 A I told him T. That's all I know.

14 Q Okay.

15 A He's dark, brown skin, medium height, medium build, but
16 that was my first time I seen him.

17 Q Do you remember telling Investigator McRae that T was
18 Taurus Watts?

19 A No. I know T is not Taurus Watts.

20 MS. SHIPLEY: I believe that that is the extent of
21 the questions.

22 THE COURT: Okay.

23 JALICCA JOHNSON - CROSS EXAMINATION

24 BY MR. SWERLING:

25 Q Ms. Johnson, if that situation -- the person that you

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1 identified as a guy named T earlier in the evening that came
2 up to you --

3 A Yeah.

4 Q -- that was not Taurus Watts was it?

5 A No.

6 Q Okay. And when you went back to see Investigator McRae
7 he asked you if you knew someone named T; correct?

8 A I don't remember going back to see him.

9 Q Okay. You don't remember?

10 A No.

11 Q But -- well, just let me ask you, just let me show you
12 this -- we might as well get it out in the open. See if
13 this refreshes your memory. It says here -- well, hold on a
14 second. Have you ever known Taurus Watts as T?

15 A No.

16 MR. SWERLING: Judge, excuse me a second.

17 (Pause.)

18 BY MR. SWERLING:

19 Q Let me ask you, you do remember giving a statement on
20 June 30, correct, this statement Ms. Shipley showed you?

21 A Yes.

22 Q And that was on the date -- the date that this
23 happened, the next morning?

24 A Yes.

25 Q And over here it says can you describe the man who came

1 up to you known as T-something?

2 A Yes.

3 Q That's how you referred to him as T-something?

4 A Yeah, that was his initial in there.

5 Q Right. And you described him as a brown skinned black
6 male, approximately five foot, eight inches, he was
7 approximately 145 pounds, had a low haircut. I think he was
8 wearing a white t-shirt. Were you describing Taurus Watts?

9 A No, I wasn't.

10 Q Then he asked you again, who asked you to dance. The
11 guy who came up to the bar and tried to talk to me, the guy,
12 T.

13 A Uh-huh. (Affirmative response.)

14 Q If that had been Taurus Watts would you have said so?

15 A Yes. I know it was two different people.

16 Q It was two different people?

17 A Yes.

18 Q The one that -- this person here Taurus Watts --

19 A Uh-huh. (Affirmative response.)

20 Q -- and the person T, who came up to you to dance and
21 got involved in this whole confrontation, altercation is two
22 different people?

23 A Yes.

24 Q That's all. Thank you.

25 THE COURT: Anything further?

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JALICCA JOHNSON - REDIRECT EXAMINATION

BY MS. SHIPLEY:

Q And so you are denying that you told Investigator McRae on July 6, at 5:15 p.m. that you knew Taurus Watts as T?

A Yes, I am. I didn't say that.

Q Okay.

MS. SHIPLEY: That's all, Your Honor.

THE COURT: Okay.

MR. SWERLING: Judge, here's the problem with that.

If you look at his notes -- what the solicitor is going to suggest is that she's not telling the truth about this individual known as T, was the individual who was known as T, who was in the truck right before the fight. But in his notes, this is what Mr. McRae said. Ms. Johnson tells investigating officer that she does not -- that she does list some people that were at the club. One person she tells investigating officer that was at the club was Taurus Watts. Ms. Johnson says that she knows him as T. She does not say in here that that was the person who she saw earlier in the evening or at the time in the evening right before the fight started or the person approached her. What the state is trying to get is that she's not telling the truth about whether or not T is Mr. Watts, and Mr. Watts is the person who came up to her in the club. Clearly, her own testimony is it was two different people.

1 THE COURT: Right.

2 MR. SWERLING: So I think that this does not say
3 what the state wants it to say. It does not say that Mr. T,
4 or T who came up to her is Taurus Watts. It just says Mr.
5 Watts is known as T. So I think there is a step there that
6 they haven't gotten over.

7 MS. SHIPLEY: Your Honor, she -- I don't have to
8 establish why I'm trying to elicit this information. I've
9 laid the foundation as to this particular statement, that it
10 was clear in Investigator's notes that she was trying to
11 protect the perpetrator's involved, and that's why we are
12 eliciting this testimony.

13 THE COURT: Okay, but there's two separate issues
14 I'm hearing. One is whether or not she ever referred to T
15 as a Taurus Watts.

16 MS. SHIPLEY: That's exactly -- I just explicitly
17 asked her and she denied that, and it's in his notes.

18 THE COURT: Okay, and then the second one is
19 whether that T that came up to dance with her was Taurus
20 Watts.

21 MS. SHIPLEY: Right. And that's something they can
22 argue to the jury.

23 THE COURT: Okay, but you're just trying to -- just
24 tie up whether somebody that she knows as T is a Taurus
25 Watts.

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1 MS. SHIPLEY: Correct.

2 THE COURT: Okay. To that extent I think you're
3 okay on that ground.

4 MS. SHIPLEY: Yes, ma'am.

5 THE COURT: But you cannot, I agree with Mr.
6 Swerling, make the further leap that that person is also the
7 one who came up to her on the dance floor.

8 MS. SHIPLEY: And that's what cross-examination is
9 for, they can --

10 THE COURT: We're just establishing that right now,
11 is my point.

12 MS. SHIPLEY: Okay.

13 THE COURT: Okay. All right.

14 MR. SWERLING: She can't -- Ms. Shipley can't do
15 that?

16 THE COURT: Exactly. That's what I'm saying.
17 We're establishing that. You're indicating that he has to
18 clear that up on cross. Your notes don't reflect that she
19 has indicated affirmatively that T, who came up to her on
20 the dance floor, is also Taurus Watts. It only says in
21 those notes that she knows somebody as T as a Taurus Watts.

22 MS. SHIPLEY: That's right.

23 THE COURT: You can't take the further step about
24 that also being the same dance floor person.

25 MS. SHIPLEY: Yes, ma'am.

1 THE COURT: All right. That's fine. We just want
2 to make that clear. He does not have to get -- make that
3 distinction on cross-examination because it's not in the
4 notes. Okay.

5 MR. SWERLING: And, Judge, I would also -- at this
6 point in time, I'd object to the solicitor asking her about
7 being afraid that someone was going to kill her under Rule
8 403. If there's any intention on the state's part in trying
9 to get that in, clearly, even though Your Honor has ruled,
10 and by the way, I never have quite understood that rule, but
11 I will renew the motion --

12 THE COURT: Sure.

13 MR. SWERLING: -- because timely -- the question.
14 But leaving that aside, since I do think it's so
15 prejudicial, allowing the state to go ahead and try and go
16 back at that issue, and elicit it from her and then try and
17 impeach her, I would object to that under Rule 403.

18 THE COURT: Okay. I would state that because I've
19 given that cautionary instruction and they've asked for a
20 mistrial and I've denied that. I have not seen anything
21 from what she's testified to so far that cause that to even
22 be injected into the trial at all. So I'm just going to
23 rule against you being able to do that.

24 MS. SHIPLEY: Yes, ma'am.

25 THE COURT: And then you would have to make a

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1 motion to me to get beyond that rule.

2 MS. SHIPLEY: Yes, ma'am.

3 THE COURT: So if that comes up, you're risking
4 this trial.

5 MS. SHIPLEY: Okay.

6 THE COURT: Okay. Clear.

7 All right. Jurors, please.

8 THE CLERK: Here's a note from the jury.

9 THE COURT: All right. Thank you.

10 Okay. That's fine. Just a juror indicating that she
11 has to pick up a child by 6:00 o'clock at daycare. So we'll
12 accommodate her.

13 Okay. Jurors, please.

14 (Jury in at 5:15 p.m.)

15 (Court's Exhibit No. 3, note from jurors
16 about child care, was marked for ID.)

17 THE COURT: Thank you.

18 MR. SWERLING: Judge, while the jury is coming in,
19 may we approach?

20 THE COURT: Yes.

21 (Off the record bench conference with counsel and the
22 Court.)

23 THE BAILIFF: The jury is all seated, Your Honor.

24 THE COURT: Okay. Thank you.

25 State, you may continue with your case.

1 MS. SHIPLEY: Thank you, Your Honor.

2 JALICCA JOHNSON - CONTINUED DIRECT EXAMINATION

3 BY MS. SHIPLEY:

4 Q Ms. Johnson, I believe the last question I asked you
5 was did you recall going back to the Sheriff's Department on
6 July 6, 2007, at 5:15. Do you remember going back?

7 A No.

8 Q You don't remember. And so do you remember -- you do
9 not remember meeting with Investigator McRae at that time?

10 A I do.

11 Q So you do remember?

12 A I remember him.

13 Q Okay. So did you meet him -- first of all, the
14 statement that you gave on June 30, was that to Investigator
15 Gallegos and a woman named Sgt. Scott?

16 A I remember him and another man.

17 Q Okay. And did meet him on June 30, 2007 or July 6,
18 2007?

19 A I don't remember the date. I thought I met him the
20 first time.

21 Q Okay. But on July 6, 2007, do you recall making a
22 statement to Investigator McRae concerning the identity of
23 the person -- of a person named T?

24 A I did that the first time.

25 Q Okay. And so do you recall telling Investigator McRae

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1 that one of the persons at the club was Taurus Watts, and
2 that you know him as T?

3 A No, I didn't say that.

4 MS. SHIPLEY: That's all, Your Honor.

5 THE COURT: Okay.

6 MS. JOHNS: Thank Your Honor, please the Court.

7 JALICCA JOHNSON - RECROSS-EXAMINATION

8 BY MS. JOHNS:

9 Q Ms. Johnson, this subject that came up to you when you
10 were getting a drink at the bar, do you see him in this
11 courtroom today?

12 A No.

13 Q Okay. So when you gave your initial statement to Heidi
14 Scott and Investigator Gallegos, who stepped out of the
15 courtroom, you stated that this guy introduced himself with
16 some initials?

17 A Yes.

18 Q Do you recall what the initials were specifically?

19 A No. I just remember T.

20 Q Okay. Do you recall whether there was a word in front
21 of the initial or more than one initial?

22 A It was more than one initial?

23 Q Okay. And if that person that introduced themselves at
24 the bar was my client, Taurus Watts, would you have told
25 that story to the investigators.

1 A No. I know Taurus Watts.

2 Q All right. So if Taurus Watts was making a move on you
3 at the bar, if that fact was true then you would have told
4 Investigator McRae that, wouldn't you?

5 A Yes.

6 Q And you would have told Investigator Gallegos that,
7 too; right?

8 A Yes.

9 Q And you also would have told Heidi Scott that it was
10 Taurus Watts that was making a move on you; wouldn't you?

11 A Yes.

12 Q Okay. And the fact that Taurus Watts did not make a
13 move on you, did that change the identity of the person who
14 did make a move on you?

15 A Yeah.

16 Q Okay. When they asked you if Taurus Watts was T --

17 A I don't remember them ask me that.

18 Q Okay. Now, in your statement, did you have an
19 opportunity to review your statement before today?

20 A Yes. Today I looked over it.

21 Q Okay. And was it your intention to give information to
22 the investigators that T was Taurus Watts, at any time?

23 A What you mean; saying they was the same person?

24 Q Yes.

25 A No. I know they not the same.

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1 Q Now, let's go over this again. How long have you known

2 Taurus Watts?

3 A A long time. Maybe 20 years.

4 Q Okay. And did you have -- let me ask you this -- In
5 your statement to Investigator Gallegos and Heidi Scott, was
6 that a statement that is written by you?

7 A No.

8 Q How did that come about -- let me ask you this way.
9 They came to your house that morning, did they not?

10 A Yes.

11 Q And when they came to your house, they came to your
12 house without you expecting them to come; is that correct?

13 A Yes.

14 Q When they came to your house, you stated on direct
15 examination that you were not happy with them being there;
16 isn't that right?

17 A Yes, because it made my son upset.

18 Q Okay. In fact, you were unhappy because you were
19 thinking, why are they getting me involved. Is that
20 correct?

21 A To a point yeah. I really didn't know anything, and
22 yet my son was crying, mom. He didn't know what was going
23 on.

24 Q Right. So your son was upset for one. Right?

25 A Yes.

1 Q And you did not know -- you were surprised, were you
2 not, that they were at your house --

3 A Yes.

4 Q -- about this?

5 A Yes.

6 Q Because you didn't have anything to do with it, right?

7 A Yes.

8 Q Okay. And when they did come to speak to you, you had
9 not had much sleep that night, right?

10 A Yes.

11 Q And when you talked to them, you do remember saying to
12 them that the guy that made a move on you in the bar had
13 more than one initial when he introduced himself?

14 A Yes.

15 Q Okay. That has not changed between then and today?

16 A No.

17 Q You'd have the same response, correct?

18 A Yes.

19 Q All right. And when you gave the description, did you
20 give the description that you gave today about being five
21 feet, about five feet, eight inches tall, that he was
22 probably about 145 pounds with a low haircut; is that right?

23 A I guess.

24 Q Well --

25 A Can I see --

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1 Q Yes, ma'am. It's on Page 2.

2 A Yes.

3 Q Is that right?

4 A Yes.

5 Q Okay, and that he had a low haircut, right?

6 A Yes.

7 Q And he was wearing a white t-shirt.

8 A Yes.

9 Q Is this information that you voluntarily gave to them
10 or is it information that they gave to you and you agreed to
11 it?

12 A No, it was me.

13 Q Okay. You gave them this information?

14 A I guess.

15 Q Okay.

16 A I mean, as far as the height and weight, he might have
17 said is he this tall and I'd say yes.

18 Q Okay. Okay. Now, the guy that asked you to dance at
19 the bar, that was making a move on you was not Taurus Watts?

20 A No.

21 Q Okay. And you've never known Taurus Watts to go by the
22 nickname T?

23 A No. Only Taurus.

24 Q Okay. And you've known him for 20 years; is that
25 right?

1 A Yes.

2 Q And you know his family; is that right?

3 A Yes.

4 Q And you know a Willie Crosby?

5 A Yes.

6 Q Okay. And how do you know Willie Crosby?

7 A I have a son by him.

8 Q Okay. And is Willie Crosby and Taurus friends?

9 A Yes.

10 Q Okay. So not only do you know Taurus over the 20 years
11 you've known his family, but you also some of the friends
12 Taurus hangs out with, one being Willie Crosby?

13 A Yes.

14 Q And Willie Crosby is also your son's father?

15 A Yes.

16 Q Okay. Now, this person that you referred to that had
17 the initials?

18 A Yes.

19 Q Did he appear to be with Brian Johnson?

20 A Well, there was a lot of people standing at the bar.

21 Q Okay.

22 A And they all standing up there. So if he was with him,
23 he probably was.

24 Q Okay. Has you ever seen this guy with the initials ever
25 with Willie Crosby or Taurus?

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1 A No.

2 Q Okay. So it's fair to say, then, that the guy that
3 made move on you at the bar was not an associate of Taurus
4 Watts, right?

5 A No. I've never seen him before.

6 Q Okay. And so when there is a fight that breaks out it
7 breaks out starting with Charlie Bates, is that right, him
8 splashing a drink in somebody's face?

9 A Yes.

10 Q Okay. And do you remember the person who splashed, who
11 was that person who received the drink in the face?

12 A T.

13 Q Okay. So it was the guy that made the move on you?

14 A Yeah.

15 Q Okay. And that person that got a drink in the face is
16 not Taurus Watts?

17 A No.

18 Q Okay. Now, when that happened to the guy that had the
19 initials that you refer to as T, somebody came up and said
20 that was his home boy; is that right?

21 A Yeah.

22 Q Who was that person that came up and said that was my
23 home boy?

24 A I think it was Brian.

25 Q Brian Johnson?

1 A Uh-huh. (Affirmative response.)

2 Q So when that happened then you saw Charlie Bates get
3 hit?

4 A No. I didn't see Charlie get hit. I just seen the
5 fight.

6 Q Okay. So after the drink got thrown in the face, then
7 you saw all the people fighting, right?

8 A Yes.

9 Q And you did say you were trying to hold Brian back?

10 A Yes.

11 Q And when you were trying to hold Brian back did you see
12 -- did you see Chris Crosby in the bar?

13 A No. I seen Chris right before I got ready to leave.

14 Q Before you got ready to leave?

15 A Yeah. That's when they were throwing some of the people
16 out.

17 Q Okay. And did you see Charlie?

18 A No.

19 Q Okay. So when they were throwing people out, you
20 didn't see Charlie?

21 A No.

22 Q Okay. And you'd just been introduced to three other
23 men that night that came with Charlie. One was Travis
24 Malone. The three men that were with your friend Stephanie?

25 A Yeah.

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1 Q Do you remember seeing them out on the patio?

2 A Yes.

3 Q And when this fight broke out did you see them in the
4 bar?

5 A When the fight broke out they were standing next to
6 Charlie's mother, Verda. That's why I called her over to
7 me, they were fighting. So she can kind of calm Charlie
8 down.

9 Q Okay. So at some point in time you said that the
10 bouncers or whatever started kicking people out?

11 A Uh-huh. (Affirmative response.)

12 Q And describe what that means?

13 A I guess because they was fighting they threw them out
14 of the club.

15 Q Okay. Did they physically take them and remove them or
16 did they instruct them to get out?

17 A I don't know.

18 Q Okay.

19 A Where I was like five minutes later there was bunch of
20 moving in the club and they was pushing everybody out.

21 Q Okay. And you said you had gone to get your key?

22 A Uh-huh. (Affirmative response.)

23 Q Where were your keys?

24 A On the bar.

25 Q So after this commotion starts, the fight, the drink

1 thrown in the face, and then the fight and then the chaos --

2 A Yes.

3 Q -- and you were thinking, I'm going to get out of here,
4 right?

5 A Not at first. Because, like I said, I didn't want to
6 go out there while it was going on. They was fighting. So
7 I waited a minute. There was people still in there.

8 Q Okay.

9 A So then I said, well, I'll go get my keys and go before
10 anything else happens.

11 Q Can you say for sure that Brian Johnson was in the bar
12 when you left?

13 A No.

14 Q You can't say for sure?

15 A When I went to get my keys I thought I seen him.

16 Q Okay.

17 A So I was holding him, so I think he was in the club.

18 Q Okay. You think he was?

19 A Uh-huh. (Affirmative response.)

20 Q So you're sure about that?

21 A I think so.

22 Q Okay. What about these three men that were with
23 Stephanie, did you see them in the club?

24 A No.

25 Q Okay. Did you see Taurus in the club?

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1 A I think I seen Taurus in the club.

2 Q Okay. So Taurus and Brian Johnson are in the club when
3 you go to get your keys to leave?

4 A Yes.

5 Q Okay. Now, you have known Taurus, and you know Willie
6 and Chris, and all those boys and you have been in the club
7 before, right?

8 A Yes.

9 Q And you've seen Taurus in the club before, right, many
10 times?

11 A Yes.

12 Q Correct?

13 A Yeah, I saw him.

14 Q Okay. And you didn't carry a purse with you that
15 night, is that right?

16 A No.

17 Q The people, the management, or the owner of this club,
18 they know you by sight, is that fair to say?

19 A The people working.

20 Q Okay. Do you know a guy named Sherman?

21 A No.

22 Q Do you know who the female was that checked your ID?

23 A No.

24 Q And but she did check your ID, some female, right?

25 A Yeah, it was two of them at the door. A heavy set dude

1 and a female.

2 Q A heavy set dude and a female. Okay. And when they
3 checked your ID they just let you in?

4 A Yeah. Most of the time, if it's a female and a guy
5 there they'll have the female check the female and the guy
6 check the guys.

7 Q Okay. How does the female check you?

8 A What you mean?

9 Q She just checked your ID, she didn't search you, right?

10 A I don't remember.

11 Q Okay. Now, you went to the club alone --

12 A Yes.

13 Q -- you drove your car to the club by yourself?

14 A Yes.

15 Q All right. And when you parked you said you parked
16 beside a white car?

17 A Yes.

18 Q Behind it?

19 A Yes.

20 Q It was about the same size as yours?

21 A Yes.

22 Q And your car was, I'm sorry, refresh my memory?

23 A A '97 Chrysler Concorde.

24 Q Chrysler Concorde, which is a sedan, right?

25 A Yes.

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1 Q Okay. And you got to the club before the fight broke
2 out, obviously?

3 A Yes.

4 Q And when you left the club the white sedan was gone, is
5 that right?

6 A I'm not sure.

7 Q You parked by the telephone booth, right?

8 A Yes.

9 Q Okay. Were there any other cars near the telephone
10 booth.

11 A I say I remember seeing a white truck.

12 Q Okay. A white truck?

13 A Yes.

14 Q Okay. Now, let me ask you this, Ms. Johnson, is there
15 any reason whatsoever for you to be in this courtroom today
16 in an effort to tell this jury what you saw to try to
17 protect Taurus Watts?

18 A No, ma'am.

19 Q Okay. Do you know Chris Crosby to have a nickname?

20 A No.

21 Q Okay. And Ms. Shipley asked you on direct examination
22 if you remember talking with Investigator McRae?

23 A Yes.

24 Q When you talked to Investigator McRae, did you talk to
25 him at your home?

1 A No. I didn't talk to any of them at my home.

2 Q Okay. You talked --

3 A They came and they got me and they took me back to the
4 police department.

5 Q So they came and got you and took you to the Sheriff's
6 Department on Two Notch, right?

7 A Yes.

8 Q Okay. The first time you talked to a female
9 investigator and Investigator Gallegos?

10 A I don't know. I remember talking to her, but she was
11 in the car.

12 Q Okay. She was in the car. Did you talk to her when
13 you got to headquarters?

14 A I don't remember talking to her?

15 Q Okay. Do you remember her being present?

16 A I can't say I do.

17 Q Okay. And then the next time you were at headquarters
18 you were talking to Mr. McRae, is that right?

19 A I don't remember that.

20 Q Okay. But do you remember talking to the Sheriff's
21 Department on two days?

22 A No.

23 Q Okay. Just one day?

24 A Yes.

25 Q Okay. And so therefore at any time thereafter for the

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1 Sheriff's Department having any information about T being
2 Taurus Watts would be wrong?

3 A Yes.

4 Q Okay. T is not Taurus Watts --

5 A That's right.

6 Q -- in any regard, is that correct?

7 A Correct.

8 MS. JOHNS: Beg the Court's indulgence.

9 BY MS. JOHNS:

10 Q How long did it take you to get from where Charlie
11 Bates and Brian Johnson were to go to the bar and get your
12 keys, about how long did that take?

13 A Okay. They threw Charlie on out.

14 Q Okay.

15 A So there was a couple minutes in between that. Brian
16 was still in there.

17 Q Okay.

18 A And they was going back and forth, and they was kicking
19 people out. So I don't know, maybe 10 minutes, at the most.
20 Fifteen maybe.

21 Q All right. And how many entrances to this club are
22 there?

23 A How many --

24 Q Yes, ma'am. How many door are at the --

25 A Two that I know of.

1 Q Two.

2 A Uh-huh. (Affirmative response.)

3 Q Okay. One would be located -- you said you exited
4 through the kitchen?

5 A Yes.

6 Q Is that one of the doors?

7 A Yes.

8 Q Okay. Can you enter through the kitchen, as well?

9 A No. Most of the time, coming in they have the door
10 locked.

11 Q Okay. So when you come in do they only have one door
12 that you can get in?

13 A Yes.

14 Q Okay. And that's where the bouncers sit?

15 A Yeah.

16 Q Okay. Now, when you left through the kitchen was there
17 any bouncers there at that door?

18 A Not that I remember.

19 Q So when you went to leave you don't know if somebody
20 could have gotten in behind you?

21 A Possibly, because I went out through the kitchen. When
22 I walk through the kitchen I can't see who coming in the
23 other door.

24 Q Okay. If you did leave through the kitchen and
25 somebody caught the door as you were going out to your car

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1 they could have gotten in, right?

2 A Possibly.

3 Q And there's also another way of exiting or entering the
4 building primarily and that would be the deck on the back,
5 right?

6 A Yes.

7 Q Okay. Now, the deck on the back has a door, and that
8 door is near the bathrooms, right?

9 A Yes.

10 Q Okay. So is the deck too high for somebody to jump
11 down on that wall?

12 A I don't know.

13 Q Well, you've been out on the deck before?

14 A I've been out on the deck before.

15 Q Well, if you had to run for your life would you jump
16 off the deck?

17 A Yeah, if I was running for my life.

18 Q Okay. So did they have a security guard at the back
19 door?

20 A The back door?

21 Q Yes, ma'am.

22 A Where that?

23 Q The back door to the sun deck, to the patio?

24 A Oh, I didn't go back there.

25 Q Okay. Is there -- when you've been there before do

1 they have somebody on the back door?

2 A Yeah, they come out on the deck.

3 Q Do they check IDs through that back door?

4 A I've never heard nobody entering the back door.

5 Q Okay. That back door stays open?

6 A Not that I know of.

7 Q So in order to get to the patio you have to push a door

8 --

9 A Oh, you're talking about the back door to the patio?

10 Q Yes, ma'am.

11 A That back door stays open.

12 Q Stays open. Okay. So when that back door stays open
13 do they have a bouncer or security officer there?

14 A No.

15 Q Okay. And you say that Brian Johnson was in the club

16 --

17 A Yes.

18 Q -- when you got your keys?

19 A Yes.

20 Q And you saw Taurus Watts in the club when you got your
21 keys?

22 A Yes.

23 Q And when you went to leave you left by yourself?

24 A Yes.

25 Q That's all I have for you, Ms. Johnson.

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1 A Okay.

2 MR. SWERLING: Your Honor.

3 THE COURT: Okay. I'm mindful of the jurors notes.

4 So are we okay with just about five minutes or so?

5 (Jurors nod heads in affirmative.)

6 THE COURT: Okay.

7 JALICCA JOHNSON - RECROSS EXAMINATION

8 BY MR. SWERLING:

9 Q Ms. Johnson, let me get these questions pretty quick.
10 When Ms. Shipley was asking you the questions before when
11 you left, when you got your keys. Your last recollection
12 was that Brian was in the club, when -- I believe you said
13 when you got your keys and started out the door you don't k
14 now where he went?

15 A In the club?

16 Q Yeah.

17 A I seen him before I got my keys.

18 Q Before you got your keys?

19 A I had turned back around and left.

20 Q So after you got your keys you don't know where he was?

21 A No.

22 Q Is that correct?

23 A No.

24 Q Okay. And this fellow known as T --

25 A Uh-huh. (Affirmative response.)

1 Q -- after the altercation in the club you don't know
2 where he was either?

3 A I didn't see him any more.

4 Q You didn't see him even after the altercation?

5 A No.

6 Q So he -- you have no idea where he was; correct?

7 A No.

8 Q All right. Let me -- as far as where the shots were
9 fired, you turned left and went down towards Farrow Road;
10 correct?

11 A Yes, sir.

12 Q When you were speaking with Investigator Barnes, you
13 told him the shots sounded like they were coming from the
14 Farrow Road area; is that correct?

15 A Yeah. Not towards Farrow Road, but on that side.

16 Q On that side. Well, the club was here, this is the
17 club, just tell me what you were describing when you said
18 Farrow Road?

19 A When I went out the door I could hear it more on my
20 left side.

21 Q Down this way?

22 A Yes.

23 Q Not over in this area; down this way?

24 A Yes.

25 Q Is that correct?

State v. Tremaine Wray and Taurus Watts 10/6/09

303

1 A Yes.

2 Q You don't know if they were coming from a vehicle or
3 someone was standing stationary?

4 A No.

5 Q Couple other questions I wanted to ask you. When you
6 got to the club you and Charlie did not have a relationship

7 --

8 A No, sir.

9 Q -- at that time; is that correct?

10 A No.

11 Q That relationship was over for a while, was it not?

12 A Yes, sir.

13 Q Charlie didn't want to give it up, did he?

14

15 A No, sir.

16 Q And that particular evening you didn't even know he was
17 going to be at the club?

18 A No.

19 Q And he was bothering you that evening wasn't he?

20 A Yes, sir.

21 Q As a matter of fact, you were trying to go to the
22 bathroom and he was just bothering you and he disrupted the
23 entire thing, I think was the word you used?

24 A Yes, sir.

25 Q He was basically harassing you that evening?

1 A Yes, he was.

2 Q And you told him that. He started telling about all
3 this stuff, I think you told him you didn't want any of that
4 BS; is that what you told him?

5 A Yes.

6 Q You agree with me?

7 A Yes.

8 Q All right. So when all that was going on between you
9 and Charlie, this guy who you describe as a guy named
10 something like T; he approached you, right?

11 A No.

12 Q Well, he asked you to dance?

13 A Yeah.

14 Q All right. And he was trying to talk with you;
15 correct?

16 A I mean, he asked me to dance.

17 Q Yeah, he asked you to dance and he was trying to talk
18 to you, and Charlie got mad, did he not?

19 A Yeah.

20 Q Charlie was the one that got mad?

21 A Yeah.

22 Q Charlie even said he was going to knock his ass out?

23 A Yes.

24 Q Isn't that right, and you wanted his mother to come
25 over and calm him down?

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305

1 A Yes.

2 Q But it didn't calm him down?

3 A No.

4 Q He was the aggressor in that situation, he was
5 provoking the whole thing wasn't he?

6 A I guess.

7 Q All right. And he threw a drink in this guy's face?

8 A Yes.

9 Q And that's when everything went crazy; is that right?

10 A Yes.

11 Q Now, you said you were holding Brian back and Brian
12 said something about that was his home boy?

13 A Yes.

14 Q Was he referring to this particular guy named T?

15 A Yes.

16 Q All right, so that's clear?

17 A Yes.

18 Q When all this was going on didn't someone in the club
19 say someone's fixing to shoot?

20 A Yes.

21 Q In the club --

22 A Yes.

23 Q -- you heard that comment that someone was fixing to
24 shoot?

25 A Yes.

1 Q That was not outside, that was not when you went
2 outside?

3 A I know the shots was already fired before I got
4 outside.

5 Q But somebody in the club said that somebody is fixing
6 to shoot?

7 A Yes.

8 Q That was inside the club?

9 A Yes.

10 Q And when you got out you heard a number of shots; you
11 don't know how many?

12 A No.

13 Q You don't know how many guns were being used?

14 A No.

15 Q But there were a number of shots that were being fired,
16 and they were coming from your left; is that correct?

17 A Yes.

18 MR. SWERLING: That's all I have, Your Honor.

19 MS. SHIPLEY: I have a question, Your Honor.

20 THE COURT: Sure.

21 JALICCA JOHNSON - REDIRECT EXAMINATION

22 BY MS. SHIPLEY:

23 Q On Page 4 of your statement do you recall being asked
24 who was left in the club by the investigators? The very
25 first question on Page 4. Question: Who else was in the bar

State v. Tremaine Wray and Taurus Watts 10/6/09

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1 when you left?

2 A Yes.

3 Q Okay. What was your answer?

4 A Well, what I can remember -- I don't know what I told
5 them, but I know Brian, Taurus, Chris -- it was a handful of
6 people in there.

7 Q Okay. So your answer was, Brian, Chris, and a handful
8 of people; correct?

9 A I just told you who was in there.

10 Q Okay. On your statement on June 30th your answer was
11 Brian, Chris and a handful of people; correct?

12 A I just said Brian, Taurus, Chris --

13 Q I know you're saying that now, but on June 30, 2007,
14 isn't it true you answered.

15 A That's what I told him. I don't know why it's not in
16 there but that's what I told him.

17 Q Okay. And you were given an opportunity to review this
18 statement --

19 A Yeah, yesterday.

20 Q -- before you signed it? Before you signed it on June
21 30?

22 A I mean, I guess. I don't even remember signing it.

23 Q So you don't mention Taurus Watts in the written
24 portion; correct -- in the writing his name is not in this
25 statement, correct?

1 A It's not in the statement, no.

2 MS. SHIPLEY: Okay. No further questions, Your
3 Honor..

4 THE COURT: Okay.

5 MR. SWERLING: I just have one follow up.

6 JALICCA JOHNSON - RE-CROSS EXAMINATION

7 BY MR. SWERLING:

8 Q What you're saying is the last thing you remember
9 before you got your keys is that they were in the club?

10 A Yes, sir.

11 Q But you don't know where Brian or T was when you got
12 your keys and exited the club; isn't that true?

13 A True.

14 THE COURT: Anything further from anyone else?

15 MS. JOHNS: No, Your Honor.

16 THE COURT: Okay. I'll remind you not to discuss
17 the case and I'll meet you all at 9:30. I hope the juror
18 makes it to her appointment.

19 Please leave your note pads in the jury room. That
20 room will be secured.

21 (Jury out at 5:50 p.m.)

22 THE COURT: Anything from the attorneys?

23 MS. JOHNS: Not from Watts, Your Honor.

24 THE COURT: Okay.

25 All right. We'll see you at 9:30. I'm always here

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1 early, if anything comes up let me know, but let's try to
2 start promptly at 9:30.

3 (Court in recess for the evening at 5:52 p.m.)
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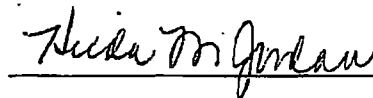
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CERTIFICATE

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 6TH DAY OF OCTOBER, 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 3
)

OCTOBER 7, 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

I N D E XWITNESS/DESCRIPTIONPAGE NO.

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3

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3	State's Exhibit No. 124	41
4	State's Exhibit No. 46	48
5	State's Exhibit No. 47	48
6	State's Exhibit No. 5	59
7	State's Exhibit No. 40	70
8	State's Exhibit No. 17	70
9	State's Exhibit No. 125	72
10	State's Exhibit No. 130	196
11	State's Exhibit No. 114	211
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20	CERTIFICATE PAGE	262
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1 MS. SHIPLEY: We have the video all ready.

2 THE COURT: Mr. Swerling informed me.

3 Bring the jury in.

4 (Jury in at 9:39 a.m.)

5 THE BAILIFF: The jury is all seated, Your Honor.

6 THE COURT: Good morning, ladies and gentlemen of
7 the jury. Sorry for the slight delay, but we did have a
8 couple of technical difficulties, although we played our
9 equipment and everything was fine, but we had a glitch. So
10 we had to try it out again before we showed you some
11 information this morning. But we are really to proceed, and
12 our full attention is directed to you and hopefully you'll
13 do the same with respect to the parties.

14 State, you may call your next witness.

15 MS. SHIPLEY: Thank you, Your Honor. State would
16 call Brian Johnson to the stand.

17 THE CLERK: Place your left hand on the Bible and
18 raise your right hand.

19 (WHEREUPON, Brian Johnson was sworn
20 to tell the truth.)

21 THE CLERK: Thank you. Have a seat in the witness
22 stand. Give the court reporter your name.

23 MR. JOHNSON: Brian Johnson.

24 BRIAN JOHNSON - DIRECT EXAMINATION

25 BY MS. SHIPLEY:

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5

- 1 Q Mr. Johnson, can you tell the jury where you're from?
- 2 A Columbia, South Carolina.
- 3 Q And where do you live?
- 4 A Off of Farrow Road.
- 5 Q What street do you live on?
- 6 A Briancliff.
- 7 Q And how long have you lived there?
- 8 A About 21 years.
- 9 Q And what's the name of your subdivision?
- 10 A Washington Heights.
- 11 Q Washington Heights. Do you know Lisa Johnson?
- 12 A Yes.
- 13 Q Is she a neighbor of yours?
- 14 A Yes.
- 15 Q How long have you known Lisa Johnson?
- 16 A Probably about 10, 15 years.
- 17 Q Do you frequent the H&J club on Hardscrabble Road?
- 18 A Yes.
- 19 Q How often do you think you've gone there?
- 20 A Pretty often.
- 21 Q Over how many years?
- 22 A About six or seven years.
- 23 Q Are you familiar with the owner of the pub?
- 24 A Yeah.
- 25 Q And what's his name?

1 A Rick.

2 Q Rick. Also known as Ricky Jacobs?

3 A Yes.

4 Q And can you tell the jury a little bit about this club,
5 do you know the other customers that frequent this club?

6 A Yeah. I know a lot of them.

7 Q And do they all reside in the same neighborhood or area
8 of the club?

9 A Same area.

10 Q And is Ricky Jacobs, everybody familiar with Ricky
11 Jacobs as the owner?

12 A If they stay 'round the area.

13 Q Okay. Now, do you know Taurus Watts?

14 A Yes.

15 Q And how do you know him?

16 A He's a friend from the neighborhood.

17 Q And what about Tremaine Wray?

18 A Yes.

19 Q And how long have you known Tremaine and Taurus?

20 A All my life.

21 Q Okay. And do they frequent the H&J club?

22 A Yes.

23 Q I'm going to bring your attention to June 30, 2007. Do
24 you recall being at the H&J club that night?

25 A Yes.

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7

1 Q And the early morning hours of June 30th?

2 A Yes.

3 Q Can you tell the jury is you were involved in an
4 altercation that night?

5 A Yes.

6 Q And tell the jury what your role was in that
7 altercation?

8 A Just breaking it up.

9 Q What started the fight?

10 A Somebody threw a drink in my friend's face.

11 Q It wasn't your face?

12 A No.

13 Q What was your friend's name?

14 A Darius.

15 Q Darius what?

16 A White

17 Q Darius White?

18 A Yeah.

19 Q What did he look like?

20 A Short, brown skin, low haircut.

21 Q What kind of shirt was he wearing?

22 A I don't know.

23 Q You can't remember?

24 A Don't remember.

25 Q What were you wearing?

1 A Don't remember.

2 Q And was your hair in dread locks that day?

3 A Yeah.

4 Q And you're indicating that the drink was thrown on
5 Darius White?

6 A Yes.

7 Q What when you saw -- is Darius White your friend?

8 A Yes.

9 Q Did you know who threw the drink on him?

10 A No.

11 Q Had you ever seen that person before?

12 A No.

13 Q When you saw that person throw a drink on your friend,
14 Darius White, what did you do next?

15 A Just stepped between them.

16 Q And did you get involved in the fight at that point?

17 A No.

18 Q Did you throw any punches?

19 A No.

20 Q How long did it take for you to get the fight to break
21 apart?

22 A Once I stepped between them everything just went crazy,
23 so I just stepped out the way.

24 Q And when you say everything went crazy, what do you
25 mean by that?

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9

1 A Everybody just start tussling and fighting.

2 Q And would that be other people from the bar?

3 A Yeah.

4 Q And the people that were with the individual that threw
5 the drink?

6 A Yes.

7 Q Did you see a woman get hit in the face and knocked
8 down unconscious?

9 A No.

10 Q And did you see Lisa Johnson involved in this situation
11 or in the midst of the fight?

12 A At the beginning.

13 Q At the beginning?

14 A Yeah.

15 Q And do you recall if Ms. Johnson tried to pull you
16 back?

17 A No, ma'am.

18 Q You don't remember that?

19 A No.

20 Q Did you ever come out of your t-shirt?

21 A No.

22 Q Did you see Taurus Watts and Tremaine Wray that night?

23 A No.

24 Q You did not see them?

25 A No.

1 Q Did you talk to either one of them that night?

2 A I talked to Tremaine earlier that day.

3 Q Earlier that day?

4 A Yeah.

5 Q But I'm talking about that night?

6 A No.

7 Q Did you talk to anybody?

8 A No.

9 Q How long were you there at the club before the fight
10 started?

11 A About 20 minutes.

12 Q What did you do after the fight finished?

13 A Stayed in the club.

14 Q And did you hear any shots fired?

15 A Yes.

16 Q Where were you when you heard the shots fired?

17 A In the club.

18 Q How long did you stay in the club after the shots were
19 fired?

20 A About 10, 20 minutes.

21 Q Did you remain for the police?

22 A No.

23 Q And where did you go from the club?

24 A Home.

25 Q Did you ever go out on the patio?

State v. Tremaine Wray and Taurus Watts 10/7/09

11

1 A No.

2 Q How many people do you think were in the club that
3 night when the fight broke out?

4 A Twenty or more.

5 Q And what is your cell phone number?

6 A [REDACTED].

7 MS. SHIPLEY: Beg the Court's indulgence.

8 BY MS. SHIPLEY:

9 Q And you've been convicted of malicious injury to
10 personal property over \$1,000 and assault and battery of a
11 high and aggravated nature from April 14, 2005; correct.

12 A Yes.

13 Q And you've also been convicted on September 25, 2008,
14 of distribution of crack cocaine; correct?

15 A Yes.

16 Q And also a possession of ecstasy on December 11, 2008?

17 A Yes.

18 Q I'm going to show you State's No. 14, and ask you if
19 you see any pictures of yourself in this lineup?

20 A Yes.

21 Q And which one is you?

22 A That one right there. (Indicating.)

23 Q Is that number four?

24 A Yes.

25 Q Okay. After this incident were you allowed to go back

State v. Tremaine Wray and Taurus Watts 10/7/09

12

1 to the H&J bar?

2 A No.

3 Q You were banned from the bar; correct?

4 A Yes.

5 Q Thank you, Mr. Johnson.

6 MS. SHIPLEY: I have no further questions, Your
7 Honor.

8 THE COURT: Okay.

9 BRIAN JOHNSON - CROSS EXAMINATION

10 BY MR. SWERLING:

11 Q Mr. Johnson, I just have a couple of follow up. Do you
12 remember what time you got to the club?

13 A No, sir. I know it was late.

14 Q And as I understand you frequented the club?

15 A Yes, sir.

16 Q And this particular night there was a group of people,
17 particularly the people who got involved in the fight, you
18 did not know who they were?

19 A No.

20 Q Is that right?

21 A Yeah.

22 Q The -- someone threw a drink at your friend, Darius
23 White, and then Darius White and that person got in a fight?

24 A He really didn't even get a chance to do nothing. The
25 club, you know what I'm saying, just went crazy.

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13

1 Q And so a number of people in the club got in the fight
2 and you stepped out after you tried to break it up; is that
3 your testimony?

4 A Yeah.

5 Q Okay. You said that you did not see Tremaine Wray and
6 Taurus Watts in the club that night; is that correct?

7 A No.

8 Q Had they been in the club you would have been able to
9 see them; isn't that correct?

10 A Yes.

11 Q It's not that big a place?

12 A Right.

13 Q All right. When this fighting broke out, isn't it true
14 that somebody in the group, somebody mentioned something
15 about somebody pulling a gun inside?

16 A Yes.

17 Q And do you know who said, he's got a gun?

18 MS. SHIPLEY: Objection, hearsay.

19 MR. SWERLING: I don't think it's hearsay under the
20 circumstances, an excited utterance under Rule 801(1)2.

21 THE COURT: Lay a foundation.

22 BY MR. SWERLING:

23 Q This was a melee going on, correct, it was a fight?

24 A Yeah.

25 Q Everybody was fighting, a number of people were

1 fighting?

2 A Yeah.

3 Q You stepped out of the fight?

4 A Yeah.

5 Q Okay. And in your presence, during the -- was that an
6 upsetting situation --

7 A Yeah.

8 Q -- obviously, with a fight?

9 A Yeah.

10 Q And if someone had yelled out something about a gun
11 would that have gotten your attention?

12 A Yes.

13 Q Would that have concerned you?

14 A Yes.

15 Q And when you heard something like that, did it concern
16 you?

17 A Yes.

18 Q And what did that person say?

19 A (No response.)

20 Q The person you heard yell out something about a gun?

21 A I just heard, you know what I'm saying, somebody got a
22 gun.

23 Q Do you know who it was that said that?

24 A No.

25 Q But it was clear that somebody did say that?

State v. Tremaine Wray and Taurus Watts 10/7/09

15

1 A Yeah.

2 Q This was during the fight?

3 A Yes.

4 Q Is that one of the reason why you stepped out of the --

5 A I stepped out from the beginning.

6 Q You stepped out from the beginning. All right. Thank
7 you.

8 MS. JOHNS: Thank Your Honor. Please the Court:

9 BRIAN JOHNSON - CROSS EXAMINATION

10 BY MS. JOHNS:

11 Q Mr. Johnson, do you have a nickname?

12 A B.

13 Q B. What's Darius White's nickname?

14 A Boo.

15 Q Okay. Now, the solicitor pointed out for the jury that
16 you have a history of -- well, a drug conviction for is it
17 cocaine, something like that?

18 A Yeah.

19 Q And what year was that?

20 A '08.

21 Q All right. Now, going back to 2007, you said you were a
22 frequent patron of the club; that's right?

23 A Yes.

24 Q How frequently?

25 A Every other weekend.

1 Q Okay. And when you would go up there every other
2 weekend would you partake in drinking alcohol?

3 A Yes.

4 Q Did you partake in doing drugs?

5 A No.

6 Q Okay. Did you ever see anybody in there use drugs?

7 A No.

8 Q Were you dating Lisa Johnson at the time?

9 A No.

10 Q Had you had a relationship with her?

11 A No.

12 Q You say you've known Taurus all your life, right?

13 A Yes.

14 Q All right. What did he look like that night?

15 A I can't remember. The same.

16 Q What kind of haircut did he have?

17 A I can't remember.

18 Q Do you remember whether or not he had dread locks?

19 A I don't think he had them no more.

20 Q Okay. Okay. He didn't have them no more. Are you
21 familiar with the term, twists?

22 A Yes.

23 Q Did he have a low haircut or did he have twists, in
24 your opinion?

25 A Low haircut.

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17

1 Q You did know him at a time when he did have dreads,
2 right?

3 A Yes.

4 Q And that was before June 30, 2007, right?

5 A Yes.

6 Q You mentioned to the solicitor on her questions that
7 you'd been banned from the bar; is that correct?

8 A Yes.

9 Q Who banned you from the bar?

10 A Rick.

11 Q Now, there was a time subsequent to this event in June
12 or July of 2007, where you did go back to the bar; do you
13 remember that?

14 A No.

15 Q You don't remember going to the bar when they were
16 having a private party, and that's when Rick told you you
17 couldn't come in.

18 A No. I heard it from the street saying I can't come
19 back.

20 Q Did you ever confirm that with Ricky?

21 A No.

22 Q Now, do you know Taurus's mother?

23 A Yes.

24 Q Okay. And how long has this convenience store, food
25 mart, pub, and nightclub; how long have you known that to be

1 in the neighborhood?

2 A All my life.

3 Q Have you ever known Taurus's mother to work there?

4 A Yes.

5 Q Do you remember what she did there?

6 A Cook.

7 Q And they also served food there then, called Granny's
8 Kitchen or Granny's Home Cooking?

9 A Yes.

10 Q And while Ms. Watts was a cook do you remember how old
11 you might have been at the time?

12 A Probably in my early 20s.

13 Q And how old are you now?

14 A Twenty-nine.

15 Q So at the time this happened you were 27?

16 A Yeah.

17 Q Two years ago?

18 A Yeah.

19 Q Do you know Ricky Jacobs, Jr., Ricky Jacobs father?

20 A Mr. Jacobs?

21 Q Yes.

22 A Yes.

23 Q Does he still run that place, sort of?

24 A I don't know. I don't even go up there no more.

25 Q When you were going up there did you see Ricky Jacobs

State v. Tremaine Wray and Taurus Watts 10/7/09

19

1 father in there?

2 A Yes.

3 Q Okay. Did he run the convenience store?

4 A Yes.

5 Q Did he also run the kitchen?

6 A I'm not sure.

7 Q Did Ricky, the guy in this case, who people call the
8 club owner now, was he also working there at the time?

9 A Yes.

10 Q If it fair to say that Ricky Jacobs was working there
11 at the same time that Ms. Watts was working there?

12 A Yes.

13 MS. JOHNS: One moment, please.

14 BY MS. JOHNS:

15 Q Now, back to the incident. You heard somebody shout
16 out, somebody's got a gun?

17 A Yes.

18 Q Did you see a gun in that club that night?

19 A Yes.

20 Q Did you see who might have been holding that gun?

21 A Somebody with the other group.

22 Q Was it a male or a female?

23 A Male.

24 Q Can you describe him for me?

25 A I can't describe him?

- 1 Q Do you know if he was black or white?
- 2 A Black.
- 3 Q Do you know if he had dreads, twists, or a low haircut?
- 4 A Can't remember.
- 5 Q Do you know how tall he was?
- 6 A Probably about five-eight or a little taller.
- 7 Q Do you know about how much he would weigh?
- 8 A (No response.)
- 9 Q How tall are you, Mr. Johnson?
- 10 A How am I?
- 11 Q I'm sorry. How tall are you?
- 12 A Six-six.
- 13 Q And how much do you weigh?
- 14 A 185.
- 15 Q Now, had you seen or had an opportunity to see a gun in
- 16 the club before this day?
- 17 A No.
- 18 Q Okay. Do you know about the alleged security system
- 19 that they have at this club?
- 20 A Yes.
- 21 Q Tell me about that?
- 22 A They got the little wand.
- 23 Q Okay. And who works the door; who worked the door on
- 24 that night, do you remember?
- 25 A I don't know the name.

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1 Q Okay. A guy named Sherman?

2 A Huh-uh. (Negative response.)

3 Q Okay. Do you know a female that was working the door?

4 A I don't know her name.

5 Q But you do know her?

6 A Yeah, I know her face.

7 Q Do you know about the fellow that sits at the door and
8 falls asleep sometimes?

9 A No.

10 Q Okay. The female that works the door, does she also
11 bartend?

12 A Yeah.

13 Q Okay. Is there anybody else that works the door that
14 also bartends other than this female?

15 A I mean, they do a little bit of everything.

16 Q Okay. Now, they had a DJ at the club that night,
17 right?

18 A Yes.

19 Q Now, this DJ isn't -- he's a traveling DJ; is that
20 right?

21 A I'm not sure.

22 Q Okay. Well, when the fight broke out the lights came
23 on, is that right?

24 A Yes.

25 Q And when the lights came on the music stopped; correct?

1 A Yes.

2 Q And it was at that time you heard somebody say,
3 somebody's got a gun?

4 A Yes.

5 Q Now, the person that you saw with the gun that was with
6 the other party; did you see him leave?

7 A Yeah, they all left together.

8 Q And did you see him come back?

9 A I heard he tried to come back in.

10 Q So you were not involved in the fight that night?

11 A No.

12 Q That's your testimony?

13 A Yes.

14 Q And you were not seeing Lisa Johnson; right?

15 A Right.

16 Q And you live on the same street she does; correct?

17 A Yes.

18 Q Is Briarcliff a very long road?

19 A It's not too long.

20 Q Okay. Can you walk the distance of the road, is it
21 less than a mile?

22 A Yes.

23 Q Okay. So how long have you lived in that neighborhood?

24 A About 21 years.

25 Q And how long have you known Lisa to live in that

1 neighborhood?

2 A Basically, all her life, I guess. About the same.

3 Q So, as long as you've lived there, you've known that
4 Lisa lived in that neighborhood; right?

5 A Once I got old enough, you know what I'm saying.

6 Q She's a little older than you, right?

7 A Yeah.

8 Q Now, when you were in there and like you said, you
9 didn't see the fight, you didn't participate in the fight,
10 you weren't seeing Lisa, and you didn't punch anybody?

11 A Right.

12 Q You said that you tried to break it up?

13 A At the beginning.

14 Q When you tried to break it up do you know whether you
15 came in contact with anybody physically?

16 A The person that I separated from my friend, and that
17 was it. That wasn't nothing but a push.

18 Q All right. And Lisa was trying to hold you back; is
19 that right?

20 A I don't recall that.

21 Q And you said that you saw a person in the other group
22 with a gun?

23 A Yes.

24 Q Then you saw them leave?

25 A Yes.

1 Q And then you saw them try to come back in?

2 A I ain't seen them trying to come back in. That's what
3 I heard.

4 Q Okay. And you remained in the club for about 10 to 15
5 minutes?

6 A Yeah.

7 Q Now, who is T? You don't know a T; do you?

8 A No.

9 Q And you've know Taurus Watts his whole life, right?

10 A Yes.

11 Q And he doesn't go by the name T, does he?

12 A No.

13 Q One more thing. With regards to this weapon that you
14 saw the other person have; what kind of gun do you think
15 that was?

16 A It was a little -- like a 25 or something.

17 Q Do you remember what the person holding the gun was
18 doing with the gun?

19 A He didn't point it at nobody, he just had it.

20 Q Okay. So he just brandished it?

21 A Yeah.

22 Q And did he hold it down by his side or did he hold it
23 up --

24 A By his side.

25 MS. JOHNS: That's all I have. Thank you.

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1 THE COURT: Okay.

2 BRIAN JOHNSON - REDIRECT EXAMINATION

3 BY MS. SHIPLEY:

4 Q Did you hear any shots inside of the club that night?

5 A Like somebody firing a gun?

6 Q Inside the bar?

7 A No.

8 Q The shots that you heard, where were they coming from?

9 A Outside.

10 Q How many shots did you hear?

11 A It was a lot.

12 Q And how quickly were they being fired?

13 A It was pretty fast, and then it was just some.

14 Q And the gun that you were describing, did you actually
15 see somebody with that gun in the club?

16 A What, the little gun?

17 Q Yeah.

18 A Yeah.

19 Q And the 25, was it a revolver or was it an automatic?

20 A I think it was probably an automatic.

21 Q And what color was the gun?

22 A It was dark, so I really couldn't see.

23 Q You couldn't see. How far away were you from the
24 person you say had the gun?

25 A Probably about 20, 30 feet.

1 Q Twenty to 30 feet. And you indicated that the person
2 kept it by their side?

3 A Yes.

4 Q And was this before or after the lights came on?

5 A Right before -- well, all at the same time. I mean,
6 everything was happening fast.

7 Q And what does your friend Darius White go by, nickname-
8 wise?

9 A Boo.

10 Q Boo. Not T?

11 A No.

12 Q And Boo had a low haircut, you indicated?

13 A Yeah.

14 Q And when you were going through security that night to
15 come into the bar, did you have to go -- did they do --

16 A Yeah.

17 Q -- the wand on you?

18 A Yeah.

19 MS. SHIPLEY: Beg the Court's indulgence.

20 BY MS. SHIPLEY:

21 Q Who did you leave the bar with that night?

22 A Me, Darius.

23 Q Who else?

24 A Norris's old lady.

25 Q Who's Norris?

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- 1 A A friend.
- 2 Q What's his first name?
- 3 A Norris.
- 4 Q What's his last name?
- 5 A Bond.
- 6 Q Bond, like James Bond?
- 7 A Yeah.
- 8 Q And what kind of car did y'all leave in?
- 9 A A blue HHR.
- 10 Q And -- a blue HHR; what kind of car is that?
- 11 A A chevy.
- 12 Q Can you -- is it a sedan or --
- 13 A It's a newer model car, so it's like a mixture.
- 14 Q A mixture?
- 15 A Like a sedan and a regular car.
- 16 Q Okay. Not an SUV?
- 17 A No.
- 18 Q How long after the shots from outside ended did it take
- 19 for you to leave?
- 20 A About 15 minutes.
- 21 Q You stayed in the bar until then?
- 22 A Yeah.
- 23 Q And did you ever talk to any police officers that
- 24 night?
- 25 A No.

1 Q And did any of your friends, Norris Bond or Darius
2 White stick around and talk to the police that night?

3 A No.

4 MS. SHIPLEY: I have no further questions, Your
5 Honor.

6 THE COURT: Any recross? Ms. Johns?

7 MS. JOHNS: No, Your Honor.

8 THE COURT: Okay. Sir, you can step down and be
9 excused.

10 State, you may call your next witness.

11 MS. SHIPLEY: State calls Ricky Jacobs.

12 (WHEREUPON, Ricky Jacobs was sworn
13 to tell the truth.)

14 THE CLERK: Thank you. Have a seat in the witness
15 stand and give the court reporter your name.

16 MR. JACOBS: Ricky Jacobs.

17 RICKY JACOBS - DIRECT EXAMINATION

18 BY MS. SHIPLEY:

19 Q Good morning, Mr. Jacobs.

20 A Morning.

21 Q Mr. Jacobs, can you tell the jury where you're from?

22 A Columbia, South Carolina.

23 Q And what part of town do you live in?

24 A Downtown area.

25 Q And do you own and operate the H&J club on Hardscrabble

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1 Road?

2 A Yes, I do.

3 Q You and your father?

4 A Yes.

5 Q How long have you and your father owned the H&J club on
6 Hardscrabble Road?

7 A The bar's been open 19 years, but the business has been
8 there 34 years.

9 Q And can you tell the jury about the hours of operation
10 of your bar?

11 A Well, through the week it's like 2:00 o'clock.
12 Fridays, I close at 4:00 a.m. And Saturdays about 3:00 a.m.

13 Q And what time do you open?

14 A I open about 4:00 p.m.

15 Q 4:00 p.m. and close at 2:00?

16 A Yes.

17 Q And the customers that come to your bar and your
18 establishment, what area of town do they typically reside
19 in?

20 A The area, the Northeast area.

21 Q And so the customers that frequent your night club are
22 from the general vicinity of your establishment?

23 A Yes, a neighborhood bar.

24 Q Neighborhood bar?

25 A Yes.

1 Q And as far as your involvement with the business, how
2 long have you actually operated the night club?

3 A Nineteen years.

4 Q Nineteen years?

5 A Yes.

6 Q And during those 19 years have you become familiar with
7 regulars at your night club?

8 A Yes.

9 Q And do you get to know them by first name basis?

10 A Yes, most of them.

11 Q Do you get to know them by face?

12 A Yes. By face, yes.

13 Q And the night in question, June 30, 2007, were you
14 working that night?

15 A Yes.

16 Q And describe for the jury what your duties are when
17 you're working?

18 A I oversee, just making sure everything's in it's right
19 proper place and I'm behind the bar, basically working the
20 bar, making sure everybody has what they need, basically.

21 Q And so you're there to make sure --

22 A Overseer.

23 Q -- your customers are satisfied?

24 A Yes.

25 Q Also, you indicated you work the door sometimes?

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1 A Yes.

2 Q Do you have security that works the door some nights?

3 A Yes, I do.

4 Q And describe for the jury what kind of security they
5 provide for your bar?

6 A In-house security, which I hired. They basically just
7 check IDs, and pat pockets and stuff like that when coming
8 in.

9 Q And do they also have a wand?

10 A Yes. For the ladies, yes.

11 Q So the --

12 A The females, they check with the wand.

13 Q So all your customers have to be checked and patted
14 down to --

15 A On the weekends, yes.

16 Q On weekends?

17 A Yes.

18 Q And on June 29th leading into June 30th, that would have
19 been a Friday night into Saturday morning of 2007?

20 A Okay. Yes.

21 Q Now, did you have security that night?

22 A Yes, I did.

23 Q And do you remember who was working security for you
24 that night?

25 A There was George Ross, and --

1 Q What's he look like?

2 A Short, heavy-set guy, black male. There was Kelly
3 Giles, he's a big heavy-set guy. And then there was Sherman
4 Bloom. He's a about middle size, five-eight, five-nine.

5 Q Okay. And any females working the door that night?

6 A No.

7 Q Not that night?

8 A No, I don't have females on the door.

9 Q Have you ever had a female work --

10 A Not security. I have a female to do -- when I charge
11 at the door. A female takes money for me at the door, yes.

12 Q And are those for certain events?

13 A Parties, stuff like that. Yes.

14 Q Did you also have a DJ working for you that night?

15 A Yes. Yes.

16 Q And do you have a DJ typically every weekend?

17 A Every weekend.

18 Q Okay. Now, I'm going to bring your attention to the
19 early morning hours of June 30, 2007. Do you remember a
20 fight breaking out in your club?

21 A Yes.

22 Q And can you tell the jury where you were located inside
23 your bar when it happened?

24 A I was behind the bar.

25 Q You were behind the bar. Could you explain to the jury

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1 where the fight broke out?

2 A Right near my back door, as you go onto the deck.
3 That's where it actually started.

4 Q Okay. And I'm going to bring your attention to State's
5 Exhibit No. 7. Does this accurately depict where your bar
6 is?

7 A Yes.

8 Q And can you show the jury where the patio is on this
9 diagram?

10 A It's right here. (Indicating.)

11 Q Okay. Where is the door leading out to that patio?

12 A It's right there. (Indicating.)

13 Q And you indicated the fight initially broke out near
14 that door?

15 A Yes. Inside..

16 Q Inside. Where's the dance floor inside of there?

17 A It's about right here. (Indicating.)

18 Q Near that door?

19 A Yes.

20 Q And where's your bar?

21 A About right in here, about mid-ways.

22 Q It's sort of in the center?

23 A Yes, the center.

24 Q Tell the jurors what exactly you watched and observed
25 as far as the fight breaking out?

1 A It happened so fast. It was just like start and stop.

2 And then they separated them and I --

3 Q Could you see who was involved in the altercation?

4 A I know Brian was. Johnson.

5 Q Brian Johnson, the man who just left this courtroom?

6 A Yes. I just passed him. And I don't know who else.
7 I'd never seen the other people before. They were like new
8 faces.

9 Q Okay.

10 A So --

11 Q Anyone else who was a regular of your night club that
12 got involved that you can remember?

13 A No. I just recall Brian because he was the one that
14 was the loudest. The voice, you know, voiced the most. And
15 they went outside and then he came back -- the guy came to
16 get his mother or somebody else. I don't know who it was. I
17 don't know the gentleman. Next thing I know they walked
18 outside and they were telling whoever it was to come outside
19 that they were going to handle it. Then I told Sherman to
20 watch behind the bar. Watch my register and my liquor
21 because I didn't know what was going on. I walked outside,
22 and as I walked outside through the restaurant door I --

23 Q Just let me stop you right there. The restaurant door,
24 point that out for the jury, please?

25 A It's right here. (Indicating.)

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1 Q Okay. And is there also a kitchen door?

2 A Yeah, that's it. One and the same.

3 Q All right. How many doors are there to enter your
4 club, your establishment?

5 A Four.

6 Q Four, and where are those doors located?

7 A In the front, right there.

8 Q Okay. So there's a total of four doors?

9 A Yes.

10 Q And tell the jurors where you went outside to see what
11 was going on?

12 A Yeah. Also, whenever there's chaos, I just close up,
13 to just end it, you know.

14 Q And is that what you did that night, did you close your
15 bar at that point?

16 A Yes. I was closing out. I turned my lights up and had
17 the DJ to kill the music.

18 Q All right. And did you ask your security to remove
19 people from your night club?

20 A No. No, no. Because if something was going on outside
21 I didn't want to jeopardize anyone, so --

22 Q What did you think was going on outside or what did you
23 see outside?

24 A Well, when I walked outside there was a guy that as
25 over on the other side of the wall by the car wash.

1 Q Okay. And can you just use that pointer and indicate
2 for the jury where you saw that person by the car wash?

3 A He was in here, up in here somewhere.

4 Q All right.

5 A Standing on this side of the wall, facing this way. He
6 was like telling somebody to come outside and they would
7 take care of it. You know, I was at the door there, and I
8 was like, you know, I'm closing, so I was walking over to
9 get my car.

10 Q Okay, and tell the jury your routine -- where do you
11 park when you're open for business?

12 A On a busy night I parked over at my father's house.

13 Q And on the map, point to where your father's house is?

14 A It's over here, pretty much. (Indicating.)

15 Q On the other side --

16 A Yeah, it's over here. (Indicating.)

17 Q And so -- what's this right here? (Indicating.)

18 A This is a dirt road that leads back to some residences.

19 Q Okay. And your father's driveway or house is in this
20 general area --

21 A Yes.

22 Q -- off Hardscrabble Road?

23 A Yes.

24 Q And why is it that you park your car there when you're
25 working weekends?

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1 A Well, my point is to allow my customers to park. I
2 don't want to take an extra park, so I park across the
3 street on the weekends.

4 Q Okay. Tell the jury what you did as you started
5 walking to your car at your dad's house; tell the jury what
6 happened next?

7 A Okay. As I walked -- I was walking out towards my
8 father's house and I got up under the canopy --

9 Q And is that the canopy --

10 A Right.

11 Q Point that out for the jury, please?

12 A Right here. (Indicating.)

13 Q Okay.

14 A These are old gas pumps right here. (Indicating.)

15 Q All right. And then what happened when you got to the
16 canopy?

17 A I looked and I seen Taurus and Tremaine walking towards
18 the business.

19 Q Okay. And what direction did you see Taurus and
20 Tremaine walking towards the business?

21 A Say what now?

22 Q Where were they coming from?

23 A From over here. (Indicating.)

24 Q Okay. And did you encounter them in the canopy area or
25 where did you encounter them?

1 A Yeah. Right near -- year. Pretty much. Yeah.

2 Q Okay. Tell the jury what, if anything, you said to
3 them when you encountered them at the canopy area.

4 A I said -- I told them I was closing and that -- that I
5 was closing, there was no need in coming back in.

6 Q Okay. Did you see where they were parked?

7 A Yeah.

8 Q Tell the jury where they were parked; point it out on
9 the map, please?

10 A They were right up in here. (Indicating.)

11 Q All right. And while they were approaching, what, if
12 anything, did Mr. Watts say to you concerning the fact that
13 your business is closed?

14 A I told him that I was closed, to go ahead on. And he
15 was like -- he just said, okay, and like turned around, you
16 know. I said, just go on, because I don't need that going
17 on and I was closing.

18 Q All right. Did you see -- do you remember telling
19 investigators in your statement --

20 MS. JOHNS: Your Honor, I object. If she wants to
21 ask a direct question, otherwise, she's leading.

22 MS. SHIPLEY: I'll lay the foundation, Your Honor.

23 THE COURT: Thank you.

24 BY MS. SHIPLEY:

25 Q Did you give a written statement in this case, to law

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1 enforcement?

2 A Yes, I did.

3 Q And do you recall making any comments or writing in
4 your statement anything Mr. Watts may have said to you?

5 A No.

6 Q After you told him you were closed?

7 A I don't know exactly what he said, but I --

8 Q Would it refresh your memory if you looked at your
9 statement to see what you wrote down?

10 A That was just like mumbling or something and then
11 turned around and walked towards the car.

12 Q Now, when you see -- after you told them that you were
13 closed, you say that they walked back to their car?

14 A Yes.

15 Q Okay. Describe the car for the jury?

16 A It was a tan or champagne colored Suburban.

17 Q Suburban?

18 A Yeah.

19 Q And did you see them get back into that car?

20 A Yes.

21 Q And who got in the driver's seat?

22 A Tremaine.

23 Q And had you seen that vehicle before?

24 A Yes.

25 Q And had you seen Tremaine driving that vehicle before?

1 A Yes.

2 Q And who got in the other side, the passenger side?

3 A Taurus.

4 Q Did you see anything in Taurus' hand as he was getting
5 back in the car?

6 A Yes.

7 Q And tell the jury exactly what you saw?

8 A There was a weapon. There was a black, whatever, gun.

9 Q Black gun?

10 A Yes.

11 Q And do you remember telling investigators or being
12 asked to identify the type of gun by investigators?

13 A Yeah, I mean, I don't know what it was, but I know -- I
14 don't know the type of weapon it was.

15 Q Are you familiar with guns?

16 A No, I'm not.

17 Q Did the gun -- was the gun wrapped, part of it wrapped
18 in any fashion?

19 A Well, there was -- his hand was covered with, like a
20 cloth.

21 Q The hand was?

22 A Yes, his hand was.

23 Q And I'm going to show you this and ask if you can
24 recognize it?

25 A Yes.

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1 Q And what is that?

2 A Gun. I don't know what kind it is, but it's a gun.

3 Yes.

4 Q The gun that you saw who have?

5 A Taurus.

6 Q Okay. And did you sign --

7 A Yes.

8 Q -- form saying that that's the kind of gun you saw on
9 June 30th?

10 A Yes.

11 MS. SHIPLEY: Your Honor, at this time, the state
12 seeks to introduce State's 124.

13 MR. SWERLING: No objection.

14 MS. JOHNS: No objection.

15 THE COURT: Okay. It's admitted.

16 (State's Exhibit No. 124, photo of gun,
17 was marked and entered.)

18 BY MS. SHIPLEY:

19 Q On this picture, what is different about the gun in
20 this picture than the gun you saw in Taurus's hands?

21 A This part --

22 Q You didn't see this back part?

23 A No. I didn't see that.

24 Q Did it have a handle or a strap like that, also?

25 A I'm not -- like I say, I'm not familiar with guns, so

1 I'm not sure if that strap was there or not, but I know that
2 the back part wasn't there.

3 Q The back part wasn't there. When you say that this
4 part wasn't there, are you referring to the shoulder --

5 A Yeah.

6 Q -- the back --

7 A I guess that's what it for, the shoulder holster.

8 Q Okay.

9 MS. SHIPLEY: Your Honor, may I publish this to the
10 jury?

11 THE COURT: Okay.

12 BY MS. SHIPLEY:

13 Q Tell the jury what happened after they got in the car;
14 where did you go?

15 A I was walking across the street towards my car.

16 Q Okay.

17 A And they had pulled off. Backed up and pulled off.

18 Q And can you tell the jury what direction they pulled
19 off towards?

20 A Towards Farrow Road.

21 Q Towards Farrow Road?

22 A Yes.

23 Q And using this pointer, show the jury exactly where you
24 were when you saw them pull out?

25 A I was about right here, getting ready to go across the

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1 street.

2 Q You were getting ready to cross the street?

3 A Yes.

4 Q And tell the jury what, if anything, happened when they
5 pulled down towards Farrow Road; what happened next?

6 A I heard a shot, and then I looked and I just heard
7 rapid fire.

8 Q Rapid fire?

9 A Yes.

10 Q How many shots did you hear?

11 A I couldn't tell you. I just know it was a couple of
12 shots.

13 Q And how fast were the shots?

14 A It was like repeated.

15 Q Repeated?

16 A Yes.

17 Q Can you tell the jury how far down the road they had
18 made it when you started hearing the shots, using your
19 pointer, please?

20 A About there. (Indicating.)

21 Q Right there?

22 A Yeah.

23 Q And where were you standing when you heard those shots.

24 A Well, I was just crossing the street.

25 Q And did you see what side of the car the shots were

1 coming out of?

2 A Out of the driver's side.

3 Q Out of the driver's side? Could you physically see who
4 was actually shooting?

5 A No, I couldn't.

6 Q And at that point were there people in the parking lot
7 of your business?

8 A Yes. There were people that were leaving the business.
9 Yes.

10 Q And are the lighting conditions on Hardscrabble Road
11 and around your business; describe it for the jury?

12 A On Hardscrabble it's kind of dim, but on the business
13 we have security lights. So we see the parking lot very
14 well.

15 Q And while you were in the parking lot and you saw
16 Taurus and Tremaine, did you have any trouble seeing their
17 faces?

18 A No, I didn't.

19 Q Did you recognize them from seeing them around your bar
20 before?

21 A Yeah.

22 Q Now, what do you recall Taurus wearing that night?

23 A A white t-shirt.

24 Q A white t-shirt.

25 A And do you remember what kind -- what his hairstyle was

1 like?

2 A He had dreads or twists, short.

3 Q Short twists?

4 A Yes.

5 Q Were his dreads like Brian Johnson's?

6 A No.

7 Q All right. When you say twists, describe the hairstyle
8 to the jury?

9 A Just like dreads. That's all I know. I mean, they
10 dreads.

11 Q Describe like how long they were?

12 A You mean -- they weren't shoulder length.

13 Q Shoulder length?

14 A They weren't shoulder length. No, they're not.

15 Q They were not shoulder length?

16 A No, they were not.

17 Q And what about Tremaine; what do you remember about
18 Tremaine? What was he wearing that night? Do you remember
19 what he was wearing?

20 A Um -- he had a white -- I think a white t-shirt on as
21 well. Yes.

22 Q Do you remember anything else about their clothing that
23 night?

24 A No. Like I said, I was closing out. So -- You know, I
25 asked them to leave, and they turned around and were walking

1 to the car. So I thought it was all over.

2 Q Now, you indicated -- were you already in the street
3 when you heard the shots?

4 A I was just crossing over the street.

5 Q And when you heard the shots did you look to see where
6 they were coming from?

7 A Yes, from the tan Suburban.

8 Q The same tan Suburban?

9 A Yeah.

10 Q And again, what side?

11 A The driver's side.

12 Q And what direction were the shots being fired towards?

13 A Towards the business.

14 Q And what part of the street, again, were they when you
15 looked and observed them shooting?

16 A They were up in here.

17 Q Okay.

18 A Yeah. Up in here. (Indicating.)

19 Q At that point, did you see another vehicle leave your
20 business?

21 A Shortly after, yes. Well -- yes.

22 Q And tell the jury what car you observed?

23 A A white Rodeo.

24 Q A white Rodeo?

25 A Yes.

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1 Q And where was that Rodeo parked?

2 A Across the street from my father's house.

3 Q And can you point out for the jury approximately where
4 that would have been?

5 A Right here. (Indicating.)

6 Q And what direction was that car facing?

7 A It was facing towards Clemson Road.

8 Q Towards Clemson Road?

9 A This way. Yes. (Indicating.)

10 Q And what happened with that vehicle?

11 A The guy got in the Suburban, I mean, in the Rodeo,
12 turned around.

13 Q And did you see how many people were in that Rodeo?

14 A It was two guys.

15 Q Two guys. Do you recall what they were wearing?

16 A I think one had a shirt on, t-shirt.

17 Q Uh-huh. (Affirmative response.)

18 A I think it was a dark-colored shirt. And I don't know
19 what the other guy had on.

20 Q Did you know those people from being frequenting your
21 bar?

22 A Face, yes.

23 Q By face. Did you know their names?

24 A No. I know them by face.

25 Q Okay. I'm going to show you State's 46 and 47, and ask.

1 if you recognize the photographs?

2 A Yes.

3 Q What are they pictures of?

4 A The two guys in the Rodeo.

5 Q The two guys in the Rodeo?

6 A Yes.

7 MS. SHIPLEY: Your Honor, at this time the state
8 seeks to introduce 46 and 47 into evidence.

9 THE COURT: Thank you. Without objection.

10 (State's Exhibit No. 46, photo, was
11 marked and entered.)

12 (State's Exhibit No. 47, photo,
13 was marked and entered.)

14 BY MS. SHIPLEY:

15 Q Do you recall which one was driving the Rodeo and which
16 one was the passenger of the Rodeo?

17 A The gentleman on the bottom was the driver.

18 Q This is the driver of the Rodeo?

19 A Yes.

20 Q And who is this?

21 A This is the passenger.

22 Q Tell the jury what happened -- did the car drive away,
23 what happened with the Rodeo?

24 A Shortly after that the Rodeo turned around and swung
25 back towards Farrow Road and the passenger got out -- sat up

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1 on the door of the car and shot a pistol in the air.

2 Q Okay.

3 A And they proceeded on down the street.

4 Q So the passenger --

5 A Shortly afterwards, yes.

6 Q -- shot out of the car?

7 A Yes.

8 Q And this was when they were driving towards Farrow
9 Road?

10 A Right?

11 Q And what direction did the shot go?

12 A Up in the air.

13 Q Could you see what kind of gun he had?

14 A No. I know it was a pistol.

15 Q A pistol?

16 A Yes.

17 Q Smaller than State's 124?

18 A Yes.

19 Q And again how many times did you observe this person
20 shoot?

21 A One time?

22 Q One time?

23 A Yes.

24 Q And, again, what direction were they driving towards
25 when that shot was fired?

1 A Farrow Road.

2 Q And please tell the jury, with your pointer, where you
3 believe they were when the shot was fired one time up in the
4 air?

5 A They were right up in here. (Indicating.) Right
6 there. I was back over here at the time. Right there.

7 Q You had already made it back to your business by that
8 time?

9 A Yes. I was in the parking lot at the time.

10 Q So I understand this, you observed the multiple shots
11 from the tan Suburban, you're crossing the street; correct?

12 A Right.

13 Q When is it that you noticed the Isuzu Rodeo?

14 A Oh, it was on the side of the road, you know, arguing
15 -- like yelling. Then I pulled my car across the street and
16 got out. By the time I got out my car and looked and the
17 Rodeo made a U-turn and went back towards Farrow Road, this
18 way. (Indicating.)

19 Q And so the time between the Suburban shooting and the
20 Rodeo shooting you had already managed to get your car and
21 park it at the business?

22 A Yes.

23 Q Okay. How much time do you think it would have taken
24 you to continue crossing the street after the Suburban
25 shoots, has the shots fired, crossing the street to your

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1 dad's house, getting your car and then driving it back to
2 your business; how much time do you think that would have
3 taken you?

4 A Two, three minutes, maybe.

5 Q Okay. And so you had already parked --

6 A Yes.

7 Q -- by the time the Rodeo pulled around?

8 A Yes.

9 Q Were there other cars in the parking lot at that point?

10 A Yes, there were.

11 Q And when the shots were fired from the tan Suburban,
12 what, if anything, did you observe people in the parking lot
13 doing?

14 A Well, they were scattering and running around. They
15 were trying to get out the way. They were just moving,
16 ducking.

17 Q Do you recall meeting with law enforcement when they
18 first arrived on the scene; did you remain at your bar?

19 A Well, yes, I did.

20 Q Okay. What was your primary concern at this point
21 after the tan Suburban shot and the Rodeo Isuzu shot one
22 time?

23 A Safety.

24 Q Safety of whom?

25 A Safety of my customers and myself.

1 Q And did you allow some of your customers to remain
2 inside?

3 A Yeah.

4 Q Eventually, how long after the shots were fired from
5 the Suburban and Rodeo did it take for the police to arrive?

6 A Oh -- I don't know. I can't really say. Maybe 20, 30
7 minutes, maybe. If that long. Yes.

8 Q And you're guessing --

9 A Yes.

10 Q -- were you watching the clock?

11 A No, I was not.

12 Q When the police arrived did you make contact with them?

13 A Yes, I did.

14 Q And did you identify who you were?

15 A Yes.

16 Q Did you tell them you were the owner of this bar --

17 A Yes.

18 Q -- or the bartender, operator?

19 A Yes.

20 Q And did you provide descriptions of both vehicles to
21 law enforcement?

22 A No, because when the police officer came up he just
23 wanted to secure the -- what was going on, because he said
24 evidence might be tampered or cars ran over it, so he
25 stopped traffic on both sides.

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1 Q Okay.

2 A And had them go around. So he -- when he got out the
3 car he just started handling that.

4 Q Okay.

5 A So by that time I walked back over to the business.

6 Q And eventually did you make contact with an officer
7 about what you had witnessed?

8 A Yes.

9 Q All right. And do you recall if that was a uniformed
10 officer?

11 A No. The officer that I talked to Officer McRae.

12 Q Investigator McRae?

13 A Investigator McRae, yes.

14 Q Okay. And so the first time you explained what you
15 observed was to Investigator McRae?

16 A Yes.

17 Q And the other officers were concerned with the crime
18 scene?

19 A Right. Yes.

20 Q Did you provide descriptions of the car, however?

21 A No, because, like I said, when the first officer pulled
22 up, he just wanted to secure the street. Looking for
23 shells.

24 Q Okay. At that point when you meet with Investigator
25 McRae did you tell him exactly what you just testified to to

1 this jury?

2 A Yes.

3 Q And did he -- did you provide a description of Tremaine
4 and Taurus to him?

5 A Yes.

6 Q Were you able to provide Investigator McRae with the
7 full name of each suspect?

8 A Not at the time, because, like I say, I was trying to
9 handle what was going on inside because I had people that
10 was not ready to leave, not wanting to leave, and -- you
11 know, I was concerned about that, and making sure everything
12 was in tact in the place.

13 Q Okay. And so --

14 A So I was talking to him and -- I'll be back -- and back
15 and forth. So some of my answers -- some of his questions
16 were really unanswered at the time.

17 Q At the time. So you did not remember --

18 MR. SWERLING: Objection.

19 BY MS. SHIPLEY:

20 Q Did you recall the last name of Taurus at the time?

21 A Yeah. I wanted to make sure -- I didn't want to give
22 him a name and wasn't sure, wasn't sure of what was going
23 on, because like I said, the gunfire was coming out of the
24 Suburban. I didn't know if somebody was still in the
25 Suburban, but I didn't see nobody get out and get back in.

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1 Q Okay. And so at the time when you met with
2 Investigator McRae, were you able to provide the last name
3 of Taurus?

4 A Yes.

5 Q Initially, what information did you give Investigator
6 McRae?

7 A I gave him a description of the vehicle and the
8 direction that they were going in. Then I told him about
9 the Rodeo and then he --

10 Q You also told him about the Rodeo?

11 A Yeah, and he received a call that they had stopped the
12 Rodeo, and then we went to look at the Rodeo.

13 Q All right. When he went and took you to the Rodeo,
14 were you asked to identify the occupants of the Rodeo?

15 A Yes.

16 Q And did you see them?

17 A Yes.

18 Q And were these the two individuals you saw at the
19 Rodeo?

20 A Yes.

21 Q And what did you tell Investigator McRae about the
22 people from the Rodeo?

23 A I told him those were the two guys that were there.

24 Q Did you tell him how many times -- did you tell him
25 which one of those shot?

- 1 A Yes.
- 2 Q And again, did you tell him how many times that person
- 3 shot?
- 4 A Yes.
- 5 Q And how many times did you report?
- 6 A One time.
- 7 Q And in what direction was that shot fired?
- 8 A Up in the air.
- 9 Q Eventually, did you go to the Richland County Sheriff's
- 10 Department the following day?
- 11 A Yes, ma'am, I did.
- 12 Q And did you give a statement to law enforcement --
- 13 A Yes.
- 14 Q -- to Investigator McRae?
- 15 A Yes, ma'am, I did.
- 16 Q And I'm going to show you a document. Do you recognize
- 17 this document?
- 18 A Yes.
- 19 Q And what is it?
- 20 A This is the questions that I was asked and I answered.
- 21 Q The questions --
- 22 A That Investigator McRae asked me and I answered.
- 23 Q Okay. And what date and time is that given?
- 24 A Um -- looks like 1:00 o'clock -- 7:00 p.m. the next
- 25 day.

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1 Q The next day?

2 A Yeah. The next day. About 1:00 o'clock.

3 Q Do you recall that after you -- after you were taken to
4 the Rodeo to identify the occupants of the Rodeo, making
5 phone calls to Investigator McRae throughout the evening or
6 throughout the morning?

7 A He called me that morning, early that morning, and
8 asked me if I could come in. I told him I wanted to get
9 some rest, but I would come before I opened up.

10 Q Okay.

11 A So I went by there.

12 Q And do you remember providing him with more details
13 about the people inside of the tan Suburban?

14 A Yes.

15 Q Were you able to provide any information as to the name
16 of the driver of the tan Suburban?

17 A Yes. Their first name. Yes.

18 Q And what name did you provide to Investigator McRae?

19 A Tremaine.

20 Q And were you able to provide a last name to
21 Investigator McRae as to the passenger of the vehicle?

22 A Yes.

23 Q And what name is that?

24 A Watts.

25 Q Do you recall calling Investigator McRae later on that

1 day with potential, with potentially last name of the driver
2 of the tan Suburban?

3 A Later that day? Yes, I did. Yes.

4 Q And what last name did you provide to Investigator
5 McRae as to the last name of the driver of the tan Suburban?

6 A Wray.

7 Q When you gave your statement to law enforcement on July
8 1, 2006, (sic) at approximately 1:00 o'clock, do you
9 remember being shown some photographic lineups?

10 A Yes.

11 Q I'm going to show you what's been marked as State's 5,
12 and ask you if you recognize that?

13 A Yes.

14 Q And what is it, sir.

15 A It's the paper that he showed me with the pictures.

16 Q Okay, and did you sign the first page of that document?

17 A Yes.

18 Q And what photograph did you pick out?

19 A Tremaine.

20 Q And what number was that?

21 A Number four. Number four.

22 Q And when Investigator McRae handed you State's No. 5,
23 did he suggest to you in any fashion which photograph to
24 pick out?

25 A No, he didn't.

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1 Q Did he tell you who was going to be in these photos?

2 A No.

3 MS. SHIPLEY: Your Honor, at this time, state seeks
4 to introduce State's Exhibit No. 5 into evidence.

5 MR. SWERLING: Subject to the previous --

6 THE COURT: Okay, the Court will stand by its prior
7 ruling. So admitted over that objection.

8 (State's Exhibit No. 5, photo, was
9 marked and admitted.)

10 BY MS. SHIPLEY:

11 Q And again, point out which picture you identified in
12 that line up; is that it?

13 A Yes.

14 Q And who is that?

15 A Tremaine.

16 Q Tremaine, and what was he doing as far as the tan
17 Suburban?

18 A Driving.

19 Q Driver? Did you hesitate in any fashion when you
20 identified this photograph?

21 A No, I didn't.

22 Q I'm going to show you what's now been marked as State's
23 No. 6, and ask you if you recognize that?

24 A Yes.

25 Q And what is it?

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1 A The photos you showed me on the other page.

2 Q Okay, and do you see your signature on the first page
3 of that document?

4 A Yes.

5 Q And what photograph, what number did you pick out on
6 those pictures?

7 MS. JOHNS: Your Honor, I'm going to object at this
8 time. I want to have a hearing outside the presence of the
9 jury.

10 THE COURT: All right. Okay.

11 All right. Ladies and gentlemen of the jury, I'm going
12 to ask you to step to your jury room. I'll remind you not
13 to discuss the case. We'll be with you shortly.

14 (Jury out at 11:05 a.m.)

15 MS. JOHNS: Thank Your Honor. May it please the
16 Court.

17 THE COURT: Sure.

18 MS. JOHNS: Your Honor, I believe State's Exhibit
19 No. -- that's been marked as an exhibit -- No. 6, and we've
20 discussed at pre-trial, and there are several things that I
21 want to reiterate at this point. One is that Mr. Jacobs has
22 admitted that he knows Taurus Watts. He's known Taurus
23 Watts. He knew Taurus's name at the time of this incident.
24 He knew Taurus's last name at the time of this incident.
25 Subsequent to that, Your Honor, he did provide a name.

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1 There's been testimony that he knew Taurus, that Taurus was
2 a frequent patron of the club. His mother worked at the
3 club, Your Honor, and furthermore the photo lineup, Your
4 Honor, is unduly prejudice in the fact that each one of
5 these individuals with the exception of my client is wearing
6 street shirts. And it is identifiable or could that these
7 photographs could come from a driver's license picture. All
8 those one through five can be predicted or can be assumed
9 that these photographs come from driver's license picture
10 with the exception of my client, number six. And in this
11 particular picture, Your Honor, there is a picture of my
12 client wearing a jail uniform. In this particular picture,
13 Your Honor, the jail uniform indicates prior arrest, which
14 affects my clients character or for 403 issues in evidence
15 without him testifying. As a result of that, Your Honor,
16 this photograph, one is not necessarily prove the identity
17 of my client and two is highly prejudicial and really had no
18 probative value.

19 So based on that, Your Honor, I would object to State's
20 No. 6 going into evidence to prove the identity of my
21 client, because it will do nothing but harm him in a way
22 that the jury may look at this photograph and say one was
23 wearing a jail uniform. And I object based on those
24 grounds.

25 THE COURT: All right. State?

1 MS. SHIPLEY: Your Honor, we have laid the
2 foundation to have this exhibit admitted into evidence, and
3 if I could hand this up to the Court. You can't see any
4 markings on that photograph that say, jail or inmate
5 numbers. It looks like a v-neck t-shirt in that photograph.
6 It's speculation that the jury would know what kind of shirt
7 they wear at the jail.

8 MS. JOHNS: Your Honor, I would submit that if
9 they've been in this courthouse before, and they've attended
10 some sort of hearing in general sessions court, not to
11 mention if they're sitting at home watching their TV, and
12 they see one of these pop up on the TV, they're going to
13 know this is a jail uniform. It's unquestionable.

14 THE COURT: Ms. Johns, you do have a witness who
15 knows this gentlemen and who could ID him separate and apart
16 from the photo line up, correct?

17 Ms. Shipley -- I'm sorry.

18 MS. SHIPLEY: No, Your Honor. This is the only
19 witness that I have who identifies him that night.

20 THE COURT: I know, but he can identify him
21 separately and apart from this photo line up?

22 MS. SHIPLEY: Yes, ma'am. We did go through a
23 Jackson -- a Neil verses Biggers hearing for the purposes of
24 having it admitted into evidence.

25 THE COURT: Right.

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1 MS. SHIPLEY: And the Court ruled in the state's
2 favor that prior identification was admissible, and so as a
3 result we are entitled to have the line up shown at this
4 time or introduced into evidence.

5 MS. JOHNS: Your Honor, I know you recall the Neil
6 v. Biggers hearing that state admittedly didn't do a Neil v.
7 Biggers in regards to my client, that he was known already
8 by this witness and it does nothing but bolster prejudice
9 against my client.

10 MR. SWERLING: The photo lineup is not probative.

11 THE COURT: Right. At the risk of the jurors
12 looking at this shirt as being different and having any
13 potential information that this might have come from the
14 jail website, and all of that, while I did rule that I don't
15 think the lineup, itself, in terms of how it was conducted
16 was not prejudicial, I think that I should err to the side
17 of the defense with respect to any potential juror have any
18 insinuation that this shirt looks different and that they
19 might associate it with a jail website or -- you know, we
20 have several jurors who have family members or people who
21 have been victimized or been in jail or whatever. I just
22 think that in that regard, while I think the method and
23 manner in which I think the photo lineup was conducted was
24 okay, it's just that I would rather err on the side of the
25 defense with respect to this picture since it is not

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1 excluding your ability to have your witness have independent
2 means of making an ID.

3 MS. JOHNS: Thank you, Your Honor.

4 MS. SHIPLEY: If the Court would provide some
5 guidance, as far as my next line of questioning, would it be
6 okay for the state to say, did you identify a picture of
7 Taurus in this photographic lineup and leave it at that.
8 And not introduce the document.

9 THE COURT: And not introduce it.

10 MS. JOHNS: Your Honor, I think make reference to
11 it and then it not going in is a double edge sword. In this
12 particular case I think the state should be able to ask if
13 he identified the photograph of Mr. Watts, but I don't think
14 that it should be in the context of the photo lineup. I
15 understand the state's position that they do want to assure
16 that at the time of the incident that he was able to
17 identify a photograph of Mr. Watts, but he already knew Mr.
18 Watts. He already knew his identity. He admitted that.
19 Knew his first name and his last name. So he knows him by
20 name and sight. So for him to identify Mr. Watts at a
21 photographic lineup, lineup itself indicates that, you know,
22 there's something there that they are particularly looking
23 for that they shouldn't see.

24 THE COURT: I don't want to harm the solicitor in
25 that line of questioning for the jury to not be able to see

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1 something that you're referring when you say lineups,
2 because you've got other pictures.

3 MS. SHIPLEY: Right. And I think the concern that
4 Ms. Johns has is alleviated if I just say, were you shown
5 pictures, did you identify Taurus in Taurus's picture, and
6 leave it at that.

7 THE COURT: That will be fine.

8 MS. SHIPLEY: Okay.

9 THE COURT: Without referencing a lineup. That
10 will be fine.

11 MS. SHIPLEY: Just that on June -- on that date,
12 July 1st, he identified a picture of Taurus.

13 THE COURT: And I'm fine with that because you are
14 entitled to show that your officers immediately were able to
15 get an ID --

16 MS. SHIPLEY: Yes, ma'am.

17 THE COURT: -- of this person, because that's where
18 you --

19 MS. SHIPLEY: And that's critical to pursuing an
20 investigation?

21 THE COURT: Correct.

22 MS. SHIPLEY: Yes, ma'am.

23 THE COURT: Absolutely. Okay. That's fine.

24 MS. SHIPLEY: Thank you, Your Honor.

25 MR. SWERLING: It will be the same ruling as to

1 Watts? I mean Wray?

2 THE COURT: He's wearing --

3 MS. SHIPLEY: He's wearing street clothes, Your
4 Honor.

5 THE COURT: So that will be different in terms of
6 why I let it out.

7 MR. SWERLING: I was just reiterating that it's the
8 same theory of they know it's a lineup and for the same
9 reason that Your Honor has articulated about getting it off
10 the website and the potential to assume that these are jail
11 photos from what people's normal understanding of what a
12 lineup is, so I'd have the same objection.

13 THE COURT: Okay. Well, the only thing is this one
14 was specific -- Taurus Watts was specifically from the jail
15 site; is that correct?

16 MS. SHIPLEY: Yes, ma'am. And this photo lineup,
17 you can't tell if it's a DMV or jail. There's no
18 characteristics of where it was taken on State's No. 5.

19 THE COURT: Okay.

20 MS. SHIPLEY: And I'll hand it up to the Court and
21 you can make your ruling.

22 THE COURT: Okay. Okay, it's definitely a
23 different type shirt. So I'll over your objection, I'll let
24 this one in.

25 MS. SHIPLEY: Thank you, Your Honor.

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1 THE COURT: You all have a quick break for
2 yourselves.

3 MS. SHIPLEY: Thank you, Your Honor.

4 (Court at recess for short break.)

5 (Court in session after short break.)

6 THE COURT: Thank you all. Take your seats.

7 Okay, do we have everybody in place, ready to proceed.

8 THE STATE: Yes, ma'am.

9 THE COURT: Okay. Jurors, please.

10 (Jury in at 11:38 a.m.)

11 THE BAILIFF: Jurors are all seated, Your Honor.

12 THE COURT: Thank you all.

13 Mr. Jacobs, I'll remind you that you are still under
14 oath.

15 State, you may continue.

16 MS. SHIPLEY: Thank you, Your Honor.

17 RICKY JACOBS - CONTINUED DIRECT EXAMINATION

18 BY MS. SHIPLEY:

19 Q Mr. Jacobs, I left off asking you about whether you
20 were shown some photos of the passenger of the tan Suburban;
21 do you recall that?

22 A Yes.

23 Q And were you able to identify a photograph of the
24 passenger?

25 A Yes.

1 Q And who was the passenger?

2 A Taurus.

3 Q And do you see him in the courtroom right now?

4 A Yes.

5 Q Please identify him for this jury?

6 A Sitting over there with the coat polka-dot tie on
7 there.

8 MS. SHIPLEY: Your Honor, please let the record
9 reflect he has identified Taurus Watts.

10 THE COURT: So reflects.

11 MS. SHIPLEY: Thank you, Your Honor.

12 BY MS. SHIPLEY:

13 Q And how long have you known Taurus Watts?

14 A A number of years, 20, maybe.

15 Q Twenty years?

16 A Yes.

17 Q And when you encountered him with Tremaine in the
18 parking lot of the H&J club can you stop me when I get as
19 close as you got to him that night? You just tell me when
20 to stop.

21 A Probably right there.

22 Q Okay. And you indicted that that was in the canopy
23 area of the parking lot?

24 A Yes.

25 Q And describe the lighting conditions under there for

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1 this jury?

2 A It's well lit.

3 Q It's well lit?

4 A Yes.

5 Q And you stop me when I get as close as you got to
6 Tremaine Wray that night?

7 A Probably there. Yeah. I was --

8 Q Go ahead.

9 A -- I was closer to the passenger side than the driver's
10 side.

11 Q I understand. And the driver of the tan SUV Suburban,
12 do you see him in the courtroom today?

13 A Yes.

14 Q And can you please identify him for this jury?

15 A He had the gray suit on. Gentleman in the gray suit.

16 MS. SHIPLEY: Your Honor, please let the record
17 reflect he's identify Tremaine Wray.

18 THE COURT: So reflected.

19 MS. SHIPLEY: Thank Your Honor.

20 BY MS. SHIPLEY:

21 Q I'm going to show you State's No. 40, and ask you if
22 you recognize that?

23 A Yes.

24 Q And what is it?

25 A The Suburban.

1 Q And is it the Suburban that night?

2 A Yes.

3 MS. SHIPLEY: Your Honor, at this time, State seeks
4 to introduce No. 40 into evidence.

5 MR. SWERLING: Judge, without waiving any
6 objections that have previously been made regarding these
7 searches.

8 THE COURT: Certainly. Okay.

9 (State's Exhibit No. 40, photo of
10 Suburban, was marked and entered.)

11 BY MS. SHIPLEY:

12 Q And I also going to show you what's been marked State's
13 No. 17. Do you recognize that car?

14 A Yeah, that's the Rodeo.

15 Q Okay. And is that the Rodeo you observed that night?

16 A Yes.

17 Q And how many shots did you see coming from this car and
18 hear coming from this car?

19 A One.

20 MS. SHIPLEY: Your Honor, at this time, state seeks
21 to introduce 17.

22 MS. JOHNS: No objection.

23 MR. SWERLING: No objection.

24 (State's Exhibit No. 17, photo
25 Rodeo, was marked and entered.)

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1 BY MS. SHIPLEY:

2 Q And how many shots did you see coming out of this one,
3 the Suburban?

4 A I couldn't tell you. It was more than one. I could
5 tell you how many.

6 MS. JOHNS: Your Honor. I'm sorry. Could he
7 repeat his answer?

8 A I couldn't tell you how many. More than one.

9 BY MS. SHIPLEY:

10 Q And you indicated that you were at your father's place
11 getting your car in between the shots fired from the tan
12 Suburban and the one shot fired from the Rodeo; is that
13 correct?

14 A Yes.

15 Q I'm going to show you what's been marked as State's
16 125. Do you see your father's house there?

17 A Yes, I do.

18 Q Can you point out for this jury where it was that you
19 normally park your vehicle?

20 A Right between -- right here. That's the driveway.

21 Q Is my finger pointed on it correctly?

22 A Yes.

23 Q Okay.

24 MS. SHIPLEY: Your Honor, at this time we would
25 seek to introduce 125 into evidence?

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1 MR. SWERLING: No objection.

2 MS. JOHNS: No objection.

3 THE COURT: Okay.

4 (State's Exhibit No. 125, photo of
5 location of parked vehicle, was marked and entered.)

6 BY MS. SHIPLEY:

7 Q And, again, am I pointing at the place where your dad's
8 driveway is? Just point it out to me so I didn't lose it?

9 A It's here. (Indicating.)

10 Q Right there. Okay. And so that is where you removed
11 your vehicle between the shots fired from each car?

12 A Yes.

13 MS. SHIPLEY: May I publish this to the jury?

14 THE COURT: You may.

15 BY MS. SHIPLEY:

16 Q And again your father, on this diagram, just to orient
17 the jury, where is your father's house located?

18 A Over here. (Indicating.)

19 Q Okay. And so the dirt road depicted in the exhibit
20 being published currently to the jury, do you see that dirt
21 road on this diagram?

22 A Here. (Indicating.)

23 Q Okay. And the parking lot that is depicted in State's
24 124, I believe; is that also depicted on the diagram?

25 A The parking lot?

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1 Q Of your establishment.

2 A Right here. (Indicating.)

3 Q Thank you. You indicated that when the shots were
4 being fired out of the Suburban were there people in the
5 parking lot?

6 A Yes.

7 Q And what were those people doing?

8 A Just scrambling. Just moving out, trying to avoid
9 getting hit, I guess. From what I recollect, yes.

10 Q Did you observe anybody fall in front of your bar and
11 cut themselves in any way?

12 A No. No, I didn't see anyone fall.

13 Q You don't remember seeing anyone fall. Okay. Did you
14 yourself personally call 911?

15 A No, I didn't.

16 Q And did you instruct anyone to call 911 on your behalf?

17 A No. I was in the middle of the street crossing, so --

18 Q At the time that you met with Investigator McRae at
19 your establishment, did you know that anyone had even been
20 hit with a bullet?

21 A No. I had no idea.

22 Q Okay. Did you know that anyone had been killed as a
23 result of shots fired?

24 A No, I had no idea.

25 Q Did you see any guns on anybody inside of that night

1 club that night; inside of your establishment?

2 A A gentleman that was backing out of the bar, he had one
3 in his hand. He was just backing out so nobody wouldn't
4 bother him. I don't know who the gentleman is, but -- like
5 I said, it was the first time I'd seen him before. That's
6 the only one I seen.

7 Q Did you see that individual; are you familiar with that
8 person?

9 A No. First time I've seen him.

10 Q And so did you see that person shoot that gun at any
11 time?

12 A No. Not to my knowledge.

13 Q The shots -- did you hear any more shots -- let me
14 rephrase. The shots that you heard from the Suburban,
15 again, who was in the Suburban?

16 A Taurus and Tremaine.

17 Q And had you seen Taurus inside of your night club
18 earlier that night?

19 A Yes.

20 Q Approximately what time did you remember seeing him
21 inside?

22 A It had to be roughly 2:00, 3:00 o'clock, a.m.

23 Q Did you see Tremaine Wray inside of your night club
24 that night?

25 A Yes.

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1 Q And what time did you see him?

2 A It was earlier -- I don't know exactly. I noticed one
3 then I noticed the other later. I don't know if they were
4 together or not.

5 Q I'm sorry, sir. I can't understand you.

6 A I noticed one and then the other one later, so I can't
7 tell you exactly what time it was.

8 Q So you noticed one before the other?

9 A Yes.

10 Q And which one was the first one you noticed?

11 A I believe it was Tremaine. Yes.

12 Q Okay. Since that night has Brian Johnson been allowed
13 back into your night club?

14 A No.

15 Q And why is that?

16 A Because he's barred.

17 Q And why -- did he get barred as a result of what
18 happened that night?

19 A Yes.

20 Q Do you recall on June 30, 2007, at approximately 5:40
21 a.m. talking to Investigator McRae about what you had
22 observed that night at your night club?

23 A Yeah. I remember speaking with him about it.

24 Q Okay. Do you recall whether you told him that Mr.
25 Watts had made a comment to you when you told them that the

1 night club was closed?

2 A Yeah, he said something. Said, that's all right or
3 something like that. Then he turned around and walked away.
4 I thought it was over. I thought everything was over. All
5 right. Cool. So I didn't pursue it any further.

6 Q Do you know a person named Brian Watson?

7 A No.

8 Q And if you don't know -- you don't know him?

9 A Probably by face, but not by that name. Not off-hand.

10 Q Have you ever had any conversation with anybody about
11 the facts that you saw, the events that you witnessed that
12 night other than law enforcement and the prosecutor?

13 A Yeah, just like my brother or father.

14 Q Have you ever had an conversations with a person named
15 Brian Watson about this case?

16 A I don't know Brian Watson. Probably by face.

17 Q And so have you had any conversations with a Brian
18 Watson about this case?

19 A No, ma'am.

20 Q And Mr. Jacobs you're had some difficulties or getting
21 arrested; correct?

22 A Yes.

23 Q And isn't it true that you were convicted on November
24 30, 1995 of possession of cocaine; correct?

25 A Yes.

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1 Q And that was 14 years ago?

2 A Yes.

3 Q And then in 1996, you were convicted of fraudulent
4 checks; is that correct?

5 A Yes.

6 Q Both less than \$500?

7 A Yes.

8 Q And lastly you were also convicted of fraudulent check
9 under \$500 on February 8, 2000; correct?

10 A Yes.

11 Q And that is the extent of your record; correct?

12 A Yes, it is.

13 Q When you saw the defendants in the parking lot by the
14 tan Suburban, did you recognize them at that time?

15 A Yes.

16 Q And where did you recognize them from?

17 A From being in the bar.

18 Q Is there any doubt in your mind that those are the two
19 occupants of that tan Suburban you identified?

20 A No.

21 Q And is there any doubt in your mind that that is the
22 vehicle from which the shots came from headed towards the
23 car wash?

24 A No.

25 Q Is there any doubt in your mind that the Isuzu Rodeo is

1 the car that shot one time up in the air?

2 A No.

3 Q Thank you, Mr. Jacobs. Please answer any questions
4 from the defense.

5 MS. JOHNS: May it please the Court, Your Honor.

6 THE COURT: Sure.

7 RICKY JACOBS - CROSS-EXAMINATION

8 BY MS. JOHNS:

9 Q Good morning, Mr. Jacobs.

10 A Good morning.

11 Q I'm Theresa Johns. How are you, today?

12 A Fine, and yourself?

13 Q Good. Now, let me ask you a little bit about your
14 business. Let me ask you, who is Eugene Jacobs?

15 A That's my father.

16 Q And do you know a Robert Henry?

17 A That's -- yes, I know him.

18 Q And who is Robert Henry?

19 A Robert Henry used to be a partner of my father in 1986.

20 Q Okay. So Mr. Henry and Eugene Jacobs, your father,
21 were partners until 1996?

22 A '86.

23 Q 1986?

24 A Yes.

25 Q Okay. And at some point then Mr. Henry dissolved

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1 himself from the partnership; is that right?

2 A Yes. My father worked for the corporation.

3 Q What?

4 A My father worked for the corporation.

5 Q And it's name (inaudible) Chasers, Incorporated; right?

6 A Exactly.

7 Q And at one time the little place next to you was called
8 Chaser's Lounge; is that right?

9 A No.

10 Q Do you have Chaser's Lounge on the door?

11 A No.

12 Q Okay. Do you have Chaser's something on the door?

13 A Chaser's Pub.

14 Q Okay, Chaser's Pub. Excuse me. Did that name of the
15 club change in 1986 to H&J?

16 A No. Chaser's Pub was in performance until 1989 when I
17 took over.

18 Q So the H stands for Mr. Henry and the J stands for
19 Eugene Jacobs; right?

20 A Exactly.

21 Q And this business has been at this location for 34
22 years; right?

23 A Yes, ma'am.

24 Q And you changed the to Chaser's Pub in what year?

25 A I opened that in 1986. We had -- '89. I'm sorry.

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1 December of '89.

2 Q So you opened it up?

3 A Yes, ma'am, I did.

4 Q And the beverage license in under your name, right?

5 A No. It's under Eugene Jacobs.

6 Q It's under Eugene Jacobs?

7 A Yes.

8 Q Okay. Eugene Jacobs, he's not -- he doesn't have
9 anything to do with the business, right?

10 A No, he still --

11 Q He still owns it?

12 A He's still president of the corporation. Yes, he is.

13 Q And who is Deborah Walker?

14 A Deborah Walker is Robert Henry's niece.

15 Q Okay. Is she part of the corporation?

16 A No, she isn't.

17 Q And has there ever been a beverage license in her name?

18 A No, there hasn't.

19 Q Now, you are very, very familiar with the alcohol
20 beverage control commission, are you not?

21 A Yes, ma'am, I am.

22 Q They have certain rules, do they not?

23 A They do.

24 Q Okay. For an example, one of those rules would be that
25 you cannot sell beer to minors, right?

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1 A Yes.

2 Q And you do know that the club had been written up for
3 that before, right?

4 A No, that's not true. That's the store.

5 Q The store?

6 A Yes.

7 Q Okay. And what about selling beer on Sundays?

8 A Yes.

9 Q Somebody has been written up for that, right?

10 A Well, I think in 1982, Mr. Henry was written up. Yes.

11 Q Okay. And you ever have to testify before the
12 commission about selling beer to minors?

13 A No. I have a Sunday All Premise --

14 Q And how long have you had a Sunday All Premise license?

15 A Every Sunday, every week.

16 Q Okay. When you open up Chaser's Pub in 1989, did you
17 apply for what we call a liquor license?

18 A No. My father did.

19 Q So this license to sell liquor was for on-premises --

20 A Yeah.

21 Q At that time it was mini-bottles, correct?

22 A Yes.

23 Q Okay. At some point in the future, probably in the
24 last five years, it's not mini-bottles any more, right?

25 A No, ma'am.

1 Q It is liquor by the drink, right?

2 A Yes.

3 Q And that license is still under your father's name?

4 A Yes, ma'am, it is.

5 Q And you can sell liquor by the drink; is that right?

6 A Yes, ma'am.

7 Q Along with beer and wine?

8 A Yes, ma'am.

9 Q And you can sell until what time Friday night going
10 into Saturday morning?

11 A Friday night going into Saturday morning it's no set
12 time on that. It's Saturday going into Sunday that's a set
13 time.

14 Q All right. What time is that?

15 A It's 12:00 o'clock if you don't have a Sunday license.
16 It's 2:00 o'clock if you have a Sunday license. If you have
17 a private party, it's whenever the party desires.

18 Q And for a private party you have to have a special
19 license?

20 A Well, no. When I rent out the building, no, I don't.

21 Q Okay. And that would be the way you get around getting
22 a license is to rent out the building; right?

23 A I don't go around getting a license. I have one for
24 Sunday.

25 Q And if you have a private party that's beyond 12:00

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1 p.m. on Saturday night or 2:00 p.m. on Saturday night into
2 Sunday morning, you rent out the business, right?

3 A What are you saying? Are you saying that I'm going to
4 operate by business and then at 2:00 o'clock I'm going to a
5 private party; is that what you're saying?

6 Q Well, either way. Private party first?

7 A No, ma'am. I contract with the person who has the
8 party before the date.

9 Q Okay.

10 A And I file it and they have the party.

11 Q Okay. And it doesn't involve applying to the ABC
12 Commission for that private party, it's just a contract
13 between you and the private party, right?

14 A Exactly.

15 Q All right. Now, let me ask you, on September 3, 2007,
16 you had one of those private parties; isn't that right?

17 A September 3, 2007? May could have. Yes.

18 Q And you called the police about a person named Norris
19 being a Tec 9 or a Mack 10 into your place of business;
20 isn't that right?

21 A No. Someone called.

22 Q Someone called.

23 A Yes.

24 Q And when that person -- you were there, right?

25 A I was there, yes.

1 Q And that person that brought that Tec 9 or Mack 10 into
2 that business, they were pointing it at people weren't they?

3 A He had it down by his side. We asked him to leave and
4 he got in the car, and him and Brian Johnson left.

5 Q Okay, and when you reported that as a complainant, that
6 was 1:50 in the morning, right?

7 A Yes.

8 Q All right. And you listed the suspect as a Norris?

9 A Yes.

10 Q And you know a Norris don't you?

11 A Yes.

12 Q And you know him as Norris Bond or Boo?

13 A Norris.

14 Q Norris?

15 A Yes.

16 Q Does he have a nickname?

17 A Norris, is all I know.

18 Q And he started threatening your customers didn't he?

19 A No. He actually was looking for one particular person.
20 I don't know who it was.

21 Q Okay. And you told the police or somebody told the
22 police his cousin is Brian Johnson, right?

23 A Yes. Who was not supposed to be on the premises.

24 Q What? I'm sorry?

25 A Who was not supposed to be on the premises.

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1 Q Who was not supposed to be on the premises. Okay.
2 Because he had been barred?

3 A Exactly.

4 Q And how did he get notification of being barred?

5 A Verbally.

6 Q Verbally?

7 A Yes.

8 Q When did you tell Mr. Johnson that he was barred?

9 A I told Mr. Johnson the very next visit that he came in
10 that he's not allowed on the property.

11 Q The first day --

12 A The very next time I seen him on the property I asked
13 him to leave.

14 Q Okay. So the last time you saw Brian Johnson was the
15 morning of July 1st?

16 A No. It was 7 July. I know that because I remember.

17 Q All right.

18 A It was after the incident that happened.

19 Q Let me back up then.

20 A Right.

21 Q You say Brian Johnson on the night of the incident?

22 A Yes.

23 Q And he was one of the customers that you let remain in
24 the bar, right?

25 A Yes.

1 Q Okay. He was one of those people, one of those patrons
2 who was a local, right?

3 A Yes.

4 Q And you let him stay in the bar on that particular
5 night while you heard shots being fired outside?

6 A Yes. For the safety of him as well as everybody else.

7 Q For the safety of him?

8 A As well as anyone else.

9 Q All right. And then at some later point, you said you
10 barred him?

11 A Yes.

12 Q And at the later time you barred him you barred him
13 because you said he was involved in the altercation?

14 A Exactly.

15 Q Okay. Now, on that particular night you knew Brian
16 Johnson was involved in the altercation didn't you?

17 A Yes.

18 Q Okay. You didn't tell him he was barred that night,
19 did you?

20 A I didn't want to tell him to leave when everything was
21 outside in the chaos.

22 Q Okay. And yet some time later, September 3, he shows
23 up with Norris with a Tec 9 or a Mack 10?

24 A Yes.

25 Q Okay. All right. Now, let's talk about this for a

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1 little bit. What time did your club open up Friday night?

2 A We open at 4:00 p.m.

3 Q 4:00 p.m. Every -- every --

4 A Daily. Every day. Daily.

5 Q All right. And do you also have another part of the
6 business that's connected to this club?

7 A Restaurant.

8 Q Restaurant. And what time does that restaurant open?

9 A Well, it opens at 11:00.

10 Q Okay, and is that restaurant open every day?

11 A Yes.

12 Q Okay. And what does that restaurant serve, food wise?

13 A Fast food.

14 Q Fast food?

15 A Yes.

16 Q Okay. All right, how long have you had the restaurant
17 or has your father had the restaurant?

18 A My father's had the business for 34 years, the whole
19 entire building. I opened up Chaser's Pub in '89, as well
20 as Granny's Country Cooking in '89. While I was still in
21 college.

22 Q I'm sorry?

23 A I was in college when I opened them.

24 Q And it's called Granny's --

25 A Country Cooking.

1 Q And can you drink alcohol at Granny's party of this
2 business?

3 A Yes.

4 Q Okay. And it has a license as well?

5 A Yes.

6 Q All right. And is it still open today?

7 A Yes, it is.

8 Q And you have employees particularly for Granny's
9 Country Cooking?

10 A Yes, I do.

11 Q And you know Taurus Watts, right, you've already said
12 that in direct testimony?

13 A Yes.

14 Q You know his mother, Shaun, don't you; in fact, she
15 used to work for you, right?

16 A Shaun. Sharon. Yes.

17 Q Sharon. I'm sorry.

18 A Yes, Sharon.

19 Q Sharon Watts is his mother, correct?

20 A Right.

21 Q She has worked for you and your dad?

22 A Yes.

23 Q And she worked the kitchen, correct?

24 A Yes.

25 Q She worked the bar, correct?

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- 1 A No.
- 2 Q She worked the store?
- 3 A Yes.
- 4 Q She cleaned up?
- 5 A The kitchen, yes.
- 6 Q And how long ago was that; how old were you, were you
- 7 in college at the time?
- 8 A Probably was college. High school, college.
- 9 Q Okay. And how old are you now?
- 10 A Forty-six.
- 11 Q And so for say 20 years you've known Sharon Watts?
- 12 A Yes.
- 13 Q Do you know Taurus as her son, correct?
- 14 A Yes.
- 15 Q And I guess knowing him for 20 years that would have
- 16 made you 26 at the time, right?
- 17 A Yeah, approximately.
- 18 Q Now, you stated on direct examination that this club,
- 19 Chaser's Pub in 1989 is a neighborhood bar?
- 20 A Yes.
- 21 Q All right. This neighborhood bar that's open from 4:00
- 22 p.m. until 2:00 or whatever you're following those
- 23 guidelines, every day of the week, right?
- 24 A I guess.
- 25 Q Okay. And when you serve alcohol at this club you do

1 not have to have any equal receipts for food, is that right?

2 A Any equal receipts?

3 Q Yeah, you don't have to have an equal percentage of
4 food verses alcohol sold, right?

5 A Well, that's the law, so yes, you do.

6 Q Okay. So you do.

7 A Yes.

8 Q So you rely on the kitchen to make sure you follow the
9 guidelines of the ABC Commission, right?

10 A Yes, correct.

11 Q All right. And at night you don't necessarily have to
12 serve any food at the club?

13 A Well, I mean, when I shut down, I shut down both. They
14 are shut down at the same time.

15 Q Okay. Now, how -- when -- let's take you to June 30th,
16 which is a Friday night, going into July 1st, Saturday
17 morning?

18 A Okay.

19 Q Can you describe for me -- let's start with
20 Hardscrabble Road --

21 A All right.

22 Q -- tell this jury the parking situation on Hardscrabble
23 Road?

24 A The parking?

25 Q Yes, sir. Let me ask you this way; people park on the

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1 side of Hardscrabble Road --

2 A Yes.

3 Q -- to go to your restaurant or to go to your bar?

4 A Yes.

5 Q Okay. And they parallel park, right?

6 A Yes.

7 Q And when they parallel park they would park wherever
8 they could find a spot?

9 A Yes.

10 Q So just take a look at State's Exhibit No. 7, and let's
11 just start out at the very left of this photograph arial,
12 and let's start right here. People will start parking on
13 this side of Hardscrabble Road all the way up to Goodrich
14 Street; is that correct, because you can't park in the
15 driveway, right?

16 A What's that street there?

17 Q That's Goodrich Street. You can't park here.

18 A No.

19 Q So they park up here?

20 A No.

21 Q So do they park down Goodrich Road?

22 A Yes, they park on Goodrich.

23 Q So they park down Goodrich Road and they're parallel
24 parking all the way down here, right?

25 A Yeah.

1 Q And they're parallel parking all the way down the other
2 side of Goodrich Road, too, right?

3 A No.

4 Q They're not because there's a house here?

5 A Yeah, and he has no parking signs there.

6 Q So what we're looking at right here arial, is these
7 bushes right here, and there's a fence that goes around his
8 property; is that fair to say?

9 A No. That's open. All this is open.

10 Q That's open?

11 A Yes.

12 Q And then --

13 A The back yard is fenced.

14 Q All right. So all this area right here on Goodrich
15 Street, all the way down this way and through here --

16 A Is open.

17 Q -- is open but he had no parking?

18 A He has no parking signs.

19 Q And what happens if somebody parks there?

20 A They get towed.

21 Q Okay. Now, this area right here beyond these bushes on
22 Hardscrabble Road, people can park there because of the
23 highway; you didn't own the highway, right?

24 A No. But his signs -- his signs not on the highway.

25 Q Okay. So the highway put signs up there?

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1 A Yes.

2 Q Now, have you ever seen a car get towed from this area
3 between Goodrich and this driveway right here?

4 A Yes, I've seen a few tows.

5 Q All right. So people will park here regardless of the
6 signs, right?

7 A I don't see them parking --

8 Q All right. So the answer to my question is people will
9 be ticketed and they still park there, at least on occasion,
10 right?

11 A Yeah, you're right.

12 Q Now, over here is the car wash which is about in the
13 middle section of this arial view, right?

14 A Right.

15 Q And over here is another business. I think it might be
16 a barber shop or a day care or something like that?

17 A Yes.

18 Q Okay. And all this area in this little barber shop day
19 car area is full of cars, right?

20 A Um --

21 Q They park here, too, right?

22 A Depends on what's going on.

23 Q But you've got 50 people in there. They've got to find
24 someplace to park, right?

25 A No. Not really.

1 Q Okay. So how about over here in the car wash area?

2 A Yeah.

3 Q And that whole area wherever they can find a spot
4 they're going to park, right?

5 A Very true.

6 Q All right. Now, over here you have a wall that goes
7 all the way down to -- looks like the back of your business
8 where the wooden patio is; is that right?

9 A It is.

10 Q Okay. And this brick wall is about four feet high; is
11 that fair to say?

12 A No. About the size of this. (Indicating.)

13 Q About the size of this?

14 A Yes.

15 Q Okay. And your deck back there is about four or five
16 feet high?

17 A No.

18 Q From the ground to the flooring?

19 A It's higher. About 12 feet.

20 Q It's higher. It's 12 feet from the ground?

21 A Yes.

22 Q In each corner?

23 A Yes.

24 Q Yes?

25 A Yes.

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1 Q So the grading then on this particular piece of
2 property right here is level, and it doesn't go down, and
3 your deck is 12 feet high?

4 A The deck is 12 feet high.

5 Q Okay. So the deck is from the ground --

6 A Up.

7 Q -- up 12 feet high?

8 A Exactly.

9 Q Right. So to jump off the deck would be 12 feet?

10 A Exactly.

11 Q Okay. This deck has a door that goes into your club?

12 A Yes.

13 Q And then on the other side there's another door that
14 goes inside your club or kitchen?

15 A Yes.

16 Q All right. All this driveway right through there, who
17 parked there?

18 A No one.

19 Q No one. Okay.

20 A We have a gate.

21 Q You have a gate. Okay. And this driveway right here
22 is used for what purpose?

23 A Is was for you to pull around to the back. There's a
24 wrought iron gate here.

25 Q Yes, sir. Right here at the edge?

- 1 A Yes.
- 2 Q You have a key to that gate?
- 3 A No.
- 4 Q Okay. So the wrought iron gate is permanent, it does
5 not open?
- 6 A It's --
- 7 Q It's permanent, you can't open it?
- 8 A You can, but I don't have a key.
- 9 Q Oh. You dad has a key?
- 10 A Yes.
- 11 Q So all through here in front of Chasers club, all of
12 this is parking area, right?
- 13 A Yes.
- 14 Q And how do they typically park, anywhere they can?
- 15 A They park in spaces and they double park sometimes.
- 16 Q So you'll have a car that will pull straight in and
17 park straight up against the building, right?
- 18 A Right.
- 19 Q Headed in, right?
- 20 A Right.
- 21 Q Or they'll back it in, sometimes, right?
- 22 A Right.
- 23 Q And then this blue roof right here is the convenience
24 store, the store?
- 25 A Yes.

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1 Q And this shelter right here is a shelter that protects
2 people when it's raining and they can walk underneath here
3 to pay for their gas?

4 A Right.

5 Q And underneath this rectangular area shelter is the gas
6 pumps, correct?

7 A Correct.

8 Q Gas pumps work?

9 A No.

10 Q Okay. How long have they not been working?

11 A Um -- '96.

12 Q '96. So these gas pumps don't actually pump any gas,
13 they're just used for parking, people can park --

14 A Yes. Island is still there.

15 Q Island is still there?

16 A Yes.

17 Q Pumps are still there?

18 A Yes.

19 Q Shelter is still there?

20 A Yes.

21 Q But it serves no real purpose except for parking?

22 A Exactly.

23 Q For the club?

24 A Exactly.

25 Q All right. Let's go further over here beyond this

1 shelter. Do you see this sandy area to the right of the
2 blue roof right here?

3 A Yes.

4 Q All this area right here is used for parking; is that
5 correct?

6 A Yeah.

7 Q All this area from the edge of the blue roof, all the
8 way out to -- looks like a road right here. All this area
9 is used for parking, right?

10 A Right.

11 Q All this quadrant is used for parking?

12 A Right.

13 Q And these two little objects right here are telephone
14 booths, right?

15 A Right.

16 Q They are not being used?

17 A No.

18 Q They're just there?

19 A No. They're not there.

20 Q They're not there. The posts are there?

21 A No.

22 Q Okay.

23 A Just the concrete slabs are there.

24 Q Okay. Okay, concrete slabs.

25 A Right.

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1 Q All right. On up Hardscrabble Road you're turning and
2 it says Summer Crest Road.

3 A Right.

4 Q Do you know where Summer Crest Road is?

5 A Right.

6 Q All down this road people were parallel parking?

7 A Yeah.

8 Q I mean, you've walked this beat every night right?

9 A Yes.

10 Q And all on this side of Summer Crest Road, cars are
11 parked?

12 A No. There's a ditch on that side.

13 Q So people don't park there?

14 A No.

15 Q All right. And across from the telephone booths, right
16 underneath the R; is that your dad's house?

17 A Yes.

18 Q Right?

19 A Yes.

20 Q And there's a road that goes down this way, and your
21 dad's house is on the corner of what road and Hardscrabble
22 and what road?

23 A Harold.

24 Q Harold. Street, road?

25 A Road.

- 1 Q Okay. And Harold Road is a dead-end?
- 2 A No.
- 3 Q It is not.
- 4 A No.
- 5 Q So there is an outlet back there?
- 6 A Yes.
- 7 Q But it is a dirt road?
- 8 A Yes, it is.
- 9 Q And people will park down Harold Road, as well?
- 10 A Yeah.
- 11 Q They will park on your dad's side of Harold Road?
- 12 A Yeah.
- 13 Q They will park on Hardscrabble, right?
- 14 A On --
- 15 Q In front of your dad's house?
- 16 A No. They park on -- here.
- 17 Q Okay. Here?
- 18 A Yeah, in there. (Indicating.)
- 19 Q Here.
- 20 A Generally, right here.
- 21 Q That's probably why there's no vegetation there because
- 22 of the parking?
- 23 A Yes.
- 24 Q Okay. And is it fair to say that Friday night is one
- 25 of your busiest nights?

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1 A Some Fridays, yes.

2 Q Well, you hire a DJ, don't you?

3 A Yes.

4 Q And you have security, extra security, right?

5 A Yes.

6 Q Because it's the weekend?

7 A Right.

8 Q People party on Friday night, right?

9 A Right.

10 Q So it's fair to say that Friday nights are one of your
11 busiest nights of the week?

12 A Depends on what Friday it is. Yes, you're right.

13 Q So this whole area potentially could have cars?

14 A Yes.

15 Q Now, I'm going to show you what is marked as State's
16 Exhibit No. 125. Do you see those telephone concrete blocks
17 in this photograph?

18 A No, ma'am, I don't.

19 Q Okay. And do you have any idea when this photograph
20 was taken?

21 A I have no idea.

22 Q All right. Now, let me ask you about -- let me ask you
23 about this house that depicted in here?

24 A Uh-huh. (Affirmative response.)

25 Q That's your father's house?

- 1 A Yes, it is?
- 2 Q Does he live there?
- 3 A Nobody lives there now.
- 4 Q Does your brother live there?
- 5 A No, ma'am, now he doesn't.
- 6 Q But he used to in 2007, right?
- 7 A Yes.
- 8 Q So this is an occupied house or it was in 2007?
- 9 A Yes.
- 10 Q Okay, and it looks to be like a brick wall that sort of
- 11 surrounds this house; is that right?
- 12 A The back yard, yes.
- 13 Q Okay. And there is some shrubbery along that brick
- 14 wall; is that correct?
- 15 A Yes.
- 16 Q And some trees?
- 17 A Right.
- 18 Q And those trees have not grown since -- well, they
- 19 weren't just planted there, right, they've been there?
- 20 A They've been there a long time.
- 21 Q All right. Now, on this Harold Road, is there a way to
- 22 get to your backyard from Harold Road?
- 23 A Yes, it is.
- 24 Q And is there a way to get to the front door from
- 25 Hardscrabble Road?

1 A Yes.

2 Q And that's a driveway, right?

3 A Yes.

4 Q Okay. And when you were parked in that driveway, you
5 pull into the driveway; isn't that right?

6 A No. I park on the edge. It's a circular driveway.

7 Q Okay. Circle --

8 A I circle in and my car faces out, you know. Out.

9 Q Okay. The nose faces out?

10 A Yes.

11 Q Okay. Which part of the driveway do you pull into
12 first, the driveway closest to Clemson Road or the driveway
13 that closest to Farrow Road?

14 A I pull in and I circle around and I face the business.

15 Q Okay, and you face the business?

16 A Yes.

17 Q And so you would be closer to Summer Crest Road; is
18 that right, your car would be facing --

19 A Facing --

20 Q -- up here somewhere near --

21 A -- yeah.

22 Q -- Summer Crest Road?

23 A Right.

24 Q Like across the street from this is where your car
25 would be facing, right?

- 1 A Yeah.
- 2 Q Now, I'm going to show you what's marked as State's
- 3 Exhibit No. 15. Do you recognize that photograph?
- 4 A Yes.
- 5 Q Okay. You see Chasers club right there?
- 6 A Yes.
- 7 Q Do you notice this blue mini-van right there?
- 8 A Yes.
- 9 Q Whose mini-van is that?
- 10 A That's the DJs.
- 11 Q The DJs?
- 12 A Yes.
- 13 Q So the DJ was at your club parking lot to unload and
- 14 load, yes?
- 15 A Yes.
- 16 Q And that's where he would normally park on a Friday
- 17 night, right?
- 18 A Depends. You know. If he's there to stay, yes. If he
- 19 unloads his equipment, leaves, parks, and when he leaves he
- 20 will pull back over to load back up.
- 21 Q Okay. This is where his van was parked on the night in
- 22 question, correct?
- 23 A I don't know who the DJ was that night.
- 24 Q You don't know?
- 25 A I could have been him or it would have been -- I'm not

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1 sure who we used that night. I'm not sure.

2 Q Okay. The Amoco shed right there depicted in this
3 picture?

4 A Yes.

5 Q You see the lighting underneath that, right?

6 A Yes.

7 Q That light comes on with a timer, is that right?

8 A Yes.

9 Q And when it gets dark that light turns on?

10 A Exactly.

11 Q And you also have some other lighting underneath the
12 store --

13 A Right.

14 Q -- florescent lighting?

15 A Right.

16 Q Correct. And you have a neon sign that's red?

17 A Correct.

18 Q Okay. Now, whose Suburban is that?

19 A I'm not sure?

20 Q That's a tan Suburban, isn't that right?

21 A I don't know, it is a Suburban?

22 Q It is a Suburban. What color does it look like to you?

23 A Gray, tan, charcoal.

24 Q Gray, tan, charcoal, champagne?

25 A Yes.

- 1 Q Okay.
- 2 A It has a light on the top.
- 3 Q Yeah. There's a light on the top? Pizza Hut?
- 4 A No, break light. Break light on the top.
- 5 Q I don't see the break light, but okay. I see the break
- 6 lights are on.
- 7 A Right here.
- 8 Q Okay. And that Cadillac right there. Do you know
- 9 whose Cadillac that is?
- 10 A Could be -- I don't know.
- 11 Q Don't know. Okay. This Mercury.
- 12 A That's my mother's.
- 13 Q E-Scott.
- 14 A That's my mother's car.
- 15 Q Your mother's car?
- 16 A Yes.
- 17 Q Your car is not in the picture here, is it?
- 18 A No it's not. I might not have been there at that
- 19 particular time.
- 20 Q Right?
- 21 A No.
- 22 Q Well, your testimony earlier was that you pulled up and
- 23 parked in front of the business, didn't you?
- 24 A Yeah.
- 25 Q But your car is not in that photograph is it?

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- 1 A I might not have been working at the time.
- 2 Q Might not have been working at the time?
- 3 A When was it taken?
- 4 Q I don't know, sir.
- 5 A I can't answer that question.
- 6 Q It's not depicted in that photograph, right?
- 7 A I must not have been open.
- 8 Q Answer my question?
- 9 A No, it's not. My car is not there. No, it's not.
- 10 Q Okay. Taurus Watts is a local fellow isn't he?
- 11 A Yes.
- 12 Q Okay, and you said not only do you hire a DJ on Friday
- 13 nights you also hire a bouncer?
- 14 A No, I said in-house security.
- 15 Q Oh, you have in-house security.
- 16 A Yes.
- 17 Q Are they licensed?
- 18 A No, they're not.
- 19 Q Okay. Sherman, what kind of hairdo does he have?
- 20 A He has dreads.
- 21 Q Dreads. And Kelly, what kind of hair does he have?
- 22 A Ball-headed.
- 23 Q I'm sorry?
- 24 A Ball-headed.
- 25 Q Okay. And these two guys used to be law enforcement,

- 1 right?
- 2 A No.
- 3 Q They weren't?
- 4 A No.
- 5 Q Probation officers?
- 6 A Kelly.
- 7 Q Kelly was a probation officer?
- 8 A Right.
- 9 Q Do you know what county he worked for?
- 10 A Richland.
- 11 Q Was he your probation officer when you got convicted of
- 12 drugs?
- 13 A No.
- 14 Q No. Okay. Does Kelly carry a gun?
- 15 A No. They don't carry any weapons when they're working
- 16 for me.
- 17 Q Okay. Do they carry -- do you have any weapons on the
- 18 premises?
- 19 A Yes. There's weapons on the premises.
- 20 Q So it's fair to say they might --
- 21 A They don't have access to them.
- 22 Q They don't?
- 23 A No, they don't.
- 24 Q So if Kelly was to have a permit to carry a gun --
- 25 A He would carry it there.

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1 Q He wouldn't carry it there?

2 A No.

3 Q So on the night in question there was a fight that
4 broke out and you witnessed it?

5 A Yeah.

6 Q And while this fight was going on you were the
7 bartender?

8 A Sure.

9 Q And the music was going, pumping, right?

10 A Yes.

11 Q The lights were off?

12 A No. They were down low.

13 Q Dim, then?

14 A It was dim. Yeah.

15 Q And have you ever kept that business open past 4:00
16 a.m.?

17 A Yes.

18 Q Okay. Sometimes you've kept that business open until
19 daylight on Saturday morning, right?

20 A No.

21 Q Ever?

22 A No.

23 Q Well, then you explain it to me. You'll close whenever
24 you feel like it, but you'll let your friends stay in,
25 right?

1 A Yes.

2 Q Okay.

3 A Yes.

4 Q If Brian Johnson was in there after you closed on that
5 night, right?

6 A No, I didn't say that.

7 Q But he was in there on that night?

8 A He was in there that night, yes. No. I was closing.

9 Q Uh-huh. (Affirmative response.)

10 A And had an altercation outside, and to protect my
11 customers I asked Kelly was to tell them to stay in there
12 until things cleared up outside.

13 Q Okay.

14 A Now, if he was one of them in there, then that's fine.
15 That wasn't about pushing outside my business to be in
16 harm's way.

17 Q Right.

18 A Because that's my job.

19 Q Okay. But you didn't -- the one you saw with the gun,
20 you really didn't care what happened to him, right?

21 A I didn't say that.

22 Q Well, just answer my question then?

23 A Okay.

24 Q Brian Johnson remained in your club that night, didn't
25 he?

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1 A After things ended, he left.

2 Q That would be a yes, right?

3 A Yes.

4 Q Okay. Norris Bond remained in that club that night,
5 didn't he?

6 A I didn't see Norris in there that night.

7 Q Okay. You didn't see them show up together?

8 A No, I didn't.

9 Q Okay. But you do know --

10 A You said the night -- which night are you speaking of?

11 Q The incident?

12 A Which incident? September?

13 Q The incident in July?

14 A Oh, I didn't see him.

15 Q You didn't see him June 30th?

16 A I didn't see Norris.

17 Q Okay. So then you'd be surprised to know that he was
18 there with Brian Johnson, then, right?

19 A Oh, yeah.

20 Q Now, they're cousins, you already knew that? They hang
21 out together all the time, right?

22 A Yeah.

23 Q Okay. Now, do you know a girl named Tia?

24 A Tia?

25 Q Latasha, Lisa. Those names don't mean anything to you?

1 A I mean, I know a few. If you could give more detail?

2 Q All right. Well, you know them as being friends of
3 Taurus, right?

4 A Taurus? No.

5 Q No. Okay. So when Taurus showed up you didn't see him
6 with these girls, right?

7 A I don't know when he showed up, but I seen him in the
8 club, in the bar.

9 Q You saw him in the bar?

10 A I don't know what time he showed up or who he show up
11 with, but I seen him in the bar.

12 Q And when you saw him in the bar it was way before any
13 shooting; is that right?

14 A Yes.

15 Q Okay. Is he a regular; would you say that's fair to
16 say, he's a regular?

17 A Yes. Yes.

18 Q Okay. You didn't have any problem knowing who Taurus
19 Watts is?

20 A No.

21 Q And I'll just go over this with you briefly. His mom
22 worked for you, right?

23 A His mom --

24 Q He was a little kid when you first met him?

25 A Yeah.

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1 Q All right. Now, when a person arrives at your club, do
2 you check their ID?

3 A Yes.

4 Q Or you have somebody check their ID?

5 A Yes.

6 Q And you pat the pockets?

7 A Yes.

8 Q And do you allow people to come into your club that
9 have drugs on them?

10 A No, I don't allow it, but it happens everywhere. So I
11 don't allow it. No.

12 Q So if they were to have drugs on them, you'd let them
13 in?

14 A No. If I know that, no.

15 Q If you know that, you're not going to let them in,
16 right?

17 A No.

18 Q So you pat people down, right?

19 A Yes.

20 Q And you wand females, right?

21 A Yes.

22 Q It has to be by another female?

23 A Yes.

24 Q All right. How much cover charge did you charge that
25 night?

- 1 A On a Friday, \$5.00.
- 2 Q Brian Johnson was the loudest person involved in that
- 3 fight, wasn't he?
- 4 A The loudest?
- 5 Q Yes, you recognized that Brian Johnson was involved in
- 6 that fight?
- 7 A Yeah, I recognized it was his -- at the start of the
- 8 altercation and I seen him in the middle of it.
- 9 Q Okay. You have no idea what they were fighting about?
- 10 A No idea.
- 11 Q Did you see any punches thrown?
- 12 A By the time I noticed they were separated and --
- 13 Q Who's they?
- 14 A Kelly.
- 15 Q Kelly separated them?
- 16 A Yes. And --
- 17 Q Who's the other that equaled they; who else?
- 18 A Well, Kelly.
- 19 Q Oh, okay. Where was Sherman?
- 20 A Excuse me?
- 21 Q Where was Sherman?
- 22 A Sherman was -- at the time he was holding the door, he
- 23 was watching the door.
- 24 Q So Kelly was separating them --
- 25 A Right.

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1 Q -- and Sherman was holding the door?

2 A Right.

3 Q And you're behind the bar?

4 A Yes.

5 Q And so then you kill the music, right?

6 A Yes.

7 Q And you turned the lights on, right?

8 A I turned the lights on immediately. That's what I did
9 first. I turned the lights on and ended the music.

10 Q And then you got Sherman to watch the bar?

11 A I told him to come back there and watch the register
12 while I go over there and get my car.

13 Q And as you're leaving you see a man standing out your
14 front door with a gun?

15 A No.

16 Q That's what you said on direct?

17 A No. Standing -- he's walking towards the business.

18 Q The person you don't know the face?

19 A No.

20 Q Okay. You said on direct examination that there was
21 somebody there you didn't know?

22 A Yes.

23 Q That had a pistol that was coming inside?

24 A No. I said a gentleman that I did not know had a
25 pistol and was backing himself out of the business.

1 Q You're right. Backing himself out of the business.
2 Meanwhile, you had Sherman watch the bar and Kelly was
3 inside making sure nothing happened to your customers,
4 right?

5 A Right. Exactly.

6 Q And with that going on you're going to go get your car
7 and move it closer to the business.

8 A Yes.

9 Q Yes. When you were walking to your car, basically your
10 back is towards the four doors to your business, right?

11 A Yes.

12 Q Okay. You can't say what happened to that gentleman
13 that was backing out of the business while you're going to
14 get your car can you?

15 A Who?

16 Q The gentleman who was backing outside your business
17 with a pistol?

18 A He was already outside the door when I walked outside.

19 Q So he was outside the door?

20 A He was already outside the business.

21 Q And when he was outside the door you had to walk away
22 from the car wash to get to your car, isn't that right?

23 A Yes.

24 Q So you can't see what's going on behind you, is that
25 fair?

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1 A No, I can't.

2 Q Now, who did you walk to -- who was walking with you
3 when you went to get your car?

4 A Nobody.

5 Q Nobody. Okay. Now, as you're walking towards your
6 father's circular driveway, you said you got to the shelter
7 of the gas pumps?

8 A Uh-huh. (Affirmative response.)

9 Q And you give testimony that you see Taurus and Tremaine
10 walking towards to place?

11 A Yes.

12 Q And this was after lights had been turned on and
13 everything, right?

14 A Inside the business, yes.

15 Q Yes, inside the business. You testified earlier that
16 Tremaine and Taurus were in the business earlier that night,
17 right?

18 A Right.

19 Q All right. And you don't know if they were together or
20 not do you?

21 A In the club?

22 Q In the club?

23 A I mean, I don't know.

24 Q Okay. Now, when you saw the tan Suburban, where was it
25 parked?

- 1 A On the other side of --
- 2 Q I'll give you the pointer.
- 3 A Right here.
- 4 Q Right where that vehicle is parked right there?
- 5 A Yeah, facing inward.
- 6 Q Facing inward?
- 7 A Yes.
- 8 Q What do you mean --
- 9 A See --
- 10 Q Where's the --
- 11 A Their lights are coming this way.
- 12 Q Their lights are coming towards your business, okay.
- 13 And where was the Rodeo parked, sir?
- 14 A Right here. (Indicating.)
- 15 Q Okay.
- 16 A Facing this way.
- 17 Q Okay. So at some point you walked past the Suburban,
- 18 is that fair to say?
- 19 A Yes.
- 20 Q And when you walked past the Suburban you noticed an
- 21 Isuzu Rodeo?
- 22 A No, not at first, I didn't.
- 23 Q Okay. At some point after you walked past the tan
- 24 Suburban you noticed a white Isuzu, right?
- 25 A After I crossed the street I noticed the Rodeo.

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1 Q Okay. After you crossed the street you noticed the
2 Rodeo?

3 A Yes.

4 Q And when you were crossing the street you were headed
5 toward your father's house?

6 A Yes.

7 Q How many times did you walk down the dirt road that
8 night, Mr. Jacobs?

9 A The dirt road, where?

10 Q Harold Street. How many times did you walk down Harold
11 Street that night?

12 A I didn't walk down Harold Street.

13 Q You didn't?

14 A No.

15 Q You walk down that street sometimes?

16 A There's no need.

17 Q No need. Okay. Now, you're aware of the violations of
18 this club, right, previous history?

19 A Oh, yeah.

20 Q Okay. And you were convicted in 1995 for possession of
21 cocaine, right?

22 A I was in the wrong car at the wrong time. Yes.

23 Q And you haven't had any violations in the club or any
24 arrests since then have you?

25 A As far as the check you spoke of earlier.

1 Q The checks. That's it?

2 A Yes.

3 Q Okay. And the checks, were they personal checks?

4 A They were personal checks, yes.

5 Q And since 1996, you haven't had any violations
6 criminally for yourself have you?

7 A No.

8 Q And you haven't had any violations at the club either,
9 have you?

10 A No.

11 Q And you called -- you did not call 911?

12 A No, I did not.

13 Q Even though there was a fight and blood was shed, you
14 did not call 911 that night, right?

15 A No, I did not.

16 Q All right. And even after you saw bloodshed and even
17 after you saw a man backing up out of your front door you
18 didn't not call 911, did you?

19 A No, I did not.

20 Q All right. Now, even after you allegedly say you saw
21 Taurus with a pistol, you didn't call 911 then, did you?

22 A No, ma'am, I didn't.

23 Q Okay. And after you saw the Isuzu Rodeo shot a gun, I
24 think you said one time in the air, you didn't call 911?

25 A Say that again?

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1 Q When you saw someone from the Isuzu Rodeo fire a
2 weapon, you did not call 911 then either, did you?

3 A No, I did not.

4 Q You did not call 911 when you said you saw a tan
5 Suburban type vehicle headed towards Farrow Road that shot a
6 couple of times out the driver's side. You didn't call 911
7 then either did you?

8 A No, ma'am.

9 Q Okay. Now, when the police arrived you didn't go to
10 the police officer to tell him what you saw, did you?

11 A I went to the police officer, but he said that there
12 was -- that there was -- somebody had got killed. I didn't
13 know that. So it was like he wanted to secure the streets
14 to check for shells.

15 Q Okay.

16 A So he was busy roping off the area. I told him I would
17 be over at the business. And that's when I went in the
18 office.

19 Q So when the officer arrived on the scene, you didn't
20 tell him what you saw did you?

21 A I went to talk to him. He told me to step back --

22 Q Somebody got killed?

23 A Yeah, he told me that. I was like -- someone was shot,
24 and I didn't know someone was shot. The officer told me
25 that.

1 Q Okay. So then you went back in the business, right?

2 A Right. I told him I will be over here if he wanted to
3 talk to me.

4 Q And the only person that you spoke with that night,
5 well, actually that morning was Don McRae, right?

6 A Yes.

7 Q You didn't tell any uniformed officer what you saw that
8 night? How many were there?

9 A I couldn't tell you.

10 Q Could you identify them as police officers because of
11 their uniforms?

12 A Yes, I could.

13 Q Okay.

14 A Yes.

15 Q And so all through this incident from the fight all the
16 way through daylight the next morning, you didn't call
17 anybody?

18 A I didn't personally call, no, I did not Someone did.

19 Q Do you know who that person was?

20 A I have no idea. I was in the middle of the street when
21 what happened occurred.

22 Q Uh-huh. (Affirmative response.)

23 A And I had no phone with me at the time.

24 Q Oh, you didn't have a phone?

25 A No. I was walking across the street.

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1 Q Do you have a phone in the business?

2 A Yeah. In the business, yes.

3 Q Do you have friends that have cell phones?

4 A Yes. I was by myself at the time.

5 Q All right. Does Kelly and them, do they carry cell
6 phones?

7 A Yes.

8 Q Kelly being a former probation officer, you didn't tell
9 him what you saw?

10 A Right.

11 Q But after you talked to Don McRae, all of a sudden you
12 found time to call. You called Mr. McRae four or five times
13 on that Saturday, didn't you?

14 A Yes, I did.

15 Q You called him each time you had new information,
16 right?

17 A Yes.

18 Q Okay, and you had a cell phone, didn't you?

19 A Yes.

20 Q And you really knew who my client was, in fact, you'd
21 known him for 20 years, right?

22 A Yes.

23 Q And you knew his name was Taurus. You knew his name
24 was Taurus Watts. But you just played along with it, didn't
25 you?

1 A No, I didn't play along.

2 Q Well, you gave him the name Taurus?

3 A Yes.

4 Q And then another time --

5 A When I was talking to him I was still conducting my
6 business.

7 Q Right.

8 A So I was back and forth. The next day he said I want
9 you to ride with me because they stopped the Rodeo.

10 Q Okay.

11 A So we got in the car and we rode by the Rodeo, and I
12 did identify the driver and the passenger. And then we came
13 back to the business and he told me he was going to call
14 later. That's how it went. That whole scenario.

15 Q Okay. So you actually got to sit with Don McRae and
16 drive all the way to Two Notch Road. Is that right?

17 A Yes.

18 Q And you didn't tell him Taurus Watts --

19 A Well --

20 Q Answer my question?

21 A No.

22 Q In light of the circumstances that night when you
23 walked back to your club to conduct your business, did you
24 see a Chevrolet?

25 A Did I see a Chevrolet? Yes.

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1 Q What did it look like?

2 A A Chevrolet, Impala.

3 Q An Impala. Kind of like a box type car?

4 A No.

5 Q Okay. Is it a new one or an old one?

6 A I new one, I believe. A round shape.

7 Q I'll show you State's Exhibit No. 16. Is that what you
8 saw?

9 A No.

10 Q No. Not this?

11 A No. That's a new one.

12 Q What about a white Envoy, did you see a white Envoy
13 that night?

14 A I don't recall.

15 Q You don't recall. A white Envoy; you know what that
16 is, right?

17 A Yes.

18 Q It's an SUV, right?

19 A Yes.

20 Q All right. Did you see a little boxy Chevrolet that
21 was like a Caprice or an HRR, a weird looking car; did you
22 see that?

23 A No.

24 Q Okay. So the only cars that you saw that night was the
25 tan Suburban and a white Rodeo?

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1 A No. I seen several cars.

2 Q What about a Nissan Pathfinder?

3 A Possibly.

4 Q What about a white car with a black stripe down the
5 side?

6 A I said the Rodeo was white with a black stripe down the
7 side.

8 Q Okay. That's in State's Exhibit No. 17?

9 A Right.

10 Q You see a Nissan Pathfinder with a black stripe down
11 the side?

12 A No.

13 Q You didn't see Tremaine Watts (sic) in that fight, did
14 you?

15 A No.

16 Q And the person you saw backing out of the club with the
17 pistol was a pistol type gun?

18 A Yes.

19 Q Was it black, was it shiny; what about it, like an
20 automatic, right?

21 A Yes.

22 Q Okay.

23 MS. JOHNS: Beg the Court's indulgence, Your Honor.

24 THE COURT: Sure.

25 BY MS. JOHNS:

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1 Q Do you have a guy named Jeff who works for you?

2 A Yes.

3 Q Okay. Was he working that night?

4 A Yes, he was.

5 Q Was he a bar back?

6 A Yes. He was at the time.

7 Q Okay. That just helps keep bottles and everything
8 stocked?

9 A Yes.

10 Q Did you see him that night?

11 A Yes.

12 Q Okay. What does he look like?

13 A Tall, black guy.

14 Q What does he drive?

15 A At the time he was driving a Honda.

16 Q Okay. And what kind of car do you drive, sir?

17 A I drive a Magnum.

18 Q A Magnum?

19 A A Magnum, a Dodge Magnum. Yes.

20 Q What color is that?

21 A Silver.

22 Q All right.

23 MS. JOHNS: Thank Your Honor. I don't have
24 anything further at this time.

25 MR. SWERLING: Excuse me a minute.

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1 THE COURT: Sure.

2 RICKY JACOBS - CROSS-EXAMINATION

3 BY MR. SWERLING:

4 Q Mr. Jacobs?

5 A Yes, sir.

6 Q You said you have a pistol in the club?

7 A It's like a -- it's a shotgun.

8 Q A shotgun.

9 A It's in the storeroom.

10 Q Well, is it in the club or is it in the storeroom?

11 A It's in the storeroom. Like I said, they don't have
12 access to the lock to the storeroom.

13 Q Okay. You don't have a pistol?

14 A No, sir.

15 Q You don't have a weapon?

16 A No, sir.

17 Q It's not your shotgun or your pistol?

18 A No, sir.

19 Q All right. I want to get something straight in my
20 head, first of all. You have testified here today that
21 Taurus Watts and Tremaine Wray were in the club that night?

22 A Yes, sir.

23 Q You spoke to Mr. McRae on June 30th for quite a while.
24 After he got there and when y'all went over to where the
25 Isuzu was?

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1 A Correct.

2 Q You called him at least two times the next day on the
3 30th, and then you went in on the 1st to give a statement?

4 A Okay.

5 Q Well, this was June 30th. I'm not trying to confuse
6 you. June 30th was when it happened.

7 A Right.

8 Q And you spoke to him a couple of times the next day and
9 gave him information about people who you thought were
10 involved?

11 A Right.

12 Q And on the 1st, you went in and gave a statement?

13 A Right.

14 Q So you spoke with him on several different occasions?

15 A Exactly.

16 Q And what I want to ask you is this, you testified that
17 they were both in the club. That's the first time you've
18 said that. That's the first time that you've mentioned to
19 anyone that Mr. Watts and Mr. Wray were in the club that
20 night?

21 A That was the night?

22 Q The first time that you said that. You didn't tell Mr.
23 McRae on June 30th, that whole time you were with him; isn't
24 that true?

25 A He never asked.

1 Q He never asked. You don't think that was important
2 that night?

3 A Well, I saw them coming -- leaving from the bar --

4 Q What you saw is you saw them coming into the club?

5 A Right.

6 Q You never saw them in the club.

7 A Yes --

8 Q That's something that you just told the jury today.

9 A No.

10 Q You did not tell Mr. McRae that on June 30th?

11 A No, I did not.

12 Q On July 1st, when you gave your statement --

13 A Right.

14 Q -- and you were asked to give a description of what
15 happened that evening?

16 A Right.

17 Q The only thing you ever mentioned about Taurus Watts
18 and Tremaine Wray was seeing them outside under the --

19 A Canopy.

20 Q -- canopy. You didn't mention then that they came into
21 the club or that they were in the club, did you?

22 A Um --

23 Q Did you?

24 A Did I?

25 Q We can get through this real quick if you'll answer the

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1 questions.

2 A Yes, sir. Please, I'm answering it. I told him I seen
3 them coming into the club as I was leaving out.

4 Q Towards the club?

5 A Right.

6 Q My question is this, you have never told -- you didn't
7 tell Mr. McRae on June 30th or July 1st, that Tremaine Wray
8 and Taurus Watts were in the club; isn't that true?

9 A No, because he didn't ask me that.

10 Q He asked you to tell him what happened?

11 A I did.

12 Q Okay. And Taurus Watts, according to you, and Tremaine
13 Wray were in the club.

14 A Yes, sir.

15 Q Okay. You didn't think that that was important when he
16 was --

17 A No --

18 Q -- asking you to tell him what happened?

19 A -- I guess I didn't.

20 Q When was the first time you told anybody that Taurus
21 Watts and Tremaine Wray were in the club?

22 A (No response.)

23 Q This morning, wasn't it?

24 A I'm not sure. I probably mentioned -- you might be
25 right. I'm not sure.

1 Q So two years later when we're trying this case, you
2 come up and tell this jury now that Tremaine Wray and Taurus
3 Watts were in the club before you saw them outside; correct?

4 A Correct.

5 Q But according to what you told Mr. McRae that night and
6 what you told him on July 1st, they were coming in the club

7 --

8 A No.

9 Q -- they had not been in the club?

10 A I didn't say that they had not.

11 Q You didn't say they had been.

12 A That's -- He didn't ask me.

13 Q You said they were walking toward the club and you told
14 them that the club was closed?

15 A That's what happened, sir.

16 Q Well, I gotta ask you this question. If they had been
17 in the club and you closed it down, then why would they be
18 walking back into the club and you had to tell them it was
19 closed?

20 A Probably because they exited during the altercation.

21 Q Probably?

22 A I would assume they had to.

23 Q Mr. Jacobs, you have no idea that they were in the club
24 that night?

25 A I know.

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1 Q You told the jury that for the first time today; isn't
2 that true?

3 A They were in the club, sir.

4 Q Aren't you telling the jury for the first time today
5 that Wray and Watts were in the club?

6 A Yes.

7 Q When all the previous occasions when you spoke with Mr.
8 McRae, you told him the first time you saw them was under
9 the canopy when they were walking towards the club; isn't
10 that true?

11 A I told him -- yes.

12 Q Pardon?

13 A Yes.

14 Q Pardon?

15 A Yes.

16 Q You make it up as you go along, don't you?

17 A No, I don't.

18 Q What time did Mr. Wray come to the club?

19 A I'm not sure, sir.

20 Q Did you talk to him?

21 A No, sir.

22 Q What time did Mr. Watts come to the club?

23 A I'm not sure.

24 Q Did you talk to him?

25 A No, sir.

1 Q What were they doing?

2 A They were -- when I seen Mr. Wray he was leaning
3 against the wall facing towards the bar area.

4 Q Who was he with?

5 A I have no idea.

6 Q What was he wearing?

7 A He had a shirt on.

8 Q He had a shirt on -- what kind of shirt, t-shirt, white
9 shirt, black shirt, yellow shirt?

10 MS. SHIPLEY: Your Honor, can the witness please
11 answer the question?

12 THE COURT: Yes.

13 BY MR. SWERLING:

14 Q How long have you know Tremaine Wray?

15 A A couple of years, a few years.

16 Q How about since he was a kid?

17 A No. I know his uncles.

18 Q You know his uncles Ronald (sp) and Darrell; correct?

19 A Right.

20 Q And you know what area he lives in, don't you?

21 A Yes.

22 Q Okay. And you've known him for at least several years?

23 A Yes.

24 Q All right. You'll concede that to me won't you?

25 A You asked?

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1 Q I'm asking you?

2 A I said, yes.

3 Q Okay. Well, let me ask you something, when Investigator
4 McRae was asking you about these individuals that night the
5 only thing that you provided him was a description on June
6 30th; isn't that true?

7 A I gave him a first name.

8 Q No. Not on June 30th?

9 A No, on the 1st, because I didn't know his last name.

10 Q You didn't even give him his first name.

11 A When I --

12 Q When you spoke -- let me ask the question. On June 30,
13 when you were speaking with Mr. McRae and you gave him a
14 physical description of the individual -- you gave him a
15 physical description of the individual, but you didn't give
16 him a name because you told him you did not get a good look
17 at the individual; isn't that true?

18 A No, I told him -- no.

19 Q Didn't you tell him you did not get a good look at the
20 individual, but that you had seen him before, that you could
21 probably recognize him again?

22 A Well, at first when I talk to him, yes. That I would
23 recognize him again, yes.

24 Q Okay, and that was what you told Mr. McRae, but yet,
25 you know, -- you knew who he was?

1 A I did not know his name. I know his face, but he's
2 younger than I am. I know his uncles, and I know his
3 brothers and those, and when I found out who he was that's
4 when I made the phone call to Mr. McRae to tell him his
5 name.

6 Q But he's been in your club, according to you, he is a
7 frequent visitor to your club?

8 A I know more of them by face than a name, sir.

9 Q And you've known him for several years, but you're
10 going to tell this jury --

11 A Yes.

12 Q -- That you -- you're going to tell the jury that on
13 June 30, in the morning when you were speaking to Mr. McRae,
14 you didn't know his name?

15 A I didn't know his first name, no.

16 Q You called him the next morning and you told him what
17 his name was, his name was Tremaine?

18 A Right.

19 Q But then you called him on another occasion and said
20 his name was Tremaine Wray?

21 A Right.

22 Q And on another occasion you said you knew where he was
23 working?

24 A No. He told me where he was working at.

25 Q No. You told him you thought he was working at

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1 Outback. Didn't you?

2 A No, sir.

3 Q Pardon?

4 A No, sir.

5 Q But you didn't tell him about Taurus Watts's name
6 either when he first asked you? So I'm just kind of
7 curious, and I think the jury may be too, is that if you
8 know these individuals, why is it that you did not tell Mr.
9 McRae what their names were?

10 A I did tell him their names.

11 Q Not right away. Not on June 30, not when you were out
12 on the road, when he was asking you questions about what
13 happened that night?

14 A I was explaining to him what happened in detail. Like
15 I said before, I was back and forth with my business and we
16 left from there when he had got the call from dispatch or
17 whatever to go and see the Rodeo. So we was going to see
18 the Rodeo, and then coming back I had to go back and close
19 up my business. And so I called him later on that day and
20 explained to him on the phone what was going on.

21 Q Let me ask you something else --

22 A Yes, sir.

23 Q -- When you first spoke with Mr. McRae on June 30, you
24 said that Taurus Watts was walking towards the club?

25 A Right.

1 Q And you told him the club was closed, and he had
2 something in his hand that was wrapped in white clothing?

3 A I said his hand was wrapped in white clothing.

4 Q His -- whatever it was was in his hand was wrapped in
5 white clothing.

6 A Okay.

7 Q Isn't that what you told Mr. McRae. Isn't that true?

8 A Yes.

9 Q And when you told him the club was closed, according to
10 what you told Mr. McRae, that evening or that morning that
11 person, Mr. Watts, told you, I've got something for you, and
12 he had the weapon in his hand at that time; isn't that true?
13 Isn't that what you told him that evening?

14 A And he turned around and went to the car.

15 Q I didn't ask you that.

16 A Yes.

17 Q You haven't answered my question yet?

18 A Yes.

19 Q You told Mr. McRae, when he was approaching you, you
20 told him the club was closed, and he told you, I've got
21 something for you and he had it in his hand already?

22 A No. I didn't say that.

23 Q I said, didn't you tell Mr. McRae that?

24 A That he had it in his hand already?

25 Q Yes.

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1 A No, sir.

2 Q Let me show you something and see if this can refresh
3 your memory.

4 A Yes, sir.

5 Q Mr. Jacobs said the subject to whom he spoke said,
6 that's fine, I've got something for you, and then he went
7 back to his vehicle?

8 A Yeah. I didn't say he had anything in his hand,
9 though.

10 Q Okay. Well, the fact is you said to him, told him that
11 night that -- he said something, I've got something for you.
12 Is that correct?

13 A Okay.

14 Q Is that right?

15 A Yes.

16 Q And then he went back to his vehicle?

17 A Yes.

18 Q When you went back towards the vehicle or you were
19 walking towards the vehicle you said you saw something in
20 his hand? Was he inside the vehicle or outside the vehicle
21 at the time?

22 A Outside.

23 Q And the vehicle -- and this particular thing was
24 wrapped in white clothing?

25 A His hand was wrapped.

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1 Q Well, you said before, and you said to Mr. McRae that
2 he had something in his hand and it was wrapped in white
3 clothing. He had the gun wrapped in white clothing.

4 A Okay.

5 Q Didn't you tell him that?

6 A Yeah.

7 Q Was he in the vehicle or outside the vehicle at the
8 time?

9 A Outside.

10 Q Answer my question?

11 A Outside.

12 Q What?

13 A Outside the vehicle.

14 Q All right. And what did you say at that point?

15 A I said, I don't need that out here. I said, man, go
16 ahead on. I'm about to close up.

17 Q All right. And then what did he say?

18 A He said I got something for that, and then he turned
19 around and walked away.

20 Q He said what?

21 A He said he had something and then he turned around and
22 walked away.

23 Q That's when he said I have something for you?

24 A And he turned around and walked away.

25 Q But, he didn't do anything to you?

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1 A No, he didn't.

2 Q He didn't threaten you did he?

3 A I didn't consider it to be a threat.

4 Q Let me ask you something. Do you even know if the two
5 of them were together that night?

6 A No. I have no idea. I know they got in the car
7 together.

8 Q According to you, they -- if we understand your
9 testimony as far as when they were in the club they came,
10 one later than the other.

11 A No. I said I noticed one earlier than the other one.

12 Q You noticed one earlier than the other one.

13 A Right.

14 Q Okay.. Did you see Tremaine Wray or Taurus Watts in
15 that fight?

16 A No, I didn't.

17 Q Okay. Let me ask you about the fight. You said Brian
18 Johnson was in the fight?

19 A That's the one I noticed, yes, sir.

20 Q And you noticed him, I think, when Ms. Shipley was
21 asking you questions. I think you said it was because he
22 was the loudest?

23 A Oh, yeah, the was the most boisterous.

24 Q So he was fighting.

25 A He was --

1 Q He was in the altercation?

2 A He was in the altercation, yes.

3 Q Okay. He wasn't just standing there --

4 A No.

5 Q -- being a peacemaker?

6 A No.

7 Q He was throwing punches?

8 A No, I didn't see him throw -- I seen him yelling and
9 pointing.

10 Q Yelling and pointing?

11 A Yes.

12 Q All right.

13 A The only time I really noticed him, like I said, Kelly
14 had separated them, and the guy walked out the door.

15 Q Do you know anyone else who is in the altercation?

16 A No, sir.

17 Q Do you know any of these folks, like Travis, I mean, --
18 I mean Charlie, Verda or Stephanie; did you know any of
19 them?

20 A No, sir.

21 Q Did you see what started the fight?

22 A No, sir.

23 Q Is did you have any idea what started the fight?

24 A No, no idea.

25 Q And what time did the fight start?

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1 A. Roughly about -- I don't know, about 3:30 or 3:00
2 o'clock; somewhere in there.

3 Q. Okay, did you see -- can you identify for the jury
4 anybody else that was in that fight?

5 A. I know that -- what's her name. I can't think of the
6 name -- she's a young lady that comes there all the time.
7 She was in it, too, in the altercation.

8 Q. She was in the fight?

9 A. Well, she was arguing and yelling.

10 Q. Okay. Well, whatever was going on in that club with
11 respect to that fight had nothing to do with my client and
12 had nothing to do with Taurus Watts, according to your
13 testimony?

14 A. Not to my knowledge.

15 Q. If we accept the fact that you said they were in the
16 club?

17 A. Yes. Not to my knowledge.

18 Q. When did they leave the club?

19 A. They pulled off after I came --

20 Q. No, I didn't ask about that. I said, when did they
21 exit the club?

22 A. I couldn't tell you, sir. I mean, I wasn't watching, I
23 wasn't timing them.

24 Q. So you have no idea when these two guys you saw in the
25 club left the club?

1 A. No, like I said, there two exit doors.

2 Q. Was it before the fight or was it after the fight?

3 A. I cannot tell you.

4 Q. Do you know if they were still in the club when the
5 fight took place?

6 A. Um --

7 Q. You're having to think and awful lot?

8 A. I know.

9 Q. Because you don't know, do you?

10 A. You're talking about two years ago.

11 Q. Because you don't know?

12 A. I'm not sure.

13 Q. Let me ask you something, your recollection two years
14 ago would have been better than it is today, don't you think
15 so?

16 A. Excuse me?

17 Q. Your recollection two years ago would be better than it
18 is today?

19 A. Two years ago, maybe. Yeah, possibly.

20 Q. Now, so you don't know when they came in, and you don't
21 know what they left, and you don't know whether they were in
22 there when the fight started, but you -- when the fight
23 started you closed the club down. You turn on the lights?

24 A. Turn the lights up. Yes, sir, I did.

25 Q. Now, you have security that apparently checks people

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1 when they come in, correct?

2 A. Correct.

3 Q. And once they are in they can go in and out of the club
4 in any one of those exits; isn't that true?

5 A. They --

6 Q. They don't get checked again when they come back in, do
7 they?

8 A. They do.

9 Q. Pardon?

10 A. They do.

11 Q. They do. No matter what door they go out or what door
12 they come in?

13 A. Right.

14 Q. They get checked again.

15 A. Yes.

16 Q. All right. So a fight starts you break -- you decide
17 you're going to close down the club, and the lights go on?

18 A. Well, actually, I decided to close the club. That was
19 after they had been separated and the guy was walking out --
20 he's left and exit the building. So I cut the lights up.

21 Q. Who exited?

22 A. I exited. When I exited the building.

23 Q. Let me just ask you this; when you exited the building
24 you saw there was a guy exiting your club with a pistol in
25 his hand?

1 A. He was already gone. He was already out the door.

2 Q. No. You said he was exiting. That is what your
3 testimony was that he was exiting the building?

4 A. Yes.

5 Q. So he had been in the building, in the club, with a
6 gun?

7 A. Very true.

8 Q But you have security that prevents that?

9 A. Yes.

10 Q. Can you tell us who that -- can you give us a
11 description of that individual?

12 A. First time I had ever seen him.

13 Q. Did he have dreads?

14 A. I don't think he --

15 Q Had he been in the fight?

16 A I think it might have been braided.

17 Q. You think it was braided?

18 A. Yes, sir.

19 Q. Was he the one in the fight?

20 A. I'm not sure, sir.

21 Q. He could've been the one in the fight?

22 A. He could've been.

23 Q. You can't exclude him from being the one in the fight,
24 can you?

25 A. No.

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1 Q. And this guy who was in the fight had a gun, correct?

2 A. Correct.

3 Q. And what kind of gun was it?

4 A. Some kind of pistol. I don't know.

5 Q. Was it a 9mm?

6 A. No, I don't think so.

7 Q. How do you know, you don't know anything about guns,
8 according to what you told the jury?

9 A. Very true.

10 Q. So you don't know whether it was a 9mm or a 38, 25 --
11 you have no idea?

12 A. It was a pistol.

13 Q. It was a pistol. And what color was it?

14 A. I think it was black.

15 Q. And the guy had braids?

16 A. I'm not sure.

17 Q. What was he wearing, a T-shirt, as well?

18 A. He had a red shirt on.

19 Q. A red shirt?

20 A. Yes.

21 Q. Button down, pullover?

22 A. I think it was a pullover, like a polo shirt.

23 Q. Where did he go when he exited the building?

24 A. He went over to the car wash, across the wall and then
25 I walked out towards --

1 Q. He went over in this area right over here?

2 (Indicating.)

3 A. No.

4 Q. Over here? (Indicating.)

5 A. No.

6 Q. Over here. You point to it?

7 A. Over here. (Indicating.)

8 Q. So, he was over here?

9 A. Yes, Sir.

10 Q. He was standing there with a pistol in his hand, right?

11 A. Yes.

12 Q. How many shots did he fire?

13 A. I couldn't tell you, sir.

14 Q. But he did fire some shots?

15 A. I'm not really sure, sir. I couldn't tell you.

16 Q. Pardon?

17 A. I couldn't tell you. I cannot tell you.

18 Q. All right. So, we've got at least one other person
19 who's got a gun?

20 A. Yes.

21 Q. And you have no idea where he went after you last saw
22 him at the retaining wall; isn't that true?

23 A. (No response.)

24 Q. Did you see what vehicle he got into?

25 A. No, I did not. He was just walking over -- when I was

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1 walking over to the house from the business. The
2 altercation had ended. Cars were pulling out, going this
3 way --

4 Q What -- you mean a number of car?

5 A Yes.

6 Q. You don't know what car he was in?

7 A. No, sir.

8 Q. You don't know when he pulled out of the business,
9 correct -- you can't tell the jury he didn't fire any shots?

10 A. I can not say that. I don't know.

11 Q. But that was the guy that was in the fight as far as
12 what your understanding was?

13 A. Could have been. Yes, sir.

14 Q. Could have been. Did you tell Mr. McRae that night
15 that there was somebody else with a pistol exiting your
16 club?

17 A. I told him that they were outside, that they had a
18 pistol outside.

19 Q. Who?

20 A. I don't know, sir.

21 Q. Fact of matter is you did not tell Mr. McRae that
22 anybody else had a pistol that night. You did not tell him
23 that morning, and you did not tell him on July 1 that there
24 was somebody else exiting the club with a pistol, and it was
25 a guy with braids, and it was the guy that was probably in

1 the fight. Why didn't you tell Mr. McRae that on June 30th
2 or July 1 or anytime since then?

3 A. I mentioned to Mr. McRae about that.

4 Q. You did?

5 A. Yes, sir.

6 Q. Did you put it in your written statement?

7 A. No, he didn't ask me. The statement was question and
8 answers. He asked me questions, and I answered.

9 Q. Well, when did you tell him?

10 A I told him the night of.

11 Q You told him that night --

12 A Yeah.

13 Q -- that somebody else had a pistol?

14 A Yes.

15 Q. Is that what your testimony is?

16 A. Yes.

17 Q. All right, so you have this confrontation -- Tremaine
18 Wray -- let's get this straight, whether or not you saw the
19 gun as he was approaching you or whether or not Taurus Watts
20 said I've got something for you when you saw the gun
21 afterwards, whether you saw the gun at all because it was
22 wrapped in white clothing according to what you told him?

23 A It was wrapped in white clothing, yes, sir, his hand.

24 Q. You said the gun, you didn't say his hand?

25 A I did not say the gun.

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1 Q. Pardon?

2 A. I did not say the gun.

3 Q. Let me show you your statement?

4 A. Okay.

5 Q. Your signature, July 1?

6 A. Right.

7 Q. I saw Taurus with a gun, I turned around and was
8 watching him get into the vehicle. It was wrapped in some
9 type of white clothing, which is actually the sentence
10 before that. Did you say that, it was wrapped in white
11 cloth clothing?

12 A. Yes, I said it was his hand.

13 Q. If his hand was wrapped in white clothing, and how can
14 you tell anybody what gun it was?

15 A. Okay.

16 Q. What?

17 A. From seeing it, sir.

18 Q. How could you see it if his hand was wrapped in white
19 clothing?

20 A. His hand was wrapped in -- in --

21 Q. That's not what you said in your statement, did you?

22 A. I said I said it was wrapped in clothing.

23 Q. That's not what you said in this statement, did you?
24 Did I read it accurately?

25 A. I read it too, yes, sir.

1 Q. And it said the gun was wrapped in white clothing?

2 A. His hand, yes, sir.

3 Q. You keep saying his hand, but that's not what it says
4 here?

5 A. It's not what it says, no.

6 Q. Well, let me ask you then you magically identify a
7 weapon that is in State's Exhibit No. 124?

8 A Uh-huh. (Affirmative response.)

9 Q Fact of the matter is, you were never showed any other
10 kind of gun. You were never shown a picture of anything
11 else. You were asked if this was the gun or what appeared
12 to be the gun that you saw that night; isn't that true?

13 A. No.

14 Q. What's not?

15 A. The picture --

16 Q. This -- what?

17 A. -- this is not the only picture that I seen.

18 Q. How many pictures did you see?

19 A I seen several.

20 Q. I ask you how many?

21 A. More than five.

22 Q. With a similar type of photographs?

23 A. Similar, yes.

24 Q. So you picked out that gun out of a number of different
25 guns, is that what you're saying?

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1 A. Pretty much, yes, sir.

2 Q. And you would deny the fact that that was the gun that
3 was shown to you when you were asked whether or not it
4 looked like that gun?

5 A. I would deny --

6 Q. You would deny that was the only one that was shown to
7 you?

8 A. Yes.

9 Q. I want to ask you about this -- how many cars were in
10 this area that night?

11 A. Where?

12 Q. Parked here, all over?

13 A. I couldn't tell you, sir.

14 Q. 40, 50?

15 A. Maybe 40 to 50.

16 Q. Tremaine Ray doesn't have the only Suburban in that
17 area, does he?

18 A. In the area, no.

19 Q. Okay. There's a bunch of them, isn't that right?

20 A. Yes.

21 Q. That's a very common vehicle, isn't it?

22 A. Yes.

23 Q. Your father lives up here?

24 A. Yes.

25 Q. All right. You're walking out to get your car when

1 this all happens, correct?

2 A. Correct.

3 Q. All right. I want to ask you this, because I'm a
4 little confused. I believe you said that when the Suburban
5 pulled out, you were standing right about there.

6 (Indicating.)

7 A. No.

8 Q. Where were you?

9 A. I was standing right here. (Indicting.)

10 Q. When the Suburban pulled out?

11 A. Yes, sir.

12 Q. Okay, and what direction did the Suburban go in?

13 A. (Witness indicating.)

14 Q. Okay, and you continued walking in that direction?

15 A. When they pulled out? Yes, sir.

16 Q. Okay. And where were you when the shots were fired out
17 of the Suburban?

18 A. I was right in the middle, middle of the street
19 walking.

20 Q. Walking in this area, here. (Indicating.)

21 A. Walking right here. (Indicating.)

22 Q. But your dad's house is off this map, is that right?

23 A. Yell, it was catty-cornered.

24 Q. Okay.

25 A. I was walking about right here, I was right here.

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1 Q. The Isuzu was over here, is that right?

2 A. Yes, sir.

3 Q. And where were you -- actually, you were in the middle
4 of the road when the shots were fired?

5 A. No, sir.

6 Q. So you would have been -- if they -- if the vehicle was
7 traveling down that way, you would have been behind the
8 vehicle; is that right?

9 A. No. I was -- I was almost side with it, I wasn't
10 aligned with it.

11 Q. You were what?

12 A. I wasn't because I turned and looked. I seen fire from
13 the shots.

14 Q. I'm not sure I understand. If you were in the middle
15 of the road --

16 A. Right here.

17 Q. And the vehicle is down the road, you would have been
18 behind the vehicle, isn't that true?

19 A. Yes, I guess.

20 Q. Pardon?

21 A. Not directly behind it, but, yes, I guess that's true.

22 Q. I didn't say directly behind it. I said you were
23 behind the vehicle --

24 A. Right.

25 Q. You were not in front of the vehicle, you were beside

1 the vehicle?

2 A. Right.

3 Q. You were looking at the back of the vehicle?

4 A. Right.

5 Q. Is that right?

6 A. Exactly.

7 Q. Do you know how many other cars pulled out at the same
8 time?

9 A. At the same time?

10 Q. At the same time, around that same time, because you
11 said the club was closing --

12 A. Yes.

13 Q. -- And everybody was leaving?

14 A. No. It was after the Suburban left, then other cars
15 pulled off and then the Rodeo made a U-turn and went down
16 the street.

17 Q. All right. So really you had no idea and you couldn't
18 tell who was firing that weapon, is that right?

19 A. No, sir.

20 Q. Okay. Because actually you never even got a good look
21 at the person, you said?

22 A. No, sir, because I was behind the vehicle.

23 Q. Okay. But you're sure it came out the driver's side?

24 A. Yes, sir.

25 Q. Now, when those shots were fired out of the Suburban,

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1 out of the driver's side, your testimony is you have no idea
2 who was firing the weapon?

3 A. Exactly.

4 Q. And the driver side would have been perpendicular or
5 parallel, I guess, to the club, is that correct?

6 A. Yes, sir.

7 Q. So all you did was you saw a mussel shot -- mussel
8 blast -- fire?

9 A. Yes, sir.

10 Q. Okay. What was the distance between you and the
11 vehicle, at that point?

12 A. Maybe --

13 Q. Will let me help you. Didn't you tell Mr. McDougal, my
14 investigator, that it was about quarter of a mile?

15 A. No, I never said that far.

16 Q. You never said that?

17 A. No, sir. It's not that far.

18 Q. Didn't you tell him that there was no way you could
19 tell who was shooting the gun?

20 A. Well, first of all, the Suburban, the windows was
21 tinted.

22 Q. And didn't you also tell him that you didn't have any
23 idea if it was out of the front window or the rear window?

24 A. No. I never said that.

25 Q. You didn't say that either?

1 A. I said on the driver's side.

2 Q. The driver's side. So you don't know if it was out of
3 the front window?

4 A. No, sir. Out of the driver's side.

5 Q. It could've been out of the rear window?

6 A. Could have been.

7 Q. You have no idea, all of you know is the driver's side
8 of the vehicle?

9 A. Exactly.

10 Q. When -- my understanding is that what you're saying is
11 when that car went down the you continued over to your
12 father's place, got your vehicle, came back and parked, and
13 then the Isuzu pulled out?

14 A. Right.

15 Q. Is that right?

16 A. Yes, sir. I got out of the car. By that time the
17 Isuzu had turned and --

18 Q. Excuse me, I'm sorry -- I didn't understand what you
19 were saying?

20 A. I parked right here and about that time the Isuzu was
21 coming down and the guy shot in the air right up in here.
22 (Indicating.)

23 Q. Well, where was the Suburban at that point?

24 A. It was gone.

25 Q. It was gone?

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1 A. Yes, sir.

2 Q. So you could not see the Isuzu and the Suburban?

3 A. Not at the same time. Not at that time.

4 Q. All right. And -- I'm not sure I remember what you
5 tell Ms. Shipley when she ask you, what was the time period
6 from the time of the shots from the Suburban and the shots
7 from the Isuzu, a minute, two minutes, three minutes?

8 A. About two minutes two or three minutes.

9 Q. Three minutes? So it was a pretty good delay between
10 the shots?

11 A Yes, it was.

12 Q. And let me ask you something, there's no question that
13 somebody was firing out of the Isuzu?

14 A. Yes.

15 Q. What?

16 A Yes.

17 Q. And there is no question that you told the police that
18 somebody fired out of the Isuzu?

19 A. Correct.

20 Q. Correct?

21 A. Right.

22 Q. You saw the gun or you saw a mussel shot; correct?

23 A. Yes.

24 Q. But you didn't see the gun, did you?

25 A. I saw them shooting.

1 Q. Okay, but when you started locking it in that it was a
2 smaller pistol or smaller than what you saw under the canopy
3 here, is what your testimony was, that Mr. Watts had in his
4 hand, you had absolutely no idea whatsoever what kind of
5 pistol it was?

6 A. Where?

7 Q. In the Isuzu?

8 A. No, I don't know.

9 Q. I know, but you told the jury when Ms. Shipley was
10 asking you that, that it was not the same it was smaller?

11 A. It was. It was smaller.

12 Q. How could you see that?

13 A. It was in his hand.

14 Q. You could see from over here, because this is where you
15 were -- you could see from over here to over hear and what
16 kind of pistol someone had their hand?

17 A. No. I was walking across the street this way, and the
18 Isuzu was parked right here. They got in the Isuzu right
19 there, and he had the pistol in his hand right here. So I
20 pulled over here, and by that time, he did a U-turn and was
21 coming down the street.

22 Q. Well, when was the shot fired?

23 A. When he got up to here. (Indicating.)

24 Q. Okay, so you could see the pistol in his hand over
25 here.

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1 A. When I was walking across the street. I was getting in
2 my car.

3 Q. Mr. Jacobs, you got somebody leaving your club with a
4 pistol in his hand, you got somebody fired a pistol from the
5 Isuzu, and when you walk past -- I'm sorry the Suburban --
6 and then when you walk by the Isuzu there's another guy with
7 a pistol?

8 A Uh-huh. (Affirmative response.)

9 Q Everybody's got a gun. You didn't call the police?

10 A. No, sir. I did not call.

11 Q. When did you tell anybody, ever, that you saw the
12 pistol in the Isuzu when you walked past it? First time
13 today?

14 A. No, I told Investigator McRae.

15 Q. You say you told him you saw a gun in the Isuzu when
16 you walk past it?

17 A. No. I told him that I seen a guy with a pistol in the
18 other car and he raised his hand up and shot it.

19 Q. That's when you saw it?

20 A. That's what I told Mr. McRae afterwards.

21 Q. But that's when he was over here?

22 A. Right.

23 Q. I'm asking -- you're telling the jury now that you saw
24 it when you were walking past the Isuzu going over to your
25 father's. I just want to get it straight?

1 A. It was in his hand.

2 Q When?

3 A He fired it. And when he fired, I told him he fired.

4 Q When did you see it in his hand?

5 A Here. (Indicating.) When I was getting in my car, I
6 seen it here.

7 Q But that's not where he fired it?

8 A No. That's not when he fired it. When he fired it her
9 was here. (Indicating.)

10 Q Where was he when you saw it in his hand?

11 A Here.

12 Q But what was he doing?

13 A He was getting in the Isuzu.

14 Q He was getting in the Isuzu, and let's see -- my
15 understanding is that this is a pretty well lit area right
16 here, but this is not a well lit area? (Indicating.)

17 A No, it isn't this -- this corner has a streetlight.
18 There is a streetlight here and a streetlight about two more
19 blocks down. This is streetlight here, and this is well
20 lit, this is well lit and this is well lit. These three
21 businesses are well lit with security lights.

22 Q So your testimony to the jury is that when you were at
23 your father's house you look back at this guy with the Isuzu
24 and he was getting in the Isuzu and he had a pistol in his
25 hand and from across the street you can tell the jury that

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1 it was a smaller pistol -- a smaller pistol than this; is
2 that your testimony?

3 A. Yes..

4 Q. Could you describe it?

5 A. No, I couldn't describe it.

6 Q. Was it a revolver or an automatic?

7 A. No, I couldn't tell you?

8 Q. Was it a big gun or a small gun?

9 A. It was just a little handgun.

10 Q. They're all handheld.

11 A. He held it in one hand. I'm just trying to tell you.

12 Q. Was it black or was it chrome or was it two-toned?

13 A. I don't know.

14 Q. Did have a barrel or was it an automatic?

15 A. I don't know.

16 Q. Did it have a cylinder?

17 A. I don't know.

18 Q. You could see that from across street?

19 A. I don't know. I don't know what it was. I have no
20 idea.

21 Q. And you have no idea how many shots were fired from
22 that vehicle, either?

23 A. From which one.

24 Q. From the Isuzu?

25 A. One.

1 Q. And 3 minutes later?

2 A. Yes, sir.

3 Q. So now he -- fired after he -- on his way down to
4 Farrow Road?

5 A. Yes, sir.

6 Q. All right. Well, let me ask you this, didn't you tell
7 -- haven't you said on other occasions that the car was
8 turning right?

9 A. What car?

10 Q. The Isuzu?

11 A. No, sir.

12 Q. You never told anybody that car was turning right and
13 it made a U-turn?

14 A. No, sir. I said it made a U-turn.

15 Q U-turn where?

16 A. It was parked here facing Clemson Road --

17 Q. It was facing Clemson Road to?

18 A. Yes. And made a U-turn right here and went on down the
19 road.

20 Q. Let me ask you if you told Mr. McRae in your statement
21 on July 1; once the vehicle that Tremaine and Taurus were in
22 started shooting, a passenger of the Rodeo fired one shot in
23 the air. The Rodeo was behind the tan -- was behind the tan
24 SUV --

25 A. No --

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1 Q. -- wait a minute, let me ask you if you told him this,
2 and this shot was fired straight in the air.

3 A. I guess.

4 Q. Tremaine was shooting at the crowd?

5 A. I can't say which one was shooting.

6 Q. But you said it under oath here?

7 A. No.

8 Q. The Rodeo was still by the end of the bar when the
9 passenger shot one time in the air. After the shot was
10 fired, the Rodeo made a U-turn and started towards Farrow
11 Road on Hardscrabble.

12 A. That's what I said.

13 Q. Mr. Jacobs, that is completely different from what your
14 testimony is today?

15 A. I said the Rodeo made a U-turn right here and went down
16 Farrow Road, towards Farrow Road. That's what I just said.

17 Q. Your testimony is that that car three minutes later
18 when you got back here --

19 A. Right.

20 Q. -- Fired a shot when it was right over here?

21 A. Okay.

22 Q. That's what your testimony is to this jury today?

23 A. Yes, sir.

24 Q. Okay?

25 A. That's what it is.

1 Q. But that's not what you told Mr. McRae on July 1. You
2 told Mr. McRae -- I just want to try to reconcile these two
3 obviously different stories --

4 A. Okay.

5 Q. Once the vehicle that Tremaine and Taurus were in
6 started shooting the passenger of the Rodeo fired one shot
7 up in the air. The rodeo was right -- was behind -- I don't
8 want to say right. The Rodeo was behind the tan SUV and
9 this shot was fired straight in the air. Tremaine was
10 shooting at the crowd. The Rodeo was still by the end of
11 the bar when the passenger shot one time in the air. After
12 the shot was fired the Rodeo made a U-turn and started
13 towards Farrow Road. After the shot was fired he made the
14 U-turn?

15 A. That is not correct.

16 Q. Well, I didn't take this statement did I?

17 A. No, I don't think he did.

18 Q. Do you see where it says sworn to and subscribed before
19 me this -- first day of July, 2007?

20 A. Yes.

21 Q. In front of a Notary Public?

22 A. Right.

23 Q. You swore that this was true?

24 A. Okay.

25 Q. You signed it?

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1 A. I did.

2 Q. You read it?

3 A. Okay.

4 Q. It says you read it?

5 A. I said the car was headed down --

6 Q. It says you read it?

7 A. -- Towards down towards Farrow Road. Yeah.

8 Q. Well -- Okay.

9 A. It went down the road behind the Suburban.

10 Q. Well, according to the -- what your testimony is, it as
11 three minutes later and the Suburban was gone.

12 A. Yeah.

13 Q. That's what you're telling the jury today?

14 A. Yeah. That's what happened

15 Q. But here you say that it was behind the --

16 A. And the --

17 Q. Suburban?

18 A. -- next car was the Suburban -- was the Rodeo.

19 Q. The first car was a suburban --

20 A. And then my car, and then the rodeo.

21 Q. Uh-huh. (Affirmative response.)

22 A. I went down towards Farrow Road and then turned into my
23 place of business, and behind me was the Rodeo.

24 Q. Well, let me ask you something. How do you reconcile
25 this -- once the vehicle with Tremaine and Taurus started

1 shooting the passenger of the Rodeo fired one shot in the
2 air. The Rodeo was behind the SUV and the shot was fired
3 straight in the air. That's at the same time. One right
4 after the other.

5 A No.

6 Q That's what it says there?

7 A That's what it says there?

8 Q Doesn't it?

9 A Well -- it doesn't have a time, does it?

10 Q Well, it's suggested there in your answer, doesn't it?

11 A Okay. Yeah, because he never asked me. It was fast.

12 Q He never asked you. As a matter of fact, one of the
13 other things he never asked you and I guess you didn't
14 answer it because he hadn't asked you, was the fact that you
15 had already moved your father's car back to the club when
16 you heard the shot from the Isuzu. You've never told
17 anybody that. Isn't that true?

18 A Yeah.

19 Q First time you tell anybody today is in front of the
20 jury?

21 A Yes. Because nobody asked me.

22 Q Nobody asked you. You don't get asked you don't tell
23 anybody?

24 A Now, I won't say that.

25 Q Well, you gave a narrative here.

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1 A Okay.

2 Q And when you talked to him on June 30, you were giving
3 him a narrative. It wasn't question and answer, it was a
4 narrative. And then he went into a question and answer with
5 you; isn't that true?

6 A Yeah. Question and answer.

7 Q All right. So you're sticking with the story that you
8 had already moved your father's car over there, right?

9 A My car. My car.

10 Q I mean, your car. You're sticking with that story?

11 A That's what I did.

12 Q Okay. So now I want to try and figure out when did the
13 Isuzu fire the gun; over here?

14 A Yes.

15 Q But in your statement it says that the Isuzu was still
16 at the other end of the bar when the passenger shot one time
17 in the air. After the shot was fired the Rodeo made a U-
18 turn and started towards Farrow Road?

19 A This is the other end of the bar, here. (Indicating.)

20 Q And where is Farrow Road?

21 A This way. (Indicating.) And this is the other end of
22 the bar.

23 Q That's not what I'm asking?

24 A (Witness indicates with pointer.)

25 Q Okay. According to your statement, which you swore to

1 under oath, after the shot was fired the Isuzu made a U-turn
2 and started towards Farrow Road. That means that the shot
3 had to be fired up here before the U-turn was made.

4 A After the shots was fired.

5 Q After what --

6 A After the shots was fired.

7 Q Oh.

8 A The Isuzu made a U-turn and headed toward Farrow Road.

9 Q Right. Mr. Jacobs --

10 A But the one that was in the Isuzu did not do the
11 shooting, then they made the U-turn. The shots were fired
12 before the Isuzu made the U-turn.

13 Q Whose statement is that?

14 A That's mine, but let me explain.

15 Q Who took the statement?

16 A Mr. McRae, but this is what I'm saying. The shots was
17 fired, already fired here. (Indicating.) The Isuzu made
18 the U-turn after the shots was fired, here. (Indicating.)
19 He made the U-turn and then he shot up in the air.

20 Q You're confusing yourself, man.

21 A No, that's what happened.

22 Q I mean, I want to ask you this. Under oath on July 1,
23 did yo say that after this one shot was fired, the Rodeo
24 made a U-turn and started towards Farrow Road on
25 Hardscrabble; isn't that what you said?

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1 A -- shot one time in the air -- yeah. That's not what
2 I'm saying. It's not. What I'm saying is after the shot
3 was fired, the Isuzu Rodeo --

4 Q I know that's what you're saying today, but that's not
5 what you said on July 1.

6 A Yes, it is.

7 Q Well, it's --

8 MS. SHIPLEY: Your Honor, if I may, this has been
9 asked and answered enough.

10 MR. SWERLING: Well, I'm still trying to get any
11 answer from him.

12 THE COURT: Okay. I'll let him go a little way.

13 BY MR. SWERLING:

14 Q Is that the answer you gave?

15 A Yes.

16 Q Is that different from what you're telling the jury
17 today?

18 A No.

19 Q How is it the same?

20 A I was just explaining it to you, sir. I shot, the one
21 shot from the Rodeo, then they made the U-turn.

22 Q That's not what it says.

23 A No?

24 Q Read the paragraph, Mr. Jacobs. I'm not trying to
25 confuse you.

1 A -- the Rodeo was still on the -- end of the bar -- one
2 of the passengers shot one time in the air. Yeah.

3 Q And then made a U-turn?

4 A After the shot was fired the Rodeo made U-turn. Yeah.
5 But not the passenger from the Rodeo.

6 Q Passenger from what other vehicle?

7 A (Inaudible.)

8 Q So your testimony is going to be that the Rodeo was
9 still at the other end of the bar when the passenger shot
10 one time in the air?

11 A Not the passenger of the Rodeo. The passenger of the
12 Rodeo shot when they past the bar on this end of the bar.
13 Not on this end. (Indicting.)

14 Q All right. Here's what I want you to do and then I'm
15 going to leave it. Read those two sentences right there.
16 Starting there. Read it out loud to the jury.

17 A Okay. The Rodeo was still parked at the other end of
18 the bar when the passenger shot one time. That it?

19 Q The next sentence.

20 A Okay. After the one shot was fired the Rodeo made a U-
21 turn and started towards Farrow Road.

22 Q So my question to you, then, is this; based upon what
23 you've put under oath in your statement that night, or that
24 day, July 1, that the Rodeo was still by the other end of
25 the bar when the passenger shot one time in the air. After

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1 this one shot the Rodeo made a U-turn and started towards
2 Farrow Road on Hardscrabble?

3 A Right.

4 Q You are still insisting that the Rodeo was down across
5 from the club drive towards Hardscrabble Road; is that
6 right?

7 A Yes.

8 Q Right?

9 A That car was. Yes, sir, that's what I'm saying.
10 That's my statement.

11 MR. SWERLING: Excuse me one minute, Your Honor.

12 BY MR. SWERLING:

13 Q Did you not tell Mr. McRae on June 30, 2007, that Mr.
14 Jacobs continued to explain that the white Isuzu Rodeo had
15 originally come out of the parking lot of the club up by the
16 gas pumps, started to turn right, the opposite direction of
17 the tan Suburban, and then after the passenger fired one
18 shot in the air the driver of the white Rodeo did a U-turn
19 on Hardscrabble Road and traveled down Hardscrabble Road
20 toward Farrow Road.

21 Isn't that what you told him on June 30, the morning of
22 June 30?

23 A That is -- Yeah. Turned right -- yeah, he pulled on
24 the side of the road and turn around and fired the gun and
25 went towards Farrow Road.

1 Q Well, let me ask you something. I guess I'm still
2 confused. How -- you're saying it happened here, but on two
3 different occasions on June 30 and July 1, in this oral
4 statement you gave him and in the written statement you said
5 after the passenger fired one shot in the air the driver of
6 the white Rodeo did a U-turn on Hardscrabble and traveled
7 down Hardscrabble Road towards Farrow Road. It's the same
8 thing that I just read you out of your statement?

9 A Yeah.

10 Q Mr. Jacobs, you have no idea what happened out there
11 that night?

12 A Okay. No.

13 Q You're giving one version to the police on June 30, and
14 July 1 and you're giving an entirely different version to
15 the jury.

16 You identify the guys in the Isuzu as the guys who
17 fired the shot, right?

18 A Yes, sir.

19 Q I guess there's no question that they fired a shot
20 whether you say it was in the corner across the road, or
21 maybe somewhere else in Columbia, maybe up in the sandhills.

22 A Up in the air.

23 Q Up in the air. Let me ask you something. This was on
24 July -- I'm sorry, June 30, in the morning of June 30, and
25 you were supposed to meet Mr. McRae on July -- that day, you

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1 were supposed to come down to the Richland County Sheriff's
2 Department and give him a statement and look at some
3 lineups; isn't that true?

4 A On June 30?

5 Q On the 30th. You had an appointment to meet with him
6 that afternoon and look at some lineups; isn't that true?

7 A It was on the 1st.

8 Q No. On July 30, (sic) the same day of the shooting.

9 A The morning of -- the evening of, yes.

10 Q And you didn't show up.

11 A No, I didn't. I didn't show up at the time I was
12 supposed to show up. No.

13 Q You didn't show up at all?

14 A Yeah. I was late. He wasn't there when I woke up.
15 Because when I woke up it was after the time --

16 Q So the answer to my question is that you didn't show
17 up?

18 A No, I didn't. I was asleep.

19 Q So he had to go find you and he had to do that on July
20 1st?

21 A No, he didn't have to find me. He called me.

22 Q Well, he couldn't find you that day?

23 A I was asleep.

24 Q Well, you weren't sleep at home?

25 A (No response.)

1 Q You were at some motel, according to what you told him.

2 A Okay.

3 Q But you didn't cooperate with the police that day?

4 A No, not that morning. I didn't woke up because I was
5 sleep.

6 Q Now, getting ready to finish, because I know everybody
7 wants to go to lunch. If you were up here in the middle of
8 the road, and the Suburban was down here -- and it's dark on
9 Hardscrabble Road, correct?

10 A This area is, yes, sir.

11 Q And now you can't tell the jury whether the shot came
12 out of the driver's window or the passenger window.

13 A You mean on the same side?

14 Q I'm talking about on the -- out of the driver's window
15 and rear window on the driver's side, you can't tell them
16 which one?

17 A No.

18 Q How was it on July 1, 2007, you said it was Tremaine
19 was shooting in the crowd?

20 A No. I didn't say that.

21 Q You didn't say that?

22 A No, I didn't see him.

23 Q Well, that's a good question. How did you tell Mr.
24 McRae that under oath?

25 A Well, I didn't see that, because I couldn't see that.

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1 Q You didn't say that? Mr. McRae got it wrong, an
2 experienced law enforcement officer?

3 A I -- didn't say that.

4 Q Did you read it?

5 A Yes, I read it.

6 Q Did you swear to it under oath?

7 A Yes, it's right there.

8 Q And it says right there that you told Mr. McRae that
9 night that Tremaine was shooting at the crowd at the car
10 wash?

11 A No.

12 Q Is it written there?

13 A It's written there.

14 Q So it's a lie?

15 A I didn't say that, sir. I couldn't see it.

16 Q So it's a lie?

17 A Yes. I couldn't see it.

18 Q I'm sorry.

19 A I couldn't see who was shooting. I know it came out
20 the driver's side.

21 Q So what you put in this statement under oath that you
22 read and swore to under oath is a lie; isn't it?

23 A I would --

24 Q Isn't it?

25 A No. I would say that what I seen is what I told him

1 the driver's side.

2 Q No. That not what you told him. It says here Tremaine
3 was shooting --

4 A No.

5 Q -- into the crowd?

6 A I didn't say that.

7 Q You didn't say that?

8 A No.

9 Q So if this fellow over here wrote it down wrong; he
10 wrote it down wrong?

11 A Could very well be. But I couldn't see who was
12 shooting but --

13 Q But you signed it?

14 A Yeah.

15 Q You swore to it, didn't you?

16 A Yes.

17 Q You did something on that morning, July 1, all these
18 discrepancies, the same thing you did today in front of the
19 jury you said was the truth?

20 A I'm saying it was the truth, yes.

21 Q When?

22 A Now.

23 Q Well, how does the jury know when you're telling the
24 truth; was it on July 1, or the morning of June 30, or is it
25 now? How do they know?

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1 A I --

2 Q How do they know?

3 A I guess by the evidence, sir.

4 Q Pardon?

5 A I guess by the evidence.

6 Q Well, you've given conflicting evidence; you agree to
7 that?

8 A Okay.

9 Q You agreed you lied in the statements?

10 A No, I didn't lie in the statements, sir.

11 Q Well, you obviously -- you couldn't see Tremaine
12 shooting in the crowd, so it's a lie, isn't it?

13 A I didn't see him.

14 Q If you say something under oath, and it's not true,
15 it's a lie, isn't it?

16 A Yes, it is.

17 Q So how does this jury know when you're lying or telling
18 the truth?

19 A (No response.)

20 Q When, how?

21 A I know that I told him I seen fire come out of the
22 driver's side of the door.

23 Q So you do admit lying to him about that?

24 A No, I didn't lie to him about that, sir.

25 Q I'm sorry. So which the truth --

1 A I seen gunfire --

2 Q Either you saw Tremaine firing out of the car or you
3 didn't see him firing out of the car?

4 A I didn't -- I seen gunfire come from the driver's side
5 of the Suburban.

6 Q So when you said Tremaine was shooting, you saw
7 Tremaine, that's a lie?

8 A He asked me who was driving the Suburban and I told
9 him.

10 Q That's not what you just said.

11 A Okay.

12 Q Mr. Jacobs, you agree with what I just read, don't you?

13 A Oh, yeah.

14 Q Huh?

15 A This is what it said.

16 Q I read it exactly like it was written didn't I?

17 A Yes.

18 Q Didn't I?

19 A Yes.

20 Q You can say whatever you'd like to, but I read it
21 exactly like it was written, didn't I?

22 A (No response.)

23 Q Didn't I?

24 A I read it the same way.

25 Q Mr. Jacobs, thank you very much.

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1 THE COURT: Okay. I know we're in the middle of a
2 witness, but I cannot hold the jury any longer in terms of
3 the lunch. It's way late, and I apologize for that.

4 So I'm going to remind Mr. Jacobs that you are still
5 under oath, because there maybe more questioning, and so you
6 are not to speak to anybody about your testimony; you
7 understand that?

8 MR. JACOBS: Nodding. (Affirmative response.)

9 THE COURT: Jurors you can be at ease for lunch.
10 Let's report back at 3:00 o'clock. I'll remind you not to
11 discuss the case.

12 (Jury out at 1:44 p.m.)

13 THE COURT: Anything we need to take up at this
14 time?

15 MS. SHIPLEY: Your Honor, we have made arrangements
16 for Saturday.

17 THE COURT: Okay. Okay. All right. You all are
18 free until 3:00. I want everyone to start on time because
19 I'm going to try to push until 5:30. I've got somebody with
20 child care and we'll deal with that. I'm staying in. If
21 you need me I'll come back early, but 3:00 o'clock I plan on
22 starting. So make sure equipment or whatever is going on is
23 ready.

24 MR. SWERLING: Your Honor, can you admonish the
25 witness not to discuss his testimony?

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1 THE COURT: Yes. I did so.

2 MR. SWERLING: Oh, I'm sorry.

3 THE COURT: That's okay.

4 You're under oath, and you can't discuss your testimony
5 with anyone. Okay.

6 All right, you can step down.

7 (Court at recess for lunch at 1:45 p.m.)

8 (Court in session after lunch at 3:00 p.m.)

9 THE COURT: Is there anything that needs to go on
10 the record before the jury comes in?

11 MS. SHIPLEY: No, Your Honor, nothing from the
12 state.

13 THE COURT: Ms. Johns?

14 MS. JOHNS: No, Your Honor.

15 THE COURT: Anything from Mr. Bax?

16 MR. BAX: No, not at this time, Your Honor. If we
17 can get Mr. Swerling up here we will be set to go.

18 THE COURT: Okay.

19 Mr. Swerling, anything you need to put on the record
20 before we proceed?

21 MR. SWERLING: No. Sorry, Your Honor.

22 THE COURT: You're fine.

23 Jurors, please.

24 (Mr. Jacobs has returned to the witness stand.)

25 (Jury in at 3:01 p.m.)

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1 THE BAILIFF: Jury is all seated, Your Honor.

2 THE COURT: Thank you.

3 Ladies and gentlemen of the jury, thank you so much for
4 your patience. I do want you all to know that I do respect
5 and appreciate your patience. Sometimes we're in the middle
6 of a witness, sometimes as we were here and ready to start
7 at 9:30, but I'm going to try to make sure I give you more
8 frequent breaks even if I have to cut the lawyers off and
9 let them resume. So let me just apologize, because I don't
10 want you in any way to think that we are not respectful of
11 your time, that we are not appreciative of your service. As
12 you're aware there's a lot of information to get through.
13 We want everybody to have their day in Court so to speak.

14 So I apologize to you on behalf of us all.

15 And we are ready to proceed, state.

16 MS. SHIPLEY: Thank Your Honor.

17 RICKY JACOBS - REDIRECT EXAMINATION

18 BY MS. SHIPLEY:

19 Q Mr. Jacobs, I'm going to be handing you your statement
20 that you gave to Investigator McRae?

21 A Okay.

22 MS. SHIPLEY: And Your Honor pursuant to Rule 106.

23 BY MS. SHIPLEY:

24 Q Please read the highlighted portions of that statement?

25 A I was walking to my car that was parked across the

1 street to move the vehicle over to in front of the club as I
2 was ready to close the club. On the way over to get my car,
3 some tires --

4 Q I'm sorry. Can you slow down a little.

5 A -- on the way over I saw Taurus walking towards the
6 club. I told him that the club was closing.

7 MR. SWERLING: First of all, Rule 106, doesn't
8 allow him to go into the entire statement, only the points
9 she needs to go ahead and -- so he can't just read a prior
10 inconsistent statement, and that's the objection.

11 MS. SHIPLEY: Your Honor, this is the portion that
12 Mr. Swerling asked Mr. Jacobs about on cross-examination.

13 THE COURT: That's fine as long as it's not any
14 other part of the writing.

15 MS. SHIPLEY: Yes, ma'am.

16 THE COURT: To complete the remainder of the
17 writing.

18 MS. SHIPLEY: Correct. I'm trying to put this in
19 context. He did ask him to read certain portions and this
20 is the entire context.

21 THE COURT: What he's indicating is not to read the
22 entire statement.

23 MS. SHIPLEY: Oh, no, ma'am. We're not -- I only
24 highlighted the portions that Mr. Swerling --

25 MR. SWERLING: Can I see them. I may not have an

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1 objection?

2 MS. SHIPLEY: Sure. I'll be happy to show you.

3 MR. SWERLING: I may not have an objection.

4 THE COURT: Okay. All right. Thank you. Proceed.

5 MS. SHIPLEY: And, Your Honor, for purposes of the
6 record, this is State's Exhibit No. 121 for identification
7 purposes.

8 BY MS. SHIPLEY:

9 Q Please start from the beginning and read the
10 highlighted portions of your statement?

11 A I was walking to my car that was parked across the
12 street to move the vehicle over to in front of the club,
13 because I was getting ready to close the club. On my way to
14 my car I saw Taurus walking towards the club. I told him
15 that the club was closing. He turned around and went back
16 to the vehicle he arrived in. I also saw Tremaine with
17 Taurus. Both of the guys walked back to the vehicle they
18 were in. Tremaine got into the driver's seat, Taurus got in
19 the front passenger seat. As I got closer to Taurus I saw
20 the gun in his hand. The gun like -- it was a short barrel
21 and had a very long clip and was wrapped in some type of
22 clothing. I saw Taurus with the gun and I turned around and
23 watched him get into the vehicle. They both got in the car
24 heading down Hardscrabble Road towards Farrow Road. When
25 they got to the end of the bar and the car wash, Tremaine

1 fired a gun out of the driver's side door. I didn't know
2 how many rounds he fired, but it was several rounds. I also
3 remember the white Isuzu Rodeo with two black males in the
4 vehicle. Once the vehicle that Tremaine and Taurus was in
5 shooting was -- okay -- once the vehicle that Tremaine and
6 Taurus was in started shooting the passenger in the Rodeo
7 fired one shot in the air. The Rodeo was behind the SUV and
8 then the shot was -- this shot was -- oh, sorry -- this shot
9 was fired straight up in the air. Tremaine was shooting in
10 the crowd of the car wash, the Rodeo was still on the other
11 end of bar when the passenger shot one time in the air.
12 After one shot was fired the Rodeo made a --

13 MR. SWERLING: That's not what it says. It says
14 after this one shot.

15 A -- after this one shot was fired, this one shot was
16 fired the Rodeo made a U-turn and started towards Farrow
17 Road on Hardscrabble Road. The vehicle that Tremaine was
18 driving was a Suburban, tan in color.

19 BY MS. SHIPLEY:

20 Q And go to the next page and read that portion?

21 A Okay. This person who fired the gun out of the
22 driver's side window from the tan Suburban. No fire came
23 from the driver's side window (sic), but I did not see him
24 firing the gun because the Suburban was too far down the
25 road for me to see.

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1 Q And so you told Investigator McRae that you did not --

2 MR. SWERLING: Objection. Leading.

3 BY MS. SHIPLEY:

4 Q Are you done reading?

5 A Yes.

6 Q The very last --

7 THE COURT: Okay.

8 MS. SHIPLEY: Okay.

9 BY MS. SHIPLEY:

10 Q And so the very last question that you just read, what
11 was that, did you explain --

12 A Yeah.

13 Q -- what did you explain to Investigator McRae on June
14 30, 2007 about who fired the shot from the tan SUV?

15 A I told him that I was in the middle of the street, and
16 I was crossing the street, and I couldn't see who was
17 shooting, but it came out the driver's side. That's what I
18 said.

19 Q That's all I have for you, Mr. Jacobs.

20 THE COURT: Okay.

21 MR. SWERLING: Back and forth, one second, Your
22 Honor.

23 THE COURT: Sure.

24 RICKY JACOBS - RECROSS EXAMINATION

25 BY MR. SWERLING:

1 Q Mr. Jacobs, on two occasions what you just read to the
2 jury -- right here -- it said when they got to the end of
3 the bar as the car wash, Tremaine fired the gun out the
4 driver's side door. Is that what you said there?

5 A That's what it says.

6 Q Okay. And then a second time on Page 2, Tremaine was
7 shooting at the crowd at the car wash. Is that what you
8 said?

9 A That's what it said.

10 Q Is that your signature?

11 A That is.

12 Q Is that under oath?

13 A It is.

14 Q And then you say, the last, the third page, the gunfire
15 was coming from the driver's side window, but I did not see
16 him firing the gun because the Suburban was too far down the
17 road for me to see that.

18 A Right.

19 Q How do you reconcile those three different statements?

20 A Well, I did not say Tremaine was doing the shooting. I
21 said that the shooter was shooting out of the driver's side
22 door. Now --

23 Q That's not what you said.

24 A Okay.

25 MS. SHIPLEY: Your Honor, may the witness please

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1 finish his response?

2 THE COURT: Yes.

3 A Okay. That is what I said. Okay.

4 BY MR. SWERLING:

5 Q Okay. That's all.

6 A That is what I said.

7 MS. SHIPLEY: Thank Your Honor.

8 THE COURT: Okay.

9 MS. JOHNS: Thank you, Your Honor.

10 RICKY JACOBS - RECROSS EXAMINATION

11 BY MS. JOHNS:

12 Q When you say the Suburban was too far down the road for
13 you to see that -- on Page 3 you say, I did not see him
14 firing the gun. Him, you're talking about Tremaine, right?

15 A Yes, because he was the driver of the Suburban.

16 Q And he was the driver, right?

17 A Yes.

18 Q And when you saw my client, Mr. Watts, get into a
19 vehicle --

20 A It was the Suburban.

21 Q -- doesn't ask which car, right?

22 A Right.

23 Q And when you saw, you said you saw mussel fire coming
24 out of the driver's side -- driver's side of the vehicle,
25 isn't that right?

- 1 A Correct.
- 2 Q With the gun all the way out the window?
- 3 A Was the gun all the way out the window?
- 4 Q Yes. All the way out the window?
- 5 A No. I seen fire coming from the window.
- 6 Q Because it was dark and you couldn't see a gun could
- 7 you.
- 8 A No. I just said it was dark. It was a lighted area,
- 9 but I couldn't see if the arm was all the way or not. No.
- 10 Q Okay. So the arm was or was not --
- 11 A I did not see the arm out the window.
- 12 Q You did not see the arm out the window?
- 13 A No, but I could see fire coming through.
- 14 Q Did you see a white cloth on the hand of Mr. Watts
- 15 hanging out the window?
- 16 A Did I see a white cloth? I can't say if it was Mr.
- 17 Watts hand or not. I was behind the Suburban.
- 18 Q Okay. And you admit you saw the Rodeo make a U-turn
- 19 and start heading towards Farrow Road, correct?
- 20 A Correct.
- 21 Q Okay. And you saw a passenger out of that vehicle
- 22 shoot --
- 23 A In the air.
- 24 Q -- in the air, right?
- 25 A Correct.

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1 Q Not with his body out shooting towards -- is that what
2 it was, was his body out and he was going over the top of
3 his car?

4 A His body was out, but he was shooting in the air.

5 Q And you also say on Page 1 in that narrative, you say
6 he turned around and went back to the vehicle he was riding
7 in. You were talking about Taurus at that time?

8 A Both of them.

9 Q You never told anybody you witnessed him riding in that
10 vehicle when they were out of the car?

11 A And when I said that I meant the vehicle he rode in
12 leaving the scene.

13 Q Okay. So it should say turned around and went back to
14 the vehicle he was riding in. That being past tense. You
15 just mean --

16 A He was past when I was talking to Mr. McRae. It was
17 after it happened.

18 Q So he went back to the car he was riding in, meaning he
19 was in the car earlier?

20 A That he was riding, yes. That he rode in.

21 Q And both of these guys walked back to the vehicle they
22 were in, right?

23 A Yes.

24 Q But they were in the vehicle at one time, is that what
25 your testimony is today?

1 A I seen them in the vehicle. Yes. I seen them in the
2 vehicle.

3 Q You saw them in the vehicle, and you saw them get out,
4 and you saw them get back in; is that your testimony today?

5 A Yes.

6 Q And this narrative you say the gun had a short barrel
7 and a very long clip?

8 A Yes.

9 Q Okay. And then Investigator McRae asked you -- I
10 showed you a picture of a gun, is this the type of gun you
11 saw Taurus with just prior to the shooting. Your answer is
12 Yes. Correct?

13 A Yes.

14 Q So Mr. McRae showed you a picture of the gun, then you
15 identified it, right?

16 A He showed me a picture of several guns.

17 Q Okay. And this particular picture that you signed, Mr.
18 McRae showed you this, and you say he showed you this gun?

19 A Yes.

20 Q Is this the type of gun you saw Taurus with?

21 A Yes.

22 Q And your answer was yes. The only difference was
23 something about a brace, right?

24 A Yes.

25 Q So this is the kind of gun you think you saw?

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1 A Yes.

2 Q Did he show you any pictures of a gun the Isuzu Rodeo
3 had?

4 A No.

5 Q Did he show you any pictures of a gun that the guy that
6 was backing out of the club had when you told him about
7 that?

8 A No.

9 Q Okay. So the only pictures that he showed you was of a
10 gun that was supposedly held by my client?

11 A Yes.

12 Q Okay. Nothing further.

13 THE COURT: All right. Sir, you can step down.

14 MS. SHIPLEY: May he be excused, Your Honor?

15 THE COURT: Yes. You can be excused.

16 MS. SHIPLEY: State calls Ray McDonald.

17 (WHEREUPON, Ray McDonald was sworn
18 to tell the truth.)

19 THE CLERK: Thank you. Have seat in the witness
20 stand and give the court reporter your name.

21 MR. MCDONALD: Raymond McDonald. M-c-D-o-n-a-l-d.

22 RAY MCDONALD - DIRECT EXAMINATION

23 BY MS. SHIPLEY:

24 Q Mr. McDonald, can you please tell the jury where you're
25 employed?

1 A I work for T-Mobile, the wireless phone company.

2 Q And where exactly are you headquartered?

3 A We're in -- the company itself is in Belleview,
4 Washington. Our location where our group is is Parsipity,
5 New Jersey.

6 Q And at one time did your company buy SunCom
7 Telecommunications Wireless?

8 A Yes, we did.

9 Q And as part -- the jury a little bit about your job and
10 you duties?

11 A I'm a manager for group which is the Subpoena
12 Compliance Group. It's actually called the law enforcement
13 release group. We do legal compliance. We take in
14 subpoenas and court orders, we process that information, we
15 sent that back out to the requesting party whether that be
16 attorneys, courts, law enforcement, private individuals. We
17 also do all the emergency work for the company throughout
18 the country; lost children, lost hikers, kidnap victims,
19 hikers. We locate them; we find them. We process wiretaps
20 for the company. We probably -- I think last year we pushed
21 out about 120,000 written requests back out the door.

22 Q And I'm going to bring you to the case at hand. Did
23 you're company receive a subpoena from the state of South
24 Carolina for a phone number pertaining to area code

25 [REDACTED]?

1 A Yes, it did.

2 Q Okay. I'm going to show you what's been marked as
3 State's 130, and ask you if you recognize this document?

4 A Yes, I do.

5 Q And what is it, sir?

6 A This is a screen print, which is the subscriber
7 information for a particular account with the subscribers
8 name, address, phone number, and the account number.

9 Q And the pages that are attached to that front page;
10 what are those?

11 A These are what we call, Call Detail Records. These are
12 calls that go to the subscriber telephone or go from the
13 subscriber telephone to whoever the person is calling.

14 Q And sir, are you also considered a custodian of records
15 for your company?

16 A Yes. Our group acts as custodian of records for T-
17 Mobile.

18 Q And as custodian of records you are familiar with how
19 to maintain these records; correct?

20 A Yes.

21 Q And how these records are -- what they mean?

22 A Yes, that's correct.

23 Q Okay.

24 MS. SHIPLEY: Your Honor, at this time the state
25 seeks to introduce State's No. 130 into evidence.

1 MR. SWERLING: No additional objection other than
2 what has already been previously argued and --

3 THE COURT: Okay.

4 MS. SHIPLEY: It does not relate to that, Your
5 Honor.

6 THE COURT: Okay.

7 MS. JOHNS: No objection as to defendant Watts.

8 THE COURT: Okay. Thank you. Admitted.

9 (State's Exhibit No. 130, phone
10 records, was marked and entered.)

11 MS. SHIPLEY: Thank you, Your Honor.

12 BY MS. SHIPLEY:

13 Q Mr. McDonald, let's go ahead and get started on the
14 phone calls -- first of all, whose phone number is [REDACTED]
15 with the area code [REDACTED]; whose phone number or who is the
16 registered subscriber of that phone number.

17 A The subscriber, the customer on the subscriber document
18 is Tremaine Wray, W-r-a-y.

19 Q And is there an address assigned to that subscriber?

20 A Yes, there is. It's [REDACTED], Columbia,
21 South Carolina.

22 Q I'm going to bring your attention to phone calls placed
23 by Mr. Wray's cell phone. If I could bring your attention
24 to June 30, 2007, at 1:45 a.m. What call was placed on his
25 cell phone to which number?

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1 A This was from the subscriber number to [REDACTED], on
2 June 30, 2007, at 1:45 a.m.

3 Q And how long did that call last?

4 A 44 seconds.

5 Q When is the next time Mr. Wray calls that same number,
6 [REDACTED]?

7 A I'm sorry, what time did you say --

8 Q The next time that --

9 MS. SHIPLEY: Your Honor, is it okay if I direct
10 him to the date and time of the call just to speed the
11 process?

12 THE COURT: Sure.

13 BY MS. SHIPLEY:

14 Q I'm going to direct your attention to June 30, 2007 at
15 4:14 in the morning?

16 A Okay, again that number was called by the subscriber,
17 [REDACTED], on June 30, 2007 at 4:14 a.m., and the call
18 lasted for six seconds.

19 Q And the next time that number is called by Mr. Wray's
20 cell phone is when?

21 A Looks like 4:35 a.m.

22 Q Okay. And what -- how long did that phone call last?

23 A A minute and 54 second.

24 Q Then on June 30, 2007, at 13:30 hours, can you tell
25 this jury whether that phone call was made to that same

1 number again?

2 A Yes, it was.

3 Q And can you tell the jury how long that conversation or
4 the phone call lasted?

5 A Two minutes, 29 seconds.

6 Q Two minutes, 29?

7 A Yes.

8 Q And I'll direct your attention June 30, 2007, at 14:03
9 hours?

10 A Okay, again, that's a call from the subscriber to the
11 same number, and it lasted for one minutes, 57 seconds.

12 Q And then on July 1, 2007, at 9:27 a.m.?

13 A Again a call from the subscriber's phone to that same
14 number, [REDACTED], July 1, 2007, at 9:27 a.m. for 11
15 minutes, 52 seconds.

16 Q And then the next call at 10:14 a.m.?

17 A Subscriber calling the same number July 1, 2007, at
18 10:14 a.m. for 24 seconds.

19 Q And you can't tell the jury the contents of these
20 conversations or anything like that?

21 A No, cannot.

22 MS. SHIPLEY: Beg the Court's indulgence.

23 BY MS. SHIPLEY:

24 Q And I'm sorry, I overlooked one, sir. If you can go
25 back to June 30, 2007, at 12:11 p.m., and let me know when

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1 you find that day and time. Oh, sorry, it starts at 12:09.

2 A At 12:09, this was an incoming call to the subscriber's
3 number from [REDACTED], and that was June 30, at 12:09,
4 and that lasted for a minute, 33 seconds.

5 Q Thank you, Mr. McDonald. Please answer any questions
6 the defense may have.

7 MR. SWERLING: I only have one.

8 RAY MCDONALD - CROSS EXAMINATION

9 BY MR. SWERLING:

10 Q Six seconds or 24 seconds, does that indicate no --
11 that it had reached somebody?

12 A It's a connection. So what happens is I don't know
13 what happens.

14 Q Is it a connection to a voice mail box?

15 A It could be. I don't know what occurs at the other
16 end.

17 Q Pardon?

18 A I don't know what occurs at the other end.

19 Q Well, it could be voice mail?

20 A Could be.

21 Q Okay. That's all I wanted. Thank you.

22 MS. JOHNS: No questions.

23 THE COURT: Okay. Sir, you can step down and be
24 excused.

25 MS. SHIPLEY: He's excused, Your Honor. Thank you.

1 Your Honor, at this time the state calls Deputy Ryan
2 Galinski:

3 MR. BAX: And Your Honor while he's being sworn in,
4 if you don't mind we'd like to approach the bench?

5 THE COURT: Certainly.

6 (Off the record bench conference with counsel and the
7 Court.)

8 (WHEREUPON, Ryan Galinski was sworn
9 to tell the truth.)

10 THE CLERK: Thank you. Have a seat in the witness
11 stand, please, and give the court reporter your name.

12 MR. GALINSKI: Deputy Ryan Galinski, Richland
13 County.

14 RYAN GALINSKI - DIRECT EXAMINATION

15 BY MS. SHIPLEY:

16 Q Good afternoon, Deputy Galinski. Could you please tell
17 the jury how long you've worked with the Richland County
18 Sheriff's Department?

19 A I'm sorry, can you repeat that?

20 Q Yeah, sur. Can you please tell the jury how long you
21 have been employed with the Richland County Sheriff's
22 Department?

23 A Part-time for one year, full time, three years for a
24 total of four years.

25 Q A total of four years?

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1 A Yes, ma'am.

2 Q I'm going to ask you to pull the microphone up a little
3 closer to that we can all hear you.

4 A (Witness complies.)

5 Q Can you tell the jury what your duties are and what
6 your role is with the Sheriff's Department?

7 A Yes. I'm a Deputy Sheriff, Special Operations, Traffic
8 Safety Unit.

9 Q And as a -- what are your duties; what do you have to
10 do?

11 A Enforce the law, apprehend criminals. I do a lot of
12 traffic right now. General duties of a law enforcement
13 officer..

14 Q And so you work around a particular part of Richland
15 County?

16 A I do. I respond to all calls and I patrol all of
17 Richland County. No particular jurisdiction. All of
18 Richland County in general.

19 Q Okay. And do you patrol with your patrol car?

20 A I do.

21 Q And are there particular shifts that you work?

22 A There are.

23 Q Okay, and do you sometimes work nights and sometimes
24 work days?

25 A That's correct.

1 Q I'm going to bring your attention to June 30, 2007, can
2 you tell the jury whether or not you were on duty that day?

3 A June 7?

4 Q June 30, 2007?

5 A June 30, 2007, I was working the evening shift.

6 Q Okay, and what time does that shift start?

7 A Approximately 8:00 at night.

8 Q And what time does it end?

9 A About 4:30 in the morning.

10 Q Okay. On this date in question, June 30, 2007, do you
11 recall being involved in looking for suspect vehicle --

12 A Yes.

13 Q -- and responding to shots fired?

14 A Yes.

15 Q All right. Tell the jury, do you remember the exact
16 time that you were called?

17 A It was approximately 4:00 o'clock in the morning,
18 roughly. It was out in the Two Notch Road area when a shots
19 fired call was dispatched over the radio. Myself and other
20 deputies attempted to respond to the location. I was --

21 Q When you say attempted, what happened; did you make it
22 to the location?

23 A Well, several other deputies were responding to the
24 location. I was patrolling and looking for a vehicle that
25 was dispatched over the radio.

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1 Q And can you tell the jury the description of that
2 vehicle?

3 A Yes, ma'am. The dispatch put out a BOLO, which is a
4 bee on the lookout for a white in color, SUV, which had
5 pinstripping down the side, black pinstripping. And would
6 be occupied by two black males.

7 Q And did they give you a make and model of that vehicle
8 at the time it was dispatched.

9 A I don't recall make and model. All I recall was just a
10 white SUV with black pinstripes.

11 Q Okay. And tell the jury where you happened to be when
12 you got this call?

13 A I was on Two Notch Road near the Hardscrabble Road
14 area.

15 Q And once you got the call and the description of this
16 type of vehicle where did you go next?

17 A I knew that several deputies were coming down to Farrow
18 Road towards Hardscrabble. I also heard that the vehicle
19 was in route towards Farrow Road from Hardscrabble, and
20 there are a couple of road that cross over from Rabon Road
21 over to Hardscrabble, so I felt it would be imperative for
22 me to go down Two Notch towards Rabon Road to see if any
23 vehicles matching that description were coming towards Two
24 Notch from that general area.

25 Q And so did you go to that area?

1 A That's correct.

2 Q And tell the jury whether or not you were able to spot
3 a vehicle fitting that description?

4 A That's correct. I was on Two Notch Road, I had turned
5 onto Rabon Road. Soon as I turned on Rabon Road, I went
6 just a very, very short distance down Rabon when I observed
7 a white Isuzu Rodeo with black pinstripping. It passed me
8 coming up to the light at Rabon and Two Notch. I turned
9 around, and it took a left on Two Notch going north, going
10 out towards Sandhill. At which time I turned around and I
11 followed it. I radioed dispatch that I was behind a vehicle
12 that matched that description. I waited for backup to
13 arrive before I made the traffic stop on the vehicle. Soon
14 as I saw Deputy Brantley coming towards me on Two Notch I
15 initiated a traffic stop. We stopped at approximately the
16 9800 block of Two Notch behind Blockbuster.

17 Q As soon as you initiated your blue lights did that
18 vehicle stop?

19 A It did.

20 Q And did you pull into a parking lot of that Blockbuster
21 or where did you stop?

22 A It was just behind the Blockbuster. It's a road that
23 goes up to, I believe it's a Food Lion. We stopped on the
24 drive going up to the Food Lion.

25 Q Okay. And did you get the occupants out of the vehicle

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1 once the stop was made?

2 A We did.

3 Q And can you tell the jury a little bit about what the
4 occupants looked like?

5 A The description that was given to us was two black
6 males, the driver having dreads in his hair. The passenger
7 was given as short hair and he was wearing a yellow shirt
8 with stripes on it. When I made contact with the
9 individuals, I did notice that the driver did have dreads in
10 his hair. And the passenger was, indeed, wearing a yellow
11 shirt with stripes in it. He has short hair, as well. So
12 it did match the description that was given to us.

13 Q And at that point, did you know where these
14 descriptions were coming from besides through dispatch?

15 A Yes. The witnesses at the location, the incident
16 location on Hardscrabble were communicating with other
17 deputies supplying them with the information.

18 Q Okay. At that point when you first take someone out of
19 a vehicle, tell the jury what you have to do for your own
20 safety?

21 A We like to frisk them to make sure they don't have any
22 weapons on them, especially on a call with shots fired. We
23 had pretty accurate descriptions. All the descriptions met
24 the suspects that were in the vehicle at the time. We
25 wanted to make sure that there was no guns in the vehicle.

1 No guns on the persons, so we did a frisk on them.

2 Q And did you -- first of all, before we proceed, I'm
3 going to show you State's 47 and 46. Do you recognize the
4 people in those photos?

5 A Yes, ma'am, both of these are the subjects that were in
6 the vehicle that I stopped.

7 Q And can you show the jury which one was the driver?

8 A The driver would be State's Exhibit No. 46.

9 Q Okay.

10 A Luther, I believe his name is. Luther Landrum.

11 Q Okay, and was that the color shirt that he was wearing
12 when you stopped him?

13 A That's correct.

14 Q All right. And the other individual, where was he
15 seated?

16 A This would be the passenger of the vehicle, Earl
17 Greene.

18 Q And is the color -- in that photograph, does that show
19 the same clothes as he was wearing that night?

20 A Yes.

21 Q And tell the jury what, if anything, you found on Mr.
22 Landrum when you frisked him?

23 A When we did a frisk of him we found a small aluminum
24 foil in his pocket. When we were removing the individuals
25 out of the vehicle we notice there was bullets in the

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1 passenger seat. So we did a little bit more extensive frisk
2 on them. When we removed that aluminum foil out of his
3 pocket there was green material which was believed to be
4 marijuana and did test positive for marijuana after a
5 forensic report was done, forensic analysis was done.

6 Q And at that point did you arrest Luther Landrum for
7 that marijuana?

8 A That's correct.

9 Q And what about the passenger, what, if anything, was he
10 charged with at the scene?

11 A He was charged with open container. There was a beer
12 within his general possession, directly behind him in the
13 vehicle on the passenger seat, and it was open. He was
14 charged with open container and arrested, as well.

15 Q Did you search the vehicle for any firearms?

16 A Yes, we did.

17 Q And did you locate a firearm?

18 A We did not locate a firearm. As I stated there were
19 several rounds of ammunition that were found on the
20 passenger seat.

21 Q And do you recall the caliber of those rounds?

22 A I believe one of them was a 38, and I believe there
23 were some 9 millimeter, if I'm correct.

24 Q But you did not collect those, correct?

25 A I did not.

1 Q In fact, tell the jury what you did with this vehicle
2 after the stop?

3 A After the stop we did the Terry frisk of the vehicle to
4 make sure there was no weapons in there. We secured the
5 vehicle. We then notified the investigators that we had a
6 possible vehicle. We secured the vehicle and it was towed
7 to the Richland County Sheriff's Department where it would
8 be scrutinized and inventoried.

9 Q Okay. So you were not involved in searching or
10 processing forensically the vehicle?

11 A No, I was not.

12 Q Were you in charge of having it towed to the Sheriff's
13 Department?

14 A I have the two slip. We notified a Puff Howard, who --
15 Puff Howard Towing, who responded, and they did tow the
16 vehicle to the Sheriff's Department. Deputies did follow
17 the vehicle to make sure nothing was tampered with the
18 vehicle.

19 Q I'm going to show you a photograph and see if you
20 recognize it. State's No. 17. Do you recognize what's in
21 that photo?

22 A Yes. This is the Isuzu Rodeo that I stopped that
23 night.

24 Q Okay. And that's the car that you had towed to be
25 processed by the crime lab?

1 A That's correct.

2 Q Now, did you remain -- how long did you remain at that
3 Blockbuster area that morning?

4 A Oh, we were there for approximately two hours, give or
5 take.

6 Q And is that normal?

7 A No, that's not normal.

8 Q Tell the jury why you had to sit around for two hours?

9 A We had to wait, one for investigators. They were
10 investigating -- talking with several witnesses. We had to
11 wait for these witnesses to possibly identify the two
12 subjects. We were looking for a firearm that may have been
13 involved that could have been tossed out. So we had
14 deputies searching the path that that vehicle likely took
15 from Rabon Road down to Two Notch. Unfortunately, we were
16 not able to find a firearm. Getting the names of the
17 individuals and pretty much just waiting to get information
18 from the investigators.

19 Q Okay. And at one point did investigators who up with a
20 witness to identify these people?

21 A I believe it would have been roughly around 6:00
22 o'clock in the morning.

23 Q Okay. And do you recall which investigator that was?

24 A McRae showed up.

25 Q Investigator McRae?

1 A That's correct.

2 Q And do you recall who the witness was that he brought
3 with him?

4 A I do not know.

5 Q Okay. While you're at the scene do you hear calls from
6 dispatch at all times; do you keep your radio on at all
7 times?

8 A Yes, ma'am. We had a lot of back and forth with the
9 officers at the scene on Hardscrabble and with them trying
10 to cooperate information with each other. And really bring
11 the situation together to make sure we had who we needed,
12 and to get our information correct with one another.

13 Q Okay. And did you receive any other information about
14 any other possible cars, description of other cars involved
15 in the shooting?

16 A We did hear another individual -- I don't recall hear
17 -- I mean, I recall hearing about another vehicle. I didn't
18 pay much attention to it. I was out with this one vehicle.
19 Most of my attention was focused on this one vehicle and
20 these two individuals. However they did -- they did
21 indicate there was possibly another vehicle involved.

22 Q And were you made aware of what the passenger of your
23 vehicle may have done at the scene?

24 A That's correct. The officers on Hardscrabble Road
25 indicated to us that the passenger that we had, indicating

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1 Mr. Greene, had fired one shot from the Isuzu Rodeo, and
2 that one shot was fired in the air as they were driving
3 away.

4 Q And did you have your dash cam, video camera on during
5 this time?

6 A During the time of the traffic stop?

7 Q Yes, sir?

8 A Yes.

9 Q And did you have an opportunity to review the video
10 pertaining to this stop?

11 A Yes, I have.

12 Q Does it accurately depict the events of that night?

13 A Yes, it does.

14 MS. SHIPLEY: Your Honor, at this time, State would
15 see to introduce State's 114.

16 MR. BAX: No objection at this time. We want the
17 times that --

18 (State's Exhibit No. 114, video,
19 was marked and entered.)

20 MS. SHIPLEY: Beg the Court's indulgence.
21 (Pause. Video equipment is set up.)

22 MS. SHIPLEY: Your Honor, permission to publish the
23 video to the jury?

24 THE COURT: Certainly.

25 BY MS. SHIPLEY:

1 Q Incidentally, before I play the video tape, did you
2 hear a name dispatched over the radio besides the name Earl
3 Greene or Luther Landrum at any time during your stop?

4 A Yes, ma'am. Shortly after the stop, within minutes,
5 approximately 4:30 a.m. is what I have indicated, deputies
6 at the scene on Hardscrabble requested the names of the two
7 individuals that I was out with. And they had asked if
8 either one of them was named Taurus Watts. I asked them. I
9 identified the two subjects. Of course, neither one of them
10 was Taurus Watts.

11 Q Thank you, sir. And if you could --

12 MS. SHIPLEY: Permission for the witness to step
13 down, Your Honor.

14 THE COURT: Certainly.

15 BY MS. SHIPLEY:

16 Q Without interrupting the calls or -- come on down.
17 Just explain to the jury initially what you're doing on the
18 tape. Just be mindful not to interrupt anything being
19 dispatched.

20 (Video is playing.)

21 A This is the call prior to the call for shots fired.
22 This was after the traffic stop on Two Notch Road.

23 Q Is this time accurate?

24 A It is. At that point, we received the call for shots
25 fired. We got back on the road. I felt it imperative to

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1 respond to shots fired. That BOLO, be on the lookout was
2 for -- the vehicle headed towards Farrow. They were coming
3 up -- those officers were already in the area. So I went
4 back down Two Notch to see if I could find the vehicle. I
5 turned on Rabon Road and just turned my lights off -- just
6 minutes later this vehicle approached me coming down Rabon
7 Road. I just heard the report and that's when I turned
8 around and went toward Two Notch, outbound. And it picks up
9 here. This is the Blockbuster. That's me talking to them
10 on the loudspeaker. That's where we put them in handcuffs
11 to restrain them for our safety. We didn't know whether
12 they had a gun on them or in the vehicle. I just instructed
13 dispatch that there was ammunition that was found in the
14 vehicle. All right. Now deputies are in the vehicle
15 attempting to find a firearm. Here they're talking about
16 whether they possibly threw out the gun. At that point
17 they're coordinating officers go down and check the woods
18 line and sides of the road to see if a gun was possibly
19 tossed out. One of the deputies at the club just asked if
20 the subject's name was Taurus Watts. And I radioed back
21 their names were Luther Landrum and Earl Greene. That was a
22 call from dispatch saying that they had a subject that had
23 been shot. He was at the hospital. That was my
24 conversation with the deputy at the scene. He gave me the
25 information that was passed on by witnesses about these two

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1 subjects, what they were wearing, what they looked like. I
2 confirmed it. I explained to them that 259 is a gun. Now,
3 that's me explaining to him that we're still looking for the
4 gun. I also explained to them that they were in custody.
5 That's where we're requesting a lab unit investigation,
6 investigators to come out there. Now, we're waiting on the
7 investigators. GSR is gunshot residue. Gunshot residue is
8 on your hand after you shoot a gun off. The put bags on
9 your hands -- unfortunately, I didn't have bags to put over
10 their hands. So she instructed us that basically make sure
11 they don't wash their hands. We're waiting for the
12 investigators right now. We're doing the paperwork.
13 They're saying it's a signal 4. Signal 4 is a homicide.
14 (Video stopped.)

15 Q And Deputy Galinski, did these two suspects remain
16 handcuffed the entire time they were in custody?

17 A Yes, they did.

18 Q Were they allowed to wash their hands at any time?

19 A They did not.

20 Q And you were not able to find paper bags, correct?

21 A That is correct. We checked with some of the other
22 deputies. Nobody had a paper bag to put on their hands.

23 Q Did they maybe -- were they both observed the entire
24 time in your custody?

25 A Yes. Each subject had a deputy that was watching him

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1 at all times; at least one deputy.

2 Q Also, you indicated the initial call came out on the
3 Nissan Pathfinder?

4 A That's correct. That's the first vehicle that came
5 across was a white Nissan Pathfinder.

6 Q Are Isuzu Rodeos -- in case the jury is not familiar
7 with the make and models, are Isuzu Rodeos similar in model
8 and style as a Nissan Pathfinder?

9 A Very similar. Yes.

10 Q Regardless you were looking for a white SUV with a
11 stripe, speckled stripe or something?

12 A A black pinstripe, yes.

13 Q And eventually did you participate in removing the
14 suspects from the patrol cars for the witness to come and
15 identify them once investigators arrived?

16 A They were removed from the investigators, yeah, once
17 the investigators got there.

18 Q And you don't participate in that side of the
19 investigation, correct?

20 A No.

21 Q You don't have contact with the witnesses or anything
22 like that?

23 A Did not.

24 Q Thank you, Deputy Galinski.

25 A Thank you.

1 THE COURT: Yes.

2 MR. BAX: Please the Court.

3 RYAN GALINSKI - CROSS EXAMINATION

4 BY MR. BAX:

5 Q Good afternoon, Deputy.

6 A Good afternoon.

7 Q Thank you for coming in. I've got a few questions
8 here. That traffic stop, looks like you were on a traffic
9 stop there and the call came -- there was a bluish car?

10 A Yes, sir. I was on a traffic stop. Yes, sir.

11 Q Okay. All right. Based on your testimony you already
12 had your blue lights on and obviously your camera was
13 running. Is your camera -- well, let me ask you this, your
14 patrol car is outfitted with a camera, correct?

15 A That's correct.

16 Q And it's located near your rear-view mirror on your
17 front windshield; is that correct?

18 A That's correct.

19 Q Okay. And Deputy Galinski is that one of the dash-cams
20 that directly connected to the blue lights in the car? In
21 other words, it will come on when the blue lights come on?

22 A Sure. You can either turn them on manually or they
23 turn on when the blue lights turn on.

24 Q Okay.

25 A There is a slight delay when you turn on the blue

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1 lights. It doesn't record for approximately five to six
2 seconds after you hit the blue lights, but they do come on.

3 Q So there about a five or six second delay?

4 A Approximately, yes.

5 Q Now, on the video that we just saw after you drove down
6 Two Notch Road towards Rabon Road the video goes blue for a
7 few seconds and then kicks back on, correct?

8 A Correct.

9 Q To your knowledge was that because the blue light went
10 off and you had cut them back on?

11 A No. When I was turning onto Rabon Road I turned my
12 blue lights off and I manually shut off my recording system.

13 Q Okay. So when the blue lights go off do you have to
14 manually turn off the camera?

15 A Yes, you have to manually turn it off.

16 Q So the blue lights will turn them on, turn on the
17 camera, but it won't turn it off?

18 A That's correct.

19 Q All right. So you manually turned that camera off when
20 -- was it before you got to Rabon Road?

21 A I believe it was right as I was turning onto Rabon Road
22 or just prior -- as I was making the turn I turned the blue
23 lights off and the video off.

24 Q So there's a portion that we don't have on that video.
25 Let me ask you a couple of questions about that. How far

1 did you get down Rabon Road before you saw this white
2 vehicle that matched this description that you talked about?

3 A It was very brief. If you're familiar with Rabon Road
4 there's a BiLo right here. As I was coming up on the BiLo
5 was when the vehicle was -- the white SUV Rodeo was passing
6 me. So approximately 50, 60 yards, maybe.

7 Q So you got a little bit past -- for anybody who's not
8 familiar with that area there's a Grease Monkey or Lube
9 Express; you'd gotten past that?

10 A I believe when I saw the vehicle I was right there at
11 the BiLo. As I was turning around, of course, the momentum
12 to turn around went just past the BiLo.

13 Q And I believe you said you did not initiate your blue
14 lights at that time, correct?

15 A That's correct.

16 Q Now, you had gotten this over dispatch, correct, and
17 believe you testified that you really kind of focused on the
18 BOLO for the white SUV with the black pinstripe; is that
19 correct?

20 A That is correct.

21 Q I believe there was another description for a box-like
22 Chevy that came over?

23 A Correct.

24 Q But you didn't really focus on that because you were
25 busy working on this car, right.

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1 A Right. I had seen that vehicle -- I focused my
2 attention on the first vehicle I was first BOLO-ed out.

3 Q Okay. And the dispatcher had indicated that this was
4 based on shots fired, it had indicated that shots had been
5 fired?

6 A Correct. They had multiple calls that shots were fired
7 at that location.

8 Q And I believe some of that information had come over
9 dispatch was that this car was alleged to have had shots
10 come out of it, correct?

11 A That's correct.

12 Q Now, there was also a description given of the
13 individuals in this Rodeo, individuals who were alleged to
14 have been in this car that indicated two black males; is
15 that correct?

16 A That's correct.

17 Q Okay. The description give to you was the driver with
18 the dread lock hairdo; is that correct?

19 A That's correct.

20 Q And that matched the description of Mr. Landrum; is
21 that correct?

22 A That's correct. Luther Landrum.

23 Q And Luther was the driver of the car; is that right?

24 A That's correct.

25 Q I'm just going to show you this. That's him from that

1 night; correct?

2 A That's correct.

3 Q And this was the passenger, and I believe that's what
4 they call a low haircut?

5 A That's correct. Short, yeah, short haircut. That
6 would be Earl Greene.

7 Q Earl Greene. Now, did you determine whose actually
8 vehicle it was; was it determined if it was his or Mr.
9 Landrum's?

10 A Yeah. While we were out there deputies requested --
11 it's called a 1028, it's a vehicle information. The vehicle
12 came back to a Dolores Thompson of [REDACTED], in
13 Columbia, 29201.

14 Q All right. Okay. So it didn't come back as being in
15 the name of either Earl Greene or Luther Landrum; is that
16 correct?

17 A That's correct.

18 Q But it did not come back as stolen did it?

19 A No. It did not. It was clear.

20 Q You said a Dolores Thompson?

21 A Dolores Thompson.

22 Q Officer, after you pulled -- well, let's go to this.
23 You indicated in the vehicle -- excuse me, you indicated in
24 your testimony that you saw or waited until you saw Officer
25 Brantley, I believe that's what you said. I believe you

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1 said he was coming towards you in a different patrol unit?

2 A That's correct.

3 Q And officer, why did you wait for Officer Brantley to
4 be near you in his patrol car before you initiated the stop?

5 A It was a shots fired call, which, of course, would
6 require a gun, and for safety purposes we like to have
7 backup before we make any contact with individuals,
8 specifically there's two individuals in the car with a
9 possible gun. So we just wanted to make sure I had plenty
10 of backup before I initiated the traffic stop.

11 Q So this was definitely something that was done based on
12 officer safety; is that correct?

13 A Correct.

14 Q So there was a danger there based on the allegation
15 that there could be an armed individual that could pose
16 danger to you as an officer?

17 A That's correct.

18 Q Now, you also indicated that -- well, number one, you
19 removed these individuals from the vehicle once you made the
20 stop; correct?

21 A That's correct.

22 Q And you said you found some ammunition. Isn't it true
23 that the passenger, the individual with the low haircut was
24 actually sitting on that ammunition?

25 A That's correct.

1 Q Now, let me ask you that one more time as far as what
2 that constituted. I believe you said there was one round
3 that was a 38 caliber ammunition?

4 A Yes, sir, that's correct.

5 Q Okay. I believe it was a hollow point?

6 A I don't recall if it was hollow point or not.

7 Q And I believe you stated there was more than one round
8 of 9 millimeter ammunition in that same location?

9 A Correct. 9 millimeter -- I can't recall how many, but I
10 believe there as 9 millimeter.

11 Q If I said there were three would that sound accurate?

12 A I don't recall.

13 Q Officer, do you recall whether they were full metal
14 jacket or not?

15 A I don't recall that either.

16 Q Can you explain to the jury what that is?

17 A A full metal jacket is a larger -- a larger round
18 within the casing.

19 Q Let me ask you this; is it not true that a full metal
20 jacket it turned that way because the lead projectile is
21 covered in a brass surrounding, a metal surrounding; isn't
22 that correct?

23 A I'm not an ammunition expert, so I can't answer that.

24 Q Thank you. I appreciate that. Now, you also indicted
25 in a couple of places during your testimony and we can hear

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1 on the video that you were actually looking for a firearm;
2 is that correct?

3 A That's correct.

4 Q And I believe you stated the code for that is 1059?

5 A That is correct. That would be a gun.

6 Q And you had said when you were communicating over the
7 phone, I believe you said -- with the supervising officer
8 that you were still looking for that?

9 A That's correct.

10 Q You -- there was some talk on the video about a 38
11 caliber. I believe around 4:30 on the dash cam there's some
12 discussion about a 38 Special; is that correct?

13 A That's correct. That's the round that was found in the
14 vehicle.

15 Q Okay. But as you said, there were also 9 millimeter
16 rounds; is that correct?

17 A That's correct.

18 Q So you were basically looking for any kind of gun that
19 could fire either one of those rounds or any kind of round;
20 is that correct?

21 A I was looking for a gun in general. Not any specific
22 firearm.

23 Q Okay. Now, let me ask you this, and you may not be
24 able to answer. To your knowledge, as an officer can a 9
25 millimeter round be shot out of a 38 caliber pistol?

1 A I do not believe so.

2 Q Moving on, you also talked about in your testimony as
3 well as in the video, as we've heard, that you had the
4 belief that they might have ditched the gun; is that
5 correct?

6 A Yes. That was a possibility.

7 Q What was that based on; can you tell us a little bit
8 about that?

9 A Sure. Since the firearm wasn't located in the car, the
10 two subjects did state that they were coming from the
11 Hardscrabble Road area, that particular area by the club.
12 He did have ammunition on him. We were concerned that there
13 was a gun in their possession within their -- very recently.
14 Also, with the large amount of deputies that were coming,
15 they could have very easily have seen several blue lights,
16 several officers. So it's reasonable to believe that
17 fearing that they may be stopped that the gun could have
18 been tossed out.

19 Q And going to that -- and this was my count -- and you
20 can correct me if I'm wrong. I believe I counted five
21 officers -- when Earl and Luther actually pulled over I
22 counted five officers that I actually saw, Highway Patrol
23 Officers; does that sound about right?

24 A Sure. There may have been more officers behind the
25 camera as well.

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1 Q Okay. So at that point you didn't know whether they
2 had seen blue lights even before you saw their car?

3 A I have no knowledge whether they saw blue lights or not
4 prior to mine.

5 Q But you had said when you were narrating for the jury,
6 I believe you kind of turned up North Brickyard there and
7 then you turned back around and got on Two Notch; is that
8 correct?

9 A Correct.

10 Q And I believe you said to the jury that's because some
11 officers had indicated through radio that they were in that
12 location already?

13 A That's correct.

14 Q Is that correct?

15 A Yes, sir.

16 Q I --

17 A They were in the location of the incident.

18 Q Okay. So you changed direction because you didn't need
19 to go to the incident, at this point, you wanted to go down
20 to Two Notch Road?

21 A Correct.

22 Q Just a couple of quick more things here and then I'll
23 let you go, deputy. You testified -- well, excuse me, we
24 just talked about it, but you testified that you thought
25 that they had ditched this gun on Rabon Road, so I'm

1 guessing that that area you just described is near the BiLo?

2 A It could have been. My understanding is that it could
3 have possible been on Rabon Road. My thought after I had
4 stopped them was that there was a fairly decent distance
5 between me and them by the time I got turned around, and
6 they had made a left on Two Notch. Most probable to me it
7 would have been right there on Two Notch near Windsor Lake,
8 which is where I caught up with them at Windsor Lake
9 Boulevard. So it --

10 Q From the time that you turned and the time that you
11 caught up to them?

12 A That's correct.

13 Q Did you ever get the opportunity yourself to go back to
14 that area and look?

15 A I, myself, did not.

16 Q Do you know or to your personal knowledge did any other
17 officers get back to those areas and look?

18 A Yes. Other officers were sent down there. I couldn't
19 tell you which ones they were. I don't recall the names of
20 which ones were sent down there. We did request for other
21 officers go to down there. We did get confirmation that
22 they were, indeed, looking for the gun. No gun was found.

23 Q But not you, yourself; correct?

24 A No.

25 Q And until Officer Brantley came up from the opposite

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1 direction near that Blockbuster there, were there any other
2 officers in other patrol units that were in pursuit at that
3 time?

4 A No. Just myself.

5 Q So you were the only officer present to see that area
6 where you think they may have ditched that gun; is that
7 correct?

8 A Matter of fact, I don't think there were any other cars
9 around, also, at that time.

10 Q So just you and this white SUV?

11 A That's correct.

12 Q And, of course, to your knowledge, you did not see
13 anything go out of the car; is that correct?

14 A I did not see anything; that is correct.

15 Q So to your knowledge it could have been further up
16 Rabon Road?

17 A It possibly could have been. If it was thrown out it
18 could have come from numerous locations. Several different
19 roads.

20 Q And to your knowledge did any of these deputies that
21 looked in the area that you indicated that they looked,
22 further up Rabon and looked in other areas?

23 A I don't know.

24 Q You don't know. Thank you, officer. Now, one final
25 matter I want to talk to you about briefly here. At

1 approximately about 4:50 on that dash cam, a female officer
2 with the crime scene investigations unit that you guys have
3 with the Sheriff's Department called in and made that
4 request that you talked to the jury about, about the bags;
5 is that correct?

6 A That is correct.

7 Q Okay. She had asked you to put brown paper bags or
8 some kind of bags, if you had them, over their hands; is
9 that correct?

10 A That's correct.

11 Q And that is to preserve any --

12 A Gunshot residue.

13 Q -- gunshot residue that may be present; is that right?

14 A That's correct.

15 Q But y'all didn't have any bag; is that right?

16 A That's correct.

17 Q Officer, this stop goes on for quite some time after
18 where we stopped watching here; is that correct?

19 A That's correct.

20 Q Okay. In fact, I think you testified that it's
21 sometime after 6:00 or 6:00 a.m when Investigator McRae
22 comes?

23 A Correct.

24 Q So these individuals hands were not bagged at all
25 during that time; is that correct?

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1 A That's correct.

2 Q Did you specifically instruct them to keep their hands
3 clear of anything and not wipe them together like this?
4 (Indicating.)

5 A One of the other deputies, Deputy Brantley, explained
6 to them not to touch anything, not to wipe their hands. I,
7 myself, did not instruct them to do that.

8 Q Were you aware or did you see during the times, not
9 only the parts that we watched on that video, but times
10 later on where there were multiple times where I think
11 Luther was complaining --

12 MS. SHIPLEY: Objection, Your Honor.

13 Q -- about his arms hurting?

14 MS. SHIPLEY: Your Honor, he's asking about facts
15 that were not shown in front of the jury. If he wants to
16 show the jury --

17 MR. BAX: Your Honor, I'm just asking about what
18 he'd specifically during that stop, which is something I can
19 ask without --

20 THE COURT: His personal observation.

21 MR. BAX: Exactly. His personal observation,
22 correct.

23 THE COURT: Okay. That's fine.

24 MR. BAX: Thank Your Honor.

25 BY MR. BAX:

1 Q In your observation throughout the entire stop, whether
2 it be what we watched or not, did you see or observe or
3 hear, I believe Luther Landrum complaining about his arms
4 and they were hurting, that he felt like his cuffs were too
5 tight?

6 A That's right.

7 Q And did you try to help him with that or try to adjust
8 his cuffs or anything like that.

9 A We checked for tightness. It was sufficient.

10 Q And do you recall doing that multiple times throughout
11 the time you were standing outside the car?

12 A I couldn't tell you how many times we checked it, but
13 visually inspected it to make sure -- we made sure, you
14 know, that the handcuffs themselves could not tighten down
15 any more. We had double locked them. And his hand was
16 turned a little bit, so it was a little awkward, him being
17 in the handcuffs, but we visually inspected it several times
18 on both subjects.

19 Q And as a result of his complaints, he was kind of
20 moving his arms around quite a bit there for a while.

21 A Probably initially it would be rather uncomfortable to
22 be in handcuffs.

23 Q Now, at some point Mr. Landrum is placed in a patrol
24 car, I think your patrol car; is that correct?

25 A That's correct.

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1 Q And I believe also Mr. Greene is placed in a patrol
2 car; is that correct?

3 A He was placed in, I believe it was Deputy Brantley's
4 car, if I'm correct.

5 Q Would it sound accurate when I say it was about 5:30
6 a.m. when Landrum was placed in your car?

7 A Right around there. About that time. I couldn't tell
8 you exactly, but roughly.

9 Q And I think the juror's observed this, but let me ask
10 you, were they cuffed in front or back?

11 A In back.

12 Q Okay. And when they were placed in the backseat of the
13 respective patrol units were they sitting on their hands?

14 A I couldn't tell you if they were sitting on their
15 hands. They certainly would have been leaning up against
16 them.

17 Q So were their hands visible to you in that position
18 when they're sitting in the car cuffed behind?

19 A I don't believe they were at the time. I couldn't tell
20 you if he had his hands down to his side. Quite often
21 suspects put their hands to their sides. I couldn't tell
22 you. I wasn't paying that close of attention.

23 Q So they could have been sitting on them or leaning
24 against them; you don't know?

25 A They could have been.

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1 Q And if I said it wasn't until about 6:23 or 6:24 that
2 they were removed from the car towards Investigator McRae;
3 does that sound about accurate?

4 A I don't recall the time. If they were put in the car
5 at 5:30, they couldn't have been removed from the car at
6 5:20. They were removed a short time after being put in the
7 car; I can tell you that.

8 Q But you couldn't specifically say whether or not it was
9 6:20 or after 6:20, at this point, based on your
10 remembering?

11 A I don't recall. I really don't recall.

12 Q Thank you, Officer.

13 MR. BAX: One moment, Your Honor.

14 THE COURT: Okay.

15 BY MR. BAX:

16 Q A couple more brief questions for you, here, Deputy.
17 Now, obviously, this was a big reason why this stop was
18 based on the fact that dispatch had sent out this BOLO on
19 this vehicle as a result of the fact that it was alleged to
20 have been involved in a shooting; correct?

21 A Correct.

22 Q And obviously if these guys -- the report was that this
23 vehicle was specifically involved, and that shots were
24 coming out of this vehicle, for them not to have a gun it
25 had to have been ditched at some point; does that make

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1 sense?

2 A Yes. That's correct.

3 Q In other words --

4 A Assumably it had to have been tossed out or handed off
5 to somebody else.

6 Q Exactly. Did you or anyone else that you observed ever
7 asked them where is the gun?

8 A Yes.

9 Q What was the response that you got?

10 A He's saying he didn't have it. Matter of fact, that
11 was one of my first questions I asked at the beginning of
12 the traffic stop. They indicated that they didn't have one.

13 Q But, of course, this is in the face of these
14 allegations and the fact that they had ammunition in the
15 car, as well?

16 A We didn't explain to them immediately what they were
17 being stopped for. But we did explain to them that somebody
18 was shot at that time. We had just asked them where the gun
19 was.

20 MR. BAX: Excuse me just one minute, Your Honor.

21 THE COURT: Okay.

22 BY MR. BAX:

23 Q Going back to that really quick. You were actually
24 doing an incident report in this case based on your contact
25 with these individuals?

1 A I'm sorry?

2 Q Do you recall doing an incident report in this case --

3 A I did a supplement report to the incident.

4 Q Okay.

5 A Yes, sir.

6 Q And you recall putting in that report that the
7 passenger was the subject who was shooting the gun and that
8 the traffic stop was on a suspicious vehicle and it was
9 confirmed that the individuals that were described as being
10 the ones that were shooting the gun over the top of the car,
11 and over the car, matched the descriptions of the people
12 that you had in custody at that time?

13 A I believe what came out to us was that the passenger
14 had fired one shot into the air from the passenger side of
15 the vehicle as the vehicle was driving off.

16 MR. BAX: A moment's indulgence, Your Honor.

17 BY MR. BAX:

18 Q You were given information and it's on your report
19 here, I think on the first page, I think, that the passenger
20 was the subject who was shooting the gun; is that correct?

21 A That would be correct.

22 Q And I believe you put in your report also, subject
23 vehicle fitted the description of the vehicle leaving the
24 scene of shots fired where one person was injured on
25 Hardscrabble Road?

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1 A That's correct.

2 Q A white SUV with black stripping down the sides?

3 A That's correct.

4 MR. BAX: A moment's indulgence, Your Honor.

5 BY MR. BAX:

6 Q I'm sorry to belabor this, Deputy, but can you point
7 out to me or can you indicate in your report it doesn't say
8 passenger shot one shot, it just says passenger was shooting
9 the gun; is that correct?

10 A That's correct. That's what was written in my report

11 --

12 Q Now, did you also --

13 MS. SHIPLEY: Your Honor, I don't believe he was
14 done answering the question.

15 MR. BAX: My apologies if I --

16 THE COURT: Okay. Go ahead and finish your answer.

17 A -- that's what had written in the report was that the
18 passenger fired the gun out the -- well, I didn't put out
19 the passenger window, but the information that was given to
20 us later was that the passenger had fired one shot directly
21 in the air as the vehicle was leaving.

22 BY MR. BAX:

23 Q That's not in that typewritten report is it?

24 A I did not put that detail --

25 Q And you did a handwritten report before you typed it

1 up, is that correct, when you were on scene you did a hand
2 written report; is that correct?

3 A I don't recall doing a handwritten report. It's
4 possible I did. I just don't recall.

5 Q Let me just hand this up to see if it refreshes your
6 memory?

7 A Sure.

8 Q I want to see if you can ID the handwriting there?

9 A That's not my handwriting.

10 Q So that's a handwritten report from another officer; is
11 that correct?

12 A That's correct.

13 Q Now, I believe we were here for the video. There was a
14 BOLO for the vehicle we just discussed, the white SUV with
15 black pinstripping, that was described as a Nissan
16 Pathfinder, even though it ended up being an Isuzu Rodeo; is
17 that correct?

18 A Correct.

19 Q There is also mentioned on the dispatch about a two-
20 toned Chevy box style car. I did not hear, but I want to
21 ask you, you did not hear any kind of a BOLO for a tan
22 Suburban at that time?

23 A I believe there was a BOLO that came out for a two-
24 tone, but I don't recall whether it was a Chevy or a
25 Suburban or what. I just don't recall.

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1 Q Just a two-tone, you don't recall anything else?

2 A Yeah, I don't recall anything else.

3 Q You don't recall it being described as a box style
4 Chevy two-tone?

5 A No, I don't recall that. It's possible, I just don't
6 recall.

7 Q Let me hand you something and see if that refreshes
8 your memory.

9 A Okay.

10 Q This is highlighted portions from the camera.

11 A This is from dispatch?

12 Q Yeah.

13 A This say about 4:15 a box Chevy two-tone leaving the
14 area, as well. Moments -- within a minute comes across as
15 a '96 white Pathfinder. Then moments later, a few minutes
16 later states that the white Pathfinder is outbound on Two
17 Notch.

18 Q Now, does that refresh your recollection, you recall
19 hearing anything other than what you've looked at in the --

20 A Just when -- looking over the video again when we were
21 out with the subjects, just that one BOLO for the vehicle,
22 the car, other than that, no.

23 Q Nothing else.

24 MR. BAX: One moments indulgence, Your Honor.

25 THE COURT: Sure.

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1 MR. BAX: No further questions at this time.

2 THE COURT: Okay. Ladies and gentlemen of the
3 jury, do you wish to have a short break before we resume
4 this questions. Okay. Let's do that. I'll remind you not
5 to discuss the case. And you all just knock on the door
6 when you're ready to proceed.

7 (Jury out at 4:48 p.m.)

8 MS. MCDUFFIE: Your Honor, just in terms of
9 guidance for our -- what time are you going to stop?

10 THE COURT: We probably need to stop by 5:30, or
11 not much longer. How long are your other witnesses?

12 MS. MCDUFFIE: Our questions shouldn't be that
13 long, but I have no idea, Your Honor. We have to go over
14 the crime scene.

15 THE COURT: Have you decided who they are?

16 MS. MCDUFFIE: We have Michael Smith, Harold
17 Bouknight and Anna Elsey.

18 THE COURT: Okay. Talk to that one juror and see
19 if she can stay. Can we push on until about 5:40.

20 THE BAILIFF: Can they go smoke?

21 THE COURT: Oh, they can go quickly and then come
22 back, but just ask that one juror about child care. Can we
23 push on until about 5:40 or so.

24 THE BAILIFF: Yes, Your Honor.

25 THE COURT: All right. You all take your quick

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1 break. We will resume at least by 5:00.

2 (Court in recess for short break.)

3 (Court in recess after short break.)

4 THE BAILIFF: All rise. Court's now in session.

5 THE COURT: Thank you. Please take your seats.

6 They're not back yet, so anything that we can take up,
7 go ahead.

8 MS. MCDUFFIE: Your Honor, our next witness is the
9 deputy that responded to the hospital, and witnessed the
10 victim arriving and also collected the projectile from the
11 victim at the hospital.

12 State is seeking to enter State's Exhibit No. 133.

13 THE COURT: Okay.

14 MS. MCDUFFIE: I can hand that up to Your Honor,
15 and I believe Mr. Swerling has no objection.

16 THE COURT: All right.

17 MR. SWERLING: Judge, I don't have any problem with
18 the other pictures showing blood splatter on the street, and
19 the car going into the hospital. I don't see any probative
20 value as to putting that massive amount of blood in the car
21 when we've already agreed to these other photographs.

22 MS. MCDUFFIE: Your Honor, if I may, 133 is the
23 only one of the interior of the car. We significantly
24 limited the numbers of shots of the interior of the car.
25 The rest show the exterior and the hospital grounds. The

1 exterior of the hospital.

2 THE COURT: Okay.

3 MS. MCDUFFIE: The probative value, Your Honor, is
4 that Dr. Nichols will testify that the victim died from
5 massive blood loss due to a gunshot wound to the leg. Your
6 Honor, we believe this is part of that --

7 MR. SWERLING: Which is not disputed, but I think
8 that the pictures showing blood on the ground at the scene,
9 going to the car, going to the -- outside the car I think is
10 sufficient without emphasizing the amount of blood on the
11 car seat. That is not the crime scene, that is merely where
12 he was transported. So I would object to it under 403.

13 MS. MCDUFFIE: Your Honor, we believe it is
14 relevant. Typically, gunshot wounds to the leg is not
15 lethal injuries and --

16 THE COURT: Okay. I'm going to allow it in.

17 (State's Exhibit No. 133, photo,
18 was marked and entered.)

19 MS. JOHNS: Judge, just for purposes of speeding
20 things up today, we don't any objection to --

21 THE COURT: Okay. And then I'll try to talk to the
22 jurors about maybe working a little later tomorrow night,
23 but I also don't want to overtire you all because you have
24 to keep prepping each day, but --

25 MS. SHIPLEY: Did you find out whether the person

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1 can stay --

2 THE COURT: She said at least until 5:40.

3 MS. SHIPLEY: Okay. Great.

4 MS. JOHNS: And is there a possibility that we can
5 start back on Monday instead of Saturday?

6 THE COURT: That's fine with me.

7 MS. SHIPLEY: That's fine with the state.

8 MS. MCDUFFIE: Your Honor, we have no objection to
9 starting at 8:30 or 9:30.

10 THE COURT: Okay. You all want to start at 9:00 in
11 the morning?

12 MS. MCDUFFIE: 8:30.

13 MR. SWERLING: 9:00.

14 THE COURT: 9:00. They don't get in until 8:30.

15 MS. SHIPLEY: Okay. That's fine.

16 THE COURT: And then I'm ordering lunch tomorrow
17 and I'll include you-all.

18 MS. SHIPLEY: We get lunch?

19 THE COURT: We're only getting a one hour break.
20 So you-all can find a work room here or go to your office,
21 but it's going to be one hour.

22 You all just keep communicating. My law clerk will
23 start working on these jury charges. We usually try to do
24 that because we know you-all are tired, and I don't want
25 that charge conference to be two hours. So we'll try to get

1 everything done. If you know something other than just
2 general standards that you want in, that's precise language.
3 That's the stuff you all should be working on now. General
4 charge --

5 Are we ready?

6 MCDUFFIE: Your Honor, Mr. Swerling told me that
7 his cross with the crime scene person would probably put us
8 past 5:45. So we --

9 THE COURT: Okay. That's fine.

10 MS. MCDUFFIE: -- are just going to have Smith and
11 that will be the last one for today.

12 THE COURT: That's fine.

13 MR. SWERLING: I think by the time they do direct
14 and we cross, it will be a while.

15 THE COURT: Sure. Sure.

16 MR. SWERLING: There's probably two crime scene
17 people.

18 THE COURT: That's okay. I'm not limiting you all,
19 because you have your cases to go forward on.

20 And that is up to you-all, but let's talk at least by
21 12:00 tomorrow about the duration of the trial because of
22 what you-all indicated as an option --

23 MS. SHIPLEY: Yes, ma'am. The stipulations too.

24 THE COURT: Okay.

25 MS. SHIPLEY: Stipulations to the fingerprints of

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1 the one witness, all the chains stipulated to.

2 THE COURT: Okay.

3 MS. SHIPLEY: So that knocked out --

4 THE COURT: My point is we don't have to work late
5 tomorrow is -- if it's going to be inevitable, see what I'm
6 saying?

7 MR. SWERLING: I just wanted to be sure I wasn't
8 building up to some point with all these stipulations.

9 THE COURT: Okay. Okay. We'll just try to make a
10 priority at least by 2:00 tomorrow as to what we --

11 MS. JOHNS: I'm sure the courthouse people would
12 like to know that as well.

13 THE COURT: Oh, absolutely. Yes. But if I hear
14 you all you're not trying to push it beyond 6:00 or close to
15 that tomorrow? Okay. I just need to make arrangements.
16 Just keep communicating.

17 Okay. Jurors, please.

18 (Jury in at 5:08 p.m.)

19 THE BAILIFF: Jury is all present, Your Honor.

20 THE COURT: Thank you.

21 Defense you may proceed.

22 MS. JOHNS: Thank Your Honor. Please the Court.

23 RYAN GALINSKI - CROSS-EXAMINATION

24 BY MS. JOHNS:

25 Q Hello.

1 A Hello.

2 Q I just want to ask a few questions. There were two
3 ways that you knew about this incident. One was through the
4 911 calls; is that correct?

5 A Correct.

6 Q And those calls were transmitted over the radio, right?

7 A That's correct.

8 Q Okay. And one of those calls that you received from
9 your radio that you're wearing on your shoulder right now is
10 a description of a white Nissan Pathfinder; is that correct?

11 A Correct.

12 Q And another call across your radio through dispatch was
13 a box Chevy two-tone leaving the area?

14 A Correct?

15 Q Okay. And with regard to your involvement in this
16 case, you did not go to the crime scene, right?

17 A I did not go to the crime scene.

18 Q Okay. And so you don't have any personal knowledge of
19 what happened on the crime scene, correct?

20 A Just what was relayed to me over the radio and over my
21 phone with phone conversations with other officers at the
22 crime scene.

23 Q Right. And just as part of your investigation you have
24 to hear those things, correct?

25 A Absolutely.

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1 Q And that stuff is pretty much hearsay because you don't
2 get to witness it; kind of hearsay, don't you think?

3 A Correct.

4 Q Okay. And the information that you did receive over
5 the radio or the information that was transmitted through
6 another police officer; is that right?

7 A At first it came over dispatch, so -- our central
8 dispatch and then the officers that were at the crime scene
9 relayed information.

10 Q Do you have any independent information about which
11 officers called in over the radio; do you know which officer
12 called it in over the radio?

13 A We had numerous officers giving us information.
14 Different information at different times. Depending on what
15 piece of information you're requesting.

16 Q Okay. Do you guys go by numbers, like you're six-
17 something, six, six --

18 A Correct. At the time my call sign was 966.

19 Q 966?

20 A That's correct.

21 Q So each deputy would have a call number?

22 A That's correct.

23 Q Okay. And 966 is you. Do you know -- do you have a
24 recollection of who 964 is?

25 A 964, would have been Deputy Brantley at the time, I

1 believe.

2 Q Okay. And even though Brantley -- Brantley was coming
3 towards you he was in a separate car than you, right?

4 A That's correct.

5 Q So these numbers that are on the 911 call sheet when
6 they refer to 226, 962, 966. All those are call numbers of
7 deputies, right?

8 A That's correct.

9 Q Do you know Mr. McRae's call number?

10 A I do not.

11 Q Okay. Now, you had an opportunity to fill out an
12 incident report in this case, didn't you?

13 A I filled out a supplemental report. I didn't fill out
14 an incident report.

15 Q Okay. I'm going to show you this and see if this is
16 the report that is submitted by you?

17 A This is not the incident report that I submitted. No.

18 Q Okay. What name is at the bottom?

19 A My name is listed at the bottom.

20 Q Okay. Do you know who submitted that report, then?

21 A We have Corporeal Gore is listed on it, and then the
22 follow up investigation by Officer -- Investigator McRae.

23 Q Okay. So that Officer Gore is the approving officer,
24 is that right?

25 A Correct.

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1 Q Okay. And it lists on there the reporting officer as
2 Ryan Galinski, right?

3 A That's correct.

4 Q And that would be you, right?

5 A That is correct.

6 Q Okay. So you generated that report?

7 A I did not.

8 Q You did not. And do you know whether or not Officer
9 Gore generated that report?

10 A I have no knowledge of who generated it. I couldn't
11 tell you.

12 Q All right. So this is not familiar to you then?

13 A That's correct.

14 Q Now, your supplemental report, let me show this to you
15 to see if this is actually your report or somebody else's
16 report? I was under the impression the incident report, the
17 initial incident report was yours with your name on it. Is
18 that familiar to you?

19 A This is my supplemental report. Both of these sheets
20 are.

21 Q And it would be supplemental to what, sir?

22 A The incident report.

23 Q Okay. Where is your incident report?

24 A I don't have an incident report. I was not the first
25 officer on the scene. Generally, the first officer on the

1 scene is responsible for that. They will fill out the
2 incident report.

3 Q Okay.

4 A And then any supplementals are done by any other
5 officers that are possibly involved.

6 Q Okay. And in your supplemental report you recall that
7 the complaint described a white SUV with the suspects in it
8 began shooting towards the club?

9 A I'm sorry. State that one more time?

10 Q Complainant described a vehicle, SUV with the suspects
11 in it began shooting towards the club?

12 A Are you referencing my supplemental or is that just a
13 general question?

14 Q I'm representing your knowledge of this?

15 A Yeah. The call that came out was a white SUV and that
16 was the BOLO for the vehicle involved in a reference to a
17 1075, which a shots fired.

18 Q Okay. And a BOLO, you've already explained is be on
19 the lookout, right?

20 A That's correct.

21 Q And that -- it receives certain urgency because it is
22 be on the lookout for these particular suspects or this
23 particular vehicle, right?

24 A Correct. It would be in reference to the incident.

25 Q Okay.

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1 A Correct. We'd be looking for a vehicle involved in an
2 incident at that location.

3 Q Okay. Now, when you -- and I'm going to just submit
4 that the video will speak for itself, but when you had these
5 two suspects pulled over the description given to you
6 through that video was that the driver had on a white t-
7 shirt and dread locks, correct?

8 A I don't recall that the color of the t-shirt came over.
9 It could have been. What I recall was that the driver was
10 wearing -- had dread locks.

11 Q Okay. And do you recall whether or not it was
12 transmitted the driver was the shooter?

13 A I believe that -- I believe that possibly came over the
14 radio. Listening to the video tape you could hear where
15 somebody referenced that the driver was the shooter. I
16 can't state that I heard that at that time. At the time I
17 was with the vehicle with the two subjects I was with. I
18 was focusing my attention primarily on them. I can't answer
19 that. I don't know.

20 Q Okay. Well, when we were viewing the video at 4:42,
21 witness said a word, he had a gun and he was the driver.

22 A I don't deny that.

23 Q And then it was transmitted to communicated in some way
24 through hearsay that the passenger had on a black and yellow
25 shirt; correct?

1 A Yellow shirt with black stripes.

2 Q Okay. And that the passenger had shot over the top of
3 the vehicle; correct?

4 A I believe it was fired a shot into the air. Straight
5 up into the air.

6 Q All right. Do you have any where, any independent
7 recollection or any memorialization of the shot being fired
8 in the air in your incident report. I know you've had an
9 opportunity to review it?

10 A No. I didn't put the direction of the fired shot, if
11 that's what you're asking. I did not put that in that
12 report.

13 Q Shooting in the air is not in your supplemental report?

14 A No, it is not.

15 Q Okay. Now, let me ask you this, in this incident
16 report that has your name at the bottom as part of a
17 departmental document, does it reference anything, shooting
18 over the air?

19 MS. SHIPLEY: Your Honor, I'm going to object. He
20 already testified that it wasn't in his report.

21 MS. JOHNS: Well, he may not have generated the
22 report, but it does have his name on it. I don't know who
23 else would have generated it. We don't know.

24 THE COURT: You can expound on any information that
25 he is aware of. So to that extend I'll let you question

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1 him.

2 BY MS. JOHNS:

3 Q Deputy Galinski --

4 A Yes, ma'am?

5 Q -- the information that you received was that there
6 were shots fired over the top of this vehicle, right?

7 A No. The information that I received was the vehicle
8 were shots --

9 Q Shots were fired from the vehicle?

10 A Shots were fired from the vehicle.

11 Q Okay.

12 A They didn't specify or I did not hear any direction or
13 where they were fired to.

14 Q All right. When was the last time you had fired your
15 service revolver, sir, prior to June 30, 2007?

16 A We had --

17 MS. SHIPLEY: relevance, Your Honor.

18 THE COURT: How is it relevant?

19 MS. JOHNS: Your Honor, I believe that they said
20 that they were bagging the suspects hands for GSR. I want
21 to know if he had GSR on his hands.

22 THE COURT: Okay.

23 BY MS. JOHNS:

24 Q When was the last time you went to the range or
25 practice or fired your service revolver prior to June 30,

1 2007?

2 A The incident occurred June 30, 2007. My last service
3 record would be approximately February or March of 2007, I
4 believe. If I'm correct.

5 Q Okay. And there's no question that the passenger was
6 sitting on ammunition?

7 A That's correct.

8 Q Okay. And who -- who was the owner of that vehicle
9 again? Ms. Thomas, you said, is that correct?

10 A Yes, ma'am. It was Dolores Thompson.

11 Q Dolores Thompson. And who did she give permission to
12 drive the vehicle?

13 A I didn't ask that question. I have no knowledge
14 whether she gave permission or not.

15 Q Okay. But there is no question in your mind that Luther
16 Landrum, the guy with the dread locks was the driver of that
17 vehicle when you pulled it over?

18 A That's correct.

19 Q And you don't have any information about them pulling
20 over, switching drivers at any time, do you?

21 A No, I do not.

22 Q And you don't have any information about somebody in
23 the backseat jumping out of the vehicle at any time do you?

24 A No, ma'am, I do not.

25 Q You don't have any evidence of that, do you?

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1 A No, ma'am, I do not.

2 MS. JOHNS: Beg the Court's indulgence.

3 That's all I have. Thank you.

4 MS. SHIPLEY: No further questions, Your Honor.

5 THE COURT: You can step down and be excused.

6 DEPUTY GALINSKI: Thank Your Honor.

7 THE COURT: Next witness?

8 MS. MCDUFFIE: State would call Deputy Smith.

9 (WHEREUPON, Michael Smith was sworn
10 to tell the truth.)

11 THE CLERK: Have a seat in the witness box. State
12 your name for the record, please.

13 DEPUTY SMITH: Michael Smith.

14 MICHAEL SMITH - DIRECT EXAMINATION

15 BY MS. MCDUFFIE:

16 Q Good afternoon, Deputy Smith. Where are you currently
17 employed?

18 A Forest Acres Police Department.

19 Q And in June of 2007, where were you employed?

20 A Richland County Sheriff's Department.

21 Q And what were your duties with Richland County
22 Sheriff's Department in June of 2007?

23 A I was working the road, patrol officer.

24 Q And as part of that you would respond to calls?

25 A That's correct.

1 Q And were you on duty on June 30, 2007?

2 A I was.

3 Q And did you have occasion to Providence Northeast
4 Hospital?

5 A I did.

6 Q And what was that in reference to?

7 A A shooting.

8 Q And approximately what time did you arrive at
9 Providence Northeast?

10 A Probably between 4:30 and 5:00 o'clock in the morning,
11 I believe.

12 Q And what was the first thing you do when you respond to
13 the hospital?

14 A I went into where the victim was.

15 Q And what was the condition of the victim when you
16 arrived?

17 A He was deceased.

18 Q And what, if anything, did you do next.

19 A I sat with the victim. I knew there was going to be a
20 lab unit coming in for the coroner. So I sat with the
21 victim just to make sure nothing got disturbed.

22 Q Were there also nurses present?

23 A Yes.

24 Q And did you collect any evidence from the deceased at
25 that time?

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1 A I did.

2 Q And what did you collect from him?

3 A It was a projectile.

4 Q I'll show you what's been marked in evidence as State's
5 Exhibit No. 136; do you recognize this?

6 A Yes. It's the evidence with my handwriting on it.

7 Q And what's contained in the evidence bag?

8 A The projectile, the bullet.

9 Q That you collected from where?

10 A From the room that the deceased was in.

11 Q On June 30, 2007?

12 A Yes.

13 MS. MCDUFFIE: Your Honor, at this time we move 136
14 into evidence.

15 MR. SWERLING: No objection.

16 MS. JOHNS: No objection.

17 THE COURT: Admitted.

18 (State's Exhibit No. 136, bullet,
19 was marked and entered.)

20 BY MS. MCDUFFIE:

21 Q And where was this projectile located?

22 A The nurse had picked up a pair of clothing like a long
23 pair of shorts the deceased had and when she picked it up
24 the bullet, the projectile fell out on the floor.

25 Q And did you also observe while you were at the hospital

1 how the victim got to the hospital; the vehicle he came in?

2 A I saw the vehicle out front.

3 Q I'll show you State's 131 to 135, and ask you if you
4 recognize these photos?

5 A Yes, ma'am.

6 Q Are those a fair and accurate depiction of what you
7 observed on June 30, 2007?

8 A Yes, ma'am.

9 MS. MCDUFFIE: Your Honor, at this time, state
10 would move 131 through 135 into evidence?

11 MR. SWERLING: No objection to all the photos
12 except the one that I've already -- what was that?

13 MS. MCDUFFIE: 133, Your Honor.

14 THE COURT: Okay.

15 MS. JOHNS: Join in the same.

16 THE COURT: Okay. The Court will stand by its
17 ruling. You can go ahead. Admitted.

18 (State's Exhibit No. 131, photo,
19 was marked and entered.)

20 (State's Exhibit No. 132, photo,
21 was marked and entered.)

22 (State's Exhibit No. 134, was
23 marked and entered.)

24 (State's Exhibit No. 135, photo,
25 was marked and entered.)

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1 BY MS. MCDUFFIE:

2 Q Please describe for the jury what is in Exhibit No.
3 131?

4 A It's in the parking lot with what appears to be blood
5 splatter on the ground.

6 Q And is that also what appears in State's No. 132?

7 A Yes, ma'am.

8 MS. MCDUFFIE: Your Honor, if I may publish these
9 to the jury?

10 THE COURT: Certainly.

11 BY MS. MCDUFFIE:

12 Q Please describe for the jury what's depicted in State's
13 No. 133?

14 A That looks to be the passenger side to the vehicle?

15 MS. MCDUFFIE: Your Honor, can I publish?

16 THE COURT: Yes, you may.

17 BY MS. MCDUFFIE:

18 Q And Deputy Smith when you were at the hospital there
19 were also friends, family members of the decedent as well?

20 A Yes, ma'am.

21 Q And did you take down basic contact information from
22 them?

23 A From the people that were there, yes, ma'am.

24 Q And the projectile you collected, what did you do with
25 it after you collected it?

1 A I put it in like a plastic bag and I stuck it in my
2 pants pocket, cargo pocket.

3 Q And after you left the hospital what did you then do
4 with the projectile?

5 A I took it and dropped it off at the Sheriff's
6 Department.

7 Q Where at the Sheriff's Department?

8 A I believe there's a drop box, a secured drop box.

9 Q And that is a secure drop box?

10 A Yes, ma'am.

11 Q And that goes to the evidence room at the Sheriff's
12 Department?

13 A Yes, ma'am.

14 MS. MCDUFFIE: Beg the Court's indulgence.

15 Nothing further for this witness, Your Honor.

16 THE COURT: Okay.

17 MR. SWERLING: No questions.

18 MICHAEL SMITH - CROSS EXAMINATION

19 BY MS. JOHNS:

20 Q Did you find any cocaine or marijuana from the victim's
21 clothing?

22 A No, ma'am.

23 Q You did not?

24 A No, ma'am.

25 Q How long did you have the projectile with you before

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1 you turned it in?

2 A I believe I turned it in a 7:27, so --

3 Q In the morning?

4 A Yes, ma'am.

5 Q Did you witness the nurse finding it?

6 A Well, when she picked up the pants it fell out?

7 Q So you witnessed her finding it? Yes?

8 A I'm the one that actually found it. When she picked up
9 the pants it fell out on the ground, so I picked it up.

10 Q Okay. That's what I'm getting at.

11 A Okay.

12 Q You actually saw it fall --

13 A Yes, ma'am.

14 Q -- to the ground?

15 A Yes, ma'am.

16 Q And then you took possession of it immediately?

17 A Yes, ma'am.

18 Q Not the coroner involved in finding it, correct?

19 A No, ma'am. That's correct.

20 Q And you were not a witness to the shooting?

21 A No, ma'am.

22 Q You were only a witness to what was going on in the
23 hospital, right?

24 A Yes, ma'am.

25 Q Okay, and while you were in the hospital you were in

1 the emergency room area?

2 A Yes, ma'am.

3 Q And are you insistent in guarding the victim?

4 A Yes, ma'am.

5 Q Okay. Are you in the back where the doctors are
6 performing their services to the victim?

7 A Yes, ma'am.

8 Q Okay. So you're not out in the waiting room --

9 A That's correct.

10 Q -- where all the other people were, right?

11 A That's correct.

12 Q Okay. Thank you.

13 MS. JOHNS: Nothing further.

14 MS. MCDUFFIE: Nothing from the state, Your Honor.

15 THE COURT: Okay, you can step down and be excused.

16 Thank you.

17 DEPUTY SMITH: Thank you, ma'am.

18 MS. SHIPLEY: Your Honor, at this time the state
19 would stipulate that the victim did have cocaine and
20 marijuana on his possession.

21 THE COURT: Okay. All right. Anything further.

22 MS. SHIPLEY: No, ma'am.

23 THE COURT: All right, ladies and gentlemen of the
24 jury, as I indicated earlier how trials go, we just never
25 know how long something is going to take or not. So I'm

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1 going to ask if it's possible that we start at 9:00 in the
2 morning. Then I'm going to have the county pay for your
3 lunch tomorrow. So that we can have a contained one hour
4 lunch break. Of course, you can exercise comfort breaks
5 outside that room, but that way we'll have a contained one
6 hour lunch break, and then we can keep moving on.

7 All right. Thank you all. Have a good evening, and
8 please do not discuss the case in any shape, form, or
9 fashion.

10 (Jury out at 5:29 p.m.)

11 THE COURT: Okay. Anything we need to take up at
12 this time?

13 MS. MCDUFFIE: Your Honor, we went over the photos
14 that we want to seek to introduce from the crime scene with
15 the defense. Mr. Swerling, I believe, has an objection to
16 State's Exhibit -- I believe it was State's 82.

17 MR. SWERLING: We pulled out the one that we
18 objected to.

19 THE COURT: Okay. All right. Anything further?

20 Okay. Thank you all. Continue to communicate and
21 we'll be ready to start sharply at 9:00. Have a good
22 evening.

23 (Court in recess for the evening at 5:35 p.m.)
24
25

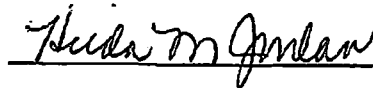
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CERTIFICATE

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 7TH DAY OF OCTOBER, 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 4
)

OCTOBER 8, 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 BAILIFF: All rise, please.

2 THE COURT: Okay. Keep your seats.

3 I spoke with the jurors. They're fine. They
4 appreciated me going back there and chatting with them. I
5 understand the other -- one of your client's is here. So
6 we'll go ahead and do this on the record and go ahead and
7 get started.

8 Anything we need to put on the record?

9 MS. SHIPLEY: Your Honor, as far as Jarrell Dansby,
10 the witness, is concerned he has no convictions that can be
11 used to impeach him. As far as Rashonda Simpson is
12 concerned, she has a conviction for three fraudulent checks.
13 One from '08, one from '09, and another one from '09. So a
14 total of three fraudulent checks.

15 THE COURT: Okay.

16 MS. SHIPLEY: Then, as far as Brian Watson is
17 concerned, there's a 1998 shoplifting that is exceeding 10
18 years. I'll leave it to the Court's discretion if you're
19 going to allow the defense to go into that. I submit that
20 there's plenty of other convictions that they can use to
21 impeach his credibility.

22 THE COURT: Brian Watson, you said?

23 MS. SHIPLEY: Yes. Brian Watson.

24 THE COURT: Okay.

25 MS. SHIPLEY: But they're seeking to introduce the

1 1998 shoplifting.

2 THE COURT: Okay.

3 MS. SHIPLEY: We're opposed to that.

4 Your Honor, November, 1999, there's eight counts of
5 forgery and one shoplifting. April of '99, one shoplifting.
6 May of 2000, burglary third, petit larceny, two counts of
7 financial transaction fraud theft. Two counts of financial
8 transaction card fraud. At that time, Your Honor, he got
9 revoked. We submit that not admissible. June 2003, three
10 counts of possession of crack cocaine and one fraudulent
11 check. June -- I'm sorry, August of '06, one shoplifting,
12 and then he's got two pending armed robberies that carry 10
13 to 30 each.

14 THE COURT: Okay.

15 MR. SWERLING: Judge, we pretty much agree, we
16 think that under criteria established under Rule 609, that
17 the additional shoplifting would obviously be admissible.
18 It's very close to the 10 year period. Plus when you look
19 at the subsequent history, so it is just one more charge.
20 It is another charge and it should be admitted to impeach
21 his credibility. The fact that his probation was revoked, I
22 also think would be admissible, and all I intend to ask him
23 is was your probation revoked when you entered a plea to
24 these other charges.

25 THE COURT: Okay.

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1 MR. SWERLING: This guy was not getting out,
2 getting out, getting out, getting sentenced, getting
3 sentenced and never went to prison. Fact is, he's been in
4 prison. I think that's an issue on his credibility, and his
5 motive to lie in this particular case.

6 THE COURT: Okay. State?

7 MS. SHIPLEY: Your Honor, under Rule 609, it is
8 clear that a conviction is required. He's already been
9 convicted and it's not an additional conviction for these
10 offenses.

11 MR. SWERLING: Your Honor, I'm not seeking
12 admissibility under 609. It goes toward the constitution
13 which -- supersedes the rules and the rules just define
14 certain legislative and court mandates or rules the court
15 wants to establish. The Sixth Amendment still gives us the
16 right to confront the witness and I think when someone is
17 looking at 10 to 30 years on two armed robbery charges, he
18 comes up in May, two years after the offense and decides to
19 come and cooperate against the defendants in this case we're
20 entitled to explore all history related to motive, interest,
21 and bias, and one of them would be going back to prison.

22 I think that's it.

23 THE COURT: All right. Were you arguing on the
24 pending armed robbery or just the probation revocation?

25 MS. SHIPLEY: The probation revocation from 2000.

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8

1 In other words, Your Honor, he was convicted for the -- for
2 eight counts of forgery and one shoplifting in 1999.

3 THE COURT: Right.

4 MS. SHIPLEY: And then he got re-arrested for
5 burglary third, petit larceny, two counts of financial
6 transaction card theft, and two counts of financial
7 transaction card fraud, and at that time he was revoked --

8 THE COURT: Right.

9 MS. SHIPLEY: -- for his prior conviction.

10 THE COURT: Okay.

11 MS. SHIPLEY: And it's the state's position that
12 you don't get to repeat over and over. If this is --
13 conviction the revocation in itself is not a conviction, and
14 the rule is clear that only convictions are admissible.

15 MR. SWERLING: I'm not going under the rule. I
16 think the case is Delaware verses Van Arsdall, which is
17 gives full cross-examination even with regards to the rules
18 where it goes to motive, interest, and bias, and what I'm
19 advising the Court is that I think when someone has had his
20 probation revoked and gone to prison and is now facing
21 additional prison time, that is something we should be
22 exploring.

23 THE COURT: Okay, but that's different from the
24 armed robbery. When you said the --

25 MR. SWERLING: We're talking about the revocation.

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9

1 THE COURT: Right.

2 THE COURT: What do you mean by bias?

3 MR. SWERLING: Because his probation is revoked.

4 THE COURT: Right.

5 MR. SWERLING: He was not a law abiding citizen.

6 He was allowed to be on probation. He got arrested again,
7 was convicted again, and sent to prison, but also his prior
8 probation was revoked. So I believe that's admissible

9 because it shows now that he has an interest, motive, or
10 bias because of a possible incarceration, and he's already
11 been in prison. So it enhances --

12 THE COURT: Enhances what may happen to him on
13 the armed robbery. Okay.

14 MR. SWERLING: And he also knows what he's facing
15 by going to prison.

16 THE COURT: Okay.

17 MR. SWERLING: I don't think there's any question
18 that we're allowed to go into the armed robberies, pending
19 armed robberies, as to what he's facing.

20 MS. SHIPLEY: Your Honor, we don't dispute that
21 they're allowed to go into -- the only thing they're allowed
22 to go into is the fact that he's got two pending armed
23 robberies and the potential sentences, but they can't go
24 into the facts and details.

25 MR. SWERLING: I agree.

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10

1 MS. SHIPLEY: And Your Honor for purposes -- you
2 can't use a 2000 revocation of forgeries for eight counts,
3 shopliftings that resulted in a conviction in 1999 to
4 establish bias. I mean, he didn't come forward until after
5 he was arrested on the armed robbery. So he's going to have
6 the opportunity to say, aren't you trying to seek leniency
7 by testifying against Taurus and Tremaine. So, Your Honor,
8 the bias they're trying to establish on two pending armed
9 robberies. That revocation in 2000 has nothing to do with
10 it. He didn't come forward until this past May of 2009.

11 MR. SWERLING: But that's exactly my point. What's
12 he's facing now is something we should be able to explore
13 because he's already been in prison. And those were by that
14 revocation.

15 THE COURT: Okay.

16 MS. SHIPLEY: Your Honor, he's not testifying until
17 this afternoon, but I still submit that a revocation is not
18 a conviction as applied by Rule 609, and any bias they would
19 like to establish is already available to them for the two
20 pending armed robberies --

21 THE COURT: Okay. We'll look into it.

22 MS. SHIPLEY: Thank you.

23 THE COURT: Okay. Anything else?

24 And tell me who the first person you mentioned that
25 there was no record?

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11

1 MS. SHIPLEY: That would be Jarrell Dansby, no
2 record.

3 THE COURT: Okay. That's fine.

4 MS. SHIPLEY: And Rashonda Simpson has three
5 fraudulent checks.

6 THE COURT: I've got all that.

7 Anything further?

8 MS. SHIPLEY: No, ma'am.

9 THE COURT: All right. We're ready to proceed.
10 Jurors.

11 THE BAILIFF: Yes, ma'am.

12 (Jury in at 9:50 a.m.)

13 THE BAILIFF: Your Honor, the jury is present.

14 THE COURT: Okay. Thank you.

15 Ladies and gentlemen of the jury, we are ready to
16 proceed.

17 State call your next witness.

18 MS. MCDUFFIE: State calls Investigator Harold
19 Bouknight.

20 (WHEREUPON, Harold Bouknight, was
21 sworn to tell the truth.)

22 THE CLERK: Thank you. Have a seat in the witness
23 stand and give the court reporter your name.

24 MR. BOUKNIGHT: Harold Bouknight.

25 HAROLD BOUKNIGHT - DIRECT EXAMINATION

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1 BY MS. MCDUFFIE:

2 Q Morning, Investigator Bouknight.

3 A Morning.

4 Q Where are you employed?

5 A With the Richland County Sheriff's Department, Crime
6 Scene Unit.

7 Q And what are your duties with the crime scene unit?

8 A To respond to crime scenes, to document, photograph,
9 process and collect evidence, and also to do latent print
10 examination, footwear comparisons, blood stain analysis, and
11 process vehicles that may be in our compound or in our
12 garage, and take supervisor on call, which is when one of
13 our investigators has a major scene they will call me out to
14 assist them.

15 Q Please tell the jury a little bit about your
16 educational -- your education and your training in crime
17 scene investigation?

18 A I have a criminal justice degree from Midland Technical
19 College. I got that in 1995. I've been in the Richland
20 County Crime Scene Unit since August of 2005. During that
21 time I completed our in-house training program. I've been
22 through courses in the Mayfield print, crime scene
23 reconstruction, forensic photography, forensic art,
24 fundamentals of crime scene investigation. Advanced blood
25 stain pattern analysis, a DNA overview, forensic pathology,

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1 advanced blood stain analysis, a 40 hour course. Complex
2 latent print examination, and in 2008, I was certified as a
3 crime scene investigator by the International Association
4 for identification.

5 Q And have you ever testified in courts of record in this
6 state in crime scene investigation?

7 A Yes, ma'am.

8 Q And how many times?

9 A Two.

10 MS. MCDUFFIE: Your Honor, at this time we would
11 offer Investigator Bouknight as an expert in crime scene
12 investigation.

13 THE COURT: Objection?

14 MR. BAX: No objection.

15 THE COURT: All right. So qualified.

16 I'm sorry, Ms. Johns, any objection?

17 MS. JOHNS: No objection.

18 THE COURT: Okay. Thank you.

19 BY MS. MCDUFFIE:

20 Q Investigator Bouknight, in June 2007, the duties you
21 just described to the jury, are those the same duties you
22 had then?

23 A At that time I was not a supervisor.

24 Q And on June 30, 2007, did you have a chance to process
25 a 2001 Isuzu Rodeo?

1 A Yes, ma'am, I did.

2 Q And where did you encounter that vehicle?

3 A That vehicle was at our forensic garage at our
4 headquarters on Two Notch Road.

5 Q And how did that vehicle get to your forensic garage?

6 A It was towed and placed in there the night before.

7 Q And when a vehicle is placed in the forensic garage is
8 it secure?

9 A Yes, ma'am. The only people who have access to that
10 forensic garage are the crime scene investigators.

11 Q And approximately what time did you begin processing
12 the 2001 Isuzu Rodeo?

13 A Approximately 11:19 that morning.

14 Q And that would be what day?

15 A June 30, 2007.

16 Q And when you encountered the vehicle it was secured?

17 A Yes, ma'am.

18 Q It hadn't been tampered with, to your knowledge, in any
19 way?

20 A Not to my knowledge.

21 Q And when you began to process the vehicle, explain to
22 the jury what the first thing you do is or how do you begin
23 processing?

24 A The first thing that we do is I'll photograph the
25 vehicle. When I'm processing the vehicle I'll photograph it

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15

1 the way I find it. I don't know if anything has been moved,
2 but I document the way it is when I get there. And then
3 I'll process for latent prints, for gunshot residue, and
4 then collect DNA. Gunshot residue is very fragile, so we
5 usually get that first, and then fingerprints and then DNA.
6 Then any other trace evidence.

7 Q The 2001 Isuzu Rodeo, is that depicted in State's
8 Exhibit No. 17?

9 A Yes, ma'am, it is.

10 Q And is that the condition you found the vehicle when
11 you processed it?

12 A Yes, ma'am.

13 MS. MCDUFFIE: Your Honor, if I may publish to the
14 jury?

15 THE COURT: Yes.

16 BY MS. MCDUFFIE:

17 Q So the first thing you do when you encounter a vehicle
18 is photograph it?

19 A Yes, ma'am.

20 Q And then the next thing you do is what?

21 A Depending on the type of case it is, if there's gunshot
22 residue involved, then I'll collect the gunshot residue.

23 Q And did you try and collect gunshot residue in this
24 case?

25 A Yes, ma'am, I did.

1 Q And is gunshot residue -- explain to the jury -- is
2 gunshot residue something you can see?

3 A No, ma'am. It's -- basically, it's what we call latent
4 evidence, which is invisible without some type of
5 processing. The only way we collect it is by using sticky
6 tabs, which come packaged in a kit. Usually they're used on
7 people's hands, but is also used on vehicles to collect the
8 particles. It's just a tab. That has an adhesive side to
9 it. And you dab it in the suspected areas where there may
10 be gunshot residue. Then it's sealed up and sent off to a
11 lab for analysis.

12 Q And what area of the 2001, Isuzu Rodeo did you process
13 for gunshot residue?

14 A The interior of the front doors and the roof.

15 Q Both the driver and passenger doors?

16 A Yes, ma'am.

17 Q And the roof, do you meant he interior roof or the
18 exterior roof?

19 A The exterior roof.

20 Q I'm going to show you what's been marked as State's
21 Exhibits 3 and 4, and ask if you recognize these?

22 A Yes, ma'am.

23 Q And are those the paper work and the gunshot residue
24 kit that you collected?

25 A This is the gunshot residue kit that I collected. It

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1 has my name on it and our agency case number. And the seal
2 on the back that I placed there with my initials and the
3 date that I sealed it.

4 Q And this is also the paper work that you submitted with
5 the gunshot residue --

6 A That's a copy of it, yes, ma'am.

7 MS. MCDUFFIE: Your Honor, at this time we would
8 officer State's 3 and 4 into evidence.

9 COURT REPORTER: Which is which? Judge, which is
10 which?

11 THE COURT: Indicate which is three and which is
12 four.

13 MS. MCDUFFIE: Your Honor, the gunshot residue is
14 three and the paper work is four.

15 THE COURT: Okay.

16 MR. BAX: No objection, Your Honor, of course,
17 subject to testimony by whoever does the test --

18 THE COURT: Okay.

19 MS. JOHNS: Join in that, Your Honor.

20 THE COURT: Okay. Admitted under that --

21 MS. MCDUFFIE: Thank Your Honor.

22 (State's Exhibit No. 3, gunshot
23 residue kit, was marked and entered.)

24 (State's Exhibit No. 4, paper work,
25 was marked and entered.)

1 BY MS. MCDUFFIE:

2 Q Investigator Bouknight, in State's Exhibit 3, could you
3 open up the GSR kit and show the jury the tabs you use?

4 A Yes, ma'am. These are the tabs that I talked about.
5 It's right here, the brown cap on the bottom side of it is
6 the adhesive area. And whenever it's taken it's placed back
7 in, under that cap.

8 Q And when you're processing for gunshot residue, do you
9 take the tap and just stick it in one area on the roof or do
10 you stick it in multiple areas?

11 A Multiple areas.

12 Q And then you mark where -- do you mark where each tab
13 was taken from or where that tab was placed on the vehicle?

14 A Yes, ma'am. This was passenger roof, from the
15 passenger side.

16 Q Okay. After you collect the gunshot residue in that
17 kit that is sent off to SLED at some point?

18 A Yes, ma'am.

19 Q Y'all do not test that in-house?

20 A No, ma'am.

21 Q And State's Exhibit No. 4, is that the paper work you
22 submitted to SLED?

23 A Yes, ma'am, it's a copy of it.

24 Q After you collected the gunshot residue from the
25 vehicle in this case, what did you then do?

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19

1 A With the gunshot residue I placed it in my locker, and
2 I had to wait on some other paper work to come in. Then
3 whenever the other paper work got in, I placed it -- I
4 turned it into evidence to Will Cedarstaff.

5 Q And on what day did you turn that into evidence?

6 A On June 7, 2008 at 8:19 in the morning.

7 Q So it wasn't until almost a year later that you turned
8 it in?

9 A It was six months, seven months.

10 Q And that entire time that the evidence was in your
11 locker, was it secured?

12 A Yes, ma'am.

13 Q Who had access to your locker?

14 A Only my supervisors would have a key to it.

15 Q And to your knowledge, is gunshot residue, once it's
16 been -- or once the sticky tab has been applied to an area,
17 if they had collected gunshot residue could it degrade or
18 erode it's condition?

19 A Not to my knowledge.

20 Q And then that was eventually taken to SLED to be
21 processed?

22 A Yes, ma'am.

23 Q And then after you collected the GSR, what did further
24 do to process the vehicle?

25 A I also processed using black powder for latent prints

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20

1 on the driver and passenger doors with -- I lifted two sets
2 of prints from the front driver's door and one from the rear
3 passenger's door.

4 Q And to your knowledge, the prints that you lifted, were
5 those of any value?

6 A No, ma'am.

7 Q Did you also collect the contents of the vehicle and
8 photograph that?

9 A The other things that I collected were DNA swabs, which
10 -- the swabs for possible DNA, which is a sterile swab,
11 moistened with distilled water and you rub it in the
12 suspected area, such as the mouth of a bottle of something
13 like that. Or if you have an obvious, like a blood stain,
14 then you'll collect it that way. And then it's sealed in a
15 box and sent to our lab for analysis.

16 Q What areas of this vehicle did you process for DNA?

17 A The passenger door and a Tropicana drink bottle.

18 Q And were those then sent to an in-house DNA lab?

19 A Yes, ma'am.

20 Q And did you also collect some shell casings from this
21 vehicle?

22 A I --

23 Q I'm sorry. Live rounds?

24 A Live rounds. Yes, ma'am. Three Winchester 9
25 millimeter Luger rounds and one Remington Peters 38 special

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21

1 round.

2 Q I'll show you State's Exhibit No, 20. Is that what's
3 depicted in State's Exhibit No. 20?

4 A Yes, ma'am, it is.

5 Q And also State's 19?

6 A Yes, ma'am.

7 Q And did you also photograph the rest of the interior of
8 the vehicle, Exhibit 18?

9 A Yes, ma'am. The rear compartment of the SUV.

10 MS. MCDUFFIE: Your Honor, at this time we'd offer
11 State's Exhibit Nos. 18, 19, and 20.

12 MR. BAX: Your Honor, I think we need to approach
13 at this point.

14 THE COURT: Okay.

15 MR. BAX: Never mind, Your Honor, we just needed to
16 ask a question. My apologies.

17 THE COURT: That's fine.

18 MR. BAX: No objection.

19 THE COURT: Okay. Admitted.

20 (State's Exhibit No, 18, photo
21 interior of SUV, was marked and entered.)

22 (State's Exhibit No. 19, photo
23 passenger seat Rodeo, was marked and entered.)

24 (State's Exhibit No. 20, photo
25 close up Exhibit 19, was marked and entered.)

1 BY MS. MCDUFFIE:

2 Q Investigator Bouknight, please explain to the jury
3 what's depicted in State's Exhibit No. 19?

4 A This is the passenger seat of the Isuzu Rodeo. And in
5 there is some keys and then the center console, and then
6 where the seat back and the seat meet is the three
7 Winchester 9 millimeter Luger rounds and the Remington
8 Peters 38.

9 Q And is State's Exhibit a close up picture of that?

10 A Yes, ma'am.

11 MS. MCDUFFIE: Your Honor, may I publish to the
12 jury?

13 THE COURT: Yes.

14 BY MS. MCDUFFIE:

15 Q And did you actually collect these live rounds from the
16 vehicle?

17 A Yes, ma'am, I did.

18 Q I'll show you State's Exhibit No. 120, and ask if you
19 recognize this?

20 A Yes, ma'am.

21 Q Are those the rounds you collected from the vehicle?

22 A Is it okay if I open this?

23 Q Yes.

24 A Yes, ma'am.

25 Q Okay. And these are the rounds depicted in State's 19

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23

1 and 20?

2 A Yes, ma'am, they are.

3 Q And after you collected those what did you then do with
4 those live rounds?

5 A They were turned into evidence?

6 Q And after you processed the vehicle for fingerprints,
7 GSR and removed anything you is of evidentiary value, what
8 then happens to the vehicle?

9 A Either one of two things. It's either taken to the
10 compound, which is secured by a fence on Powell Road or it
11 is given -- turned over to the owner, the registered owner
12 of the vehicle.

13 MS. MCDUFFIE: Beg the Court's indulgence.

14 Your Honor, at this time we move State's 120 into
15 evidence.

16 MS. JOHNS: No objection.

17 MR. SWERLING: No objection.

18 THE COURT: Okay. Admitted.

19 (State's Exhibit No. 120, live
20 rounds, was marked and entered.)

21 BY MS. MCDUFFIE:

22 Q And I have another question about the GSR kit. Can you
23 check the date that you turned that into the evidence room?

24 A January 7, 2008.

25 Q So it was January 7, not June 2008?

1 A Yes, ma'am.

2 Q And from June 30, 2007 until January 2008, that GSR kit
3 was secured in your locker?

4 A Yes, ma'am.

5 Q And it was not tampered with in any way?

6 A No, ma'am.

7 MS. MCDUFFIE: Nothing further.

8 MR. BAX: May it please the Court, Your Honor.

9 HAROLD BOUKNIGHT - CROSS-EXAMINATION

10 BY MR. BAX:

11 Q Morning, officer.

12 A Morning.

13 Q Just a couple quick questions for you. You processed
14 the -- it was a white Isuzu Rodeo with black pinstripes; is
15 that correct?

16 A It appears to have black pinstripping and a graphic on
17 the side of it.

18 Q And I believe you testified that you processed it for a
19 number of things. You photographed it and processed it for
20 gunshot residue. Did you also process it for the
21 possibility of any latent prints?

22 A Yes, sir.

23 Q Okay. And did you collect some possible prints?

24 A Yes, sir.

25 Q And do you recall where were the locations that you

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25

1 looked at for possible prints on this car?

2 A The exterior of the vehicle. The front driver's door,
3 read driver's door, and the passenger door, both side
4 passenger doors on the outside and inside.

5 Q Did you -- I know you've testified you processed the
6 roof of the car for gunshot residue, the possibility of
7 gunshot residue. Did you process the roof of the car for
8 any latent prints or palm prints, either one?

9 A Right next to the doors.

10 Q Right next to the doors?

11 A Yes, sir.

12 Q How about on top?

13 A I didn't get all the way on top of it, no, sir.

14 Q But when you were talking about the gunshot residue you
15 did go on top for that; is that correct?

16 A Right. Not all the way to the middle.

17 Q Not to the middle?

18 A The passenger side of it and then the driver's side of
19 it.

20 Q Okay. Additionally, you processed the interior of the
21 car and I think that's where the photographs that we've
22 referred to -- I think the jury may have those -- of the
23 interior of the car -- actually, they're right here.
24 State's 19, that shows the live rounds that were in the
25 passenger seat. You took that photograph; correct?

1 A Yes, sir.

2 Q Okay. And those were -- that's as it was when you
3 opened the car to take a look at it?

4 A Yes, sir.

5 Q All right. And I believe you testified that three of
6 those rounds were 9 millimeter ammunition; correct?

7 A Yes, sir.

8 Q Winchester ammunition; is that correct?

9 A Yes, sir.

10 Q Officer Bouknight, are you familiar with the term full
11 metal jacket?

12 A Yes, sir.

13 Q Can you recall whether these rounds are full metal
14 jacket or not?

15 A I believe they were. I don't believe they were hollow
16 points.

17 Q If you can look in there and see if that refreshes your
18 memory?

19 A Yes, sir, they are full metal jacket.

20 Q Officer Bouknight, can you explain to the jury the
21 difference between a full metal jacket round and what you
22 call a normal un-jacketed round?

23 A Projectile jackets come in different shapes and
24 composition. Full metal jacket is a full lead core
25 projectile that's completely surrounded by a copper jacket.

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1 Then a hollow point round would have a portion of that
2 jacket removed at the end which would cause greater
3 expansion when the bullet impacts something. Then some are
4 not jacketed at all and they're just a round lead
5 projectile. They have no type of jacket or anything
6 attached to them.

7 Q And these rounds, and indicating that these are full
8 metal jacket, these have a copper metal jacket that fully
9 surrounds the outer exterior of that lead projectile; is
10 that correct?

11 A I may not on the base. I notice some full metal jacket
12 the base of the projectile is open and just lead, but
13 without examining them I wouldn't know.

14 Q But the front portion that's visible on top of that
15 unspent cartridge is covered; correct?

16 A Yes, sir.

17 Q Okay. Thank you. Now, on the gunshot residue, you
18 testified that you use a tab that has a sticky portion on it
19 to collect whatever evidence may be in that place that
20 you're sticking it to; is that correct?

21 A Yes, sir.

22 Q Okay. I believe you testified that you kind of used
23 that one tab and kind of hit it a couple of different times
24 in that one little area?

25 A I hit it several times, depending on the size of the

1 area.

2 Q And for -- in one particular area is there anything
3 that indicates to you how many tabs you would use for a
4 particular area; in other words, does one tab work for six
5 inches square or do you use it for a foot square?

6 A I've used tabs before for one tab for a door panel.
7 And then we -- whenever we do it for an individual it's one
8 tab for the back of their hand and one tab for the front of
9 their hand. It's just depends on what I'm looking for and
10 what I'm processing.

11 Q And there was one tab, in this case, for each side of
12 the roof above --

13 A Yes, sir.

14 Q -- driver and passenger side; correct?

15 A Yes, sir.

16 Q Now, you testified that after collecting those tabs you
17 placed them in your locker; is that correct?

18 A Yes, sir.

19 Q Where is your locker?

20 A My locker is in our crime scene laboratory, which is
21 secured in our headquarters building.

22 Q And who has access to your locker?

23 A Myself and my supervisors.

24 Q And what kind of things do you use your locker for?

25 A Use it to store evidence. If I collect something from

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1 a scene to process later or if I check something out of
2 evidence to process or if I have several things I've
3 collected and are packaged before they're turned in, they
4 they're secured in my locker.

5 Q So other things, different kinds of evidence go in and
6 out of that locker; is that correct?

7 A Yes, sir.

8 Q And other kinds of evidence have been in and out of
9 that locker during the seven months period that this GSR was
10 there; correct?

11 A Yes, sir.

12 Q Is that locker got any kind of climate control?

13 A It's -- the room that it's in has climate control.

14 Q The room that it's in, but not the locker itself?

15 A No, sir.

16 MR. BAX: A moment's indulgence, Your Honor.

17 BY MR. BAX:

18 Q Briefly, officer. What kind of evidence do you
19 typically keep in your locker verses turning into the main
20 evidence depository?

21 A Usually they are turned in as soon as possible.
22 Sometimes we have to wait on paper work. Like for gunshot
23 residue kits we have to have copies of incident reports, as
24 soon as it is available.

25 Q So the protocol that you have it to turn it in as soon

1 you're done with it; is that correct?

2 A Yes, sir.

3 Q And why was the evidence in this case kept for so long?

4 A Because whenever I put it in there -- I have a box in
5 my locker that has distilled water, evidence tape and
6 envelopes in it, and it was behind it whenever I put all of
7 it in there and I didn't see it. And whenever I moved that
8 box again I saw it and went downstairs and turned it in.

9 Q So it was behind the box and you didn't see it?

10 A Yes, sir.

11 Q So typically that wouldn't be your process to have it
12 there for that amount of time?

13 A Correct.

14 Q Final question Officer Bouknight, what on that piece of
15 evidence identified it as being something you had taken from
16 the Isuzu Rodeo?

17 A The case number on there, and then the paper work that
18 was attached with it.

19 Q So this white envelope is the one that was behind that
20 box; is that correct, in your locker?

21 A Yes, sir.

22 Q And it has something on that envelope that indicates --

23 A The case number right here.

24 Q Uh-huh. (Affirmative response.)

25 A And that's the only GSR kit that I collected and it's

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1 sealed on the back for that date, and then this paper work,
2 it shows that it's a gunshot residue kit from a 2001 Isuzu.

3 Q Was the paper work with it or just the envelope?

4 A Just the envelope.

5 Q Let me see that. And this has a case number on it,
6 but it does not have the make and model of the car. Did you
7 have to look up that case number when you found this
8 envelope to see what it was about?

9 A No. It was already -- I had already filled it out
10 whenever I collected it and sealed it that day.

11 Q Let me repeat my question. I think I may have asked it
12 incorrectly. When you saw that behind the box it had been
13 about seven months; correct?

14 A Yes, sir.

15 Q Were you immediately able to identify what that was or
16 did you have to look it up to remember what case that went
17 with, because you had a case number and you had a name. Was
18 that enough to remind you automatically what this was about?

19 A The case number. Yes, sir.

20 Q The case number reminded you, without having to look
21 this up what this was about?

22 A Yes, sir. Back then I did.

23 MR. BAX: No further questions at this time, Your
24 Honor.

25 Thank you, officer.

1 MR. BOUKNIGHT: You're welcome.

2 MS. JOHNS: Thank Your Honor. Please the Court.

3 THE COURT: Sure.

4 HAROLD BOUKNIGHT - CROSS-EXAMINATION

5 BY MS. JOHNS:

6 Q You don't have any problems admitting the mistake with
7 this gun powder residue kit left in your locker, because
8 that could happen, right?

9 A Yes, ma'am.

10 Q And let me just take a look at this first. These are
11 kind of like a little dipstick or something where you take
12 it off and then you dab it, right?

13 A Yes, ma'am. They come out of the clear plastic tube
14 and then they have an adhesive pad on them, and the adhesive
15 pad would collect the gunshot residue if there were any.

16 Q Can you open one?

17 A It's got tape around it.

18 Q Okay. Okay, can I look at that, please, and the
19 bottle. Okay, this is just like a little black sticky pad,
20 right?

21 A Yes, ma'am.

22 Q And you're just going to go and dab a particular area,
23 whatever it is your looking for, right?

24 A Yes, ma'am.

25 Q Then when you put it back into this bottle like that

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1 and you've got a label that's underneath and then you've got
2 something that's taped over the top of it?

3 A Yes, ma'am.

4 Q Do you know what was written underneath that new label
5 that you have written on it?

6 A The original label on here is left back.

7 Q It's what? Left back?

8 A Yes, ma'am.

9 Q Why'd you cover it up?

10 A Because I didn't take it -- it's for the left back of
11 someone's hand --

12 Q Oh, okay.

13 A -- and to identify where I got it from I put driver's
14 roof on there, that's where I got it from.

15 Q So can you tell what's underneath each of these little
16 labels that you recovered. Like that looks like a D to me
17 underneath that original label.

18 A Now, are you talking about under the original label?

19 Q No.

20 A I'm confused, I think.

21 Q You have like a label that comes with the container?

22 A Yes, ma'am.

23 Q And then what you've done is you've taken a sheet of
24 paper and you've cut it and you've taped that sheet of paper
25 over the top of it?

1 A Yes, ma'am.

2 Q Okay. One of those you say that underneath the piece
3 of paper that you taped over the top of it says left hand?

4 A It's says -- the original label says left back.

5 Q Left back?

6 A Yes, ma'am.

7 Q Okay. Well, what about the other one in your right
8 hand, what does it say on that original label?

9 A It says right back.

10 Q Right back? Okay. And I'm going to give you a third
11 one, and can you tell me what that says?

12 A The original label says right palm.

13 Q Right palm?

14 A Yes, ma'am.

15 Q Now, are these labels that you say have left palm, left
16 back; are they preprinted labels?

17 A Yes, ma'am. Applied by the manufacturer.

18 Q On, let's say the one that says passenger door,
19 underneath it, that's not handwritten to you?

20 A There's -- you can see through the back where it was
21 originally printed.

22 Q Uh-huh. (Affirmative response.)

23 A And then I'd written over that, passenger door, and
24 then I taped over that because I didn't want any confusion
25 at SLED as to where it came from.

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1 Q Okay. So the original label you wrote on, you said
2 passenger door, and then you took another label and taped
3 over it and what does that label say?

4 A Passenger door.

5 Q Okay. So you double labeled it?

6 A Yes, ma'am.

7 Q So you didn't want SLED to be confused?

8 A I didn't want any confusion as to -- because I had
9 written passenger door on there and it also said right palm.
10 I didn't want anything mixed up.

11 Q Okay. So you didn't have any vials, new one available
12 to you where you could have gotten one that didn't have
13 something already written on it?

14 A No, ma'am.

15 Q You did not?

16 A No, ma'am. They come pre-packaged from Tri-Tech with
17 the four tabs in these containers already labeled with the
18 left back, left back, right back and right palm on them.

19 Q Okay. And is your testimony that this one label that
20 has right palm. Above right palm you have passenger, and
21 below palm you have door. That's handwritten by you?

22 A Yes, ma'am.

23 Q And then you've taken an extra label and taped it over
24 and put passenger door?

25 A Yes, ma'am.

1 Q Instead of crossing through it or whatever?

2 A Yes, ma'am.

3 Q Can you tell me where these containers -- you have a
4 case number?

5 A There isn't one, ma'am.

6 Q There's not. Okay. Now, you went to the scene the
7 night of June 30, is that correct?

8 A No, ma'am.

9 Q You did not. I was looking at your report and crime
10 scene investigation analysis report?

11 A Yes, ma'am.

12 Q So you were not called to the crime scene?

13 A No, ma'am.

14 Q So the first time you ever looked at this Isuzu Rodeo
15 it was in the garage?

16 A Yes, ma'am.

17 Q Okay. And that was 11:14 or sometime after 11:00?

18 A 11:19 that morning.

19 Q That morning. Now, Investigator Bouknight, during your
20 direct testimony you told this jury that you in 2008 were
21 certified as a crime scene investigator?

22 A Yes, ma'am.

23 Q And this case occurred in 2007; isn't that right?

24 A Yes, ma'am.

25 Q So, I'm not trying to be disrespectful, but when you

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1 processed this Isuzu Rodeo you were not certified; is that
2 right?

3 A Not through the International Association for
4 Identification.

5 Q All right. You were in training for forensic
6 investigator's position?

7 A No, ma'am. I had completed the in-house training at
8 the Richland County Sheriff's Department, the in-house
9 training program that we have to go through and complete
10 certain portions of it before you are allowed to process
11 crime scenes.

12 Q Okay. How many hours is that?

13 A All total it took me about a year and a half to
14 complete it.

15 Q So it's like on the job training, little hours here,
16 and there?

17 A For certain portions of it, like foot wear examination
18 and comparison.

19 Q I'm just talking about stuff that would be particular
20 to this case. We don't have footwear in this case do we?

21 A No, ma'am. I'm not involved in any footwear evidence.

22 Q You didn't do any footwear, right?

23 A No, ma'am.

24 Q So I'm talking about how many hours did you devote to
25 the collection of gunshot residue -- in your training?

1 A In my training? I don't know right off.

2 Q Okay. And you said you received an associate's degree
3 in criminal justice in 2005; is that right?

4 A 1995.

5 Q Oh, 1995. And how long have you been with the
6 department?

7 A Seven years.

8 Q Okay. So you'd been with the department a little over
9 five years when this incident happened; is that right?

10 A I would say right at five years.

11 Q Okay. Right at five years. Now, you also drew some
12 diagrams in this particular case?

13 A Yes, ma'am.

14 Q And those diagrams help assist prosecutors, law
15 enforcement officers in your explanation of where you may
16 have received or collected particular evidence, right?

17 A Yes, ma'am.

18 Q That's your diagram, right?

19 A I'm not sure they are. Yes, ma'am. Those are the same
20 copies I have.

21 Q And these diagrams, do they assist in any way with
22 regard to where you collected the gunshot residue or
23 fingerprints?

24 A These are for the latent prints.

25 Q Fingerprints, right?

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1 A Yes, ma'am.

2 MS. MCDUFFIE: Could we ask that if Ms. Johns is
3 going to show that to the jury that she identify it?

4 MS. JOHNS: I apologize, Your Honor.

5 THE COURT: Sure.

6 BY MS. JOHNS:

7 Q The diagram that you provided to the state is the
8 diagram of where you collected the latent fingerprints,
9 right?

10 A Yes, ma'am.

11 Q Do you have your diagram where you collected the
12 gunpowder residue?

13 A No, ma'am.

14 Q You do not. Now, Mr. Bouknight, when did you witness
15 Mr. Greene with his hands bagged at the sheriff's
16 department?

17 A I didn't.

18 Q You did not?

19 A No, ma'am.

20 Q Okay. So you were not responsible for collecting the
21 gunpowder residue from his hands?

22 A No, ma'am.

23 Q You were not instructed to do that?

24 A No, ma'am.

25 Q And you're at the sheriff's department on the morning

1 of June 30, 2007?

2 A I was there at some time. I believe I was working the
3 10:00 to 10:00 shift then. 10:00 a.m. to 10:00 p.m.

4 Q Okay. Were you aware that Mr. Jerome Greene and Mr.
5 Luther Landrum were at the sheriff's department?

6 A I don't recall being aware of it, no, ma'am.

7 Q Okay. But you were not involved in any way in
8 collecting gunpowder residue from their hands, correct?

9 A Correct.

10 Q And you were at no time instructed to go to their
11 location, whether it be on Two Notch Road or the sheriff's
12 department headquarters to bag their hands, correct?

13 A Correct.

14 Q So you did not submit at any time a gunpowder residue
15 kit for their hands, you were not involved in that part?

16 A Correct.

17 Q Now, let me ask you about the gunpowder residue kit
18 that you did collect. You say it is from the roof?

19 A Yes, ma'am.

20 Q Is that the head liner?

21 A No, ma'am, that's the roof.

22 Q Okay. And what about -- you've got listed here in your
23 narrative a driver's and passenger's door?

24 A Yes, ma'am.

25 Q That's the interior?

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1 A Yes, ma'am.

2 Q That's the interior door, right?

3 A Yes, ma'am.

4 Q Would that be a door handle?

5 A A door panel.

6 Q A door panel on the inside?

7 A Yes, ma'am.

8 Q Okay. What about the steering wheel, sir. Did you
9 collect an dipsticks from the GSR kit from the steering
10 wheel?

11 A No, ma'am.

12 Q How about the gear shift?

13 A No, I did not.

14 Q Okay. What about the glove box?

15 A No, ma'am.

16 Q What about the back passenger seat?

17 A No, ma'am.

18 Q What about the hood of the car?

19 A No, ma'am.

20 Q What about the back driver's roof top?

21 A No, ma'am.

22 Q Okay. The console in the middle, did you collect
23 anything from that?

24 A Are you talking about gunshot residue?

25 Q Yes.

1 A Okay. No, ma'am.

2 Q So even though you have three things listed, one being
3 the passenger, driver -- wait, let me see. You have the
4 roof listed. You have the driver's door interior listed,
5 and you have the passenger doors interior listed. You have
6 four vials right here?

7 A Yes, ma'am.

8 Q And these little kits are readily available for you
9 through Tri-Tech Incorporated?

10 A Yes, ma'am.

11 Q So you have plenty of them?

12 A Yes, ma'am.

13 Q So you've got a driver's roof, you've got a passenger
14 door, you've got a driver's door, and a passenger's roof.

15 A Yes, ma'am.

16 Q So in your narrative what you're missing is driver's
17 roof and passenger roof to be detailed?

18 A Yes, ma'am.

19 Q And these labels alone do not say whether they're
20 interior or exterior, you're just testifying based on your
21 memory?

22 A Correct. Yes, ma'am.

23 Q Okay. And you -- let's move on to the bullets. You
24 collected these bullets from the forensics garage. You
25 didn't collect them from the scene?

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1 A They were in the vehicle that was in the forensic
2 garage, yes, ma'am.

3 Q Okay. Would you mind opening the second part of
4 State's Exhibit No --

5 A It's already open.

6 Q The envelope itself?

7 A It's already open.

8 Q Can you get those out for me. Oh, I see. Okay. Those
9 three bullets right here, but I know that they probably have
10 a fancier name, but those are ammunition and those are 9
11 millimeter ammo, ammunition?

12 A It's 9 millimeter Luger ammunition. Yes, ma'am.

13 Q Okay. And Luger, is that the producer of the bullet?

14 A It's manufacturer is Winchester.

15 Q And Luger is a type of bullet?

16 A Yes, ma'am. It's on the head stamp. It says 9
17 millimeter Luger.

18 Q Okay. Now, you are certified now, but wasn't at the
19 time, nationally, but you had training on collecting latent
20 prints, right?

21 A Yes, ma'am.

22 Q Do you have the fingerprint report on any of these
23 bullets?

24 A No, ma'am.

25 Q Okay. What about this 38?

1 A No, ma'am.

2 Q Okay. Now, looking at State's Exhibit No -- excuse me
3 for reaching -- 120, this evidence and property bag, does it
4 have a date when you turn this in?

5 A Yes, ma'am.

6 Q Could you tell us what the date is when you turned this
7 in?

8 A June 30, 2007, at 13:38 hours. 1:38.

9 Q 1:38. So even though you turned this property in at --
10 on the same date as the incident you did not turn State's
11 Exhibit No. 3. You did not turn this in until January of
12 '08?

13 A Yes, ma'am.

14 Q Okay. Now, does the manilla envelope itself have an
15 independent date on it that's written by you?

16 A The manilla envelope?

17 Q The manilla envelope, yes, sir.

18 A I believe -- it appears right there where it's covered
19 by SLED's evidence label.

20 Q Can you see what that date is?

21 A I can see '08.

22 Q '08. Okay. And the sheet that is written out, it has
23 a date of 6/3/07, is that right? Incident date 6/3/07?

24 A Yes, ma'am.

25 Q Okay. And the date submitted is 1/7/08, is that right

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1 there at the bottom?

2 A Yes, ma'am.

3 Q That's your handwriting?

4 A Yes, ma'am.

5 Q Okay. So there's no indication that this label itself
6 was written on June 30?

7 A No, ma'am.

8 Q Okay. Now, on the inside that contains the GSR report,
9 is there a date on this envelope in your handwriting?

10 A Yes, ma'am. It's 6/30/07.

11 Q Okay. And that is through this red evidence tape that
12 you have here?

13 A Yes, ma'am.

14 Q And that's your handwriting?

15 A Yes, ma'am.

16 Q Okay. Did your supervisor label this in any way?

17 A Did my supervisor?

18 Q Yes.

19 A No, ma'am.

20 Q Okay. He was the only one or she was the only one
21 other than you that had access to the locker, right?

22 A Yes, ma'am.

23 Q And what else do you keep in that locker, I think you
24 said a water bottle and something else?

25 A It's a box with coin envelops and things like that in

1 it for evidence collection.

2 Q So it would be like an envelope such as these that are
3 empty?

4 A Yes, ma'am.

5 Q And these kits envelopes you have to get somewhere
6 else?

7 A Yes, ma'am.

8 Q So this envelope was stuck behind something else in
9 your locker?

10 A Yes, ma'am.

11 Q Which is the blots and things like that?

12 A Yes, ma'am.

13 Q Does the GSR kit have a number that has been assigned
14 to it for the purposes of inventory for the Richland County
15 Sheriff's Department?

16 A Yes, ma'am. It's Item No. 57.

17 Q Item No. 57. Okay. And when that item was turned in
18 as Item No. 57, how was it labeled in regards to it's
19 further testing at SLED; how is it labeled?

20 A It's marked for GSR testing, gunshot residue testing at
21 SLED with copies of this -- the SLED laboratory request form
22 which we have to fill out to let SLED know what we want
23 tested?

24 Q Okay, may I see the request form, please, which is
25 State's No. 4?

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1 A Yes, ma'am.

2 Q Okay, and on this SLED laboratory forensics request
3 form you've got listed down here, subjects name, and what
4 name is that down there in that box?

5 A Subject I have is Jerome Greene.

6 Q And Jerome Greene is the driver of this Isuzu Rodeo?

7 A I believe so.

8 Q Now, on Page 2 of 4, Page 2 of 4, you have on there --
9 I think this is for SLED. Part of it was filled out by
10 SLED, but it's a description of evidence that says one Tri-
11 Tech GSR kit from 2001 Isuzu Rodeo, right?

12 A Yes, ma'am, it's does.

13 Q And the analyst request a GSR analysis?

14 A Yes, ma'am.

15 Q And who is KMW, if you know?

16 A I don't know.

17 Q And what is hand written at the top of this, "ADD'L"?

18 A Yes, ma'am, it appears so.

19 Q And your handwriting?

20 A No, ma'am.

21 Q Would you agree with me that that represents
22 additional?

23 A I wouldn't know what it means, ma'am. I didn't put it
24 on there.

25 Q Okay. If you were to read that, would you interpret

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1 that as additional?

2 A That may be what I'd think. I can't say that's what it
3 means.

4 Q Okay.

5 MS. JOHNS: Beg the Court's indulgence, Your Honor,
6 one moment.

7 THE COURT: Sure.

8 BY MS. JOHNS:

9 Q Now, are you aware of a GSR kit on a Jerome Greene?

10 A No, ma'am.

11 Q You're not?

12 A No, ma'am.

13 Q Well, there's no way for this jury to know, since these
14 dipsticks have been relabeled as to whether or not they were
15 originally from the hand of Jerome Greene or whether they're
16 now relabeled as GSR kits from the Rodeo, right?

17 A Yes, ma'am.

18 MS. JOHNS: I have nothing further.

19 HAROLD BOUKNIGHT - REDIRECT EXAMINATION

20 BY MS. MCDUFFIE:

21 Q Investigator Bouknight, did you have any contact with
22 an Earl Jerome Greene?

23 A No, ma'am.

24 Q Did you ever take a GSR kit from Earl Jerome Greene?

25 A No, ma'am.

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1 Q If another investigator had, would you know about that?

2 A Possibly.

3 Q Are you aware of what other forensic investigators in
4 your lab are doing all the time?

5 A No, ma'am.

6 Q So if someone else had been called out to do that you
7 necessarily wouldn't know about it?

8 A No, ma'am.

9 Q Where did you take the GSR kit from?

10 A From a 2001 Isuzu Rodeo.

11 Q And is that what is contained in State's Exhibit No. 3?

12 A Yes, ma'am.

13 Q Please read for the jury how you labeled it?

14 A It's labeled, subjects name is Jerome Greene. The
15 officer's name is Harold Bouknight. My badge number is 157.
16 The agency's name is Richland County Sheriff's Department.
17 And the case number is 0706279030, which is the case number
18 with this case.

19 Q And did you label it as a vehicle?

20 A No, ma'am. Not on the outside. On the inside I
21 labeled them with where they were collected from.

22 Q And at the Richland County Sheriff's Department do you
23 have special GSR kits only for collection on vehicles?

24 A No, ma'am.

25 Q Do you have vials that come pre-marked with hood,

1 interior door, and things of that nature?

2 A No, ma'am.

3 Q How do the vials come pre-marked?

4 A With left back, right back, left palm, right palm.

5 Q So if you were to take GSR from anywhere other than a
6 person hand what would you have to do with those vials?

7 A Re-label it to show where it came from.

8 Q Because you don't have vials with any other pre-printed
9 labels?

10 A Correct.

11 Q Where did the GSR kit in State's Exhibit No. 3 come
12 from?

13 A From the Isuzu Rodeo, from the passenger side roof, the
14 driver's side roof, and the interior of the driver's and
15 passenger's doors.

16 Q And you sealed it with your initials on what day?

17 A June 30, 2007.

18 Q And that was the day it was collected?

19 A Yes, ma'am.

20 Q When you turned it into evidence had that seal been
21 broken or tampered with in any way?

22 A No, ma'am.

23 Q And then on that day you put it into that envelope, the
24 manilla envelope?

25 A Yes, ma'am.

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1 Q And you filled out the paper work?

2 A Yes, ma'am.

3 Q And when you send something to SLED and you fill out
4 the paper work, do you typically list the subjects that were
5 in the vehicle and also the vehicle?

6 A The subjects that I have listed in the incident report,
7 as a subject, suspect, and victim.

8 Q And also the make and model of the vehicle?

9 A Yes, ma'am.

10 Q Where did the GSR kit in State's Exhibit No. 3 come
11 from?

12 A The 2001 Isuzu Rodeo.

13 Q Any question in your mind about where it came from?

14 A No, ma'am.

15 Q Did you any other GSR kits pertaining to this case in
16 your possession?

17 A No, ma'am.

18 Q Had the seal ever been broken with or tampered with?

19 A No, ma'am.

20 Q The fact that it was in your locker until January of
21 '08, rather than in the evidence room, did that -- to your
22 knowledge, did that effect the contents of what was in that
23 piece of evidence in any way?

24 A No, ma'am.

25 Q Did it allow for the evidence to degrade or erode in

1 any way, to your knowledge?

2 A Not to my knowledge.

3 Q Was that evidence tampered with in any way?

4 A No, ma'am.

5 Q Ms. Johns showed you a diagram of the latent
6 fingerprints that you took?

7 A Yes, ma'am.

8 Q Why do you do a diagram of latent fingerprints rather
9 than GSR?

10 A The diagram for the latent prints is for the latent
11 print examiner. So they know where -- and there's an arrow
12 drawn that points up. So the latent print examiner when
13 they examine the prints they can orient that print, because
14 if you just have a print stuck on a blank card, we have no
15 idea where it came from or how -- if it could be a left hand
16 or right hand and things like that.

17 Q And so when you're dusting a vehicle for prints and you
18 find a print, that print is in one specific area?

19 A Yes, ma'am.

20 Q And you diagram that so the print examiner knows what
21 specifically --

22 MR. BAX: Objection, Your Honor, she's leading the
23 witness at this point.

24 THE COURT: Sustained.

25 BY MS. MCDUFFIE:

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1 Q Why do you diagram that?

2 A To show where that fingerprint lift came from and to
3 assist the latent print examiner.

4 Q And when you do GSR do you take that GSR from one
5 specific area only?

6 A It's from a larger area?

7 Q Would a diagram be of any use to an analyst?

8 A No, ma'am.

9 Q And you're certification that you received in 2008?

10 A Yes, ma'am.

11 Q Purely from the fact that you became certified in 2008,
12 did that change the way you did any procedures in the lab?

13 A No, ma'am.

14 Q Was that a class you attended or something that you get
15 in your training, how --

16 A It was -- it involved reading study materials and then
17 taking a written test.

18 Q And the way you collected gunshot residue in 2007,
19 verses present has that changed in any way?

20 A No, ma'am.

21 MS. MCDUFFIE: Nothing further, Your Honor.

22 MR. BAX: Briefly, Your Honor.

23 HAROLD BOUKNIGHT - RE-CROSS EXAMINATION

24 BY MR. BAX:

25 Q Officer, a couple questions. Are you aware of the fact

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1 that the Richland County Sheriff's Department maintains an
2 evidence log or a property log?

3 A Yes, sir.

4 Q And that list all the property or pieces of evidence
5 involved in a particular case; is that correct?

6 A Yes, sir.

7 Q In this particular case did you ever look at the
8 property log?

9 A Yes, sir. I did.

10 Q Do you recall checking with the description of the GSR
11 that was listed as that came from you in this case?

12 A I believe it's listed the same as it is on the evidence
13 label here where they printed it out with the bar code as
14 Jerome Greene.

15 Q So it was labeled as Jerome Greene on the evidence log?

16 A Yes, sir.

17 Q And it was not labeled as GSR from a white Isuzu was
18 it?

19 A Not on the evidence log, no, sir.

20 MR. BAX: No further questions. Thank you, Your
21 Honor.

22 MS. JOHNS: Briefly.

23 HAROLD BOUKNIGHT - RE-CROSS EXAMINATION

24 BY MS. JOHNS:

25 Q Mr. Bouknight, you stated that you provided diagrams

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1 for latent prints so they have the benefit of seeing the
2 orientation of the print?

3 A Yes, ma'am.

4 Q Okay. And there's no --

5 A And where it's lifted from. Yes, ma'am.

6 Q So there is more than one benefit for a diagram, right?

7 A Yes, ma'am.

8 Q Okay. For example you didn't remember that you had
9 collected the GSR kit until you just happened upon it in
10 your locker; isn't that right?

11 A Yes, ma'am.

12 Q And that's a human mistake; do you agree with that?

13 A Yes, ma'am.

14 Q So if you can't remember that you even collected the
15 GSR kit, then isn't it possible that you can't remember
16 where you collected it from?

17 A No, ma'am, because it was already labeled with where I
18 collected it from.

19 Q And the vials are labeled where you collected them
20 from?

21 A Yes, ma'am. Because it was sealed that day.

22 Q Okay. And there's no X on a diagram because you know a
23 driver's side top of the roof can be pretty expansive or can
24 be pretty narrow; could you agree with that?

25 A Yes, ma'am.

1 Q Okay. So would you -- are you saying that a diagram
2 depicting where you took the GSR kit would not help in your
3 memory?

4 A No, ma'am.

5 Q And it wouldn't assist any other technician or
6 prosecutors or defense attorneys in determining where that
7 was lifted or dabbed?

8 A No, ma'am.

9 Q It would not? That's your testimony?

10 A Yes, ma'am.

11 Q Okay.

12 MS. JOHNS: I have nothing further.

13 THE COURT: Okay.

14 Sir, you can step down and be excused.

15 MR. BOUKNIGHT: Thank you, ma'am.

16 MS. MCDUFFIE: May it please the Court, Your Honor?

17 THE COURT: Yes.

18 MS. MCDUFFIE: State would call Lt. Elsey.

19 (WHEREUPON, Anna Elsey, was sworn
20 to tell the truth.)

21 THE CLERK: Have a seat in the witness stand and
22 give the court reporter your name.

23 LT. ELSEY: Anna Elsey, E-l-s-e-y.

24 ANNA ELSEY - DIRECT EXAMINATION

25 BY MS. MCDUFFIE:

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1 Q Lt. Elsey, where are you currently employed?

2 A Richland County Sheriff's Department.

3 Q And what are your duties with the Richland County
4 Sheriff's Department?

5 A Currently the Lieutenant Supervisor over the Crime
6 Scene Latent Print Section.

7 Q And how long have you been a supervisor over the crime
8 scene unit?

9 A I was a sergeant for three years, and a lieutenant for
10 two.

11 Q And in June 2007, what were your duties with the crime
12 scene unit at the sheriff's department?

13 A I was a sergeant with the unit.

14 Q And how long have you been in law enforcement?

15 A I started with the Richland County Sheriff's Department
16 in July of 1998.

17 Q And please tell the jury a little bit about your
18 education and training in the field of crime scene
19 investigation?

20 A I graduated from the College of Charleston in '95 with
21 a bachelor of science in biology and psychology. I received
22 my master's from University of Florida in forensic DNA and
23 serology. I started with the department in '98. I worked a
24 couple of years on the road as a first responder and then
25 was promoted to the crime scene unit. I worked as an

1 investigator responding to calls anywhere from a burglary to
2 a homicide, and while doing that, I also received in-house
3 training and formal training. Some of the formal training
4 courses that I attended are; emergency crime scene
5 responder, IV Tech, advanced palm print identification,
6 crime scene investigation, basic fingerprint, chemical
7 development, forensic aspects of investigation, blood scene
8 pattern analysis, crime scene reconstruction, advanced blood
9 pattern analysis, and the detection and recovery and
10 examination of footwear impression evidence. I'm also
11 certified by the International Association for
12 Identification as a Crime Scene Investigator.

13 MS. MCDUFFIE: Your Honor, at this time, we would
14 offer Lt. Elsey as an expert in crime scene investigation.

15 THE COURT: Any objection?

16 MR. BAX: No objection.

17 MS. JOHNS: Without objection, Your Honor.

18 THE COURT: Okay. So admitted as an expert.

19 BY MS. MCDUFFIE:

20 Q Lt. Elsey, on July 2, 2007, did you process a 1999
21 Chevy Suburban?

22 A I did.

23 Q And where was that vehicle located when you encountered
24 it?

25 A It was secured in our forensic garage at headquarters

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1 on Two Notch Road.

2 Q And how did it arrive at your forensic garage?

3 A According to our log for the garage it was entered into
4 that location on July 1, at 5:21 by Investigator Livingston.

5 Q And who has access to the forensic garage at the
6 sheriff's department?

7 A Crime scene investigators. It's secure access. We
8 have key access and also it's monitored by camera.

9 Q And when a vehicle is being towed to the garage for
10 processing an investigator has to let the vehicle into the
11 garage?

12 A That's correct.

13 Q And secure the vehicle in the garage?

14 A Yes.

15 Q So a road deputy couldn't just put a vehicle in there
16 or take one out?

17 A No. There's very limited access to that garage.

18 Q And when was the 1999 Chevy Suburban placed in the
19 forensic garage?

20 A July 1st, at 5:21.

21 Q P.m?

22 A Yes.

23 Q And it was secured until you processed it the next
24 morning?

25 A Correct.

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1 Q And what time did you begin processing the Chevy
2 Suburban?

3 A It was on July 2nd, at 10:00 a.m.

4 Q I'm going to show you what's in evidence as State's 40.
5 Is that the Suburban you processed?

6 A Yes, it is.

7 MS. MCDUFFIE: Permission to publish, Your Honor.

8 THE COURT: All right.

9 BY MS. MCDUFFIE:

10 Q Lt. Elsey, when you began to process the Suburban,
11 what's the first thing you did?

12 A The first thing I did would be to photograph that
13 vehicle as I found it. The exterior and then the interior
14 of the vehicle.

15 Q I'll show you what's been marked as State's Exhibits 21
16 to 39 and 41 to 45 and ask you if these are the photographs
17 you took of the Suburban on July 2, 2007?

18 A These are.

19 MS. MCDUFFIE: Your Honor, at this time, we'd offer
20 State's 21 through 39 and 41 to 45.

21 MS. JOHNS: Your Honor, I don't have any objection.
22 I think we've been over these.

23 MR. BAX: Your Honor, I just want to check --
24 Without objection, Your Honor.

25 THE COURT: Okay. Those will be admitted, as well.

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1	(State's Exhibit No. 21, photo, was
2	marked and entered.)
3	(State's Exhibit No. 22, photo, was
4	marked and entered.)
5	(State's Exhibit No. 23, photo, was
6	marked and entered.)
7	(State's Exhibit No. 24, photo, was
8	marked and entered.)
9	(State's Exhibit No. 25, photo, was
10	marked and entered.)
11	(State's Exhibit No. 26, photo, was
12	marked and entered.)
13	(State's Exhibit No. 27, photo, was
14	marked and entered.)
15	(State's Exhibit No. 28, photo, was
16	marked and entered.)
17	(State's Exhibit No. 29, photo, was
18	marked and entered.)
19	(State's Exhibit No. 30, photo, was
20	marked and entered.)
21	(State's Exhibit No. 31, photo, was
22	marked and entered.)
23	(State's Exhibit No. 32, photo, was
24	marked and entered.)
25	(State's Exhibit No. 33, photo, was

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1 marked and entered.)

2 (State's Exhibit No. 34, photo, was
3 marked and entered.)

4 (State's Exhibit No. 35, photo, was
5 marked and entered.)

6 (State's Exhibit No. 36, photo, was
7 marked and entered.)

8 (State's Exhibit No. 37, photo, was
9 marked and entered.)

10 (State's Exhibit No. 38, photo, was
11 marked and entered.)

12 (State's Exhibit No. 39, photo, was
13 marked and entered.)

14 (State's Exhibit No. 41, photo, was
15 marked and entered.)

16 (State's Exhibit No. 42, photo, was
17 marked and entered.)

18 (State's Exhibit No. 43, photo, was
19 marked and entered.)

20 (State's Exhibit No. 44, photo, was
21 marked and entered.)

22 (State's Exhibit No. 45, photo, was
23 marked and entered.)

24 BY MS. MCDUFFIE:

25 Q Lt. Elsey, what was the license number of the vehicle

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1 that you processed?

2 A [REDACTED].

3 Q Is that depicted in State's 41?

4 A It is.

5 Q And you also -- did you also document the VIN number of
6 the vehicle?

7 A I did.

8 Q And as depicted in State's 39?

9 A Correct.

10 Q And what -- after you photograph a vehicle, what's the
11 next thing you do?

12 A In this particular case, I collected a GSR residue kit.

13 Q And explain to the jury how you did that, in this case,
14 on this vehicle.

15 A Well, sometimes a GSR kit. When a weapon is fired
16 microscopic particles of that residue are released in the
17 vicinity of where it was fired. So we are going to look for
18 those types of particles. We have a kit. I received it
19 sealed. The kit is opened, and in this particular case we
20 use what we call sticky tabs. They're in the kit, they're
21 sealed with a cap. We pull the cap off. Within that vial
22 is a sticky tab, and we use that sticky tab and we collect
23 evidence from the area specifically that's labeled on that
24 tab and then we seal it and place it back into the kit?

25 Q State's Exhibit 2 and ask if you recognize that?

1 A Yes. This is the kit that collected.

2 MS. MCDUFFIE: Your Honor, at this time, we'd
3 officer State's Exhibit No. 2 into evidence.

4 MR. BAX: Without objection, Your Honor.

5 MS. JOHNS: No objection, Your Honor.

6 THE COURT: It's in.

7 (State's Exhibit No. 2, GSR kit,
8 was marked and entered.)

9 BY MS. MCDUFFIE:

10 Q And this is the GSR kit you lifted from the Chevy
11 Suburban?

12 A Correct.

13 Q And before you process a vehicle for things such as
14 GSR, are you briefed by the investigators on where to look
15 for potential evidence?

16 A Yes. Prior to starting the vehicle I make contact the
17 investigators who worked the case to get a background to see
18 exactly what it is they're looking for and this was one of
19 the things they requested I collect.

20 Q And so they're information helps you focus in on
21 certain areas that need to be processed?

22 A Correct.

23 Q And please tell the jury the first area you processed
24 for GSR in the vehicle?

25 A What I did was I labeled each door area a specific

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1 letter. For instance, the driver's door was labeled A. The
2 driver's back door area was labeled B.

3 Q And is that what's depicted in State's 33?

4 A It is.

5 MS. MCDUFFIE: Your Honor, if I may publish to the
6 jury?

7 THE COURT: Yes.

8 A And also the passenger side, the front area was labeled
9 C. The back area was labeled D.

10 BY MS. MCDUFFIE:

11 Q And is that State's 34?

12 A Yes.

13 Q And then after you labeled them what did you do?

14 A I labeled all of the vials that I was speaking of for
15 each of the areas that I labeled. I also labeled a vial for
16 the area above the window frame and also above the door
17 frames, two separate ones for each one of those locations.

18 Q And is this one of those vials you were just talking
19 about?

20 A Yes.

21 Q And --

22 A So by opening that, you can see this brown part here,
23 this clear top comes off. This contains the sticky tab and
24 so we collect it and the top goes back on.

25 Q And these containers come with a pre-made label?

1 A They actually do. The label on these are actually ones
2 that I made. These kits are generally made to do GSR on
3 someone's hands. So we re-label those sticky tabs to relate
4 to where we collected from.

5 Q And --

6 A So that's what those labels are there.

7 Q And that's where you handwrote it onto the original
8 label?

9 A Yes. I did, and there's also a typed label.

10 Q And why did you label it twice?

11 A In case the label came off, the exterior label.

12 Q And you told the jury that you processed all four of
13 the doors of the vehicle for gunshot residue?

14 A Yes.

15 Q Was that the interior of the door or the exterior of
16 the door?

17 A Interior.

18 Q So State's 38, that would be the interior of the
19 driver's door?

20 A Yes.

21 Q And explain to the jury how you processed that for
22 gunshot residue?

23 A Again, I take my sticky tabs and I do the top of the
24 window frame and then I did the door handle area of each one
25 of the door frames. And then I also did the steering wheel,

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1 the gear shift, the exterior of the center console and glove
2 box.

3 Q And were each one of those areas that you just
4 described; the door frame, the door handle, and the center
5 console, and glove box, you did a different sticky tab on
6 each one of those?

7 A Correct.

8 Q And after you tested each area you sealed that tab in
9 the container?

10 A Yes.

11 Q State's Exhibit 32; is that a picture of the steering
12 wheel?

13 A Yes.

14 Q And you also tested that for gunshot residue?

15 A Yes.

16 Q And you mentioned the center console and gear shift, as
17 well?

18 A Yes.

19 Q All these areas were tested that day?

20 A Correct.

21 Q After you tested the vehicle for gunshot residue what
22 did you then do?

23 A I then collected a couple of items from inside the
24 vehicle; a Mugg root beer can, some cigarette butts, and a
25 black head rag.

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1 Q State's 26, 27, 28, 29, and 30. Are these photographs
2 of the contents of the vehicle?

3 A Yes. That's the items that I photographed from the
4 interior of the vehicle.

5 Q And you photographed them, why?

6 A To show what was in the vehicle.

7 Q And you mentioned a Mugg root beer can?

8 A Yes.

9 Q And is that depicted in State's 31?

10 A It is. It's in between the front driver and passenger
11 seats.

12 Q And you collected this Mugg root beer can?

13 A I did.

14 Q And did you do any further processing of it?

15 A I did. On July 11th, I processed it with black powder
16 and then swabbed the mouth area.

17 Q And after you collected the items from the car and
18 processed them for gunshot residue, what did you do next?

19 A I then placed hot shot containers in the vehicle. Hot
20 shot containers are -- it uses a super glue, which is
21 something that we use for processing something for
22 fingerprints.

23 Q And when you place the containers in the vehicle what
24 happens?

25 A The super glue is released from the canisters and

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1 releases a fume and if there are fingerprints present it
2 will adhere to the fingerprint residue and turn it a whitish
3 color. Once that is completed and the canisters are removed
4 and I process the interior with white powder.

5 Q And so looking at State's Exhibit No. 21, a photo of
6 the interior of the car, everything looks a little dirty or
7 has black color all over it and --

8 A That's after the vehicle had been searched and
9 processed.

10 Q So after you had dusted the vehicle for fingerprints?

11 A Yes.

12 Q And that would be the fingerprint powder that is
13 displayed in the photograph?

14 A You can see some in there, yes.

15 MS. MCDUFFIE: Your Honor, permission to publish?

16 THE COURT: Yes.

17 BY MS. MCDUFFIE:

18 Q And did you also process the exterior of the vehicle
19 for fingerprints?

20 A I did.

21 Q And were you able to lift any fingerprints from this
22 vehicle?

23 A There were four cards submitted to our latent print
24 section.

25 Q And after you processed the vehicle for fingerprints

1 did you do any further processing?

2 A I did. I searched the interior for any spent shell
3 casings. None were located. I collected some swabs from
4 different areas within the vehicle. Interior and exterior.

5 Q And what was the purpose of collecting those swabs?

6 A For potential -- possibly to determine the different
7 people that had had contact with the vehicle.

8 Q And after you had -- I'm sorry. Did you do anything
9 further to process this vehicle?

10 A Additionally, a brownish stain was located on the rear
11 barn door of the vehicle. That was tested, the presumptive
12 test for blood and that came back negative. A swab was
13 collected.

14 Q But that did come back negative for blood?

15 A It did. Then prior to release of the vehicle, I
16 contacted both of the lead investigators. They also
17 searched the vehicle to see if they needed anything else
18 collected from the vehicle, and they did not.

19 Q Let's go back to the gunshot residue kit that you
20 collected from this vehicle. Can you please tell the jury
21 the date and time that you collected it?

22 A Yes. It was July 2, and I started collection at 10:30.

23 Q And when -- do know when you sealed this kit with your
24 initials?

25 A My seal is covered up. It was submitted on the 12th of

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1 July to our evidence room.

2 Q And from the 2nd of July when you collected it, until
3 the 12th of July when you submitted it to the evidence room,
4 where was that kit kept?

5 A It was kept in my -- our secured locker and in my
6 evidence locker, which is also secured. I'm the only one
7 that has a key to it. Each investigator has a locker and
8 they have the key to that locker and the only persons who
9 have access are supervisors.

10 Q And why was that kit kept in your locker for those 10
11 days?

12 A To complete additional processing, so I could submit
13 all the evidence related to this case at one time.

14 Q And you submitted it to where?

15 A To our evidence room.

16 Q And after you submitted it to the evidence room, at
17 some point in time it was taken to SLED?

18 A Correct.

19 Q And you were not responsible for that?

20 A No.

21 Q And the 10 days that that kit was in your locker was it
22 tampered with in any way?

23 A No.

24 Q Was your seal broken?

25 A No. It was not sealed until after -- until being

1 submitted to evidence.

2 Q Okay. And from the time that you collected the on July
3 2, 2007, until you turned it in on July 12th was that kit
4 tampered with?

5 A No.

6 Q Did anyone have access to that kit besides you?

7 A My lieutenant would have. We also -- if a supervisor
8 enters a locker, we have a log that identifies that
9 supervisor and when he entered the locker and the type of
10 evidence, the case that they look at and would have come in
11 contact with. So there is a log of that.

12 Q And you searched this vehicle, the 1999, Chevy
13 Suburban, pursuant to a search warrant?

14 A I did.

15 Q And pursuant to that search warrant you fill out what
16 you removed from that vehicle on a search warrant return?

17 A I do.

18 Q And are you aware of the date that you put on the
19 search warrant return?

20 A I put June 2nd, which was a clerical area. It should
21 have been July 2nd.

22 Q And in your notes and in all of your reports you
23 submitted, what was the date of the processing of this
24 vehicle?

25 A July 2nd.

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1 Q This evidence was eventually sent to SLED?

2 A It was.

3 Q Did you have any further contact with the SLED analyst,
4 Michael Moskol?

5 A I did. After receiving the initial report, I contacted
6 him to get some clarification --

7 MR. BAX: Objection, Your Honor, that would be
8 hearsay if she's going to testify anything that he told her.

9 THE COURT: Correct.

10 MS. MCDUFFIE: Your Honor, she has not -- she will
11 not testify as to anything --

12 THE COURT: Just make sure you don't say what he
13 told you in your conversation to him.

14 LT. ELSEY: Okay.

15 A Once I relayed to him what I knew about the case I
16 requested that the items be sent back to him for analysis.

17 BY MS. MCDUFFIE:

18 Q Was it ever analyzed the first time by him?

19 A Not to my knowledge.

20 Q So he sent it back and did not analyze it?

21 A Correct.

22 Q And then after you spoke with him you re-submitted
23 that?

24 A Yes.

25 Q What is your -- can you explain to the jury what is

1 your understanding of secondary transfer?

2 A Based on my conversation with him my understanding was
3 that --

4 MR. BAX: Objection, Your Honor. She's testifying
5 to things that have been told to her by Mr. Moskol. She has
6 not been qualified as an expert in GSR either.

7 MS. JOHNS: That would be my objection. I don't
8 think this witness is qualified to give a conclusion or an
9 opinion as to what was found.

10 MS. MCDUFFIE: Your Honor, we're not asking for a
11 conclusion or opinion.

12 THE COURT: Okay. Narrow your question. I'll
13 overrule the objection.

14 BY MS. MCDUFFIE:

15 Q Lt. Elsey, based on your knowledge and experience, what
16 is secondary transfer?

17 A My understanding of that term is that it would be a
18 transfer from someone who maybe handled a weapon at some
19 point in time and then touched another object after handling
20 the weapon or weapon that was discharged.

21 Q Do if I fired a weapon and got GSR on my hands and then
22 touched it, and left some GSR there, that would be secondary
23 transfer?

24 A That's my understanding of it. That's the term that we
25 use in our lab.

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1 Q And after your conversations with SLED, the items were
2 re-submitted to them for testing?

3 A Yes.

4 Q And when it was returned back to the Richland County
5 Sheriff's Department was that item kept secure?

6 A Yes. It was kept in our evidence room the whole time.
7 Our evidence submitted it back to SLED. And it was returned
8 from SLED to our evidence room.

9 MS. MCDUFFIE: Beg the Court's indulgence.

10 THE COURT: Sure.

11 BY MS. MCDUFFIE:

12 Q And the Chevy Suburban that you processed, what color
13 did you indicate it was in your notes when you were
14 processing the vehicle?

15 A Tan.

16 Q And some other places did you refer to it as silver?

17 A Is there somewhere specific that you're referring to?

18 Q I'll rephrase the question. The vehicle that you
19 processed, please tell the jury the license tag of that
20 vehicle?

21 A It was [REDACTED].

22 Q And this was the vehicle that was processed by you in
23 State's Exhibit No. 41?

24 A Yes.

25 MS. MCDUFFIE: No further questions.

1 MR. BAX: Please the Court.

2 ANNA ELSEY - CROSS-EXAMINATION

3 BY MR. BAX:

4 Q Morning, Officer Elsey.

5 A Morning.

6 Q And just for clarification, I cannot recall the
7 solicitor asking you this, but is that a married name that
8 you have now, Elsey?

9 A No, it's not.

10 Q Okay. Did you have a different --

11 A I did. It was Clemmons, at the time.

12 Q Okay. My apologies. So your married name or whatever,
13 you went by Clemmons then?

14 A Yes.

15 Q Okay. So when we're looking at this and we see Sgt.
16 Clemmons that's --

17 A That would be me.

18 Q Okay. Just wanted to clarify that. Thank you. Couple
19 of things. First of all, you testified that when you saw
20 this 1999 Chevy Suburban it was in your forensic garage,
21 which you testified is a secure locations; correct?

22 A Right.

23 Q So when they pull it in they pull down, like, a big
24 garage door and that gets locked; is that right?

25 A That's right.

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1 Q And that garage is connected to the main building at
2 the sheriff's department?

3 A It's actually not connected. It's a separate building.

4 Q It's a separate building?

5 A Yes.

6 Q Okay. All right. And you said that officers assigned
7 to criminal scene investigation department are the ones that
8 have access to that garage, right?

9 A That's correct.

10 Q About how many people were in the division or had
11 access to that garage in 2007, do you recall?

12 A Eleven or 12 actually in the crime scene area, and then
13 there are a supervisors that have access to that area.

14 Q So between 12 and 15, somewhere around in there?

15 A That would be my guess. We have a log for someone who
16 has a key, a log for that.

17 Q Isn't it true that that garage can contain more than
18 one vehicle; is that correct?

19 A It can, yes.

20 Q How many vehicles can go in that particular garage?

21 A We have put two back there.

22 Q Two. Do you recall if there was another vehicle in
23 that garage at the time you processed this one?

24 A Not to my knowledge. Let me check my log to confirm
25 that. No. There was not. The last vehicle was on June 30.

1 Q So a vehicle had been in that garage for processing on
2 June 30, right?

3 A Yes.

4 Q Now, you also testified -- obviously you took the
5 photographs that had been introduced, and that was the first
6 thing you did; is that correct?

7 A That is correct.

8 Q I believe you testified you kept taking photographs. I
9 believe you testified you photographed after you processed
10 the black powder?

11 A I did.

12 MR. BAX: Moments indulgence, Your Honor, there's a
13 lot of photographs here.

14 BY MR. BAX:

15 Q I'll refer you to State's Exhibit No. 25. It appears
16 that this picture was one of the initial pictures that was
17 taken, correct?

18 A No, that is not correct.

19 Q So this was taken at what point?

20 A That appears to be after it was -- items removed -- I
21 cannot -- it appears to be after it was processed.

22 Q And how are you able to tell that?

23 A Well, the center console is open, items disturbed and
24 the search warrant and all are right there in the driver's
25 seat.

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1 Q Okay. Was the search warrant laying there when you
2 first opened the car, left there by the officers that seized
3 it?

4 A I don't recall exactly where the incident report was.
5 I don't know if it was there or it was in the lab, where it
6 was left for me.

7 Q So you don't recall whether it was in that vehicle when
8 you got there?

9 A No, sir. I do not.

10 Q So it could have been in the vehicle, right?

11 A It could have been, but I think it was left in the
12 laboratory for me, but I'm not positive.

13 Q All right. So you don't remember?

14 A No, not off-hand.

15 Q Now, obviously -- you've testified that it was in a
16 secured garage, but prior to that did you have any knowledge
17 of where that vehicle had been or who had been around that
18 vehicle prior to it being in the garage?

19 A No.

20 Q And were you part of the group that seized the vehicle
21 in the first place?

22 A No.

23 Q Now, you testified that you've been certified by the
24 National Association. I forget the exact wording for it, I
25 apologize. There's a lot of national associations that I'm

1 a part of and I can't remember all of them. When was that?

2 A The actual certification?

3 Q Yes, ma'am.

4 A December of '08.

5 Q December of '08, which is after this period of time,
6 correct?

7 A That's correct.

8 Q Now, also in your direct testimony you testified that
9 you labeled the doors A, B, C, D; is that correct?

10 A That's correct.

11 Q And I believe you said you took two separate tabs,
12 sticky tabs from each door; is that correct? Two different
13 locations?

14 A Two different locations under that particular label,
15 yes.

16 Q All right. And that is what you've shown to the jury
17 here that was contained in this little bottles; correct?

18 A In these vials, yes.

19 Q And you labeled those; correct?

20 A I did.

21 Q Okay.

22 A The handwriting is mine on the original label and then
23 I had a set of label maker --

24 Q Oh, okay. So you used a label maker to create these?

25 A I did.

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1 Q To individualize them; correct?

2 A Correct.

3 Q And that's so the person that is doing the examination
4 is able to tell from what you've labeled where it came from;
5 is that correct?

6 A That's correct.

7 Q And inside of these -- now, at this point these are
8 empty; is that correct?

9 A They appear to be.

10 Q Okay. So what --

11 A I haven't had contact with them since --

12 Q All right. Can you tell me if there was more than one
13 of those sticky tabs in these or was there just one in each
14 bottle?

15 A There's one in each bottle as far as when I collected
16 it.

17 Q Okay. So you have all these different ones. In fact,
18 it looks like -- gosh, I couldn't count, but it looks like
19 -- one, two, three, four, five, six, seven, eight, nine,
20 ten, eleven, twelve; is that right?

21 A Yes. You can see that the bottles are not empty.

22 Q Oh.

23 A The part that is black is the sticky tabs.

24 Q So that black thing is the sticky tab?

25 A Yes.

1 Q Okay. All right. Thank you. You've got all these
2 different ones that you've taken and you've labeled these
3 different bottles, correct?

4 A That's right.

5 Q Now, as a result of this, is there an evidence/property
6 form that you fill out to indicate what you collected during
7 the processing?

8 A There's an evidence label.

9 Q And that is there on the exterior of that manilla
10 folder or that manilla envelope; is that correct?

11 A That is correct.

12 Q And if you can can you indicate what's written under
13 items contained?

14 A That's one GSR kit collected from a 1999 -- I actually
15 put silver Chevy Suburban, South Carolina tag [REDACTED].

16 Q Okay. It just indicates GSR kit?

17 A Correct.

18 Q It does not list or indicate all the separate little
19 tabs or bottles inside that envelope, does it?

20 A It does not. That was in my bench notes that I took at
21 the time of collection.

22 Q Now, you obviously filled out more of those same exact
23 labels for some of the other things that you collected;
24 correct?

25 A For the -- on each one of these?

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1 Q No. For the other things that you collected when you
2 processed this vehicle, ma'am. For example --

3 A Oh, you mean evidence label?

4 Q -- for example --

5 MR. BAX: May I approach?

6 THE COURT: Yes.

7 BY MR. BAX:

8 Q See if that will refresh your memory. That is another
9 label that you filled out after processing the Suburban; is
10 that correct?

11 A Yes.

12 Q And that's a label listing all the swabs that you took
13 from the vehicle; correct?

14 A Correct.

15 Q And it lists each individual swab and it's location on
16 that label, does it not?

17 A It does.

18 Q But that's not what's on the label for the GSR kit?

19 A No, it's not.

20 Q And this label is what the evidence custodians that
21 formulate the property log. They look at the label. They
22 don't open it up and go through everything; correct, because
23 it gets sealed when you turn it in to evidence, correct?

24 A That's correct.

25 Q So from your swabs they can tell exactly what's inside

1 each and every one of them, but from your GSR kit they only
2 see GSR kit; correct?

3 A Well, each swab has to have a separate evidence number
4 because they will be analyzed. Each one of those will be
5 analyzed separately. That's why we do those separately.
6 The GSR kit is considered evidence to be sent off. They
7 don't need to be labeled separately for our evidence
8 purposes.

9 Q Okay. So your protocol does not require that the GSR
10 kit, sticky tabs get labeled individually?

11 A Oh, no. That's labeled -- no.

12 Q Now, also in your direct testimony, I believe Solicitor
13 McDuffie was asking you about -- I believe her words were,
14 when you tested for GSR, but let me ask you this; the
15 correct way to say it is that you collected, that you
16 weren't actually testing anything. You were only
17 collecting, at that point?

18 A That's right. I do collecting.

19 Q So those stickies put onto things, they don't change
20 color, they don't do any sparks or anything like that to
21 indicate you've just found something do they?

22 A I don't do any analysis on it.

23 Q So it's purely collection purposes on that GSR?

24 A That's correct.

25 Q You have no idea when you use those stickies whether

1 there's anything getting picked up or not?

2 A Correct. I don't do the analysis on it.

3 Q Gunshot residue is microscopic. It can't be seen by
4 the naked eye; is that correct?

5 A That's correct.

6 Q Now, after you collected this you testified --

7 A If I can clarify. Sometimes you can see sooting, but as
8 far as the collection of what I did, I did not see anything,
9 any of the microscopic particles.

10 Q You didn't see --

11 A As far as the testing, yes.

12 Q So you weren't seeing anything when you were putting
13 these tabs down?

14 A I didn't see anything obvious, no.

15 Q Now, after you -- you've made these collections when
16 you processed the car on July 2nd, is that correct?

17 A That's correct.

18 Q And you have a locker, you testified to, that you
19 placed the kit into?

20 A That's correct.

21 Q Is that in the same room where the other CSI
22 investigators have their lockers?

23 A We have one secure laboratory, and the lockers are
24 located in there. Each one has an individual lock on it.

25 Q And that locker is accessible by the person whose

1 locker it is as well as their supervisor?

2 A That's correct.

3 Q And that locker is used for storage of any evidence
4 that you're processing at the time; correct?

5 A Any evidence that is collected, is in the process of
6 being processed or has not been submitted to evidence yet.

7 Q And the protocol is that once you've collected the
8 evidence you need to turn that into the evidence room as
9 soon as possible; is that correct?

10 A Within a reasonable amount of time, depending on the
11 type of evidence, what needs to be done to it, what type of
12 paper work needs to be done, other evidence related to the
13 case, and, of course, other case loads and having access to
14 the evidence to --

15 Q And I believe you testified you turned it into the
16 evidence room on July 12, approximately 10 days later?

17 A Correct.

18 Q And I believe you said the reason for that was that you
19 wanted to get all of your evidence together on this
20 particular case and turn it all in at one time?

21 A That's what I did, yes, in this particular case.

22 Q So based on that, 10 days is reasonable delay between
23 putting it in your locker and turning into the evidence
24 room?

25 A Yes.

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1 Q What about seven months?

2 A In my experience that would not be reasonable for me.

3 Q Now, you also testified that the white envelope, I
4 believe, you testified it was not sealed until it was
5 submitted.

6 A That's correct.

7 Q Now, is that standard, in other words, when you put
8 these white envelopes in your locker they are not sealed
9 until they go to the evidence room?

10 A This envelope was inside this manilla envelope. It was
11 not sealed, but it was closed. I had additional paper work.
12 I had to make copies of some additional paper work and I had
13 to make sure I had copies of everything prior to submitting
14 it. So I did not seal it right away.

15 Q Is that pretty standard operating procedure not to seal
16 that until you turn it into the evidence room so you make
17 sure you put extra paper work in there if necessary?

18 A It wasn't extra paper work. It's paper work that I
19 filled out when I was processing it. And I had to make a
20 copy of it from my records and I had to make a copy of it
21 before I sealed it and submitted it.

22 Q Let me ask you again. Is it fairly standard operating
23 procedure to not seal it until it goes to the evidence room?

24 A It depends on the item of evidence, but it doesn't have
25 to be sealed if it's in your locker. No.

1 Q There's no requirement that it be sealed when it's in
2 your locker?

3 A That's correct.

4 Q Now, you testified, also that after this evidence was
5 submitted to the evidence room that an officer with state
6 law enforcement division sent the GSR back to you; is that
7 correct?

8 A He sent it back to the evidence room.

9 Q Sent it back to the evidence room. And he indicated --
10 you talked about secondary transfer and that was the reason
11 why it was returned; correct?

12 A That's what was stated on the report. Yes.

13 Q And, in fact, you also testified that you sent it back
14 to SLED after that?

15 A After our conversation he requested it be sent back to
16 him so he could complete an analysis on it.

17 Q Officer Elsey, do you recall sending an email to Mr.
18 Moskol?

19 A I did.

20 Q And I believe that was September 12th; is that correct?

21 A Yes.

22 Q 2008?

23 A Yes.

24 Q Excuse me 2007.

25 A 2007.

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1 Q Okay. And in that email you referenced the phone
2 conversation that you testified to; correct?

3 A Yes.

4 Q And in that email you reference the fact that you do
5 further investigation -- or, excuse me, you talked to the
6 main investigators in this case; is that correct?

7 A Yes. Would you like to hand me the email?

8 Q No. I'm just asking you if you indicate in that email
9 that you had conversations with the main detectives or the
10 homicide detectives in the case?

11 A It indicates I had contact with them. Yes. In
12 reference to this case.

13 Q And you provided information they provided you in that
14 email to Mr. Moskol; is that right?

15 A I did.

16 MR. BAX: A moment's indulgence, Your Honor.

17 THE COURT: Okay.

18 This is what we're going to do, ladies and gentlemen,
19 we've going to go ahead and take a short break now. I'll
20 remind you not to discuss the case before we conclude with
21 that -- okay.

22 MR. BAX: Thank Your Honor.

23 (Jury out at 11:45 a.m.)

24 THE COURT: Ma'am, you can step down. I'll just
25 remind you you're under oath. Don't discuss your testimony.

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1 (Court in recess for morning break.)

2 (Court in session after morning break.)

3 THE BAILIFF: All rise, please.

4 THE COURT: Thank you. We have a little extended
5 break to exercise the comfort needs of the jurors. So we're
6 ready to proceed.

7 MS. MCDUFFIE: Your Honor, for scheduling purposes,
8 our next witness is going to be considerably more lengthy.
9 So we went ahead and told her to go to lunch.

10 THE COURT: Okay. How long will this one last?

11 MR. BAX: It won't take long to finish this and
12 from my remembrance we're on cross or recross --

13 MS. JOHNS: I haven't done cross.

14 THE COURT: She hasn't done cross.

15 MR. BAX: Oh, you haven't. I'm sorry.

16 THE COURT: I was going to try to break at
17 approximately 1:00. So let's push on to 1:00 or so.

18 MS. MCDUFFIE: I don't think we can do the direct
19 on the next witness by 1:00.

20 THE COURT: Okay. That's okay.

21 All right. We're ready to proceed. Jurors, please.

22 (Jury in at 12:03 p.m.)

23 THE BAILIFF: Your Honor, the jury is all present.

24 THE COURT: Okay. Thank you.

25 You may proceed.

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1 MR. BAX: Thank Your Honor.

2 ANNA ELSEY - CONTINUATION OF CROSS-EXAMINATION

3 BY MR. BAX:

4 Q Just continuing briefly Lieutenant, you had testified
5 to before, just to refresh your memory, you had had some
6 communications with SLED about the GSR collected from the
7 Chevy; correct?

8 A Correct.

9 Q At any time prior to the GSR kit that you collected
10 from the Chevy being sent back, prior to it being sent back,
11 did you have any communication written or otherwise or
12 anything on the actual paper work in that case that would
13 indicate that it was a secondary transfer?

14 A That I wrote?

15 Q That is correct?

16 A I did not write that.

17 Q So to your knowledge, you did not communicate that to
18 Mr. Moskol?

19 A I don't understand the question?

20 Q Did you ever give him any indication that there may be
21 a secondary transfer?

22 A No. That was the first conversation that we had was
23 once I received the paper work back in reference to the
24 initial report he sent out.

25 Q Okay. So that information that he had did not come

1 from you; is that correct? About the secondary transfer?

2 A I don't know where. I don't know why he came to that
3 conclusion.

4 Q Okay.

5 MR. BAX: No further questions at this time.

6 THE COURT: Okay.

7 MS. JOHNS: Thank Your Honor. Please the Court.

8 ANNA ELSEY - CROSS-EXAMINATION

9 BY MS. JOHNS:

10 Q And you're Ann Elsey?

11 A Anna Elsey.

12 Q Elsey. E-l-s?

13 A Correct.

14 Q Ms. Elsey, I just want to verify a couple of points
15 that were brought out. First of all, you do recall
16 submitting a crime scene investigation analysis report;
17 right, that was dated July 2, 2007?

18 A Are you referring to my report that I wrote?

19 Q Yes, ma'am.

20 A Yes, ma'am.

21 Q Okay. And this crime scene investigation analysis
22 report you stated that you made contact with case officers
23 in this case, being, Investigator McRae and Investigator
24 Gallegos for additional processing information, right? In
25 fact, you met with them, did you not?

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1 A I don't recall if I met with them or if I spoke with
2 them on the phone.

3 Q In fact, if you had met with them in person they would
4 have given you information about the crime; is that correct?

5 A At some point we made contact and they gave me
6 additional information about the crime so that I would know
7 how to process the vehicle.

8 Q Okay. Now, if you are -- let me ask you this way. You
9 are a crime scene analysis; right?

10 A I'm a crime scene investigator.

11 Q Investigator. And if you were to collect evidence you
12 would collect evidence based on what you're instructed to
13 collect?

14 A I collect based on what is probative based on what I
15 know about the case and what I know about evidence
16 collection.

17 Q Okay. So the information that you receive -- well, let
18 me rephrase that. The investigation that you conduct is
19 connected to and related to the information that you
20 received from somebody else?

21 A That is a factor that comes into play.

22 Q Okay.

23 A I mean, obviously the more we know about the crime we
24 are investigating the more we know what type of evidence to
25 focus on in addition to the types of evidence we would focus

1 on in general.

2 Q Okay. So therefore, your investigation is contingent,
3 in some ways, on the information you receive from another
4 person; correct?

5 A In this particular case, speaking with Investigator
6 McRae and Investigator Gallegos was important in reference
7 to what specifically happened and what I needed to look for
8 in a vehicle.

9 Q And the information that you received from them was
10 that they were not eye witnesses; right?

11 A That the investigators were eye witnesses?

12 Q Yes, ma'am. They were not eye witnesses, right?

13 A Correct.

14 Q Okay. So the information, you can deduct, the
15 information they received was information they received from
16 somebody else that was there?

17 A I don't know -- I know it's information they received
18 from investigating the case. I don't know who they received
19 it from at the time.

20 Q Okay. But you can conclude they were not eye witnesses
21 based on what you know about this case?

22 A Correct.

23 Q You have bench notes; right?

24 A The written notes?

25 Q Yes.

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1 A Yes.

2 Q Okay. And in those bench notes you have indicated that
3 you took sticky tabs, right, from four areas of this
4 Chevrolet Suburban?

5 A The GSR tabs?

6 Q Yes, ma'am.

7 A Yes. Well, the four areas I marked A thru D and then
8 the additional areas after that.

9 Q So instead of drawing a diagram, basically what you did
10 is you took it one step further and you just marked with a
11 label four quadrants of the interior of the Suburban; right?

12 A I marked the four door areas.

13 Q Okay. And A is the driver's door area?

14 A Correct.

15 Q B is the rear door behind the driver's door area?

16 A Correct.

17 Q Okay. C is the front passenger front door area; right?

18 A Yes.

19 Q And then D is the rear passenger door area; is that
20 correct?

21 A Rear passenger side, yes.

22 Q Rear passenger side. Now, is there any labels that you
23 have whatsoever for the outside of the vehicle?

24 A No. Those are referenced to the GSR that I collected.

25 Q So you didn't take any GSR, you didn't like do any of

1 these sticky tabs on the outside of the vehicle, did you?

2 A I did not. No.

3 Q Now, you did a request form that is necessary for SLED
4 to conduct an analysis on what you collect; is that correct?

5 A I did.

6 Q Okay. And what you did on the request form is that
7 standard operating procedure for the South Carolina Law
8 Enforcement Division to send you a letter or a report with
9 regards to their testing?

10 A They send their analysis report back. Their forensics
11 laboratory report.

12 Q And you did receive sometime subsequent, in or around,
13 August 20, 2007, a report from a Michael Moskol; is that
14 right?

15 A Yes. The report was actually sent to Investigator
16 Reed-Ensor, but it included items of evidence that I
17 submitted.

18 Q Okay. And this particular case you had labeled the GSR
19 kits from the interior four areas, A, B, C, and D as Item
20 No. 10; is that correct?

21 A I guess Item No. 10 is SLED's item number.

22 Q Okay.

23 A Our label is actually the GSR samples, the GSR kit was
24 how I entered it into evidence.

25 Q So the GSR kit for item 10 is a different item number

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1 for your departmental reason, right?

2 A It appears to be SLED's item number.

3 Q Okay. Item No. 10 is a complete envelope of all of
4 these sticky tabs?

5 A Yes, it appears to be.

6 Q And on the report that you received from SLED, the
7 results no analysis performed?

8 A That's the first report.

9 Q Yes, ma'am.

10 A That was prior to him completing the analysis.

11 Q Prior to him what?

12 A He did not do analysis at that point.

13 Q Okay.

14 A And then he sent me another report once the analysis
15 was complete.

16 Q Okay. So when you received this, you received it
17 through Reed-Enzor, you noticed there was not an analysis
18 performed due to secondary transfer?

19 A That's what his report states, yes.

20 Q Okay. And then in September Mr. Bax has referenced an
21 email that you sent to Mr. Moskol; correct?

22 A Correct.

23 Q And in that email you had told him or discussed with
24 him that due to a recent telephone conversation that
25 afternoon with him you are going to submit or resubmit a GSR

1 analysis pertaining to this case; right?

2 A Correct.

3 Q Okay. And you went on to say that after the initial
4 report was completed by the responding officer -- what
5 initial report are you referring to?

6 A When I was speaking -- I have to say what he told me to
7 answer that question.

8 Q No. I'm talking about who's initial report?

9 A The initial case report based on my conversation with
10 the analyst.

11 Q Okay. So after the initial report was completed by the
12 responding officer, I just want to know who the responding
13 officer is?

14 A I don't have the initial report, I don't have a copy of
15 that. The initial report that was written in reference to
16 this case.

17 Q Okay. So you don't know whose initial report you're
18 referring to; is that correct?

19 A It was based on my conversation with him, with the
20 analyst.

21 Q Okay. All right. So you had a conversation with the
22 analyst and then you went and looked at the initial report
23 by a responding officer who you don't know who that is?

24 A No, that's correct. My conversation with him is that
25 he came to the conclusion to not analyze the GSR kit based

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1 on what he knew about the initial report.

2 Q Okay. But this is your email to him?

3 A That's correct.

4 Q And you say after the initial report was concluded by
5 the responding officer, further investigation by our
6 homicide --

7 MS. MCDUFFIE: Your Honor, I'm going to object to
8 Ms. Johns reading this to the jury unless she --

9 MS. JOHNS: I will rephrase my question, Your
10 Honor.

11 THE COURT: Okay.

12 BY MS. JOHNS:

13 Q In your email to Mr. Moskol at SLED, you make a
14 reference to an initial report completed by a responding
15 officer. You don't know who that officer is, do you?

16 A I do not. No.

17 Q And based on your further investigation, which means
18 your conversations with or meetings with the homicide
19 investigators in this case, it was revealed that subjects
20 fired from inside vehicle?

21 A Correct. I explained to him why I collected the
22 evidence that I collected.

23 Q Okay. And your explanation for collecting the evidence
24 that you collected was because there was a gunfire from a
25 vehicle?

1 A That was the information that was provided to me that,
2 yes, that could be the case.

3 Q Okay. And you don't know whether that was the case or
4 not because that was based on hearsay, right?

5 A I was not at the incident when it happened.

6 Q Right. So you're relying on somebody else telling you
7 this information, right?

8 A I'm relying on a case investigator's information. Yes.

9 Q Okay.

10 A In relation to the search warrant that he obtained.

11 Q And so your information that you received, which was
12 secondary information, you processed the interior of this
13 vehicle, right?

14 A The information I received was directly from
15 Investigator Gallegos and --

16 Q McRae?

17 A -- McRae.

18 Q And based on information that you received from them
19 initially on July 2, 2007, you processed the interior of
20 this vehicle?

21 A Correct.

22 Q And you were further explaining that to Mr. Moskol?

23 A Correct.

24 Q Now, you have any other information that you relied
25 upon with regards to the facts of this case other than the

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1 information you received from McRae and Gallegos?

2 A No. Just what was requested in the search warrant and
3 my conversations with them.

4 Q Okay.

5 A And I may have had a conversation with Investigator
6 Bouknight, but I don't recall anything specific.

7 Q You didn't note that in your bench notes, did you?

8 A No. I just know that he requested that I do it.
9 That's why he and I may have had a conversation about it.

10 Q Investigator Bouknight, he's with the crime scene
11 investigation team?

12 A He's with -- yes, with the crime scene unit.

13 Q All right. Now, you have a photograph in here that
14 shows the interior of the Suburban, State's Exhibit No. 25,
15 and that picture clearly depicts a search warrant in there,
16 right?

17 A Correct. That's after I placed the search warrant in
18 there after I completed the vehicle.

19 Q So you had an opportunity to view the search warrant;
20 right?

21 A Yes.

22 Q And in this search warrant description of person, place
23 or thing to be searched. It clearly says a tan colored
24 vehicle; right?

25 A It does.

1 Q And in all or the majority of your reports you listed
2 the vehicle as being silver; right?

3 A There are places where I put silver on the label and on
4 the GSR form. It had -- to me it kind of had a silver tint
5 to it, but it is manly tan. And I have that indicated in my
6 analysis report.

7 Q All right. But we have photographs; right?

8 A Yes.

9 Q Because color would be a matter of opinion unless it's
10 documented somewhere on the door frame; right?

11 A It's -- I mean, it was a tan vehicle.

12 Q It was?

13 A Yes.

14 Q But you listed it as silver because it could have been
15 silver at the time, as well; right?

16 A Well, it kind of had a silver hue to it, I guess.

17 Q Well, what color was the interior?

18 A I believe it was tan. I'd have to look at the
19 photograph to -- it was gray.

20 Q Gray.

21 A Gray, and I think the seats were --

22 Q I'll show you 24.

23 A It's kind of hard to --

24 Q The seats are --

25 A -- fairly dirty.

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1 Q No. 24. Does that help?

2 A They appear grayish. I -- it's fairly dirty inside the
3 vehicle.

4 Q What about No. 40. Would you agree now that color is a
5 matter of opinion?

6 A Well, it's tan, but it has kind of a silver tone to it.
7 But it is labeled as tan in the search warrant, that's why I
8 labeled it in most of my reports.

9 Q You took these photographs provided to me by the state.
10 Let me see if I can get that to help you refresh your
11 opinion. What's your opinion about that color depicted in
12 those photographs you took?

13 A I would say a tanish silver colored vehicle. It's also
14 listed on the log that the investigator entered it in as
15 silver. So --

16 Q Okay. I'm not trying to trip you up. I was just --

17 A I understand.

18 Q Now, based on these capsules -- and you call them what
19 -- sticky --

20 A They're vials with like a sticky surface, sticky tab.

21 Q And these are the GSR to SLED's No. 10, in this case.
22 And you have gone through this pretty much with Mr. Bax with
23 regard to how these were labeled; correct?

24 A Yes.

25 Q Okay. And you know I can tell by the way you labeled

1 them how precise and how -- you had stated with a label
2 already on it; correct?

3 A Yes. Those are made to do GSR on hands; not on --

4 Q Okay. And what you did is you took another label and
5 you put door A to coincide with the photograph; right?

6 A Yes.

7 Q And then you handwrote, specifically -- can't really
8 make that out?

9 A That's why I did the label also so the analyst would be
10 able to read exactly where it came from.

11 Q So door handle, but does it say --

12 A Door A, door handle.

13 Q What's the handwritten stuff say for example?

14 A Door handle, and then it has driver's.

15 Q Driver's. Okay. So door A would be driver's and then
16 door handle would be where you took it?

17 A Correct.

18 Q Okay. So you're very meticulous about labeling these,
19 because you had to write it down and then you went back to
20 your office and you made your own labels and then you taped
21 them --

22 A Actually, I made the labels while I was out there.

23 Q Okay.

24 A Doing the collection.

25 Q All right. And you know how many of these there are?

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1 A I believe there -- that were collected total?

2 Q Yes?

3 A I believe there were 12. Let me double check. There
4 are 12.

5 Q And Ms. Elsey, do you have your original gunshot
6 analysis residue form with you?

7 A That was submitted with the kit? Let me see what you
8 -- Yes, I do.

9 Q My copy is cut off at the bottom, so may I see yours?

10 A Sure.

11 Q All right. This analyst information form was signed on
12 July 2, 2007; right?

13 A Right.

14 Q And that was at 10:30 in the morning; right?

15 A Yes, that's when I started.

16 Q Okay. And this was done after you met with McRae and
17 Gallegos; right?

18 A I spoke with them prior to starting the processing of
19 the vehicle.

20 Q And there's a portion of that forma that has relation
21 to the shooting information, that's obviously the gunshot
22 residue, is powder residue. It's going to have to do with
23 the shooting; right?

24 A Correct.

25 Q So in that shooting information block that you have on

1 that, the date and time that the shooting occurred, you've
2 got June 30, 2007 at 4:00 a.m.; right?

3 A Can I -- yes.

4 Q Okay. And it says place. For example, in parking lot,
5 indoors or outdoors, and you've got outdoors/from vehicle;
6 right?

7 A Right.

8 Q And so nothing has changed about that; right?

9 A In reference to the information that the shooting was
10 from a vehicle?

11 Q Outdoors/from a vehicle. That's the information that
12 you wrote down there to assist Moskol in determining whether
13 or not he should even be performing an analysis; right?

14 A Correct.

15 Q And did anything change --

16 A That the information I received that it was from a
17 vehicle?

18 Q No, ma'am. Has anything changed from July 2, 2007,
19 with regard the place, outdoors/from vehicle?

20 A No.

21 Q Okay. So in July it was outdoors, from vehicle and in
22 September it was outdoors from vehicle.

23 A If you're asking if I changed the form at all; no, I
24 did not.

25 Q Okay.

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1 MS. JOHNS: Your Honor, we would ask if we could
2 substitute these copy of Ms. Anna Elsey Clemmons report and
3 mark it as ID only.

4 MS. MCDUFFIE: No objection.

5 THE COURT: Okay.

6 (Defendant's Exhibit No. 2 GSR
7 form, was marked for ID.)

8 BY MS. JOHNS:

9 Q Now, do you -- let's go back just a little bit in your
10 testimony. I just want to make sure I covered your
11 credentials. You have a bachelor's of science degree that
12 you received from the College of Charleston, and then you
13 have a master's degree from the University of Florida;
14 right?

15 A Correct.

16 Q And the master's degree is in what area?

17 A Forensic DNA and serology.

18 Q Forensic DNA and serology?

19 A Correct.

20 Q Okay. And then you listed a number of other things;
21 emergency crime scene technology and so on; right?

22 A Do you want me to list them again or --

23 Q No.

24 A Okay.

25 Q A number of other things --

1 A Training since I've been with the department, yes.

2 Q A number of other things you've been trained in. Do
3 you know anything about the effect of wind when it comes to
4 gunshot --

5 A Gunshot residue powder?

6 Q Yes, ma'am?

7 A No. I'm not a firearms expert. I'm a trace analyst.

8 Q Okay. Do you know anything in regards to fireworks,
9 gun powder in fireworks?

10 A No.

11 Q Okay. Do you know what happens to a bag of flour when
12 it's dropped on the floor?

13 A (No response.)

14 Q All purpose cooking flour when it's dropped on the
15 floor?

16 A I'm not sure I understand your question?

17 Q Have you ever had an experience where that happens --

18 A No.

19 Q -- and it goes everywhere?

20 A No. It's not happened to me personally. No.

21 Q And are you aware of shell casings from a weapon that
22 had been used at Hardscrabble Road that the shell casings
23 were found outside on the roadway?

24 A No.

25 Q Do you know that?