

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of General Sessions
George C. James, Jr., Circuit Court Judge

Appellate Case No. 2013-002735
Circuit Court Case No. 1999-GS-43-00756

RECEIVED

JUL 07 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA

RESPONDENT,

v.

KEVIN CHOICE,

APPELLANT.

RECORD ON APPEAL

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENSKA
Senior Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

JEREMY A. THOMPSON
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
P.O. Box 12891
Columbia, SC 29211
803-779-2555
803-779-2556 Fax
jeremyatlaw@yahoo.com

ATTORNEY FOR APPELLANT.

THE HONORABLE ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit
P.O. Box 836
Sumter, SC 29151

ATTORNEYS FOR RESPONDENT.

INDEX

Index	i
Trial Transcript	1
State's Opening Statement	8
Defense's Opening Statement	13
Louis Jenkins	
Direct	17
Cross	40
Redirect	51
Marion Howard	
Direct	53
Cross	59
George McQuilla	
Direct	62
Cross	70
Redirect	72
Saprena Davis	
Direct	73
Cross	81
Phillip McCoy	
Direct	86
Cross	91
Mark Rosensteel	
Direct	93
Cross	101
Ken Nesbitt	
Direct	103
Cross	120
John Barron	
Direct	124
Cross	134
Redirect	141

Joe Powell	
Direct.....	143
Cross	151
Redirect.....	154
Irene Culick	
Direct.....	157
Cross	164
Carl Jordan	
Direct.....	166
Cross	170
David Collins	
Direct.....	171
Cross	180
Dr. Joel Sexton	
Direct.....	194
Cross	202
Sharon Bailey	
Direct.....	204
Cross	210
Redirect.....	214
Eugene Williams	
Direct.....	216
Cross	224
Alvin Holston	
Direct.....	226
Cross	229
Kevin Choice	
Direct.....	240
Cross	246
Redirect.....	257
Defense's Closing Argument.....	260
State's Closing Argument.....	275
Jury Charge	289
Verdict.....	302

Indictment	304
Defendant's Motion for New Trial Based upon After-Discovered Evidence.....	306
Rule 29(b), SCRCrimP, Transcript.....	326
Louis Jenkins	
Direct.....	336
Examination by the Court	350
Redirect	352
Ronald Skipper	
Direct.....	354
Cross	361
Redirect	368
Examination by the Court	370
Kevin Choice	
Direct.....	372
Cross	377
Redirect	382
Defendant's Exhibit #2: Affidavit of Louis Charles Jenkins, Jr., #313523	401
Defendant's Exhibit #3: Statement of Louis Jenkins.....	406
Order Denying Motion for New Trial.....	407
Certificate of Compliance	411

1 BACK TO PATROL SOON AFTER THIS CASE AND HE TURNED OVER
2 RESPONSIBILITY TO MR. HOLSTON.

3 THE COURT: THAT WILL DO. HE CAN STAY.

4 MR. CROFT: IF I MAY, CAN I SEND THEM ALL RIGHT
5 AROUND HERE TO THIS LIBRARY, LAW LIBRARY, WE CAN KEEP THEM
6 IN THERE, THAT WAY WE KNOW WHERE EVERYBODY IS. THAT MIGHT
7 BE THE EASIEST THING TO DO, KEEP MY FIRST ONE HERE, YOUR
8 HONOR.

9 THE COURT: OKAY.

10 MR. CROFT: IS THAT ALL RIGHT?

11 THE COURT: SUITS ME. AS LONG AS YOU DON'T INTERFERE
12 WITH ANY LAWYERS IN THE LAW LIBRARY DOING RESEARCH. I
13 THINK THERE IS SEPARATED DEGREE OF -- THEY KEEP THEM
14 INVOLVED WITH TOO MANY PEOPLE. IF IT IS, THEY CAN GO DOWN
15 TO MY OFFICE. WHO IS YOUR FIRST WITNESS GOING TO BE, MR.
16 JENKINS? HE IS GOING TO STAY RIGHT HERE.

17 THE COURT: JUST KEEP HIM. YA'LL READY TO GO?

18 MR. CROFT: YES, SIR.

19 THE COURT: ALL RIGHT. LET'S BRING THE JURY PANEL
20 BACK IN AND WE WILL CRANK UP AND LET THESE WITNESSES GET
21 OUT.

22 (WHEREUPON THE JURY ENTERED THE COURTROOM).

23 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN. GETTING
24 READY TO START THIS TRIAL. I'M GOING TO TELL YOU A LITTLE
25 BIT ABOUT HOW WE ARE GOING TO PROCEED AND WHAT YOUR JOB IS

THIS PAGE INADVERTENTLY LEFT BLANK

1 GOING TO BE SO HOPEFULLY IT WILL MAKE IT EASIER AS WE GO
2 ALONG.

3 NOW, THE FOREMAN HAS TO SIT IN THE CHAIR HE IS
4 SITTING IN AT ALL TIMES. THE REST OF YOU CAN SIT IN ANY
5 CHAIR YOU WANT TO. OF COURSE, IT'S MY EXPERIENCE THAT GO
6 BACK TO THE SAME CHAIR EVERY TIME, BUT ALTERNATES HAVE TO
7 SIT IN THEIR CHAIR.

8 THE REASON WE HAVE ALTERNATES IS IN CASE
9 SOMETHING HAPPENED TO ONE OF OUR JURORS IN THE TRIAL OF A
10 CASE, WE HAVE SOMEBODY TO PUT IN THEIR PLACE. WE GET ALL
11 THE WAY THROUGH THE TRIAL AND NOTHING HAPPENS TO OUR 12
12 JURORS, THEN I WILL REPLACE THE ALTERNATE BEFORE WE GO TO
13 THE JURY DELIBERATIONS.

14 ISN'T MANY TIMES SOMETHING HAPPENS TO A JUROR,
15 YOU NEED SPARES AROUND JUST IN CASE, BUT YOU SIT AND
16 PARTICIPATE THROUGHOUT THE TRIAL AND HEAR ALL THE EVIDENCE
17 JUST LIKE YOU'RE A REGULAR JUROR.

18 NOW, THIS IS CRIMINAL COURT. CALL IT GENERAL
19 SESSIONS COURT. EARLIER TODAY I TOLD YOU THAT THIS
20 DEFENDANT, KEVIN CHOICE, WAS INDICTED BY THE GRAND JURY OF
21 SUMTER COUNTY.

22 NOW, THE GRAND JURY IS 18 PEOPLE WHO MEET ONCE A
23 MONTH AND THEY LISTEN TO CRIMINAL CASES BROUGHT TO THEM BY
24 THE POLICE DEPARTMENT, THE SHERIFF'S DEPARTMENT,
25 SOLICITOR'S OFFICE, AND THEY DECIDE WHETHER OR NOT THERE

1 IS ANY EVIDENCE AT ALL TO SEND THE CASE TO THE COURT OF
2 GENERAL SESSIONS FOR DISPOSITION.

3 NOW, THE GRAND JURY IS A SAFEGUARD BETWEEN THE
4 LAW AND CITIZENS. AND IN THIS CASE THE GRAND JURY
5 RETURNED A TRUE BILL WHICH MEANS THERE IS PROBABLE CAUSE
6 TO BELIEVE A CRIME HAS BEEN COMMITTED AND THAT THIS
7 DEFENDANT COMMITTED IT.

8 SO THEY SIGN THE BACK OF THIS INDICTMENT AND
9 THEY SEND IT UP HERE AND THEN WE HAVE A TRIAL ON ALL OF
10 THE CHARGES REMAINING IN THIS INDICTMENT. NOW, THIS IS NO
11 EVIDENCE WHATSOEVER OF THE DEFENDANT'S GUILT.

12 YOU CAN KEEP THAT STRAIGHT. THIS IS JUST THE
13 MECHANISM BY WHICH CASES GO THROUGH THE GRAND JURY TO ME,
14 OKAY? SO THIS IS OUR SYSTEM THAT'S BEEN AROUND SINCE THE
15 BEGINNING OF TIME.

16 AS A MATTER OF FACT, THE GRAND JURY SYSTEM GOES
17 BACK TO ENGLISH LAW A LONG TIME, REALLY ACTS AS A
18 PROTECTION AGAINST YOU BEING GRABBED OFF THE STREET,
19 HAULED INTO COURT AND BEING REQUIRED TO FACE CHARGES
20 WITHOUT SOMEBODY PASSING ON IT.

21 SO ANY WAY, HERE WE ARE. THE DEFENDANT HAS PLED
22 NOT GUILTY TO THIS INDICTMENT TO ALL THE CHARGES.
23 THEREFORE THAT PLACES THE BURDEN ON THE STATE OF SOUTH
24 CAROLINA WHO IS REPRESENTED BY THE SOLICITOR'S OFFICE OF
25 SUMTER COUNTY TO PROVE HIS GUILT BEYOND A REASONABLE

1 DOUBT.

2 THAT IS THE STANDARD BY WHICH THEY MUST PROVE
3 THIS CASE, BEYOND A REASONABLE DOUBT. NOW, AFTER WE GET
4 THROUGH ALL THE TESTIMONY AND THE EVIDENCE OF THE CASE,
5 THE LAST THING THAT HAPPENS IS I CHARGE YOU ON THE LAW
6 WHICH MEANS I EXPLAIN TO YOU THE LAW THAT APPLIES TO THIS
7 CASE, ALL THE CRIMES CHARGED IN THIS INDICTMENT.

8 AND I WILL GO OVER THE BURDEN OF PROOF WITH YOU
9 AND I WILL GO OVER EVERYTHING ELSE, TELL YOU ALL ABOUT THE
10 LAW, THE LAST THING THAT HAPPENS IS BEFORE I HAND YOU A
11 VERDICT FORM IS YOU DECIDE THIS CASE.

12 NOW, THE FIRST THING THAT HAPPENS WHEN I FINISH
13 MY REMARKS IS THE ATTORNEYS WILL COME UP BEFORE YOU AND
14 MAKE WHAT IS KNOWN AS AN OPENING STATEMENT. THE SOLICITOR
15 GOES FIRST BECAUSE THEY HAVE THE BURDEN OF PROOF.

16 THE DEFENDANT IN A CRIMINAL CASE HAS NO BURDEN
17 WHATSOEVER. HIS LAWYER DOESN'T HAVE TO SAY ANYTHING. HE
18 DOESN'T HAVE TO SAY ANYTHING. HE CAN SIT RIGHT THERE AND
19 SAY I DON'T THINK YOU PROVED THE CASE, I'M NOT GOING TO
20 SAY A WORD.

21 DEFENSE COUNSEL MAKES AN OPENING STATEMENT, HE
22 DOESN'T HAVE TO. ANY WAY, THE SOLICITOR GOES FIRST
23 BECAUSE THE STATE HAS THE WHOLE BURDEN. ANY WAY, THEY
24 WILL MAKE OPENING STATEMENTS, SO TELL YOU WHAT THE CASE IS
25 ALL ABOUT AND WHAT THEY THINK THE EVIDENCE WILL SHOW.

1 NOW, WHAT THE ATTORNEYS SAY IN THEIR OPENING
2 STATEMENTS IS NOT EVIDENCE. AND THE REASON I TELL YOU
3 THAT IS BECAUSE YOU CAN'T BASE YOUR VERDICT ON WHAT THE
4 LAWYERS SAY IN THEIR OPENING STATEMENTS. YOU HAVE TO BASE
5 YOUR VERDICT ON THE EVIDENCE AT TRIAL.

6 THE EVIDENCE IS TWO KIND OF EVIDENCE. YOU HAVE
7 LIVE TESTIMONY WHICH IS WHAT WITNESSES SAY, AND THAT ALL
8 IS UNDER OATH WHEN THEY TESTIFY, AND THEN WE MAY HAVE SOME
9 PHOTOGRAPHS, SOME WRITTEN DOCUMENTS, THOSE KINDS OF THINGS
10 AND THOSE ARE WRITTEN MATTERS, THE INDICTMENT, LIVE
11 TESTIMONY AND WRITTEN EVIDENCE.

12 AND YOU WILL HAVE TO BASE YOUR DECISION ON WHAT
13 THE EVIDENCE IS, AND OF COURSE THE LAW OF THE STATE.
14 AFTER THE OPENING STATEMENTS, THE STATE GOES FIRST WHICH
15 MEANS THE STATE CALLS ITS WITNESSES FIRST.

16 THEY WILL BE EXAMINED BY THE SOLICITOR'S OFFICE,
17 BE CROSS-EXAMINED BY THE DEFENSE ATTORNEY. AND AFTER THE
18 STATE HAS PRESENTED ALL OF IT'S WITNESSES, THEN THE
19 DEFENDANT CAN CALL WITNESSES IF HE WANTS TO.

20 HE IS NOT REQUIRED TO DO SO, ONCE AGAIN HE HAS
21 NO BURDEN OF PROOF. THE DEFENDANT MAY TESTIFY. HE HAS A
22 RIGHT NOT TO TESTIFY. HE HAS A CONSTITUTIONAL RIGHT NOT
23 TO TESTIFY. IF HE CHOOSES NOT TO TESTIFY, YOU CAN'T HOLD
24 THAT AGAINST HIM, AND I WILL EXPLAIN ALL OF THAT TO YOU AT
25 THE END OF THE TRIAL.

1 BUT ANY WAY, IF THE DEFENDANT DECIDES TO CALL
2 WITNESSES, THEY CAN. THEN AFTER EVERYBODY TESTIFIES, THEN
3 THE LAWYERS COME BACK UP BEFORE YOU AND MAKE WHAT IS KNOWN
4 AS A CLOSING ARGUMENT. AND THAT'S WHEN THEY WILL TRY TO
5 CONVINCE YOU TO BRING A VERDICT BACK IN THEIR FAVOR, AND
6 THEN I WILL TELL YOU WHAT THE LAW IS, GIVE YOU A VERDICT
7 FORM AND LET YOU DECIDE THIS CASE. OKAY?

8 THE MAIN THING YOU HAVE TO DO IS PAY CLOSE
9 ATTENTION TO THE EVIDENCE IN THIS CASE BECAUSE YOU ARE
10 GOING TO HAVE TO JUDGE THE CREDIBILITY OR THE
11 BELIEVABILITY OF THE WITNESSES.

12 IF THIS WERE A CIVIL CASE, TWO PEOPLE CAME IN
13 HERE AND SAID I HAD THE GREEN LIGHT, YOU WOULD HAVE TO
14 DECIDE WHO HAD THE GREEN LIGHT. THIS IS NOT A CIVIL
15 CASE. SO YOU WILL PAY CLOSE ATTENTION AND WE WILL GET
16 STARTED AND WE WILL GO ON TILL ABOUT 5 TODAY, THEN WE WILL
17 START AGAIN AT 9:30 IN THE MORNING.

18 WE TAKE A BREAK MID-MORNING MORNING, GIVE YOU A
19 COKE, CUP OF COFFEE OR SOMETHING AND WE WILL TAKE LUNCH
20 ABOUT 1, 2:30, COME BACK, WORK TILL ABOUT 5 TOMORROW,
21 HOWEVER LONG TO WORK THIS CASE. YOU WON'T BE REQUIRED TO
22 WORK LATE.

23 JUDGES ON THE WALL AROUND HERE, THEY USED TO
24 MAKE YOU WORK LATE. WE DON'T DO THAT. AS A MATTER OF
25 FACT, I CAN REMEMBER BEING IN THIS COURTHOUSE TILL ABOUT

1 MIDNIGHT ONE TIME A LONG TIME AGO. BY THE WAY, PAY CLOSE
2 ATTENTION.

3 LET ME SAY SOMETHING ELSE BEFORE WE BEGIN. YOU
4 HAVE BEEN SWORN AS JURORS IN THIS CASE, WHICH MEANS YOU
5 HAVE TO DECIDE THIS CASE BASED ON THE EVIDENCE AND THE LAW
6 WHICH MEANS YOU CAN'T DISCUSS THIS CASE WITH ANYBODY
7 ELSE.

8 YOU CAN'T LET ANYBODY DISCUSS IT WITH YOU. WHEN
9 I SAY THAT, THAT INCLUDES YOUR HUSBAND AND WIFE, BOYFRIEND
10 AND GIRLFRIEND OR ANYBODY BECAUSE EVEN IF YOU TOLD THEM
11 ABOUT IT, THEY ARE GOING TO GIVE YOU THEIR OPINION ABOUT
12 SOMETHING. IT'S JUST HUMAN NATURE AND -- BUT CAN'T
13 DISCUSS IT WITH ANYBODY.

14 I'M GOING TO ASK YOU IF YOU'LL GO TO YOUR JURY
15 ROOM, NOT TO DISCUSS IT WITH EACH OTHER. EVERYBODY KEEPS
16 AN OPEN MIND TILL THE END. THEN YOU PUT IT ALL TOGETHER
17 AND YOU DECIDE THE CASE, OKAY? WE WILL MAKE IT A LOT
18 EASIER ON YOU AND EVERYBODY ELSE. ALL RIGHT. MR. CROFT?

19 MR. CROFT: MAY IT PLEASE THE COURT.

20 **OPENING STATEMENT BY MR. CROFT:**

21 RESPECT. WEBSTER'S DICTIONARY DESCRIBED THIS
22 WORDS AS QUALITY OR A STATE OF ESTEEM. TODAY SO MANY
23 PEOPLE, ESPECIALLY YOUNG PEOPLE, WANT THAT SO DESPERATELY
24 AND SOME PEOPLE, LADIES AND GENTLEMEN, WILL GO OUT AND
25 THEY WILL WORK HARD AND THEY DO WHAT THEY HAVE TO DO TO

1 MAKE SOMETHING OF THEMSELVES, AND OTHER PEOPLE, LADIES AND
2 GENTLEMEN, WILL TAKE THE EASIER ROUTE.

3 AND SOME PEOPLE THINK SIMPLY BY TAKING A PISTOL,
4 STICKING IT IN YOUR BELT YOU CAN FORCE PEOPLE TO HAVE
5 RESPECT FOR YOU. THE DEFENDANT IS ONE OF THOSE PEOPLE IN
6 THE SECOND GROUP, LADIES AND GENTLEMEN. AND AS IS SO
7 OFTEN THE CASE WHEN PEOPLE TAKE THAT SECOND OPTION,
8 TRAGEDY RESULTS.

9 MY NAME IS WILLIAM CROFT. AS I TOLD YOU, I'M AN
10 ASSISTANT SOLICITOR HERE IN SUMTER COUNTY. I PROSECUTE
11 CASES ON BEHALF OF PEOPLE OF SUMTER COUNTY. OVER THE NEXT
12 COUPLE OF DAYS I'M GOING TO BE LEADING YOU THROUGH A
13 SERIES OF EVENTS THAT SURROUNDS THE TRAGEDY I REFERRED TO,
14 A TRAGEDY WHICH LED TO THE DEATH OF 20 YEAR OLD TONY
15 RIVERS AT THE HANDS OF THE DEFENDANT AND HIS PISTOL.

16 AS THE JUDGE TOLD YOU, AT THE END OF THE CASE
17 HE'S GOING TO EXPLAIN TO YOU IN DETAIL WHAT THE LAW IS.
18 BUT BEFORE WE GET STARTED, I WANTED TO BRIEFLY GO OVER
19 SOME OF THE IMPORTANT PARTS, POINTS OF THE LAW THAT YOU
20 MAY HEAR AS WE GO THROUGH THIS CASE.

21 AS YOU HEARD, THE DEFENDANT IS CHARGED WITH
22 THREE THINGS, FIRST AND MOST IMPORTANTLY HE IS CHARGED
23 WITH MURDER. THE LAWS OF SOUTH CAROLINA DEFINE MURDER AS
24 THE KILLING OF ANY PERSON WITH MALICE AFORETHOUGHT EITHER
25 EXPRESS OR IMPLIED.

1 AND IN REFERENCE TO MURDER, MALICE MEANS
2 INTENTIONAL KILLING OF A PERSON KNOWING IT'S WRONG,
3 INTENDING TO DO IT KNOWING IT'S WRONG WITHOUT ANY LEGAL
4 EXCUSE. AND WHEN I SAY EXPRESS OR IMPLIED MEANS TWO WAYS,
5 ONE IS EXPRESS, SOMEBODY WERE TO COME TO YOU, SAY I'M
6 GOING TO KILL YOU, THEN THEY DIDN'T, THAT'S EXPRESS
7 MALICE, THEY SAID THEY WERE GOING TO DO IT.

8 IT CAN ALSO BE IMPLIED. IT CAN BE IMPLIED BY
9 THE USE OF A DEADLY WEAPON SUCH AS A PISTOL IN THIS CASE.
10 IT CAN BE IMPLIED BY AN INTENT TO KILL OR AN INTENT TO DO
11 SERIOUS BODILY INJURY.

12 AND THE JUDGE WILL TELL YOU IN MUCH MORE DETAIL
13 ABOUT IMPLIED MALICE AT THE END OF THE TRIAL. AND HE'S
14 CHARGED WITH TWO OTHER THINGS, POSSESSION OF A WEAPON
15 DURING A VIOLENT CRIME IS WHAT IT SOUNDS LIKE. IF YOU
16 CONVICT HIM OF MURDER AND IF YOU DETERMINE THAT HE
17 POSSESSED A WEAPON DURING THAT MURDER, HE IS GUILTY OF
18 POSSESSION OF A WEAPON DURING A VIOLENT CRIME.

19 AND THE OTHER IS POSSESSION OF A WEAPON ON ABC
20 PREMISES. IF YOU DETERMINE THAT HE IN FACT POSSESSED A
21 WEAPON ON THE PREMISES THAT SERVES ALCOHOL, THEN HE IS
22 GUILTY OF AN OFFENSE OF POSSESSION OF A WEAPON ON ABC
23 PREMISES.

24 LADIES AND GENTLEMEN, I ALSO WANT TO TAKE A FEW
25 MORE MOMENTS TO TALK ABOUT THE EVIDENCE AND THE WITNESSES

1 THAT YOU WILL HEAR. IT'S IMPORTANT AS THE JUDGE SAID YOU
2 LISTEN TO THEM ALL CLOSELY AND AT THE END YOU LOOK AT THEM
3 ALL TOGETHER AND THE TOTALITY OF THE CIRCUMSTANCES.

4 WHAT I MEAN BY THAT IS THAT EACH PIECE OF
5 EVIDENCE, EACH WITNESS COMPLIMENTS EACH OTHER TO SOME
6 EXTENT LIKE THE PIECES OF A PUZZLE SO THAT IN THE END YOU
7 HAVE ONE PICTURE.

8 WHAT YOU ARE GOING TO HEAR HAPPENED IS THAT ON
9 SEPTEMBER 3RD OF 1998 AT APPROXIMATELY 1 A.M. THERE WAS A
10 SHOOTING HERE INSIDE OF A BAR, A BAR CALLED THE DIAMOND
11 CLUB RIGHT HERE IN THE HEART OF SUMTER ON BROAD STREET.
12 IT'S NO LONGER THERE.

13 IT'S BEEN REPLACED BY I THINK IT'S SCHOOL SUPPLY
14 STORE, BUT IN 1998 IT WAS THE DIAMOND CLUB. YOU ARE GOING
15 TO HEAR A FEW WITNESSES WHO WERE INSIDE THE BAR AND TELL
16 YOU WHAT THEY SAW. YOU'RE GOING TO HEAR FROM THE SECURITY
17 GUARDS WHO WERE WORKING OUTSIDE OF THE BAR AND WILL TELL
18 YOU WHAT THEY SAW.

19 YOU'RE GOING TO HEAR THE POLICE OFFICERS CAME TO
20 THE SCENE AND TELL YOU WHAT THEY SAW. YOU'RE GOING TO
21 HEAR FROM INVESTIGATORS WHO WERE CALLED OUT. THEY ARE
22 GOING TO TELL YOU ABOUT THE EVIDENCE THEY FOUND.

23 YOU ARE GOING TO HEAR FROM EXPERTS WHO ARE GOING
24 TO TELL YOU ABOUT THE EXAMINATIONS THEY DID ON THAT
25 EVIDENCE AND ABOUT WHAT THE EVIDENCE MEANS. FINALLY

1 YOU'RE GOING TO HEAR FROM THE PATHOLOGIST, THE DOCTOR WHO
2 PERFORMED THE AUTOPSY ON THE VICTIM'S BODY.

3 LADIES AND GENTLEMEN, AFTER YOU HAVE HEARD ALL
4 OF THAT EVIDENCE AS I HAVE TOLD YOU, YOU'RE GOING TO HAVE
5 TO LOOK AT IT IN THE TOTALITY OF THE CIRCUMSTANCES AND
6 APPLY IT TO THE REASONABLE DOUBT STANDARD THE JUDGE HAS
7 TOLD YOU ABOUT.

8 THE REASONABLE DOUBT I THINK IS A TERM YOU'LL
9 PROBABLY ALL HEARD, BUT I WONDER WHETHER YOU EVER STOPPED
10 TO THINK ABOUT WHAT DOES IT REALLY MEAN. SEE SO MUCH ON
11 T.V. AND OTHER PLACES ABOUT REASONABLE DOUBT, LEGAL TERMS
12 AND SOME OF THESE LEGAL SHOWS.

13 SOMETIMES ITS MEANING CAN BECOME DISTORTED AND
14 CONFUSED. AND IT'S IMPORTANT THAT YOU UNDERSTAND
15 REASONABLE DOUBT DOES NOT MEAN ANY DOUBT AND THERE ARE
16 VERY FEW THINGS IN THIS WORLD WE KNOW WITH ABSOLUTE
17 CERTAINTY.

18 AND IN CRIMINAL CASES OF SOUTH CAROLINA, THE LAW
19 DOES NOT REQUIRE PROOF BEYOND EVERY POSSIBLE DOUBT, OF
20 COURSE. BUT INSTEAD AFTER HEARING ALL OF THE EVIDENCE IF
21 YOU ARE FIRMLY CONVINCED THE DEFENDANT IS GUILTY, THEN YOU
22 MUST FIND HIM GUILTY.

23 THAT IS YOUR OBLIGATION AS JURORS. LADIES AND
24 GENTLEMEN, I SIMPLY ASK THAT YOU USE YOUR COMMON SENSE,
25 YOU APPLY IT TO WHAT YOU HEAR FROM THIS WITNESS STAND,

1 APPLY IT TO THE LAW AS THE JUDGE TELLS IT TO YOU.

2 AND IF YOU DO THAT, I AM CONFIDENT THAT YOU WILL
3 COME UP WITH A PROPER VERDICT. A PROPER VERDICT IN THIS
4 CASE, LADIES AND GENTLEMEN, IS GUILTY ON ALL THREE
5 COUNTS. THANK YOU.

6 THE COURT: ALL RIGHT. MR. WRIGHT?

7 OPENING STATEMENT BY MR. WRIGHT:

8 MAY IT PLEASE THE COURT, YOUR HONOR. GOOD
9 AFTERNOON, LADIES AND GENTLEMEN. MY NAME IS PATRICK
10 WRIGHT. I'M REPRESENTING MR. KEVIN CHOICE SEATED BESIDE
11 ME OVER THERE. WE ARE HERE TO TRY THE CASE FOR THE MURDER
12 OF MR. TONY ROSE.

13 AND WHAT I ALSO WANT YOU TO KNOW OR LET YOU KNOW
14 RIGHT NOW IS A LITTLE THING ABOUT MY CLIENT, MR. KEVIN
15 CHOICE. AT THE TIME THAT THIS INCIDENT HAPPENED, MR.
16 KEVIN CHOICE WAS 22 YEARS OLD.

17 HE WAS A HARD WORKING YOUNG MAN. HE WORKED WITH
18 HIS FATHER. HIS FATHER -- PRIOR TO OPENING THEIR OWN
19 BUSINESS, HIS FATHER WORKED FOR THE YAMAHA DEALERSHIP OVER
20 ON EVANS STREET, PROBABLY WORKED THERE FOR ABOUT 40
21 YEARS.

22 HIS MOTHER ALSO WAS A WORKING WOMAN. SHE WORKED
23 FOR NEPCO. THINK SHE WAS -- OR WAS A MANAGER FOR COLOR-FI
24 UNTIL SHE TOOK ILL AND STOPPED WORKING. THEY RAISED MR.
25 KEVIN CHOICE AS BEST THEY COULD AND I THINK THEY DID A

1 PRETTY GOOD JOB.

2 NOT TOO LONG BEFORE THIS INCIDENT HAPPENED MR.
3 CHOICE, KEVIN CHOICE AND HIS FATHER HORMEL CHOICE WHO IS
4 SEATED BEHIND HIM ALSO, THEY OPENED UP A BUSINESS TOGETHER
5 FIXING SMALL ENGINES.

6 MR. KEVIN CHOICE, MY CLIENT, HE BASICALLY RAN
7 THE BUSINESS, HE DID ALL THE WORK, GAVE HIS FATHER A
8 CHANCE TO REST AFTER HE WAS WORKING AT THIS OTHER PLACE
9 FOR 40 YEARS ALMOST.

10 ALSO BEFORE THAT MR. CHOICE WORKED AT ANOTHER
11 JOB THAT HIS EMPLOYERS SPOKE VERY HIGHLY OF HIM, SAID HE'S
12 A--

13 MR. CROFT: YOUR HONOR, I'M GOING TO OBJECT.

14 THE COURT: MR. WRIGHT, GOING TO BE EVIDENCE OF THIS
15 FACT, FINE. THIS IS NOT ALLOWED TO TESTIFY IN YOUR
16 OPENING STATEMENTS.

17 (MR. WRIGHT CONTINUED).

18 ANY WAY, I WANT TO LET YOU KNOW MR. CHOICE IS A
19 HARD WORKING PERSON. HE IS NOT JUST SOME STREET THUG ON
20 THE STREET. HE DID HAVE A JOB. HE WORKED HARD. EVERYONE
21 SPOKE HIGHLY OF HIM. THE NIGHT OF THIS INCIDENT,
22 SEPTEMBER THE 3RD, 1998, MR. CHOICE, HE HAD BEEN DRINKING
23 BEFOREHAND WHEN HE WENT TO THE CLUB HAD SOME DRINKS AND
24 AFTER HE GOT TO THE CLUB HE HAD SOME DRINKS.

25 HE WAS SHOOTING POOL. THE EVIDENCE WILL SHOW

1 THAT WHILE MR. CHOICE WAS THERE IN THE CLUB WITH A BUNCH
2 OF OTHER PEOPLE IN THE CLUB, IN THE POOL HALL REALLY, THE
3 LIGHTS WENT OUT AND THERE WAS A SHOT.

4 THE POLICE DID AN INVESTIGATION. THEY TALKED TO
5 WITNESSES, HAVE STATEMENTS FROM DIFFERENT WITNESSES. NOT
6 ONE STATEMENT SAID THAT ANYBODY IN THIS CLUB WITH ALL
7 THESE PEOPLE SAW KEVIN CHOICE SHOOT ANYBODY. NOT ONE
8 STATEMENT SAID THIS. AS A MATTER OF FACT, ALMOST EVERY
9 STATEMENT--

10 MR. CROFT: I'M GOING TO OBJECT. I THINK HE IS GOING
11 INTO THINGS--

12 THE COURT: THAT'S GOING TO BE ARGUMENTATIVE.

13 MR. WRIGHT: GOING INTO THE EVIDENCE WILL SHOW--

14 THE COURT: EXCUSE ME. YOU'RE NOT ALLOWED TO ARGUE
15 IT IN YOUR OPENING STATEMENT.

16 MR. WRIGHT: THANK YOU, YOUR HONOR.

17 (MR. WRIGHT CONTINUED).

18 THE EVIDENCE WILL SHOW THAT MR. KEVIN CHOICE DID
19 NOT SHOOT ANYBODY. MR. KEVIN CHOICE DID -- AT THE END YOU
20 WILL SEE THE EVIDENCE. THEY WILL SAY IT I'M SURE, THAT
21 THE WEAPON -- DID HAVE A WEAPON COMING OUT OF THE CLUB,
22 BUT THE EVIDENCE WILL SHOW THAT HE DID NOT SHOOT ANYONE
23 NUMBER ONE. THE EVIDENCE WILL SHOW THAT HE HAD NO REASON
24 TO SHOOT MR. TONY ROSE, THERE IS NO MOTIVE, THERE IS A
25 WEAPON.

1 THERE IS NO WITNESS TO SHOW THAT HE SHOT
2 ANYONE. THERE IS WITNESSES TO SHOW THAT HE DIDN'T SHOOT
3 ANYONE. THERE WAS NOT ANY EVIDENCE TO SHOW THAT MR. KEVIN
4 CHOICE COMMITTED THIS CRIME. WHEN YOU COME INTO THIS
5 COURT, THE DEFENDANT IS COVERED WITH A SHROUD OF
6 INNOCENCE.

7 HE IS INNOCENT UNTIL PROVEN GUILTY. AS THE
8 JUDGE STATED EARLIER, THE BURDEN OF PROOF IS ON THE STATE
9 TO PROVE MR. KEVIN CHOICE GUILTY. THEY WON'T DO THAT
10 BECAUSE THEY CAN'T DO THAT. HE IS NOT GUILTY AND HE HAS
11 PLED NOT GUILTY.

12 WHAT I WANT YOU TO DO IS LISTEN TO ALL THE FACTS
13 IN THIS CASE. LISTEN TO ALL THE STATEMENTS, LISTEN TO ALL
14 THE WITNESSES, LISTEN TO WHAT THEY SAY CLOSELY, LISTEN TO
15 WHAT -- THEY HAVE ANY REASON TO SAY WHAT THEY ARE SAYING.
16 JUST USE YOUR COMMON SENSE.

17 THAT IS WHY BOTH OF US CHOSE YOU ON THIS JURY SO
18 YOU COULD USE YOUR COMMON SENSE BASICALLY. MR. CROFT
19 TALKED A LITTLE BIT ABOUT REASONABLE DOUBT. REASONABLE
20 DOUBT IS A DOUBT FOR WHICH YOU CAN GIVE A VALID REASON.
21 IF THERE IS SOMETHING IN THE EVIDENCE THAT YOU THINK IN
22 YOUR MIND THIS JUST DOESN'T ADD UP, THAT'S A REASONABLE
23 DOUBT.

24 AND THAT'S -- IF YOU FIND A REASONABLE DOUBT, IT
25 IS REASONABLE FOR YOU TO FIND MR. KEVIN CHOICE NOT GUILTY

LOUIS JENKINS - DIRECT BY CROFT

1 OF THIS CRIME. AND I'M CONFIDENT THAT ONCE YOU HAVE HEARD
2 ALL THE EVIDENCE, THAT YOU WOULD LIKE TO RESERVE -- THE
3 STATE GOES FIRST, SO AS FAR AS GOING TO HEAR ALL THE
4 EVIDENCE THEY'RE GOING TO TRY TO SAY MR. CHOICE DID THIS.

5 RESERVE YOUR JUDGMENT TILL THE VERY END OF THE
6 TRIAL WHEN ALL THE EVIDENCE, YOU HAVE HEARD ALL ARGUMENTS,
7 YOU HEARD EVERYTHING, RESERVE YOUR JUDGMENT AND LISTEN TO
8 EVERYTHING, LOOK AT WHAT IS SAID, LOOK AT WHAT IS NOT
9 SAID, LOOK AT EVERYTHING.

10 USE YOUR COMMON SENSE. AND I THINK ONCE YOU DO
11 THAT, YOU WILL FIND KEVIN CHOICE NOT GUILTY. THANK YOU.

12 THE COURT: ALL RIGHT, MR. CROFT. CALL YOUR FIRST
13 WITNESS.

14 MR. CROFT: YOUR HONOR, THE STATE WOULD CALL LOUIS
15 JENKINS.

16 LOUIS JENKINS, BEING FIRST DULY SWORN,
17 TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION BY MR. CROFT:

19 Q GOOD AFTERNOON, MR. JENKINS. JUST GOING TO ASK YOU A
20 FEW QUESTIONS. FIRST START OFF ABOUT YOUR BACKGROUND.
21 YOU LIVE HERE IN SUMTER?

22 A YES, SIR.

23 Q OKAY. AND HOW LONG HAVE YOU LIVED HERE IN SUMTER?

24 A SAY TEN, OVER TEN YEARS.

25 Q OKAY. AND WHERE DO YOU WORK HERE IN SUMTER?

LOUIS JENKINS - DIRECT BY CROFT

1 A EXIDE BATTERY.

2 Q EXIDE BATTERY?

3 A YES, SIR.

4 Q OKAY. AND DID YOU KNOW THE VICTIM IN THIS CASE, TONY
5 ROSE?

6 A YES, SIR.

7 Q OKAY. HOW DID YOU KNOW HIM?

8 A HE WAS MY BROTHER-IN-LAW.

9 Q YOUR BROTHER-IN-LAW? WERE YOU MARRIED TO HIS SISTER?

10 A YES, SIR.

11 Q OKAY. AND LET ME ASK YOU THIS. WHAT IS YOUR CURRENT
12 MARITAL SITUATION THERE?

13 A I'M SEPARATED, BUT WE ARE STILL COMMUNICATING.

14 Q SEPARATED RIGHT NOW?

15 A YEAH.

16 Q BACK IN SEPTEMBER OF 1998 -- LET ME ASK YOU THIS.
17 WHO WERE YOU LIVING WITH OR WHO WAS LIVING WITH YOU?

18 A ME, MY WIFE AND MY MOTHER-IN-LAW, ALL OF US WERE
19 LIVING TOGETHER.

20 Q YOUR MOTHER-IN-LAW, THAT'S THE VICTIM'S MOTHER?

21 A YES.

22 Q OKAY. IS THIS HER RIGHT HERE ON THE FRONT ROW?

23 A YES.

24 Q OKAY. WITH SOME OF THE OTHER FAMILY MEMBERS?

25 A UH-HUH.

LOUIS JENKINS - DIRECT BY CROFT

1 Q OKAY. LET ME ASK YOU THIS QUESTION BEFORE WE GET
2 STARTED AS FAR AS ANY WITNESS WHO TESTIFIES -- I'M GOING
3 TO ASK ABOUT YOUR CRIMINAL RECORD. YOU DO HAVE A LITTLE
4 BIT OF A PAST CRIMINAL RECORD; IS THAT RIGHT?

5 A YES.

6 Q AND THAT CONSISTS OF EVENTS TOOK PLACE IN 1997; IS
7 THAT RIGHT?

8 A YES.

9 Q AND YOU WERE CONVICTED OF POSSESSION OF CRACK
10 COCAINE?

11 A YES.

12 Q AND FAILURE TO STOP FOR A BLUE LIGHT?

13 A YES.

14 Q CARRYING A PISTOL; IS THAT RIGHT?

15 A YES.

16 Q OKAY. I WANT TO TAKE YOU BACK TO SEPTEMBER 3RD OF
17 1998. DO YOU REMEMBER THAT NIGHT?

18 A YES.

19 Q WAS THAT A WEDNESDAY?

20 A WEDNESDAY NIGHT.

21 Q OKAY. YOU WORKED THAT DAY?

22 A YES, SIR, EARLIER.

23 Q OKAY. WHAT DID YOU DO WHEN YOU GOT HOME FROM WORK?

24 A I TOOK A SHOWER AND SAID I WAS GOING TO RIDE OUT TO
25 THE POOL HALL, SHOOT A COUPLE GAMES OF POOL, MAYBE HAVE A

LOUIS JENKINS - DIRECT BY CROFT

1 BEER OR TWO.

2 Q OKAY. IS THAT YOUR IDEA?

3 A YEAH, THAT'S MY IDEA.

4 Q DID YOU DECIDE TO TAKE ANYBODY WITH YOU?

5 A NO, BUT MY WIFE SUGGESTED SHE SAID -- SHE HAD TWO
6 SUGGESTIONS, SHE SAID MAYBE TONY OR EITHER MAURICE WOULD
7 LIKE TO RIDE OUT WITH ME, SO SHE CALLED HER BROTHER AND HE
8 AGREED TO RIDE OUT WITH ME, SO...

9 Q DID YOU PICK HIM UP?

10 A YES, I PICKED HIM UP.

11 Q HE WAS WAITING ON YOU WHEN YOU CAME BY?

12 A YES.

13 Q WHERE DID YA'LL GO ONCE YOU PICKED HIM UP?

14 A WELL, WE WENT STRAIGHT TO THE POOL HALL.

15 Q OKAY.

16 A STRAIGHT TO THE--

17 Q POOL HALL. THAT'S THE DIAMOND CLUB?

18 A THAT'S THE DIAMOND CLUB ON BROAD STREET.

19 Q DID YOU GO ANYWHERE IN BETWEEN?

20 A NO, WE STARTED TO GO PICK UP ANOTHER FRIEND AND WE
21 WENT STRAIGHT TO THE POOL HALL.

22 Q WAS IT JUST THE TWO OF YOU OR DID THAT THIRD PERSON--

23 A NO, JUST THE TWO OF US, THIRD PERSON DIDN'T GO.

24 Q OKAY. AND WHERE DID YOU PARK WHEN YOU GOT TO THE
25 POOL HALL?

LOUIS JENKINS - DIRECT BY CROFT

1 A SINCE IT'S ON BROAD STREET, EVERYBODY NORMALLY PARK
2 IN THE BACK, WE PARKED IN THE BACK AND KIND OF NOT CROWDED
3 BUT HAD A GOOD CROWD ALL IN THE BACK.

4 Q YOU WENT IN THE BACK DOOR?

5 A YEAH.

6 Q OKAY. WHAT DID YOU SEE OR DO AS YOU APPROACHED THE
7 BUILDING OR WENT IN THE BUILDING?

8 A AS WE APPROACHED THE BUILDING, WE SAW KEVIN CHOICE AS
9 WE ENTERED STANDING BY THE DOOR.

10 Q SPEAK TO HIM?

11 A YEAH, WE SPEAK TO HIM. I DON'T KNOW HIM VERY WELL,
12 BUT I MET HIM BEFORE LIKE IF I SEE HIM, I WOULD SPEAK TO
13 HIM AND ME AND TONY SPOKE TO HIM AS WE GO IN, WENT INSIDE
14 THE POOL HALL.

15 Q OKAY. DID YOU NOTICE ANYTHING ABOUT MR. CHOICE AT
16 THAT TIME?

17 A YES, IT WAS OBVIOUS THAT HIS EYES WERE REAL RED AND
18 HE WAS LIKE HE WAS REAL -- I WOULDN'T KNOW HIM AS
19 INTOXICATED OR SOME OTHER KIND OF HIGH, BUT HE -- HE
20 LOOKED REAL HIGH AND--

21 MR. WRIGHT: OBJECTION, YOUR HONOR.

22 THE COURT: SUSTAINED. CONDITION.

23 (WHEREUPON QUESTIONING RESUMED).

24 Q LET ME ASK YOU THIS. DID YOU--

25 THE COURT: YOU CAN TELL US -- HE CAN GIVE US HIS

LOUIS JENKINS - DIRECT BY CROFT

1 PERSONAL OBSERVATIONS WITHOUT MAKING HIS CONCLUSIONS AS TO
2 WHAT HIS CONDITION WAS.

3 MR. CROFT: YES, SIR.

4 (WHEREUPON QUESTIONING RESUMED).

5 Q LET ME ASK YOU THIS. WHAT MADE YOU THINK THAT HE
6 MIGHT HAVE BEEN HIGH?

7 A BECAUSE HIS EYES WAS REAL RED.

8 MR. WRIGHT: OBJECTION.

9 THE COURT: THAT WAS THE OBJECTION I JUST SUSTAINED,
10 SO DON'T ASK THAT QUESTION AGAIN.

11 MR. CROFT: SORRY.

12 (WHEREUPON QUESTIONING RESUMED).

13 Q YOU TELL US WHAT YOU OBSERVED ON THE DEFENDANT, BUT
14 DON'T GIVE US ANY OPINIONS ABOUT WHAT YOUR CONDITION YOU
15 THINK HE WAS IN, OKAY? TELL US WHAT YOU SAW. I THINK YOU
16 JUST DID, BUT IF YOU CAN REPEAT WHAT YOU NOTICED.

17 THE COURT: ANYTHING OTHER THAN HIS EYES WERE RED?

18 THE WITNESS: WELL, HE LOOKED INTOXICATED OR HIGH
19 AND--

20 MR. WRIGHT: OBJECTION, YOUR HONOR.

21 MR. CROFT: WE WILL MOVE ON, YOUR HONOR. WE WILL
22 MOVE ON.

23 THE COURT: MOVE ON.

24 (WHEREUPON QUESTIONING RESUMED).

25 Q AT THAT POINT DID YOU MAKE ANY COMMENTS TO HIM OR DID

LOUIS JENKINS - DIRECT BY CROFT

1 YA'LL MAKE ANY COMMENTS ABOUT IT?

2 A WE JUST LIKE SPOKE. WE DIDN'T SHAKE HANDS OR
3 ANYTHING. WE JUST SPOKE AND TONY MADE A COMMENT AS WE
4 WALKED IN THE DOOR, HE SAID EXACT WORDS IS DAMN, THIS
5 MOTHER FUCKER LOOK FUCKED UP, BUT IT WASN'T WHEREAS KEVIN
6 COULD HAVE HEARD, THIS WAS SUDDEN, NO PERSONAL BETWEEN ME
7 AND HIM.

8 Q YA'LL JUST JOKING AROUND WITH EACH OTHER?

9 A WELL, IT WASN'T -- IT WAS JUST A LITTLE COMMENT,
10 WASN'T LIKE WE SPENT TIME JOKING, IT WAS A LITTLE COMMENT
11 THAT HE MADE.

12 Q AND WHERE DID YOU GO ONCE YOU WENT IN THE BAR?

13 A IN THE POOL HALL.

14 Q ONCE YOU WENT IN THE DOOR, WHERE DID YOU GO?

15 A TO THE BAR.

16 Q OKAY. WHAT DID YOU DO WITH -- WHEN YOU GOT TO THE
17 BAR?

18 A WE HAD ONE BEER AT THAT TIME.

19 Q OKAY. AND FROM THERE WHAT DID YOU DO?

20 A WE STAND TO THE BAR, JUST STANDING AROUND, STAND AT
21 THE BAR DRINKING THE BEER AND WE DRANK -- WELL, WE WAS
22 DRUNK THE FIRST BEER. WHEN WE WAS ON OUR SECOND BEER AND
23 THAT'S WHEN KEVIN CALLED TONY OFF.

24 Q OKAY. HE CALLED HIM OFF, HE GOT TONY'S ATTENTION?

25 A YEAH, HE WAS LIKE, YOU KNOW, COME HERE, YOU KNOW.

LOUIS JENKINS - DIRECT BY CROFT

1 Q IT'S NOT LIKE IT WAS A PERFECT STRANGER?

2 A HE KNOW TONY, SO HE TOLD TONY COME HERE.

3 Q OKAY.

4 A AND HE CALLED HIM OFF.

5 Q DID TONY GO OVER TO TALK WITH KEVIN?

6 A YES, TONY WENT OVER TO TALK WITH KEVIN AND I STOOD AT
7 THE BAR BECAUSE I DIDN'T FEEL, YOU KNOW, LIKE THERE WAS
8 NOTHING -- HE JUST CALLED HIM OFF. I DIDN'T KNOW WHAT
9 THEY WAS GOING TO TALK ABOUT, SO I--

10 Q SEEM OF ANYTHING IMPORTANCE TO YOU?

11 A HE JUST CALLED HIM, YOU KNOW. I DIDN'T REALLY TOOK
12 TOO MUCH INTEREST IN IT AT THE TIME, YOU KNOW. I JUST
13 KNOW HE CALLED HIM OFF.

14 Q HOW LONG AFTER HE WALKED -- AFTER TONY WALKED OFF,
15 HOW LONG DID YOU STAY THERE AT THE BAR?

16 A COULD HAVE BEEN LIKE THREE TO FOUR MINUTES I STANDING
17 THERE DRINKING AND I JUST, YOU KNOW, HAPPENED TO GLANCE
18 AROUND AND -- AND LIKE IT WAS TALKING AT THE TIME. I
19 DIDN'T KNOW WAS IT AN ARGUMENT OR NOT, BUT SOMETHING TOLD
20 ME TO WALK OVER THERE.

21 COULD HAVE BEEN THE WAY THEY WERE EXPRESSING
22 THEMSELVES AND TALKING, BUT I SENSED, YOU KNOW, SOMETHING
23 DIFFERENT, WASN'T NOTHING LOUD OR OUT OF PROPORTION, SO I
24 WALKED OVER AND I ASKED TONY WHAT WAS GOING ON AND THEN
25 HIS EXACT WORDS SAID I DON'T KNOW--

LOUIS JENKINS - DIRECT BY CROFT

1 THE COURT: WHOA, WHOA, WHOA. YOU CAN'T TESTIFY
2 ABOUT WHAT HE SAID NOW BECAUSE HE IS NOT HERE FOR ANYBODY
3 TO CROSS-EXAMINE HIM, BE SURE HE SAID THAT, SO THAT WOULD
4 BE HEARSAY. YOU CAN'T TELL HIM WHAT TONY SAID.

5 Q DON'T TELL US WHAT TONY SAID, BUT LET ME ASK YOU
6 THIS. WERE THEY YELLING AT EACH OTHER, WERE THEIR VOICES
7 RAISED?

8 A WELL, JUST IT WASN'T A HIGH TONY YELLING, BUT IT WAS
9 -- THEY WAS CHANGING WORDS LIKE ONE WAS -- ONE PARTY WAS
10 CONFUSED AND THE OTHER ONE WAS -- IT WASN'T NO
11 UNDERSTANDING IN THAT.

12 Q OKAY. DID MR. CHOICE APPEAR TO BE UPSET TO YOU AT
13 THAT POINT?

14 A WELL, IT WAS PASSING WORDS, COULD HAVE BEEN UPSET.

15 Q AND YOU SAY PASSING WORDS, DO YOU MEAN LIKE AN
16 ARGUMENT IN THE SENSE OF THE WORD?

17 THE COURT: LET'S DO THIS. LET'S MAKE THE WITNESS
18 TESTIFY WITHOUT YOU PUTTING WORDS IN HIS MOUTH. YOU HAVE
19 TO TELL US EXACTLY WHAT YOU SAID, WHAT YOU SAW.

20 THE WITNESS: WELL, I WAS--

21 THE COURT: HOLD ON A MINUTE. WHEN I'M TALKING YOU
22 CAN'T TALK. THE COURT REPORTER CAN'T TAKE DOWN BUT WHAT
23 ONE OF US SAYS. WHAT YOU CAN DO IS YOU CAN TELL US WHAT
24 YOU SAW, BUT YOU CAN'T GIVE US YOUR OPINION OF WHAT YOU
25 THINK WAS GOING ON. YOU DESCRIBE WHAT YOU SAW TO THE JURY

LOUIS JENKINS - DIRECT BY CROFT

1 AND THE JURY DECIDES WHAT WAS GOING ON, OKAY?

2 A OKAY. WELL, THEY WAS HAVING SOME WORDS, IT SEEMED
3 LIKE A DISAGREEMENT.

4 Q OKAY.

5 A A SMALL ARGUMENT AT THAT TIME.

6 Q THAT'S FINE. DID -- AT THIS POINT WHO ALL WAS
7 STANDING THERE?

8 A IT WAS JUST ME, TONY AND KEVIN.

9 Q OKAY. AND BEFORE YOU WALKED OFF, WAS IT -- WHO WAS
10 THERE?

11 A JUST THOSE TWO, KEVIN AND TONY.

12 Q JUST?

13 A KEVIN AND TONY, YES.

14 Q THE TWO OF THEM? OKAY. AT ANY POINT DID ANYONE ELSE
15 WALK UP TO WHERE THE THREE OF YOU WERE?

16 A WHEN THEY WERE GETTING A LITTLE LOUDER -- WHEN I
17 FIRST WALK UP, IT WAS NOT SO LOUD. WHEN IT STARTED
18 GETTING A LITTLE LOUDER, THAT'S WHEN HARRY SPANN WALKED
19 UP.

20 Q OKAY.

21 A AND WHEN HE WALKED UP, HE GRABBED KEVIN AND HUGGED
22 HIM AND HE SAID EVERYTHING--

23 Q WAIT. YOU CAN'T TELL ME WHAT HE SAID EITHER, BUT
24 TELL ME, HE APPROACHED KEVIN CHOICE; IS THAT RIGHT?

25 A YES.

LOUIS JENKINS - DIRECT BY CROFT

1 Q OKAY. AND HE PUT HIS ARM AROUND HIM?

2 A YES, AND I UNDERSTOOD EVERYTHING IS OKAY, THIS IS MY
3 BROTHER.

4 Q WAS YOUR SENSE THAT HE WAS THERE TO AGITATE THE
5 SITUATION OR TO CALM IT DOWN?

6 A SEEMED LIKE HE WAS THERE TO CALM IT DOWN. THAT'S THE
7 WAY...

8 Q AT THIS POINT IS IT JUST THE FOUR OF YA'LL STANDING
9 THERE?

10 A YES.

11 Q OKAY.

12 MR. CROFT: YOUR HONOR, MAY I APPROACH THE WITNESS?

13 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
14 EXHIBIT NUMBER 11.

15 MR. CROFT: YOUR HONOR, THIS IS ONE OF THE EXHIBITS
16 WE AGREED UPON THAT'S BEEN -- I WOULD OFFER INTO
17 EVIDENCE. MAY HE STEP DOWN OFF THE WITNESS STAND.

18 THE COURT: SURE.

19 (WHEREUPON THE WITNESS LEFT THE STAND).

20 Q IF YOU WOULD KIND OF TELL US, MAYBE IT COULD BE
21 EASIER IF I DO IT LIKE THIS SIDE WAYS. TELL US WHERE YOU
22 WERE STANDING AT THE BAR.

23 A I WAS LIKE AT THE END OF THE BAR IN THIS AREA.

24 Q OKAY. TELL US--

25 THE COURT: WHY DON'T YOU USE THAT POINTER, STEP BACK

LOUIS JENKINS - DIRECT BY CROFT

1 A LITTLE BIT.

2 BAILIFF: WANT TO USE THIS TABLE OVER HERE?

3 THE COURT: MAKE SURE YOU SPEAK UP SO THE COURT
4 REPORTER...

5 THE COURT: I BELIEVE THE BAILIFF CAN HOLD IT UP. AS
6 LONG AS THE JURY CAN SEE IT.

7 (WHEREUPON QUESTIONING RESUMED).

8 Q AGAIN SHOW ME WHERE YOU WERE LOCATED IF YOU WOULD
9 WHEN YOU WERE STANDING AT THE BAR.

10 A I WAS LIKE IN THIS AREA ABOUT RIGHT HERE.

11 COURT REPORTER: CAN'T HEAR YOU.

12 THE COURT: SPEAK UP SO SHE CAN.

13 A I WAS LIKE AT THE END, FAR SIDE OF THIS BAR RIGHT
14 THERE.

15 Q OKAY. AND WHERE DID -- WHERE WAS EVERYONE WHEN YOU
16 CALLED TONY OFF?

17 A HE WAS LIKE -- MORE LIKE IN THIS AREA RIGHT HERE.

18 Q OKAY.

19 A HE WAS.

20 Q IS THAT WHERE TONY WENT TO GO SPEAK WITH HIM?

21 A YES.

22 Q OKAY. WHERE DID YOU GO WHEN YOU WENT AND APPROACHED
23 THE TWO OF THEM?

24 A I WENT TO WHERE THEY WAS AT IN HERE.

25 Q OKAY. THAT AREA THERE?

LOUIS JENKINS - DIRECT BY CROFT

- 1 A YES.
- 2 Q AND WHAT IS THIS RIGHT HERE IN -- THIS IS A WALL?
- 3 A YEAH, IT'S LIKE A WALL, IT'S A WALL.
- 4 Q OKAY. AND AS MR. SPANN APPROACHED, DID YOU MOVE OR
- 5 DID YOU STAY IN THAT SAME AREA?
- 6 A WE MOVED.
- 7 Q OKAY.
- 8 A BECAUSE MR. SPANN HE HUGGED HIM AND THEY LIKE WALKED,
- 9 SO THAT'S HOW WE MOVED.
- 10 Q OKAY. AND WHERE WOULD YOU SAY YOU MOVED TO?
- 11 A OVER HERE IN THIS AREA RIGHT OVER HERE. THERE WAS A
- 12 AAA LIGHTNING IN THERE.
- 13 Q AND IS THERE THE BACK DOOR THAT YOU CAME IN?
- 14 A YES, RIGHT HERE.
- 15 Q OKAY. LET ME ASK YOU THIS. WHILE YA'LL WERE
- 16 STANDING HERE IN THIS AREA, JUST THE FOUR OF YOU TALKING;
- 17 IS THAT RIGHT?
- 18 A YES.
- 19 Q OKAY. AND DID ANYONE ELSE APPROACH THE FOUR OF YOU
- 20 WHILE THE FOUR OF YOU WERE STANDING THERE TALKING?
- 21 A NO.
- 22 Q OKAY. AT ANY POINT DID SOMEBODY -- LET ME ASK YOU
- 23 THIS. WHAT HAPPENED WITH -- WHAT'S THE LIGHTING LIKE IN
- 24 THIS BAR?
- 25 A IT'S A LIGHT UP IN THE CEILING THAT THEY HAVE A

LOUIS JENKINS - DIRECT BY CROFT

1 STRING ATTACHED TO IT. YOU CAN PULL IT DOWN.

2 Q WHERE IS THAT LOCATED?

3 A IT'S IN THIS AREA, LIKE UP IN THIS AREA, SOMEWHERE IN
4 THIS AREA.

5 Q OKAY. AND THAT'S NOT THE ONLY LIGHT IN THE BAR; IS
6 IT?

7 A NO, IT'S NOT.

8 Q OKAY. SO THERE'S OTHER LIGHT?

9 A YEAH, POOL TABLES HAVE ALL LIGHTS ON ALL OF THEM.

10 Q WAS THAT LIGHT ON OR OFF WHEN YA'LL WALKED OVER?

11 A IT WAS OVER AT THAT TYPE.

12 Q DID AT SOME POINT SOMEBODY TURN THE LIGHT ON?

13 A YES, THE OWNER OF THE BAR, HE TURN IT ON TO SEE WHAT
14 WE WAS ARGUING ABOUT.

15 Q OKAY. AND DID EVERYONE -- WHAT DID EVERYONE INDICATE
16 TO HIM, IT WAS OKAY OR NOT?

17 A WELL...

18 MR. WRIGHT: OBJECTION, YOUR HONOR. LEADING.

19 THE COURT: YEAH, DON'T LEAD YOUR WITNESS.

20 A WHEN HE TURNED THE LIGHT ON, HE BASICALLY -- HE
21 DIDN'T REALLY HAVE TIME TO REALLY SEE WHAT WAS GOING ON,
22 HE WAS LIKE -- I ASKED WHAT WAS GOING ON AND HARRY
23 SPANN...

24 Q RESPOND, DON'T TELL ME WHAT HE SAID, BUT DID THE
25 GROUP RESPOND TO HIM, DID THE PEOPLE IN THE GROUP RESPOND

LOUIS JENKINS - DIRECT BY CROFT

1 TO HIM?

2 A NOT EVERYBODY IN THE GROUP RESPONDED TO HIM, BUT HE
3 GOT A RESPONSE SAYING EVERYTHING IS OKAY.

4 MR. WRIGHT: OBJECTION, YOUR HONOR.

5 THE COURT: YOU CAN'T TELL US WHAT SOMEBODY ELSE
6 SAID.

7 A OKAY. WELL--

8 Q YOU UNDERSTAND WHAT I'M TALKING ABOUT?

9 A YES, SIR.

10 THE COURT: LET ME EXPLAIN IT TO YOU ONE MORE TIME.
11 LISTEN TO ME, NOW.

12 THE WITNESS: WELL--

13 THE COURT: HEY, I'M THE GUY WITH THE BLACK ROBE, SO
14 WHEN I START TALKING, YOU CAN'T TALK, OKAY?

15 THE WITNESS: YES, SIR.

16 THE COURT: IF YOU COME IN HERE AND TELL US WHAT
17 SOMEBODY ELSE SAID AND THEY ARE NOT HERE, THEY CAN'T BE
18 CROSS-EXAMINED. WE HAVE NO WAY TO DETERMINE WHETHER
19 THAT'S THE TRUTH OR NOT. SO WE HAVE THIS RULE OF EVIDENCE
20 THAT'S CONTAINED IN THIS BOOK WHICH SAYS WE DON'T ALLOW
21 HEARSAY TESTIMONY.

22 THE WITNESS: YES, SIR. I UNDERSTAND THAT.

23 THE COURT: HAD IT FOR HUNDREDS OF YEARS. SO WHAT
24 YOU CAN DO IS YOU CAN'T COME IN AND TELL US WHAT SOMEBODY
25 ELSE SAID. YOU CAN TELL US WHAT YOU DID AS A RESULT OF

LOUIS JENKINS - DIRECT BY CROFT

1 WHAT THEY SAID.

2 THE WITNESS: YES, SIR.

3 THE COURT: BUT YOU CAN'T REPEAT WHAT THEY SAID.

4 THE WITNESS: YES, SIR. CAN I EXPLAIN THAT TO YOU,
5 SIR? HAVE A MINUTE -- IT'S LIKE, YOUR HONOR--

6 THE COURT: NOW, THE SOLICITOR NEEDS TO ASK YOU
7 QUESTIONS.

8 MR. CROFT: I THINK WE CAN DO THIS.

9 THE COURT: YOU NEED TO ANSWER HIS QUESTIONS. YOU
10 DON'T NEED TO EXPLAIN IT TO ME. YOU NEED TO ANSWER HIS
11 QUESTIONS.

12 THE WITNESS: I UNDERSTAND.

13 (WHEREUPON QUESTIONING RESUMED).

14 Q HERE'S WHAT WE WILL DO. LET ME ASK YOU QUESTION
15 SIMPLY--

16 A KIND OF LIKE BAD--

17 MR. WRIGHT: OBJECTION.

18 A NOT LIKE--

19 THE COURT: HOLD ON A MINUTE. LISTEN TO ME, NOW.
20 HERE IS HOW THIS GAME WORKS. THE LAWYER ASKS A QUESTION,
21 THE WITNESS ANSWERS THE QUESTION. YOU DON'T GET TO ASK
22 THE LAWYER QUESTIONS. IF HE ASKS YOU A QUESTION YOU DON'T
23 UNDERSTAND, YOU CAN ASK HIM TO EXPLAIN HIS QUESTION,
24 OKAY?

25 THE WITNESS: YES, SIR.

LOUIS JENKINS - DIRECT BY CROFT

1 THE COURT: BUT THIS SYSTEM WORKS PRETTY GOOD.

2 (WHEREUPON QUESTIONING RESUMED).

3 Q HOLD YOUR HORSES FOR ONE MINUTE. ANSWER THE
4 QUESTIONS THAT I ASK. DID SOMEONE TURN THE LIGHT ON?

5 A YES.

6 Q WHO WAS THAT?

7 A THE OWNER OF THE BAR.

8 Q OKAY. DO YOU REMEMBER HIS NAME?

9 A THEY CALLED HIM JUNIOR.

10 Q OKAY.

11 A THAT'S WHAT I KNOW.

12 Q AND DID HE ADDRESS YOU AND THE OTHER PEOPLE, THE
13 OTHER THREE PEOPLE STANDING THERE IN THAT GROUP? DID HE
14 SAY ANYTHING?

15 A YEAH.

16 Q NOT ASKING YOU WHAT HE SAID, JUST WANT TO KNOW DID HE
17 SAY ANYTHING TO YOU?

18 A LIKE I SAY, HE COULD HAVE. SEE, HE DIDN'T REALLY SAY
19 ANYTHING BECAUSE WHEN THE LIGHT GOT TURNED ON, I CAN'T
20 TELL WHAT ANYBODY ELSE SAY, SO YOU KNOW, BUT HE DIDN'T SAY
21 ANYTHING.

22 Q DID HE INDICATE TO YOU WHAT IT MEANT WHEN THE LIGHT
23 CAME ON?

24 A IT INDICATED HE WAS CONCERNED ABOUT THE ARGUMENT IN
25 THE CLUB, HE WANTED TO WARN US.

LOUIS JENKINS - DIRECT BY CROFT

1 Q OKAY. AND DID THE FOLKS IN YOUR GROUP, NOT DID
2 ANYBODY RESPOND TO HIM -- DON'T TELL ME WHAT THEY SAID,
3 BUT DID--

4 A YES, SIR THEY RESPOND.

5 Q OKAY. WHAT DID YOU DO --

6 MR. WRIGHT: OBJECTION YOUR HONOR. LEADING--

7 Q IN RESPONSE?

8 THE COURT: IT'S NOT LEADING.

9 Q WHAT DID HE DO IN RESPONSE TO YOUR GROUPS RESPONSE,
10 THE FOUR OF YOU STANDING THERE?

11 A TURNED THE LIGHT OFF.

12 Q TURNED THE LIGHT BACK OFF. OKAY. AND ONCE HE TURNED
13 THE LIGHT BACK OFF, WHAT HAPPENED?

14 A AFTER HE TURNED THE LIGHT IN THIS AREA -- STANDING IN
15 THIS AREA, HE TURNED THE LIGHT OFF, WE KIND OF LIKE MOVE
16 FORWARD. IT WAS LIKE GOING -- HE WAS GOING TO GO BACK
17 TOWARDS THE BAR KIND OF LIKE MOVE HARRY, AND HARRY WAS
18 STILL WITH KEVIN, YOU KNOW, DON'T KNOW WHAT THEY WERE
19 TALKING ABOUT, YOU KNOW, BUT THEY WAS STILL TOGETHER.

20 AND KEVIN AND TONY, THEY WERE STILL HAVING WORDS
21 PASSING WORDS, AND -- AND THAT'S WHEN WE MOVED FROM THE
22 LIGHT AREA LIKE AND THEN YOU GOT LIKE THIS AREA HERE.

23 Q OKAY. AND IN THAT AREA IS THERE STILL ENOUGH LIGHT
24 YOU COULD SEE WHAT'S GOING ON?

25 A YES.

LOUIS JENKINS - DIRECT BY CROFT

1 Q IT'S NOT -- IT'S NOT PITCH BLACK?

2 A WASN'T PITCH BLACK. IT WAS DARK IN THIS AREA.

3 Q IT'S THE SAME LIGHT AS IT WAS BEFORE THE LIGHT WAS
4 TURNED ON, CORRECT?

5 A YES, SAME LIGHT.

6 Q AND BACK HERE, WHAT'S BACK HERE IN THIS AREA?

7 A RESTROOM.

8 Q SO THAT'S WHERE ANYBODY IN THE BAR WOULD GO TO THE
9 RESTROOM?

10 A YES.

11 Q ONCE HE TURNED THE LIGHTS BACK OFF AND MOVED TO THIS
12 AREA, WHAT HAPPENED?

13 A LIKE I SAID, KEVIN AND TONY WAS EXCHANGING WORDS
14 STILL AND AT THAT TIME KEVIN SAID OH, YOU THINK I'M A PUNK
15 MOTHER FUCKER.

16 MR. WRIGHT: OBJECTION.

17 MR. CROFT: YOUR HONOR, IT'S STATEMENT AGAINST
18 INTEREST. IT'S THE DEFENDANT'S STATEMENT.

19 (WHEREUPON QUESTIONING RESUMED).

20 Q GO AHEAD.

21 A KEVIN SAID DO YOU THINK I'M A PUNK MOTHER FUCKER AND
22 HE PULLED A GUN OUT OF HIS FRONT AND HAD IT HAPPENED FAST,
23 YOU KNOW, OH, YOU THINK I'M A PUNK MOTHER FUCKER AND HE
24 JUST AIM IT BESIDE HIM AND HE SHOT.

25 Q HOW FAR WOULD YOU SAY WAS THE DISTANCE BETWEEN KEVIN

LOUIS JENKINS - DIRECT BY CROFT

1 AND TONY?

2 A IT COULD HAVE BEEN--

3 COURT REPORTER: I COULDN'T HEAR.

4 Q FROM ME TO YOU. THAT'S ABOUT THREE FEET WOULD YOU
5 SAY?

6 A YEAH.

7 Q APPROXIMATELY?

8 A YEAH.

9 Q OKAY. SO YOU CAN TAKE--

10 THE COURT: HOLD ON WHILE THE SIREN GOES BY. HOLD A
11 MINUTE. SHE'S HAVING A HARD TIME HEARING. GOING TO HAVE
12 HIM STEP BACK ON THE WITNESS STAND.

13 MR. CROFT: OKAY. COME BACK UP.

14 (WHEREUPON THE WITNESS RESUMED THE STAND).

15 Q LET ME ASK YOU THIS. HOW FAR WERE YOU FROM KEVIN AND
16 TONY WHEN THE WEAPON WAS FIRED?

17 A I WAS ON THE SIDE, ON THE SIDE OF THEM. THEY WAS
18 LIKE PRACTICALLY IN FRONT OF EACH OTHER AND I WAS LIKE ON
19 THE SIDE AND HARRY SPANN WAS ON SORT OF ON THE BACK SIDE
20 OF KEVIN IN THE AREA IN THE BACK.

21 Q APPROXIMATELY HOW MANY FEET WOULD YOU SAY YOU WERE
22 AWAY FROM KEVIN?

23 A I SAY THREE, FOUR FEET. I WAS CLOSE.

24 Q AND WERE YOU ABSOLUTELY SURE ABOUT WHAT YOU SAW?

25 A YES, POSITIVE.

LOUIS JENKINS - DIRECT BY CROFT

1 Q OKAY. IS THERE ANY POINT THAT SOMEONE ELSE FIRED THE
2 WEAPON?

3 A NO.

4 Q OKAY. AND TELL ME AGAIN WHERE DID HE RETRIEVE THIS
5 WEAPON FROM?

6 A FROM OUT OF HIS FRONT OF HIS WAIST.

7 Q FROM HIS WAISTBAND?

8 A FROM THE FRONT.

9 Q OKAY. LET ME ASK YOU -- I'M GOING TO ASK YOU TO
10 POINT OUT THE PERSON WHO YOU SAW SHOOT TONY RIVERS.

11 A RIGHT THERE (INDICATING).

12 Q THAT'S THE DEFENDANT KEVIN CHOICE?

13 A YES.

14 Q OKAY. AND AFTER YOU SAW KEVIN CHOICE SHOOT TONY
15 ROSE, WHAT DID YOU DO?

16 A AT THE TIME IT HAPPENED SO FAST, I TURNED, TURNED
17 AROUND AND IT WAS LIKE A CORNER AND HE WAS, WHEN HE SHOT,
18 HE WAS SAYING SOMETHING BUT I COULDN'T MAKE OUT WHAT HE
19 WAS SAYING. HE PULLED OUT THE TURN BECAUSE I THOUGHT I
20 WAS GOING TO BE SHOT, TOO, BECAUSE IT HAPPENED SO FAST.

21 WHEN IT FIRST CAME, I -- I THOUGHT IT WAS GOING
22 TO BE ANOTHER, SO I TURNED MY BACK AND IT WAS LIKE A
23 WEIGHT MACHINE OR SOMETHING AND I TRIPPED OVER.

24 I THOUGHT IT WAS A PERSON BUT IT WAS LIKE A
25 WEIGHT MACHINE. I TRIPPED OVER AND I WAS LIKE AROUND THE

LOUIS JENKINS - DIRECT BY CROFT

1 CORNER AND EVERYBODY WAS JUST RUNNING TRYING TO GET OUT OF
2 THERE. AND AT THE TIME--

3 Q LET ME ASK YOU, YOU TRIPPED AND FELL ON THE GROUND?

4 A YEAH, AROUND THE CORNER.

5 Q HOW MANY SHOTS DID YOU HEAR?

6 A IT WAS JUST ONE SHOT.

7 Q OKAY. AND WHEN YOU LOOKED UP, WHAT DID YOU SEE?

8 WHAT WERE THE PEOPLE IN THE BAR DOING?

9 A RUNNING, BUSTING WINDOWS GETTING OUT OF THE CLUB.

10 Q OKAY. AND WHAT DID YOU DO AT THAT POINT?

11 A AT THAT POINT I GOT UP AND I WENT OVER TO THE AREA
12 WHERE TONY WAS AT AND SOMEONE -- SOMEBODY WAS DOWN ON --
13 HAD A CERTAIN, YOU KNOW, HOLDS HIM UP. I WAS SHOCKED. I
14 DIDN'T KNOW WHAT TO PICK HIM UP, TAKE HIM, LEAVE. I
15 DIDN'T KNOW WHAT TO DO.

16 I KNOW SOMEBODY WAS CALLING THE AMBULANCE. THEY
17 HAD THE AMBULANCE ON THE WAY AND SOMEBODY WAS DOWN THERE
18 WITH HIM HOLDING A SHIRT ON HIM, AND SO AT THAT TIME I
19 LEFT THE BAR AND I WENT TO MY HOUSE AND I GOT HIS MOTHER
20 AND MY WIFE AND WE CAME BACK UP THERE, BUT HE WAS ALREADY
21 ON THE WAY TO THE HOSPITAL TO GO TO THE HOSPITAL.

22 Q SO YOU LEFT THE BAR, WENT TO YOUR HOME, GOT TONY'S
23 MOTHER?

24 A YEAH AND MY WIFE.

25 Q AND YOUR WIFE, HIS SISTER?

LOUIS JENKINS - DIRECT BY CROFT

1 A YES.

2 Q OKAY. AND EVENTUALLY YA'LL WENT TO THE HOSPITAL THAT
3 NIGHT?

4 A YES.

5 Q LET ME ASK YOU THIS. DID YOU EVER HAVE A CHANCE TO
6 TALK TO POLICE ABOUT THE EVENTS OF THAT NIGHT?

7 A WELL, NO. BRIEFLY.

8 Q BRIEFLY?

9 A NOT REALLY.

10 Q HAVE YOU EVER GIVEN A WRITTEN STATEMENT IN REFERENCE
11 TO THIS CASE?

12 A NO.

13 Q WAS THERE ANY REASON YOU DIDN'T GIVE A STATEMENT IN
14 REFERENCE TO THIS CASE?

15 A YES, IT WAS A LOT GOING ON AT THE TIME AND I HAVE A
16 -- I WAS MARRIED, HAD A FAMILY AND KIDS AND I WAS KIND OF
17 FEARING FOR MY FAMILY AND IT'S A LOT GOING ON IN THE
18 STREETS AT THE TIME AND, YOU KNOW, I -- I WAS, YOU KNOW,
19 LIKE I SAID FEARING FOR MY FAMILY AND I DIDN'T WANT TO --
20 I WRITE A STATEMENT TO MYSELF, BUT I NEVER TURNED IT IN
21 AND BASICALLY IT'S THE SAME THING I'M SAYING NOW. I NEVER
22 TURNED IT IN TO...

23 Q IS WHAT YOU TOLD US TODAY CONSISTENT WITH WHAT YOU
24 HAVE ALWAYS TOLD THE SOLICITOR'S OFFICE SINCE THE FIRST
25 TIME YOU CAME IN?

LOUIS JENKINS - CROSS BY WRIGHT

1 A YEAH, SAME THING, SAME THING, YEAH.

2 Q OKAY. AND--

3 A THAT'S--

4 Q YOU TOLD US THE ABSOLUTE TRUTH TODAY?

5 A YES, SIR, THAT'S -- I WAS KIND OF LIKE HAVING A
6 PROBLEM BECAUSE EVERYTHING LIKE I WAS JUST PREPARE RIGHT
7 NOW TELL YOU DETAIL BY DETAIL WHAT HAPPENED. I KNOW
8 CERTAIN THINGS I CAN'T SAY, BUT SOMETIMES CAN'T, YOU KNOW,
9 GO AROUND JUST TELLING THE WAY I SEE IT IN THE TRUTH AND
10 THAT'S WHAT BASICALLY I WAS TRYING TO, YOU KNOW, GET IN TO
11 SAY, KIND OF BARE WITH ME AND TELL IT THE WAY IT EXACTLY
12 HAPPENED, LIKE I PLAN ON PREPARING THIS, JUST GOT TO TELL
13 YOU THE WAY IT HAPPENED.

14 Q SO WHAT YOU TOLD US TODAY IS THE ABSOLUTE TRUTH AS
15 YOU REMEMBER IT?

16 A YES.

17 Q PLEASE ANSWER ANY QUESTIONS MR. WRIGHT MAY HAVE.

18 THE COURT: ALL RIGHT. MR. WRIGHT?

19 **CROSS-EXAMINATION BY MR. WRIGHT:**

20 Q HOW ARE YOU DOING, MR. JENKINS?

21 A HOW YOU DOING?

22 Q YOU SAID TONY ROSE WAS YOUR BROTHER-IN-LAW?

23 A YES, SIR.

24 Q AND YOU WENT TO THE CLUB WITH HIM THAT EVENING?

25 A YES, SIR.

LOUIS JENKINS - CROSS BY WRIGHT

1 Q ABOUT WHAT TIME DID YA'LL GET TO THE CLUB?

2 A COULD HAVE BEEN -- I'M NOT SURE OF THE EXACT TIME.
3 IT WAS LIKE THREE YEARS AGO. I MEAN, I'M NOT SURE OF THE
4 EXACT TIME.

5 Q DO YOU HAVE ANY IDEA WHAT TIME IT WAS?

6 A COULD HAVE BEEN JUST GUESSING 11, COULD HAVE BEEN
7 LIKE 12, 11:30, 12. IT COULD HAVE BEEN KIND OF HARD TO
8 SAY. I DON'T KNOW EXACTLY WHAT TIME.

9 Q AND WHEN WAS -- YOU SAID THAT YOU -- DID YOU TALK TO
10 THE POLICE AT ALL THAT NIGHT OR THAT WEEK OR ANY TIME?

11 A NO, I NEVER TALKED TO THEM THAT NIGHT. THEY CAME MY
12 HOUSE, BUT I WASN'T HOME AND I GOT MESSAGES SAYING THAT
13 THEY WANTS TO TALK TO ME, BUT I NEVER...

14 Q YOU NEVER WENT IN? YOU HAD JUST -- I MEAN, YOU JUST
15 WITNESSED YOUR BROTHER-IN-LAW GET MURDERED, WHY WOULDN'T
16 YOU TELL THE POLICE?

17 A WHY WOULDN'T I TELL THE POLICE?

18 Q YEAH.

19 A I TALKED TO THEM BRIEFLY, BUT I NEVER TOLD THEM
20 EVERYTHING THAT HAPPENED. LIKE I SAY, I WAS FEARING FOR
21 MY FAMILY AND MY LIFE.

22 Q SO YOUR BROTHER-IN-LAW JUST GOT MURDERED AND YOU
23 NEVER TOLD THE POLICE THAT YOU WITNESSED WHO SHOT HIM?

24 A YEAH, BECAUSE I WAS THINKING I COULD GET MURDERED TOO
25 AND THAT THIS TIME THERE WAS A LOT OF COMMOTION GOING ON

LOUIS JENKINS - CROSS BY WRIGHT

1 AND HEARSAY, YOU KNOW, AND NOT GETTING IN ON ANOTHER
2 SUBJECT, BUT CERTAIN PEOPLE HAVE BAD REPUTATION AND BAD
3 NAME AND THAT'S SOMETHING THAT TOOK INTEREST IN AND I WAS
4 BEING CAUTIOUS ABOUT.

5 SO IT WAS HARD FOR ME TO DO THAT, BUT IT'S
6 SOMETHING I HAD TO DO. THAT'S WHY I'M HERE TODAY.

7 Q ISN'T IT TRUE THAT YOU WERE CONCERNED YOU WOULD BE
8 CHARGED BECAUSE YOU WERE ONE OF THE ONLY PEOPLE AROUND
9 KEVIN?

10 A NO, I WASN'T CONCERNED ABOUT THAT BECAUSE I KNOW I
11 DIDN'T DO IT. THAT DIDN'T BROUGHT NO CONCERN. THAT WAS
12 FARTHEST THING ON MY MIND.

13 Q DID YOU EVER GO TALK TO THE POLICE BEFORE 2001?

14 A I TALKED TO THEM LIKE I SAID BRIEFLY, BUT I NEVER
15 GIVE THEM A WRITTEN STATEMENT OR TOLD THEM EXACTLY WHAT
16 HAPPENED THE WAY I TOLD...

17 Q WHEN WAS THE FIRST TIME YOU TALKED TO THE SOLICITOR,
18 THOUGH?

19 A ABOUT LAST WEEK, LAST WEEK.

20 Q SO THIS HAPPENED ON SEPTEMBER 3RD, 1998, YOU
21 WITNESSED AND SAW KEVIN CHOICE PULL A GUN OUT AND SHOOT
22 YOUR BROTHER-IN-LAW AND MURDER HIM, BUT YET YOU ARE NOT
23 GOING TO SAY ANYTHING UNTIL A WEEK AGO?

24 A YES, EXACTLY.

25 Q AND ARE YOU -- YOU SAID YOU ARE SEPARATED RIGHT NOW?

LOUIS JENKINS - CROSS BY WRIGHT

- 1 A YES, I AM.
- 2 Q AT ANY POINT YOU SAID WHO -- DO YOU REMEMBER WHO
- 3 CALLED YOU FROM THE POLICE DEPARTMENT?
- 4 A I SAID THEY CAME BY MY HOUSE.
- 5 Q THEY CAME BY YOUR HOUSE?
- 6 A I DIDN'T RECEIVE ANY PHONE CALLS.
- 7 Q DO YOU REMEMBER WHO?
- 8 A IT COULD HAVE BEEN MR. -- WHAT HIS NAME?
- 9 Q YOU SAID YOU WEREN'T THERE, RIGHT?
- 10 A THAT'S WHO I TALKED TO WHEN I WENT TO THE POLICE
- 11 OFFICE, I ASSUME IT WAS HIM CAME BY MY HOUSE.
- 12 Q SO YOU DID GO DOWN. WHAT EXACTLY DID YOU SAY WHEN
- 13 YOU WENT TO TALK TO THE POLICE?
- 14 A WELL, REALLY I WASN'T IN ANY SHAPE TO DO ANY TALKING
- 15 AND DISCUSSING ANYTHING, SO REALLY I -- LIKE I SAID,
- 16 TALKED TO THEM BRIEFLY. I DIDN'T TOLD THEM WHAT HAPPENED
- 17 BECAUSE I WASN'T IN, YOU KNOW, I WAS IN SHOCK. I WASN'T
- 18 IN THE MOOD FOR GOING THROUGH AT THE TIME.
- 19 Q SO WHAT DID YOU TELL THEM?
- 20 A WHAT DID I TELL THEM?
- 21 Q UH-HUH.
- 22 A THAT I TOOK THEM TO THE CLUB AND JUST I CAN'T
- 23 REMEMBER. LIKE I SAID, I DIDN'T WRITE DOWN. I COULDN'T
- 24 REMEMBER EXACTLY WHAT I TOLD THEM AT THE TIME. I SPOKE
- 25 WITH THEM BRIEFLY.

LOUIS JENKINS - CROSS BY WRIGHT

1 Q YOUR BROTHER-IN-LAW JUST GOTTEN MURDERED, YOU CAN'T
2 REMEMBER ANYTHING YOU TOLD THE POLICE?

3 A THIS HAPPENED THREE YEARS AGO.

4 Q IS THAT CORRECT?

5 A I TALKED WITH THEM BRIEFLY.

6 Q BUT YOU CAN'T REMEMBER?

7 A I DIDN'T REALLY -- I DIDN'T WRITE ANYTHING IN A
8 STATEMENT OR ANYTHING OUT.

9 Q SO YOU CAN'T REMEMBER ANYTHING YOU TOLD THEM? IS
10 THAT WHAT YOU ARE SAYING?

11 A I TOLD THEM THAT WE WENT TO THE CLUB TOGETHER AND I
12 -- I BASICALLY JUST LIKE I SAID I TALKED WITH THEM
13 BRIEFLY. DIDN'T NEVER REALLY GET INTO ANYTHING. I WAS
14 FEARING, I WAS -- WHAT WOULD YOU CALL IT -- I WITHHELD
15 INFORMATION BECAUSE I WAS -- DIDN'T WANT TO LET THE
16 INFORMATION GO AT THE TIME BECAUSE LIKE I SAID, I WAS
17 FEARING FOR MY FAMILY.

18 Q YOU WERE TALKING TO THE POLICE, YOU WEREN'T TALKING
19 TO KEVIN CHOICE OR ANYBODY ELSE; WERE YOU?

20 A SEE, I UNDERSTAND THAT. I UNDERSTAND I VERY WELL
21 SAW, BUT I DIDN'T WANT TO LET GO OF THE INFORMATION AT
22 THAT TIME.

23 Q DID YOU THINK THAT SOMEBODY WAS IN COHORTS WITH THE
24 POLICE OR DETECTIVE WILLIAMS OR ANYTHING?

25 A TO BE HONEST, I DIDN'T KNOW WHAT, YOU KNOW, I DIDN'T

LOUIS JENKINS - CROSS BY WRIGHT

1 KNOW. I WASN'T REALLY TRUSTING TOO MUCH OF ANYTHING, YOU
2 KNOW.

3 Q , SO YOU DIDN'T TRUST ANYBODY UNTIL A WEEK AGO.

4 A A WEEK AGO?

5 Q UH-HUH.

6 A AT THE -- AFTER THREE YEARS, YOU KNOW, I HAD A LOT OF
7 TIME TO THINK AND, YOU KNOW, AND -- I MEAN, YOU KNOW,
8 THINGS, YOU KNOW.

9 Q THINGS CAME TOGETHER?

10 A NO, THEY DIDN'T CAME TOGETHER. I JUST -- I HAD A LOT
11 OF TIME TO THINK AND I REALIZED I NEED TO DO WHAT'S RIGHT
12 AND GOD -- AT THE TIME I DIDN'T HAVE NO SORT OF RELIGION
13 IN MY LIFE, SO YOU KNOW, IT MAJOR PART, SO A LOT OF THINGS
14 I DIDN'T KNOW THAT I KNOW NOW, SO THEREFORE I DON'T FEAR
15 ANYTHING, SO THAT'S WHY I AM HERE TODAY.

16 Q A TWO AND A HALF YEARS YOU WAS LIKE OH GOODNESS, I
17 SAW KEVIN CHOICE SHOOT TONY ROSE, LET ME GO TELL THE
18 SOLICITOR?

19 MR. CROFT: OBJECT. IT'S ARGUMENTATIVE.

20 THE COURT: DON'T BE ARGUMENTATIVE.

21 MR. WRIGHT: OKAY.

22 (WHEREUPON QUESTIONING RESUMED).

23 Q SO WHAT YOU TOLD -- WHAT YOU JUST ANSWERED WHEN MR.
24 CROFT ASKED YOU QUESTIONS, THAT'S WHAT YOU TOLD THEM A
25 WEEK AGO WHEN YOU CAME IN?

LOUIS JENKINS - CROSS BY WRIGHT

1 A REPEAT THAT QUESTION.

2 Q WHAT YOU TESTIFIED TO ON THE STAND JUST NOW THAT'S
3 WHAT YOU TOLD MR. CROFT A WEEK AGO?

4 A YES.

5 Q OKAY. HOW DID -- WHAT MADE YOU COME IN A WEEK AGO?

6 A WHAT MADE ME COME IN A WEEK AGO?

7 Q YEAH, WHAT MADE YOU COME IN A WEEK AGO.

8 A I -- MR. CROFT HAD TOUCHED ME WITH ME, I GUESS THE
9 DETECTIVES LET HIM KNOW THAT, YOU KNOW, WHAT I TOLD THEM
10 BRIEFLY WHEN IT FIRST HAPPENED AND HE WANTED TO TALK TO ME
11 AND SEE IF I WAS READY TO OPEN UP.

12 Q OKAY. YOU SAID WHAT, YOU TOLD HIM -- THE ONLY THING
13 YOU TOLD THE POLICE TWO AND A HALF YEARS AGO WAS THAT YOU
14 WENT TO THE CLUB WITH TONY?

15 A YEAH, WE WENT TO THE CLUB TOGETHER AND IT'S -- I
16 DIDN'T REALLY LIKE I SAY, I DIDN'T REALLY OPEN UP AND SAID
17 ANYTHING BECAUSE LIKE I SAID I WAS FEARING FOR MY LIFE.

18 Q DID YOU STATE THAT YOU WERE PRESENT WHEN HE GOT SHOT?

19 A YES.

20 Q YOU SAID THAT TWO AND A HALF YEARS AGO?

21 A YES.

22 Q AND--

23 A AS FAR AS GETTING IN DETAILS SAYING WHAT THIS
24 HAPPENED LIKE THIS, THIS HAPPENED LIKE THAT, ANYTHING LIKE
25 THAT, I DIDN'T DO ALL THAT. THAT'S BASICALLY WHAT I'M

LOUIS JENKINS - CROSS BY WRIGHT

1 SAYING.

2 Q DID YOU STATE THE PEOPLE THAT WERE PRESENT WHEN HE
3 GOT SHOT?

4 A NO, I'M NOT -- EXPLAIN WHAT YOU MEAN BY PEOPLE.

5 Q WHO WAS IN THE AREA WHEN TONY ROSE GOT SHOT?

6 A YEAH, I MIGHT HAVE YES I SAID THAT.

7 Q YOU SAID HARRY SPANN?

8 A YEAH.

9 Q KEVIN CHOICE?

10 A THE FOUR OF US, YES.

11 Q SO YOU TOLD THEM THAT TWO AND A HALF YEARS AGO?

12 A YEAH, BRIEFLY.

13 Q AND YOU DIDN'T SAY THAT YOU SAW KEVIN CHOICE SHOOT
14 ANYBODY?

15 A EXCUSE ME. WHAT PART DO YOU DON'T UNDERSTAND? I
16 SAID I TALKED WITH THEM BRIEFLY. I DIDN'T WANT TO GIVE
17 ANY INFORMATION.

18 Q YOU UNDERSTAND WE ARE AT TRIAL HERE?

19 A YEAH, I UNDERSTAND THAT, BUT...

20 THE COURT: HERE IS WHAT YOU NEED TO DO. YOU NEED TO
21 ANSWER HIS QUESTIONS. YOU NEED TO EXPLAIN YOUR QUESTIONS
22 SO HE CAN ANSWER THEM.

23 A I ANSWER THE SAME QUESTION TEN TIMES ALREADY.

24 Q OKAY. I WILL ASK YOU JUST SAY YES OR NO. DID YOU
25 TELL THE POLICE THAT KEVIN CHOICE SHOT TONY ROSE TWO AND A

LOUIS JENKINS - CROSS BY WRIGHT

1 HALF YEARS AGO?

2 A NO I DIDN'T AND I TOLD YOU THE REASON WHY I DIDN'T.

3 Q BUT YOU DIDN'T DO IT, CORRECT?

4 A AND I ALSO TOLD YOU THE REASON WHY I DIDN'T DO IT.

5 Q DID YOU TELL THE POLICE THAT YOU SAW KEVIN CHOICE,
6 HARRY SPANN AND ANYBODY ELSE IN THE AREA TWO AND A HALF
7 YEARS AGO OR DID YOU FIRST TELL THEM A WEEK AGO?

8 A LIKE I SAY, I TALKED WITH THEM BRIEFLY. I MIGHT HAVE
9 DID, I MIGHT HAVE DIDN'T. I MEAN...

10 Q YOU DON'T REMEMBER?

11 A I MIGHT HAVE DID, MIGHT HAVE DIDN'T.

12 Q AND YOU DO -- MR. CROFT STATED THAT YOU DO HAVE A
13 CRIMINAL RECORD, CORRECT?

14 A YES, I DO.

15 Q OKAY. AND THERE IS A NUMBER OF THINGS ON THERE; IS
16 THAT CORRECT?

17 MR. CROFT: YOUR HONOR, THIS HAS ALREADY BEEN ASKED
18 AND ANSWERED.

19 MR. WRIGHT: I HAVEN'T ASKED HIM.

20 THE COURT: HE DIDN'T ASK. JUST BECAUSE YOU ASKED
21 DOESN'T MEAN HE DON'T GET TO ASK AGAIN.

22 A YES, THERE IS A NUMBER OF THINGS ON THERE.

23 Q IS THAT CORRECT? YOU CAN SAY YES OR NO?

24 A YOU CAN NAME THE THINGS ON THERE. YOU SAID NUMEROUS
25 THINGS, COULD BE ANYTHING. YOU CAN BE SPECIFIC. YOU CAN

LOUIS JENKINS - CROSS BY WRIGHT

1 GO THROUGH THE LISTS AND ANONYMOUS.

2 Q YOU TELL ME YES OR NO.

3 A LIKE I SAID, YES OR NO TO NUMEROUS THINGS, COULD BE
4 ANYTHING. COULD BE MURDER ON THERE, YOU SAY NO.

5 Q YOU WERE CONVICTED OF POSSESSION OF COCAINE, CORRECT?

6 A YES.

7 Q DO YOU DO COCAINE?

8 A NO, I DON'T.

9 Q DO YOU SELL COCAINE?

10 A NO, I DON'T.

11 Q WHY DID YOU HAVE COCAINE?

12 MR. CROFT: YOUR HONOR, I'M GOING TO OBJECT TO THIS.

13 THE COURT: SUSTAINED.

14 (WHEREUPON QUESTIONING RESUMED).

15 Q WERE CONVICTED OF FAILURE TO STOP FOR BLUE LIGHT.

16 JUST ASKING. I MEAN, YOU WERE CONVICTED. WERE YOU
17 RUNNING FROM THE POLICE?

18 A WAS I RUNNING FROM THE POLICE?

19 Q THAT'S WHAT I'M ASKING.

20 A CAN I SIMPLY ASKING THIS QUESTION--

21 MR. CROFT: GOING TO ASK AGAIN -- HE'S GOING INTO
22 SPECIFICS OF THESE OFFENSES.

23 THE COURT: NOT ENTITLED TO GO INTO SPECIFICS.

24 (WHEREUPON QUESTIONING RESUMED).

25 Q AND YOU WERE ALSO CONVICTED OF CARRYING A PISTOL?

LOUIS JENKINS - CROSS BY WRIGHT

1 A YES, I PLEAD GUILTY TO THAT.

2 Q ALL RIGHT. QUESTION, DO YOU OWN A PISTOL?

3 A NO, I DON'T.

4 Q HAVE YOU EVER OWNED A PISTOL?

5 A HAVE I EVER OWNED A PISTOL?

6 Q YES, SIR.

7 A NO.

8 Q HAVE YOU EVER SHOT A PISTOL?

9 A NO. I SHOT A SHOTGUN BEFORE.

10 Q SHOT A SHOTGUN?

11 A YEAH.

12 Q BUT NOT A PISTOL?

13 A YEAH.

14 Q OKAY. AND KNOW PEOPLE THAT OWN PISTOLS?

15 MR. CROFT: YOUR HONOR, OBJECTION.

16 A YEAH, THE POLICE.

17 MR. CROFT: RELEVANCE.

18 (WHEREUPON QUESTIONING RESUMED).

19 Q ALL RIGHT. THAT NIGHT WHEN YOU WENT TO THE CLUB,
20 THERE WERE SECURITY OFFICERS AT THE DOORS OF THE CLUB?

21 A YEAH, THEY WAS HANGING AROUND IN THE AREA OF THE BACK
22 ENTRANCE.

23 Q DID THEY FRISK YOU OR TONY WHEN YOU WENT INSIDE THE
24 CLUB?

25 A NO, THEY DIDN'T.

LOUIS JENKINS - REDIRECT BY CROFT

1 Q SO YA'LL JUST WALKED IN?

2 A YES.

3 Q YOU SAID YOU SPOKE TO KEVIN CHOICE BEFORE YOU WENT
4 IN. DID YOU SPEAK TO ANYBODY ELSE?

5 A YEAH, I SPOKE TO NUMEROUS OF PEOPLE AS I GETS -- GOT
6 IN, BUT AS I ENTER, I GO TO HIM BECAUSE HE WAS STANDING BY
7 THE DOOR, LIKE HAD TO WALK DIRECTLY PAST HIM. HE WAS KIND
8 OF LIKE STANDING AT THE DOOR BY HIMSELF. PEOPLE WAS GOING
9 IN AND OUT, BUT AS I GOT IN THE CLUB, YEAH, I SPOKE TO A
10 LOT OF PEOPLE.

11 MR. WRIGHT: NO FURTHER QUESTIONS, YOUR HONOR.

12 THE COURT: ANY REDIRECT?

13 REDIRECT EXAMINATION BY MR. CROFT:

14 Q JUST ONE QUESTION. WANT TO REITERATE?

15 THE COURT: NO, DON'T REITERATE. IF YOU ALREADY
16 ASKED HIM A QUESTION, DON'T ASK AGAIN.

17 Q I WANT TO ASK ABOUT PRIOR RECORD THAT MR. WRIGHT WENT
18 OVER WITH YOU. YOU HAVE THREE CONVICTIONS ON YOUR RECORD;
19 IS THAT RIGHT?

20 A YES, SIR.

21 Q AND THAT'S FAILURE TO STOP FOR BLUE LIGHT, POSSESSION
22 OF CRACK COCAINE?

23 A YES, SIR.

24 Q AND THE CARRYING A PISTOL CHARGE?

25 A YES, SIR.

LOUIS JENKINS - REDIRECT BY CROFT

1 Q DOES THAT IN ANY WAY AFFECT THE TRUTH OF WHAT YOU
2 WOULD HAVE TOLD US TODAY?

3 A NO, SIR BECAUSE--

4 THE COURT: NO, NO, NO, NOT A QUESTION YOU CAN ASK.
5 THE JURY WILL HAVE TO DECIDE THAT.

6 THE WITNESS: NO, SIR.

7 THE COURT: YOU CAN'T GIVE YOUR OWN OPINION ON YOUR
8 OWN CREDIBILITY, OKAY?

9 THE WITNESS: I WASN'T GOING TO GIVE AN OPINION.

10 THE COURT: THE QUESTION HE ASKED YOU WAS GOING TO
11 SOLICIT YOUR OPINION AS TO WHETHER YOU WERE TELLING THE
12 TRUTH OR NOT. THE JURY IS GOING TO HAVE TO DECIDE THAT.

13 WITNESS: WELL--

14 THE COURT: IF YOU ASK ME THE JURY, OF COURSE I'M
15 TELLING THE TRUTH. SO THAT'S THE END OF IT. ANY OTHER
16 QUESTIONS?

17 MR. CROFT: NO, SIR YOUR HONOR.

18 THE COURT: YOU CAN COME DOWN. THANK YOU VERY MUCH.

19 (WHEREUPON THE WITNESS LEFT THE STAND).

20 THE COURT: CALL YOUR NEXT WITNESS.

21 MR. CROFT: YOUR HONOR, THE WITNESS HAS ALREADY BEEN
22 CALLED, CAN THEY BE ALLOWED TO STAY IN THE COURTROOM AFTER
23 THEY TESTIFY?

24 THE COURT: SURE.

25 (WHEREUPON THERE WAS A PAUSE).

MARION HOWARD - DIRECT BY CROFT

1 MR. CROFT: HE'S GOING TO GET HIM OUT OF
2 SEQUESTRATION, YOUR HONOR.

3 MARION HOWARD, BEING FIRST DULY SWORN,
4 TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION BY MR. CROFT:

6 Q AFTERNOON, MR. HOWARD. WOULD YOU TELL US YOU LIVE
7 HERE IN SUMTER?

8 A YES, SIR.

9 Q ARE YOU FROM HERE?

10 A YES, SIR.

11 Q GROWN UP HERE?

12 A YES, SIR.

13 Q OKAY. WHERE DO YOU WORK?

14 A WEEKS AND HOWARD'S USED CARS, MANNING AVENUE.

15 Q YOU THE OWNER OF WEEKS AND HOWARD?

16 A YES, SIR.

17 Q YOU HAVE WORKED THERE WITH YOUR DAD ALSO?

18 A YES, SIR.

19 Q OKAY. WE HAVE JUST GONE THROUGH THIS WITH THE LAST
20 WITNESS. WANT TO TALK TO YOU. SOMEBODY TESTIFIES, WE ASK
21 ABOUT THEIR PRIOR RECORD. YOU DO HAVE A LITTLE BIT OF A
22 PRIOR RECORD; IS THAT RIGHT?

23 A YES, SIR.

24 Q OKAY. YOU HAVE POSSESSION OF CRACK COCAINE WITH
25 INTENT TO DISTRIBUTE IN 1990?

MARION HOWARD - DIRECT BY CROFT

- 1 A (WHEREUPON SUBJECT INDICATED NODDING HEAD) .
- 2 Q AND POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE
- 3 IN 1999?
- 4 A (WHEREUPON SUBJECT INDICATED NODDING HEAD) .
- 5 Q AND A SIMPLE POSSESSION OF MARIJUANA IN 2000; IS THAT
- 6 RIGHT?
- 7 A (WHEREUPON SUBJECT INDICATED NODDING HEAD) .
- 8 Q OKAY.
- 9 THE COURT: NEED TO ANSWER.
- 10 Q IS THAT RIGHT?
- 11 A YES, SIR.
- 12 Q ARE YOU LIVING IN SUMTER IN SEPTEMBER OF 1998?
- 13 A YES, SIR.
- 14 Q WHAT WERE YOU DOING WORK-WISE AT THAT TIME?
- 15 A I OWNED DIAMOND'S BAR AND GRILL.
- 16 Q OKAY. THAT WAS ON BROAD STREET?
- 17 A (WHEREUPON SUBJECT INDICATED NODDING HEAD) .
- 18 Q OKAY.
- 19 A YES, SIR.
- 20 Q WERE YOU WORKING WEDNESDAY NIGHT, SEPTEMBER 3RD,
- 21 1998?
- 22 A YES, SIR.
- 23 Q DO YOU REMEMBER THAT NIGHT?
- 24 A YES, SIR.
- 25 Q OKAY. TELL ME A LITTLE BIT ABOUT WEDNESDAY NIGHTS

MARION HOWARD - DIRECT BY CROFT

1 BACK THEN. DID YOU HAVE SPECIALS?

2 A YEAH. I GAVE OUT FREE DRINKS ON WEDNESDAY NIGHTS.

3 Q OKAY.

4 A COUPLE FREE.

5 Q OKAY. PEOPLE PAY COVER CHARGE AND CAME IN AND HAD
6 CERTAIN DRINKS FOR FREE?

7 A YES, SIR.

8 Q DID YOU SEE KEVIN CHOICE THAT NIGHT?

9 A I -- WELL, I SEEN EVERYBODY CAME THROUGH THE DOOR. I
10 WAS TAKING, PARTIALLY TAKING THE MONEY.

11 Q AND AT SOME POINT DID SOMEBODY BRING TO YOUR
12 ATTENTION A POTENTIAL ARGUMENT OVER NEAR THE BATHROOMS IN
13 THE CLUB?

14 A YES, SIR.

15 Q OKAY. WHAT DID YOU DO ONCE THEY BROUGHT THAT TO YOUR
16 ATTENTION?

17 A I WENT BACK THERE AND I SWITCHED THE LIGHT ON.

18 Q WHEN YOU SAY SWITCHED THE LIGHT ON, WHAT DO YOU MEAN?

19 A WELL, IT WAS A STRING HOOK UP TO A LITTLE BUBBLE IN
20 THE BACK.

21 Q OKAY.

22 A AND SO I PULLED THE STRING AND EVERYONE TURNED
23 AROUND, THEY SAID THEY WAS OKAY, YOU KNOW, THEY WAS FINE.

24 Q WELL, LET ME ASK YOU THIS. WHEN YOU SAY EVERYONE,
25 WHO ALL WAS STANDING THERE THAT YOU SAW?

MARION HOWARD - DIRECT BY CROFT

1 A IT WAS HARRY ROSE, KEVIN AND ANOTHER GUY.

2 Q OKAY. YOU SAY HARRY, YOU MEAN HARRY SPANN?

3 A YES, SIR.

4 Q YOU SAY KEVIN, YOU MEAN KEVIN CHOICE, THE DEFENDANT?

5 A (NODDED HEAD).

6 Q WHEN YOU SAY ROSE YOU MEAN TONY ROSE, THE PERSON THAT
7 WAS SHOT THAT NIGHT?

8 A YES, SIR.

9 Q OKAY. AND THE FOUR OF THEM WERE STANDING TOGETHER?

10 A YES, SIR.

11 Q LET ME ASK YOU THIS. WAS -- YOU SAID THERE IS A
12 FOURTH INDIVIDUAL. YOU DON'T RECOGNIZE HIM. COULD IT
13 HAVE BEEN LOUIS JENKINS?

14 A YES, SIR.

15 Q OKAY. YOU THINK IT WAS HIM?

16 A IT WAS.

17 Q OKAY. YOU JUST DIDN'T KNOW HIS NAME?

18 A NO, SIR.

19 Q OKAY. TELL US WHO WAS FACING WHOM?

20 A WELL, IT WAS KEVIN AND HARRY FACING ROSE AND...

21 Q MR. JENKINS?

22 A YEAH, MR. JENKINS.

23 Q OKAY. AND WHAT WAS MR. ROSE'S BACK TO AS FAR AS IN
24 RELATION TO THE BATHROOM?

25 A TO ME.

MARION HOWARD - DIRECT BY CROFT

1 Q THE WALL?

2 A THINK IT WAS ME WHEN I CAME UP.

3 Q OKAY. AND YOU WERE FACING THE BATHROOM; IS THAT
4 RIGHT?

5 A YES, SIR.

6 Q I'M GOING TO SHOW YOU BRIEFLY WHAT IS MARKED AS
7 STATE'S EXHIBIT NUMBER 11.

8 MR. CROFT: YOUR HONOR, MAY HE STEP DOWN BRIEFLY?

9 (OFF STAND).

10 Q ARE THOSE THE BATHROOMS?

11 A YES, SIR.

12 Q THAT SIDE DOWN THERE?

13 A YES, SIR.

14 Q OKAY. AND GENERALLY WHERE WERE YOU STANDING?

15 A RIGHT HERE ON THE CORNER WHERE THIS LIGHT BUBBLE IS
16 RIGHT HERE.

17 Q OKAY. AND TONY YOU SAID HAD HIS BACK TO YOU?

18 A YES, SIR.

19 Q OKAY. SO WHICH WAY -- KEVIN AND HARRY WERE FACING
20 YOU; IS THAT RIGHT?

21 A YES, SIR.

22 Q OKAY. THEY WERE FACING THIS DIRECTION?

23 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

24 Q OKAY. YOU CAN TAKE A SEAT AGAIN.

25 (WHEREUPON THE WITNESS RESUMED THE STAND).

MARION HOWARD - DIRECT BY CROFT

1 Q AND YOU TURNED THE LIGHT ON TO SEE WHAT WAS GOING ON
2 AND YOU TURNED IT BACK OFF; IS THAT RIGHT?

3 A YES, SIR.

4 Q OKAY. WHAT HAPPENED ONCE YOU TURNED THE LIGHT OFF?

5 A I TURNED AROUND AND BEFORE I KNOW IT WAS A, YOU KNOW,
6 A SHOT.

7 Q ONE SHOT?

8 A YES, SIR.

9 Q OKAY. AND WHAT DID YOU DO AT THAT POINT?

10 A WELL, I HIT THE GROUND AND I CAME BACK UP, TURNED THE
11 LIGHT BACK ON AND THAT'S WHEN MR. ROSE WAS FALLING DOWN
12 AND KIND OF LIKE, YOU KNOW, WAS DEAD, TRYING TO WAKE HIM
13 UP, YOU KNOW.

14 Q SO YOU GRABBED MR. ROSE, THE VICTIM WHO WAS SHOT,
15 GRABBED HIM?

16 A YES, SIR.

17 Q OKAY. DID YOU LOOK UP AT THAT POINT?

18 A YES, SIR.

19 Q WHAT DID YOU SEE?

20 A SEEN EVERYONE RUNNING OUT, YOU KNOW, GOING TOWARDS
21 THE BACK DOOR.

22 Q OKAY. WAS KEVIN CHOICE ONE OF THOSE PEOPLE?

23 A YES, SIR.

24 Q DID HE HAVE A GUN IN HIS HAND?

25 A YES, SIR.

MARION HOWARD - CROSS BY WRIGHT

1 Q OKAY. DID YOU SEE ANYBODY ELSE WITH A GUN?

2 A NO.

3 Q OKAY. KEVIN ACTUALLY -- DID SECURITY BRING HIM BACK
4 INSIDE?

5 A WITH THE GUN.

6 Q OKAY. HE HAD THE GUN THEN?

7 A UH-HUH.

8 Q DID YOU SEE WHO ACTUALLY SHOT TONY ROSE?

9 A NO, SIR.

10 Q BUT NOW YOU SAID YOU DIDN'T SEE ANYBODY ELSE WITH A
11 GUN; IS THAT RIGHT?

12 A YES, SIR.

13 Q PLEASE ANSWER ANY QUESTIONS MR. WRIGHT MAY HAVE.

14 THE COURT: ALL RIGHT, MR. WRIGHT.

15 CROSS-EXAMINATION BY MR. WRIGHT:

16 Q HOW ARE YOU DOING, MR. HOWARD? YOU SAID AT THE TIME
17 YOU WERE THE OWNER OF THE DIAMOND CLUB?

18 A YES, SIR.

19 Q YOU HAD SECURITY OFFICERS THERE THAT EVENING,
20 CORRECT?

21 A YES, SIR.

22 Q WERE THEY FRISKING ANYBODY WHEN THEY CAME IN THE
23 DOOR?

24 A NO, SIR.

25 Q JUST LET THEM IN?

MARION HOWARD - CROSS BY WRIGHT

1 A YES, SIR.

2 Q AND YOU STATED THAT YOU SAW BASICALLY EVERYBODY THAT
3 CAME IN?

4 A YES, SIR.

5 Q YOU SAID YOU DIDN'T SEE WHO SHOT TONY ROSE; IS THAT
6 CORRECT?

7 A I DIDN'T.

8 Q IN THAT GENERAL AREA WHERE THEY WERE, THOSE WERE, DID
9 YOU SEE ANYBODY OTHER THAN THE FOUR PEOPLE YOU JUST
10 MENTIONED? DID YOU SEE ANY FEMALES?

11 A WELL, THERE WAS -- IT WAS THE FEMALE THAT POINTED ME
12 TO THEM, YOU KNOW, THAT LET ME KNOW THAT IT WAS SOMETHING
13 WAS GOING ON. THAT'S WHEN I CAME, YOU KNOW, TURNED THE
14 LIGHT ON.

15 Q AND WERE THERE ANY OTHER PEOPLE AROUND AT THE MOMENT
16 THAT YOU HEARD THE SHOT?

17 A NOT THAT I COULD REMEMBER.

18 Q OKAY. BUT IT'S POSSIBLE?

19 A IT'S POSSIBLE.

20 Q CAN YOU TELL ME IN RELATION TO THE LIGHT GOING OUT
21 WHEN YOU HEARD THE SHOT?

22 A EXCUSE ME?

23 Q YOU TURNED THE LIGHT BACK OFF, CAN YOU TELL ME IN
24 RELATION TO THAT THAT YOU HEARD THE SHOT AS FAR AS TIME,
25 HOW LONG AFTER YOU TURNED THE LIGHT OUT OR WAS IT BEFORE

MARION HOWARD - CROSS BY WRIGHT

1 OR AFTER?

2 A IT WAS LIKE A COUPLE OF SECONDS, YOU KNOW.

3 Q OKAY. AND HOW FAR AWAY FROM THE EXIT WERE YA'LL
4 STANDING?

5 A A COUPLE FEETS TO THE DOOR, BACK DOOR.

6 Q BEFORE THIS NIGHT, DID YOU KNOW KEVIN CHOICE?

7 A WELL, I KNEW A LOT OF PEOPLE BY FACES, YOU KNOW, BUT
8 I DIDN'T -- I DON'T THINK THAT I KNOW HIM PERSONALLY. I
9 DON'T, YOU KNOW...

10 Q BUT YOU CAN'T SAY THAT KEVIN CHOICE SHOT TONY ROSE;
11 CAN YOU?

12 A NO, SIR.

13 Q CAN YOU SAY WHO SHOT TONY ROSE?

14 A I CANNOT SAY.

15 Q DO YOU KNOW?

16 A DON'T KNOW.

17 Q OKAY. OTHER THAN KEVIN CHOICE, OUT OF THOSE FOUR DID
18 YOU KNOW ANY OF THEM?

19 A BY FACE.

20 Q DID YOU KNOW HARRY SPANN?

21 A YOU KNOW, BY FACE HERE AND THERE. PEOPLE COME TO THE
22 CLUBS, YOU KNOW.

23 Q UH-HUH. ALL RIGHT.

24 MR. WRIGHT: NO FURTHER QUESTIONS, YOUR HONOR.

25 THE COURT: ANY REDIRECT?

1 MR. CROFT: NO REDIRECT.

2 THE COURT: ALL RIGHT. YOU CAN COME DOWN. LADIES
3 AND GENTLEMEN, WE ARE GOING TO TAKE A LITTLE TEN MINUTE
4 BREAK. GO TO YOUR JURY ROOM. GIVE YOU SOME REFRESHMENTS
5 AND WE WILL COME BACK AND GET STARTED, HOUR OR SO. PLEASE
6 DON'T DISCUSS THE CASE AMONG YOURSELVES.

7 MR. CROFT: MAY MR. HOWARD BE EXCUSED?

8 (WHEREUPON THE JURY LEFT THE COURTROOM AT 4:05 P.M.)

9 (WHEREUPON A BRIEF RECESS WAS TAKEN).

10 THE COURT: ALL RIGHT. YA'LL READY TO GO? BRING THE
11 JURY BACK IN, PLEASE SIR.

12 (WHEREUPON THE JURY ENTERED THE COURTROOM).

13 THE COURT: TOLD YA'LL ALL WOULD COME BACK TO THE
14 SAME SEAT. ALL RIGHT. SOLICITOR?

15 MR. CROFT: THE STATE WOULD CALL GEORGE MCQUILLA.

16 GEORGE MCQUILLA, BEING FIRST DULY
17 SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION BY MR. CROFT:

19 Q MR. MCQUILLA, TELL ME WHERE DO YOU LIVE?

20 A MY ADDRESS NOW?

21 Q WELL, JUST DO YOU LIVE HERE IN SUMTER?

22 A LIVE IN SUMTER, SOUTH CAROLINA.

23 Q YOU FROM HERE?

24 A YES, I WAS BORN HERE.

25 Q OKAY. AND WHERE DO YOU WORK RIGHT NOW?

GEORGE MCQUILLA - DIRECT BY CROFT

1 A I'M EMPLOYED AT GOLD KIST.

2 Q OKAY. WHERE WERE YOU WORKING ON SEPTEMBER OF 1998?

3 A I WAS WORKING WITH PALMETTO SECURITY INVESTIGATIVE
4 SERVICES.

5 Q OKAY. AND SPECIFICALLY ON THE NIGHT OF SEPTEMBER THE
6 3RD OF 1998, WHERE WERE YOU ASSIGNED THAT NIGHT?

7 A I WAS ASSIGNED AT DIAMOND'S ON BROAD STREET ACROSS
8 FROM MEINEKE MUFFLER.

9 Q OKAY. AND WAS THERE A SHOOTING INCIDENT WHILE YOU
10 WERE WORKING THERE THAT NIGHT?

11 A YES, SIR THERE WAS.

12 Q OKAY. WHAT MADE YOU AWARE OF THIS?

13 A WELL, I WAS STANDING AT IN -- IN THE BACK PARKING LOT
14 AT THE TIME WHEN IT OCCURRED.

15 Q OKAY. DID YOU HEAR THE SHOT?

16 A YES, SIR.

17 Q OKAY. WHAT DID YOU DO ONCE YOU HEARD THE SHOT?

18 A WELL, I HEARD THE SHOT AND I IMMEDIATELY TURNED
19 TOWARDS THE DOOR BECAUSE IT WAS INSIDE. AND WHEN I TURNED
20 TOWARDS THE DOOR, I SAW A GENTLEMAN IN THE CRACK OF THE
21 DOOR ABOUT THIS -- THIS DISTANCE AND THEY WERE PUTTING
22 WHAT I SAW WAS A WEAPON DOWN THE BACK OF HIS BACK AND
23 PULLED HIS SHIRT OVER THE TOP.

24 Q OKAY.

25 A BUT I DID NOT SEE HIS FACE AT THAT TIME.

GEORGE MCQUILLA - DIRECT BY CROFT

1 Q OKAY. AND WHEN YOU SAY THE DOOR, WAS THIS THE FRONT
2 OR THE BACK DOOR?

3 A IT WAS THE BACK DOOR.

4 Q OKAY. THAT'S WHERE THE PARKING LOT IS?

5 A UH-HUH.

6 Q OKAY. WHEN YOU SAW HIM DO THIS, WHAT DID YOU DO?
7 FIRST TELL ME HOW FAR AWAY YOU WERE FROM THAT.

8 A I WAS ABOUT FROM -- FROM HERE TO WHERE THAT MIKE IS
9 LOCATED RIGHT THERE FROM THE DOOR.

10 Q WHAT DID YOU DO WHEN YOU SAW THAT?

11 A WELL, I IMMEDIATELY KEPT MY EYES ON HIM TO MAKE SURE,
12 YOU KNOW, WHAT WAS GOING ON. I WAS IN DANGER AT THAT TIME
13 BECAUSE I WAS SECURITY THERE. SO WHEN HE CAME DOWN THE
14 RAMP, YOU KNOW, HE CALLED ME BY NICK NAME. THEY CALL ME
15 BIG MAN.

16 SAID BIG MAN, THERE'S A SHOOTING GOING ON
17 INSIDE, SO I ACTED NONCHALANTLY LIKE I WAS WANT TO WALK
18 INTO THE CLUB TO SEE WHAT WAS GOING ON. WHEN I GOT ON THE
19 SIDE WHERE I KNOW THE WEAPON WAS AT, I WENT FOR THE
20 WEAPON.

21 Q OKAY. DID YOU IN FACT GRAB THE WEAPON?

22 A YES, SIR. I GRABBED THE WEAPON.

23 Q ALL RIGHT. AT THAT POINT DID YOU GET A BETTER
24 OPPORTUNITY TO SEE WHO THIS WAS?

25 A YES, SIR, I DID.

GEORGE MCQUILLA - DIRECT BY CROFT

1 Q OKAY. IS HE HERE IN THE COURTROOM TODAY?

2 A YES, HE IS.

3 Q WHO IS THAT?

4 A THE GENTLEMAN RIGHT THERE, CHOICE.

5 Q KEVIN CHOICE?

6 A KEVIN CHOICE.

7 Q OKAY. AND LET ME ASK YOU, HOW MANY SHOTS DID YOU
8 HEAR?

9 A I HEARD ONE.

10 Q OKAY. AND WHEN YOU GRABBED THE WEAPON, WHAT HAPPENED
11 AT THAT POINT?

12 A WELL, AT THAT TIME THERE WAS ANOTHER OFFICER THERE BY
13 THE NAME OF SAPRENA DAVIS. I GAVE HER THE WEAPON WHILE I
14 WRESTLED WITH THE GENTLEMAN TO SECURE HIM FOR THE POLICE
15 COULD GET THERE.

16 Q WHAT DO YOU MEAN BY WRESTLE WITH HIM?

17 A WELL, HE WAS TRYING TO GET AWAY BASICALLY BECAUSE I
18 TOOK A WEAPON OFF OF HIM.

19 Q OKAY. AND WAS HE RESISTING YOUR ATTEMPTS?

20 A YES, HE WAS.

21 Q OKAY. DESCRIBE THAT FOR ME.

22 A I BASICALLY GRABBED THE WEAPON WITH ONE HAND AND
23 GRABBED, YOU KNOW, HIM WITH THE OTHER HAND, AND AT THAT
24 TIME I WENT AROUND HIM AND THE GUN WAS BEHIND HIM, SO HE
25 WAS IN BETWEEN ME. AND I ASKED SAPRENA TO GRAB THE WEAPON

GEORGE MCQUILLA - DIRECT BY CROFT

1 SO I COULD BASICALLY HANDLE HIM.

2 Q OKAY. AND DID SHE IN FACT TAKE THAT WEAPON FROM YOU?

3 A YES, SHE DID.

4 Q AND DURING THE STRUGGLE, DID YOU HAVE A CHANCE TO GET
5 A GOOD LOOK AT THE WEAPON?

6 A NOT REALLY, BUT AFTERWARDS I, YOU KNOW, I KNEW IT WAS
7 A 9 MILLIMETER, BUT AS FAR DESCRIBING HOW IT LOOK, IT BEEN
8 SO LONG AGO, I SAW IT AT THAT TIME AND I GRABBED IT, BUT
9 YOU KNOW, IT'S BEEN SINCE '98 TO IDENTIFY THAT GUN.

10 Q OKAY. BUT YOU REMEMBER SPECIFICALLY HANDING IT TO
11 SAPRENA DAVIS?

12 A YES, I DID.

13 Q AND ONCE SHE HAD THE GUN, WHAT DID YA'LL DO AT THAT
14 POINT?

15 A WELL, I BASICALLY PUT HIM INTO CUSTODY TO LET HIM
16 KNOW THAT I WAS DETAINING THEM AT THAT TIME FOR THE POLICE
17 TO GET THERE.

18 Q OKAY. LET ME ASK YOU THIS. WHEN YOU GRABBED THE
19 GUN, DID YOU NOTICE ANYTHING ABOUT HIM?

20 A ANYTHING ABOUT HIM?

21 Q NO, ABOUT THE GUN ITSELF.

22 A NO, I -- IT WAS DEFINITELY A REAL GUN, YOU KNOW, IT
23 WAS KIND OF WARM. THAT'S ABOUT IT.

24 Q YOU NOTICED THE GUN WAS WARM?

25 A YEAH, THAT'S ABOUT IT.

GEORGE MCQUILLA - DIRECT BY CROFT

- 1 Q WHAT DID THAT INDICATE?
- 2 A WELL, THE SITUATION WAS HEATED YOU KNOW, SO BUT...
- 3 Q WERE YOU ABLE TO EVENTUALLY GET HIM SUBDUED?
- 4 A YES, I DID.
- 5 Q OKAY. ANY OTHER OFFICERS HELP YOU?
- 6 A I DIDN'T HEAR YOU.
- 7 Q DID ANY OTHER SECURITY OFFICERS HELP YOU?
- 8 A YES, SAPRENA DAVIS WAS THE GUN -- AFTER SHE SECURED
- 9 THE GUN, SHE ASSISTED ME IN HELPING ME DETAIN HIM.
- 10 Q DID YA'LL PUT HANDCUFFS ON HIM?
- 11 A YES, I DID.
- 12 Q WHEN YOU SAY SECURITY GUARD, WHAT DO YA'LL DRESS
- 13 LIKE? WHAT'S YOUR APPEARANCE?
- 14 A WE DRESS AT THAT TIME IN THE SAME BLUES THAT THE CITY
- 15 POLICE, THE POLICE WEAR EXCEPT WE HAVE THE YELLOW STRIPE
- 16 AND OUR PATCHES ARE TOTALLY DIFFERENT THAN THEIRS.
- 17 Q SO IT'S AN ACTUAL SECURITY UNIFORM?
- 18 A UH-HUH.
- 19 Q NOT CLOTHES?
- 20 A HUH-UH.
- 21 Q AT THAT POINT WHEN YOU WERE WRESTLING, DID HE MAKE
- 22 ANY STATEMENTS TO YOU?
- 23 A NO. ONLY THING I REMEMBER HIM SAYING, HE WAS CALLING
- 24 OUT SOMEONE ELSE'S NAME BY KIWI. AT THE TIME I DIDN'T
- 25 KNOW WHO WAS KIWI.

GEORGE MCQUILLA - DIRECT BY CROFT

1 Q OKAY. DID HE MAKE ANY OTHER STATEMENTS TO YOU?

2 A SAID THAT, YOU KNOW, THAT HE WAS HURT, THAT WAS ABOUT
3 IT, BUT I FIGURE HE WAS TALKING ABOUT ME AND HIM FIGHTING
4 ONE ANOTHER, BUT HE WAS SAYING THAT HE WAS INJURED.

5 Q DID HE SAY SPECIFICALLY HOW HE WAS INJURED?

6 A NO, I -- AT THAT TIME HE, YOU KNOW, I'M MORE THINKING
7 ABOUT THE SITUATION, NOT TRYING TO HEAR SO MUCH WHAT HE'S
8 SAYING. I'M TRYING TO MAKE IT SAFER.

9 Q WHAT DID YA'LL -- ONCE YOU GOT -- WHAT DID YOU DO
10 WITH HIM AT THAT POINT?

11 A I DETAINED HIM UNTIL THE CITY POLICE ARRIVED. WE
12 BROUGHT THEM AWAY FROM THE CROWD AND BASICALLY HAD THEM
13 SIT BACK UNTIL THEY GOT THERE. WE KNEW THE PHONE CALL WAS
14 MADE AND HELP WAS ON THE WAY.

15 Q OKAY. TELL ME ABOUT THE CROWD, WHAT WAS THE CROWD
16 DOING OUTSIDE?

17 A WELL, SOME OF IT WAS BEING AGGRESSIVE. I GUESS IT
18 WAS FRIENDS TO HIM OR WHATEVER. ONE OF THE GENTLEMEN KEPT
19 HOLLERING THAT, YOU KNOW, I GOT THE WRONG MAN.

20 Q DON'T TELL ME WHAT, CAN'T TELL ME--

21 A NO, NO. THE GENTLEMAN WAS BASICALLY -- HE WAS OVER
22 THE OTHER CROWD SAYING I BASICALLY WAS I HAD THE WRONG
23 MAN, BUT I WAS EXPLAINING TO HIM THAT, YOU KNOW, I'M NOT
24 GOING TO DEAL WITH THAT, JUST STAY BACK.

25 Q WAS IT A LARGE CROWD?

GEORGE MCQUILLA - DIRECT BY CROFT

1 A YEAH, KIND OF, KIND OF LARGE.

2 Q WERE THEY COMING TOWARDS YOU AT ANY POINT?

3 A AT ONE POINT THEY WERE UNTIL ONE OF THE OTHER
4 GENTLEMEN THAT WAS WITH US, SEAN HARDY, HE CAME AND
5 BASICALLY BACKED THEM UP.

6 Q OKAY. DID YOU -- ONCE YOU WENT INSIDE, DID YOU SEE
7 THE VICTIM?

8 A YEAH, I SAW THE GENTLEMAN LAYING DOWN ON THE FLOOR.

9 Q OKAY. YOU DIDN'T SEE ANY KIND OF WEAPONS AROUND THE
10 VICTIM; DID YOU?

11 A NO, I DIDN'T.

12 Q AT THAT POINT DID YOU DO ANYTHING ELSE?

13 A NO, THE ONLY THING ELSE WAS DONE AFTER THAT WAS THE
14 POLICE ARRIVED AND I EXPLAINED TO THEM WHAT HAD HAPPENED
15 IN MY SCENE OF WHAT WAS HAPPENING AND THAT WAS IT. I --
16 THEY DID A CHAIN OF CUSTODY WITH THE WEAPON BECAUSE I
17 HANDLED IT. THEY SAID I HAD TO BASICALLY SAY IT WENT FROM
18 THIS PERSON TO THAT PERSON.

19 Q OKAY. YOU SIGNED THAT FORM?

20 A YES, SIR, I SIGNED THAT FORM.

21 Q OKAY.

22 MR. CROFT: COURT'S INDULGENCE ONE MOMENT.

23 (WHEREUPON THERE WAS A PAUSE).

24 MR. CROFT: ANSWER ANY QUESTIONS MR. WRIGHT MAY HAVE.

25 THE COURT: ALL RIGHT. MR. WRIGHT?

GEORGE MCQUILLA - CROSS BY WRIGHT

1 CROSS-EXAMINATION BY MR. WRIGHT:

2 Q HOW YOU DOING, MR. MCQUILLA?

3 A HOW YOU DOING?

4 Q ALL RIGHT. THAT NIGHT YOU WERE HIRED TO DO SECURITY
5 FOR THE DIAMOND CLUB, CORRECT?

6 A YES, SIR.

7 Q YOU WERE AT THE BACK DOOR?

8 A YEAH, I WAS AT THE BACK DOOR.

9 Q OKAY. THAT'S WHERE YOU WERE AT THE ENTIRE NIGHT?

10 A THE MAJORITY OF THE NIGHT.

11 Q OKAY. AND DID ANY PEOPLE -- I GUESS WHEN YOU WERE I
12 GUESS HAD MR. CHOICE, SAY PEOPLE WERE -- THE CROWD WAS
13 TALKING TO YOU OR COMING TOWARDS YOU YOU STATED?

14 A YEAH, THEY WERE BASICALLY BEING AGGRESSIVE BECAUSE I
15 GUESS THEY WERE FRIENDS OR SOMETHING WITH SOME OF THE
16 GUYS, YOU KNOW, BUT THEY WANTED TO HELP HIM. HE WAS
17 ASKING FOR HELP.

18 Q OKAY. AND DID THEY MAKE ANY INDICATION TO YOU ABOUT
19 WHAT HAPPENED INSIDE THE CLUB?

20 A WELL, THEY WERE THINGS BEING SAID, BUT YOU KNOW AT
21 THAT TIME YOU HAVE TO KEEP YOUR MIND AT WHAT, YOU KNOW --
22 LIKE I SAID I HEARD ONE PARTICULAR PERSON SAYING THAT THAT
23 WAS HIS BROTHER, THAT WAS ABOUT IT AND YOU KNOW, HE WAS
24 HURTING AND TO TURN HIM LOOSE OR SOMETHING.

25 Q OKAY. AND THE ENTIRE TIME THAT YOU WERE OUTSIDE THE

GEORGE MCQUILLA - CROSS BY WRIGHT

1 CLUB, CORRECT?

2 A NO, I WOULDN'T SAY THE ENTIRE TIME, BUT THE MAJORITY
3 OF THE TIME I WAS.

4 Q AS FAR AS AFTER THE SHOT?

5 A YEAH, OH, YEAH.

6 Q ALL RIGHT. WERE -- SO WHEN YOU HEARD THE SHOT, YOU
7 HEARD IT FROM OUTSIDE? YOU WERE OUTSIDE?

8 A YEAH, I WAS AT THE BOTTOM OF THE RAMP.

9 Q OKAY.

10 A LEANING BACKWARDS.

11 Q WAS ANYBODY OUT THERE WITH YOU?

12 A YEAH, SAPRENA DAVIS AND SEAN HARDY WAS OFF TO YOUR --
13 TO MY LEFT FROM ME.

14 Q OKAY.

15 A OUT BY A CAR.

16 Q THEY WERE ALSO SECURITY?

17 A YEAH, TWO OTHER WERE SECURITY THERE. THERE WAS THREE
18 WORKING THAT NIGHT.

19 Q AND YOU REALLY DON'T KNOW WHAT HAPPENED INSIDE THE
20 CLUB; DO YOU?

21 A NO, SIR, I DON'T.

22 Q AND THE ONLY REASON YOU STOPPED MR. CHOICE WAS
23 BECAUSE YOU SAW A GUN ON HIM?

24 A I SAW -- I SAW EITHER HIM OR SOMEONE ELSE'S HANDS
25 BECAUSE YOU ONLY HAD A PORTION OF THE DOOR THAT WAS OPEN,

GEORGE MCQUILLA - REDIRECT BY CROFT

1 BUT THEY WERE PUTTING THE WEAPON IN THE BOTTOM OF THE
2 SHIRT, THEN PULLING THE SHIRT OVER THE WEAPON I GUESS TO
3 GET IT OUT OF THE CLUB.

4 Q OKAY. SO YOU SAW SOMEBODY PUT A GUN?

5 A I WOULDN'T SAY I -- I DIDN'T KNOW WHO HANDED ONE.
6 LIKE I SAID, YOU COULD ONLY SEE A PORTION OF THE DOOR AND
7 I SAW A PORTION OF HIS BODY, YOU KNOW, SAYING -- I
8 COULDN'T SEE THE WHOLE BODY, SO I DON'T KNOW WHO PUT IT
9 THERE. I WILL BE HONEST WITH YOU, I DON'T KNOW.

10 Q OKAY. AND HOW LONG DID YOU WORK FOR PALMETTO
11 SECURITY?

12 A HOW LONG? I BEEN EMPLOYED BY THEM SINCE '94.

13 Q NO FURTHER QUESTIONS.

14 THE COURT: ANY REDIRECT?

15 MR. CROFT: COURT'S INDULGENCE JUST ONE MOMENT.

16 REDIRECT EXAMINATION BY MR. CROFT:

17 Q HE ASKED YOU ABOUT WHAT YOU SAW AS FAR AS PUTTING THE
18 GUN IN THE WAISTBAND. WHO WAS PUTTING GUNS IN THE
19 WAISTBAND?

20 A IN HIS WAISTBAND? THAT'S WHAT I SAID. I COULDN'T
21 SEE.

22 Q I MEAN, WHOSE WAISTBAND WAS IT?

23 A IT WAS MR. CHOICE'S WAISTBAND.

24 Q AND AS -- WHO DID YOU SEE COMING OUT THE DOOR AT THAT
25 TIME?

SAPRENA DAVIS - DIRECT BY CROFT

1 A IT WAS MR. CHOICE CAME OUT OF THE DOOR.

2 Q OKAY. DID HE IN FACT HAVE A WEAPON ON HIM?

3 A YES, HE DID.

4 MR. CROFT: THAT'S ALL I HAVE, YOUR HONOR.

5 THE COURT: YOU CAN COME DOWN.

6 (WHEREUPON THE WITNESS LEFT THE STAND).

7 THE COURT: I DON'T ALLOW RE-CROSS. YOU CAN COME
8 DOWN.

9 THE WITNESS: OKAY. THANK YOU.

10 (WHEREUPON THE WITNESS LEFT THE STAND).

11 THE COURT: CALL YOUR NEXT WITNESS.

12 MR. CROFT: HE'S GOING TO GET HIM, YOUR HONOR. MAY
13 MR. MCQUILLA BE EXCUSED, YOUR HONOR?

14 THE COURT: HE CAN BE EXCUSED.

15 (WHEREUPON THERE WAS A PAUSE)

16 (WITNESS IN COURTROOM).

17 MR. CROFT: YOUR HONOR, THE STATE WOULD CALL SAPRENA
18 DAVIS.

19 SAPRENA DAVIS, BEING FIRST DULY SWORN,
20 TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION BY MR. CROFT:

22 Q GOOD AFTERNOON, MRS. DAVIS.

23 A HOW YOU DOING?

24 Q HOW ARE YOU DOING?

25 A FINE.

SAPRENA DAVIS - DIRECT BY CROFT

1 Q TELL US WHERE YOU ARE EMPLOYED RIGHT NOW.

2 A AT EASTERN STAR NURSING HOME.

3 Q OKAY. YOU LIVE HERE IN SUMTER?

4 A YES.

5 Q HOW LONG HAVE YOU LIVED IN SUMTER?

6 A ABOUT 14 YEARS.

7 Q OKAY. AND WHO WERE YOU WORKING FOR BACK IN SEPTEMBER
8 OF 1998?

9 A PALMETTO SECURITY.

10 Q OKAY. AND WERE YOU WORKING FOR THEM SPECIFICALLY ON
11 THE NIGHT OF SEPTEMBER 3RD OF 1998?

12 A YES.

13 Q WHERE WERE YOU ASSIGNED THAT NIGHT?

14 A AT DIAMOND POOL HALL ON BROAD STREET.

15 Q OKAY. AND DID SOMETHING BRING YOUR ATTENTION TO A
16 SHOOTING THAT NIGHT?

17 A YES.

18 Q OKAY. WHAT WAS THAT?

19 A I HEARD ONE GUNSHOT FROM THE INSIDE OF THE POOL HALL.

20 Q OKAY. WHERE WERE YOU LOCATED WHEN YOU HEARD THE
21 SHOT?

22 A STANDING AT THE REAR OF THE DOOR OF THE BUILDING.

23 Q YOU SAY THE REAR OF THE DOOR MEANING THE BACK DOOR?

24 A UH-HUH.

25 Q OKAY. IS THAT WHERE THE PARKING LOT IS?

SAPRENA DAVIS - DIRECT BY CROFT

1 A YES, IT'S IN THE BACK.

2 Q OKAY. AND WHAT DID YOU DO OR OBSERVE ONCE YOU HEARD
3 THAT SHOT?

4 A WHEN I FIRST HEARD THE SHOT, ME AND OFFICER SEAN
5 HARDY RAN FOR COVER FOR A VEHICLE ON THE RIGHT HAND SIDE
6 OF ME AND THAT'S WHEN A CROWD CAME RUNNING OUT HOLLERING
7 AND SCREAMING.

8 Q A CROWD OF PEOPLE CAME RUNNING OUT?

9 A OUTSIDE THE POOL HALL, UH-HUH.

10 Q OKAY. WHERE WAS SERGEANT MCQUILLA AT THE TIME THIS
11 WAS ALL GOING ON? WAS HE WORKING WITH YOU THAT NIGHT?

12 A YES, HE WAS.

13 Q WHERE WAS HE LOCATED AT THIS TIME?

14 A HE WAS ON THE LEFT HAND SIDE OF ME, SO ME AND SEAN
15 WAS ON THE RIGHT HAND SIDE AND SEAN WENT TO THE RIGHT, YOU
16 KNOW, GO FOR COVER NEXT TO A JEEP AND THEN GEORGE ON THE
17 LEFT HAND SIDE, SO HE STARTED APPROACHING THE VEHICLE
18 BUILDING.

19 Q AND AS MR. MCQUILLA APPROACHED THE BUILDING, DID YOU
20 OBSERVE HIM DO ANYTHING?

21 A YES.

22 Q WHAT DID YOU OBSERVE?

23 A I OBSERVE HE APPREHENDED KEVIN CHOICE.

24 Q OKAY. WHERE WAS THIS APPROXIMATELY?

25 A SOON AS YOU COME OUT THE DOOR.

SAPRENA DAVIS - DIRECT BY CROFT

1 Q OKAY. IT WAS RIGHT OUTSIDE THE BACK DOOR?

2 A UH-HUH.

3 Q OKAY. AND WHAT WAS -- DID YOU APPROACH HIM AT THAT
4 TIME?

5 A NO, I DIDN'T APPROACH HIM AT THAT TIME. AT THAT TIME
6 HE HAD KEVIN AND THROW HIM AGAINST THE CAR WHICH IS RIGHT
7 NEXT TO THE SIDE ENTRANCE, AND I SEEN WHEN HE PULL A GUN
8 FROM HIM AND HAD TWO GUNS IN HIS HANDS, SAID SAPRENA GET
9 THE GUN, WHICH ONE -- HE GOING LIKE THIS MOTIONING FOR ME
10 TO GET THIS ONE.

11 Q HE MOTIONED FOR YOU TO GET ONE GUN IN PARTICULAR?

12 A RIGHT.

13 Q HE HAD HIS OWN GUN DRAWN ALSO?

14 A RIGHT.

15 Q OKAY. AND WAS HOLDING KEVIN DOWN AT THE SAME TIME?

16 A YES.

17 Q OKAY. DID YOU IN FACT TAKE THAT GUN FROM HIM?

18 A YES, I DID.

19 Q OKAY. AND GEORGE MCQUILLA HANDED THAT TO YOU; IS
20 THAT CORRECT?

21 A RIGHT.

22 Q AND YOU REMEMBER WHAT KIND OF A GUN IT WAS?

23 A YES.

24 Q WHAT KIND WAS IT?

25 A A 9 MILLIMETER, SILVER ON TOP, BLACK ON THE BOTTOM.

SAPRENA DAVIS - DIRECT BY CROFT

1 Q ALL RIGHT.

2 MR. CROFT: YOUR HONOR, MAY I APPROACH THE WITNESS?

3 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED FOR
4 IDENTIFICATION STATE'S EXHIBIT NUMBER 12. DO YOU
5 RECOGNIZE THIS?

6 A YES.

7 Q OKAY. CAN YOU TELL ME WHAT THAT IS?

8 A A 9 MILLIMETER.

9 Q OKAY. IS THIS CONSISTENT WITH THE GUN THAT YOU SAW
10 THAT NIGHT?

11 A YES.

12 Q DO YOU BELIEVE IT IS IN FACT THE GUN THAT YOU SAW
13 THAT NIGHT?

14 A YES.

15 Q OKAY. WHAT DID YOU DO WITH THE GUN THAT WAS GIVEN TO
16 YOU, THIS GUN?

17 A PLACE IT IN MY LEFT HAND POCKET OF MY UNIFORM.

18 Q OKAY. NOW, DID YOU NOTICE THAT INSIDE THE GUN IT HAD
19 ITS CLIP INSIDE IT OR NOT?

20 A I WASN'T PAYING IT ANY ATTENTION.

21 Q WHO DID YOU EVENTUALLY TURN THAT GUN OVER TO?

22 A TO P.J. MCCOY.

23 Q OKAY.

24 A CITY POLICE OFFICER.

25 Q HE WAS WITH THE CITY POLICE DEPARTMENT?

SAPRENA DAVIS - DIRECT BY CROFT

1 A UH-HUH.

2 Q OKAY. DID YOU EVENTUALLY SIGN A FORM ALSO IN
3 REFERENCE TO CHAIN OF CUSTODY WHO HANDLED THE GUN?

4 A YES.

5 Q OKAY. AND WHEN YOU TURNED IT OVER TO HIM, IT WAS
6 INTACT?

7 A UH-HUH.

8 Q HADN'T DONE ANYTHING TO THE GUN?

9 A I DIDN'T DO ANYTHING. TOOK IT OUT MY POCKET AND I
10 HANDS IT TO HIM, WATCH HIM PUT IT IN A BAG AND PUT IT IN
11 THE TRUNK.

12 Q TELL ME ABOUT WHAT -- TELL ME WHAT KEVIN WAS DOING AS
13 OFFICER MCQUILLA AND YOURSELF WERE TRYING TO SUBDUE HIM.

14 A ONCE I GOT THE GUN AND PUT IT IN MY POCKET, I CAME
15 AROUND AND HELPED GEORGE APPREHEND KEVIN AND HE WAS JUST
16 STRUGGLING US ABOUT A GOOD 15, 20 MINUTES, KEPT SAYING LET
17 HIM GO, YOU MY COUSIN, I'M HURT, HE WAS SHOT, LET HIM GO.
18 I CAN'T DO THAT, I NEED FOR YOU TO COOPERATE WITH US.

19 Q HE SAID HE WAS SHOT?

20 A THAT'S WHAT HE SAID.

21 Q HE SAID HE -- WHY IS THAT?

22 A HE'S MY COUSIN.

23 Q WHAT DID YA'LL DO AT THIS POINT TO ATTEMPT TO SUBDUE
24 HIM?

25 A KEPT STRUGGLING WITH HIM TRYING TO GET HIM TO LET US

SAPRENA DAVIS - DIRECT BY CROFT

1 PUT HANDCUFFS ON HIM. AT THIS TIME HE COULDN'T, THEN SEAN
2 WAS CALLING BACK FOR HELP FOR BACK-UP AND AT THAT TIME
3 THAT'S WHEN ANOTHER OFFICER FROM PATROL, CAPTAIN CLOCK
4 (SIC) AND HE CAP-STUNNED HIM.

5 Q CAP-STUNNED MR. CHOICE?

6 A UH-HUH.

7 Q WHAT IS CAP-STUN?

8 A SPRAY.

9 Q IT'S LIKE MACE?

10 A YEAH.

11 Q THAT HELP SUBDUE HIM?

12 A RIGHT.

13 Q OKAY. AND ONCE YOU GOT THAT ACCOMPLISHED, ONCE YOU
14 SUBDUE HIM, WHAT DID YOU DO THEN?

15 A PUT HANDCUFFS ON HIM, TOOK HIM INSIDE.

16 Q TOOK HIM INSIDE?

17 A YES.

18 Q WHY WAS THAT?

19 A THE CROWD WAS COMING TOWARDS US THE WHOLE TIME. IT
20 WAS ONCE THE PEOPLE CAME OUT FIRST, BEFORE GEORGE GOT TO
21 KEVIN THE CROWD WAS COMING OUT. AND THEN ONCE WE GOT HOLD
22 OF HIM, THEY SAW WE HAD KEVIN, THEY WERE SAYING LET HIM
23 GO, HE DIDN'T DO IT, YA'LL GOT THE WRONG PERSON, LET HIM
24 GO.

25 IT WAS COMING -- IT WAS ONLY THREE OF US, ME,

SAPRENA DAVIS - DIRECT BY CROFT

1 SEAN AND KEVIN, ME, SEAN, GEORGE AND THEN KEVIN.

2 Q DESCRIBE THE CROWD AS HOSTILE?

3 A YES, AT THAT TIME THAT'S WHEN SEAN HARDY HAD PULLED
4 HIS 9 ON THE CROWD TO GET THEM OFF OF ME AND GEORGE.

5 Q OKAY. AT THAT POINT YOU WERE ABLE TO PULL BACK
6 INSIDE?

7 A YES.

8 Q DID YOU OBSERVE THE VICTIM AT THAT TIME?

9 A ONCE I GOT INSIDE.

10 Q WHAT WAS HIS STATE?

11 A HE WAS LAYING ON HIS BACK, BLOOD WAS COMING OUT HIS
12 STOMACH AND OUT HIS MOUTH.

13 Q OKAY. WAS ANYBODY ATTENDING TO HIM?

14 A YES, WANDA SOOLA, THE BARTENDER.

15 Q ANY KIND OF WEAPON -- DID YOU SEE ANY KIND OF WEAPON
16 AROUND HIM?

17 A NO, SIR, HAD HIT -- ON HE WAS LAYING ON HIM.

18 Q DID YOU DO ANYTHING ELSE FROM THERE?

19 A NO. I HAD KEVIN AGAINST THE POOL TABLE AND THIS GUY
20 WAS WALKING AROUND THAT I LEARNED LATER WAS A GUY NAMED
21 HARRY SPANN AND HE WAS TALKING TO KEVIN AND KEVIN WAS
22 TELLING HIM HE WASN'T GOING DOWN LIKE THAT, IF THAT --
23 SAID HE WASN'T GOING DOWN LIKE THAT.

24 Q DID YOU EVENTUALLY TURN KEVIN OVER TO THE POLICE?

25 A YES.

SAPRENA DAVIS - CROSS BY WRIGHT

1 Q OKAY.

2 MR. CROFT: COURT'S INDULGENCE JUST ONE MOMENT.

3 PLEASE ANSWER ANY QUESTIONS MR. WRIGHT MAY HAVE.

4 CROSS-EXAMINATION BY MR. WRIGHT:

5 Q HOW WILL YOU DOING, MRS. DAVIS?

6 A FINE, AND YOU?

7 Q THAT NIGHT YOU WERE WORKING FOR PALMETTO SECURITY?

8 A YES, SIR.

9 Q DO YOU REMEMBER I GUESS APPROXIMATELY WHAT TIME YOU
10 CAME OUT TO THE CLUB?

11 A ON DUTY AROUND 11:00 P.M.

12 Q AND YOU WERE PATROLLING THE OUTSIDE OF THE CLUB?

13 A RIGHT.

14 Q AT WHAT TIME -- WHAT WAS THE FIRST TIME THAT YOU SAW
15 KEVIN CHOICE THAT NIGHT? DID YOU SEE HIM COME TO THE
16 CLUB?

17 A I SAW HIM PROBABLY ABOUT 30 MINUTES AFTER I ARRIVED
18 THERE.

19 Q OKAY.

20 A FROM 11:30 TO 12:00.

21 Q AT THE DOOR?

22 A NO JUST OUT IN THE YARD. SEE, WHEN YOU PULL UP YOU
23 PULL AROUND THE BUILDING AND THERE'S A PARKING AREA SO YOU
24 SEE EVERYBODY WHEN THEY COME IN.

25 Q DID YOU SPEAK TO HIM?

SAPRENA DAVIS - CROSS BY WRIGHT

1 A NO, I DIDN'T KNOW HIM. JUST SAY I SPEAK TO HIM LIKE
2 SPEAK TO HIM.

3 Q OKAY. GOING IN THE CLUB, WAS ANY OFFICERS FROM
4 PALMETTO SECURITY, DID ANYBODY FRISK ANY PEOPLE GOING
5 INSIDE THE CLUB?

6 A NOT TO MY KNOWLEDGE.

7 Q YOU GAVE A STATEMENT TO THE POLICE, CORRECT?

8 A RIGHT.

9 Q IS THAT THE STATEMENT YOU GAVE?

10 A YES.

11 MR. WRIGHT: LIKE THIS MARKED FOR--

12 THE COURT: YOU WANT TO USE IT TO CROSS-EXAMINE HER
13 WITH?

14 MR. WRIGHT: YES, YOUR HONOR.

15 THE COURT: THAT'S FINE. YOU CAN CROSS-EXAMINE HER,
16 BUT IT DOESN'T COME INTO EVIDENCE.

17 (WHEREUPON QUESTIONING RESUMED).

18 Q OKAY. YOU STATED THAT IN YOUR STATEMENT AND YOU
19 STATED HERE TODAY THAT WHEN KEVIN WAS -- I GUESS WHEN MR.
20 MCQUILLA HAD KEVIN ON THE CAR, HE SAID SOMETHING TO YOU?

21 A HE WAS JUST SAYING THAT NOT REALLY TO ME, HE WAS JUST
22 SPEAKING.

23 Q YOU SAID HE SAID WAS -- LET ME GO?

24 A YEAH, RIGHT AT THAT TIME, YEAH.

25 Q DID HE MAKE ANY STATEMENTS ABOUT DID HE DO SOMETHING

SAPRENA DAVIS - CROSS BY WRIGHT

1 OR NOT DO SOMETHING?

2 A NO, ONLY THING HE SAID WAS LET ME GO, I'M HURT.

3 Q OKAY. IN YOUR STATEMENT YOU SAID THAT HE SAYS THAT
4 YOU KNOW I DIDN'T DO THIS; IS THAT CORRECT?

5 A THAT'S CORRECT.

6 Q OKAY. AND YOU SAID THE CROWD WAS COMING AT YA'LL
7 WHEN YA'LL HAD HIM, THE CROWD OF PEOPLE FROM THE CLUB?

8 A CORRECT.

9 Q SO THIS CROWD CAME OUTSIDE OF THE CLUB, CAME FROM
10 OUTSIDE OF THE CLUB?

11 A CORRECT.

12 Q AND YOU SAID THEY WERE -- YOU STATED THAT THEY SAID
13 SOMETHING. WHAT DID THEY SAY?

14 A WHAT DID WHO SAY?

15 MR. CROFT: OBVIOUSLY THAT'S HEARSAY ANSWER.

16 Q OKAY. IN YOUR STATEMENT YOU STATE THAT THE CROWD
17 WERE TELLING YOU AND MR. MCQUILLA SOME THINGS, CORRECT?

18 A CORRECT.

19 MR. WRIGHT: MAY I APPROACH, YOUR HONOR?

20 THE COURT: STILL HEARSAY.

21 (WHEREUPON QUESTIONING RESUMED).

22 Q WERE YOU EVER INSIDE THE CLUB THAT NIGHT?

23 A BEFORE THE SHOOTING OR AFTER THE SHOOTING?

24 Q ANY TIME?

25 A AFTER THE SHOOTING, YES.

SAPRENA DAVIS - CROSS BY WRIGHT

1 Q OKAY. DID YOU HEAR THE SHOT?

2 A YES.

3 Q BUT YOU DIDN'T SEE WHO SHOT --

4 A NO.

5 Q -- MR. ROSE?

6 A NO.

7 Q SO ALL YOU KNOW IS THAT YOU -- AFTER THE SHOT, KEVIN
8 CAME OUT OF THE CLUB AND MR. MCQUILLA HAD HIM?

9 A RIGHT.

10 Q OKAY. AND YOU STATED IN YOUR STATEMENT MR. CHOICE
11 HIMSELF STATED THAT LET ME GO, I DIDN'T DO THIS?

12 A CORRECT.

13 Q HOW MANY PEOPLE AFTER YOU HAD KEVIN YOU, AND MR.
14 MCQUILLA AND MR. MCQUILLA HAD KEVIN, HOW MANY PEOPLE CAME
15 RUSHING OUT OF THE CLUB COMING TOWARDS YA'LL WHERE YA'LL
16 WERE? DO YOU HAVE AN IDEA OF THE AMOUNT OF PEOPLE?

17 A IT WASN'T AFTER THAT. PEOPLE CAME OUT BEFORE KEVIN
18 CAME OUT.

19 Q SOME PEOPLE CAME OUT BEFORE?

20 A RIGHT.

21 Q THEN SOME PEOPLE CAME OUT AFTER?

22 A UH-HUH.

23 Q SO BOTH PEOPLE THAT CAME OUT BEFORE AND AFTER WERE
24 YELLING AT YA'LL, THE ONES THAT WAS OUT?

25 A I CAN'T TELL YOU WHO WAS COMING OUT. EVERYTHING

SAPRENA DAVIS - CROSS BY WRIGHT

1 HAPPENED SO FAST.

2 Q WAS A BUNCH OF PEOPLE YELLING AT YA'LL?

3 A RIGHT.

4 Q WAS THERE ANYBODY ELSE OTHER THAN KEVIN APPREHENDED
5 ON THE SCENE?

6 A NOT TO MY KNOWLEDGE.

7 Q SO BASICALLY BECAUSE KEVIN -- THE GUN WAS ON KEVIN,
8 HE WAS APPREHENDED, CORRECT?

9 A TO MY KNOWLEDGE, YES.

10 Q WAS THERE ANYBODY OTHER THAN KEVIN THAT AFTER THE
11 SHOOTING HAPPENED THAT WAS RIGHT AFTER -- BEFORE THE
12 POLICE GOT THERE WAS QUESTIONED OR FRISKED OR CHECKED FOR
13 A GUN?

14 A I COULDN'T TELL YOU. MY JOB IS TO MAKE SURE I KEEP
15 HIM IN MY CUSTODY AND MAKE SURE NO ONE GET NEAR HIM OR
16 AROUND HIM UNTIL THE SUMTER POLICE GOT THERE.

17 Q SO BASICALLY YA'LL WERE CONCENTRATING ON KEVIN
18 BASICALLY?

19 A YES.

20 MR. WRIGHT: NO FURTHER QUESTIONS, YOUR HONOR.

21 THE COURT: ANY REDIRECT?

22 MR. CROFT: NO, SIR, YOUR HONOR.

23 THE COURT: ALL RIGHT. YOU CAN COME DOWN.

24 (WHEREUPON THE WITNESS LEFT THE STAND).

25 MR. CROFT: YOUR HONOR, MAY SHE BE EXCUSED ALSO?

PHILLIP MCCOY - DIRECT BY CROFT

1 THE COURT: LET'S DO ONE MORE.

2 MR. CROFT: ALL RIGHT, SIR.

3 (WITNESS IN COURTROOM)

4 PHILLIP MCCOY, BEING FIRST DULY SWORN,
5 TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION BY MR. CROFT:

7 Q MR. MCQUILLA, TELL US WHERE DO YOU LIVE, HERE IN
8 SUMTER?

9 A IN SUMTER.

10 Q OKAY. YOU ARE FROM HERE?

11 A NO, I'M FROM DARLINGTON COUNTY.

12 Q OKAY. WHERE DO YOU WORK RIGHT NOW?

13 A I WORK FOR GOLD KIST INCORPORATION.

14 Q ALL RIGHT. WHO WERE YOU WORKING FOR BACK IN
15 SEPTEMBER OF 1998?

16 A SUMTER POLICE DEPARTMENT.

17 Q HOW LONG WERE YOU WITH THE POLICE DEPARTMENT?

18 A APPROXIMATELY 13 YEARS.

19 Q OKAY. WERE YOU ON DUTY SPECIFICALLY ON THE NIGHT OF
20 SEPTEMBER 3RD OF 1998?

21 A YES, I WAS.

22 Q OKAY. DID YOU GET A CALL THAT NIGHT IN REFERENCE TO
23 A SHOOTING AT THE DIAMOND CLUB?

24 A THAT'S CORRECT.

25 Q WHERE WERE YOU LOCATED WHEN YOU GOT THIS CALL?

PHILLIP MCCOY - DIRECT BY CROFT

1 A IT WAS AFTER 12:00, AROUND 1:00 IN THE MORNING,
2 MYSELF AND ANOTHER OFFICER WAS SITTING AT WAL MART PARKING
3 LOT TALKING AND WE RECEIVED A CALL AT THE DIAMOND CLUB ON
4 BROAD STREET.

5 Q WAL MART IS ALSO ON BROAD STREET?

6 A THAT'S CORRECT.

7 Q DID YOU RESPOND TO THE DIAMOND CLUB?

8 A THAT'S CORRECT.

9 Q OKAY. AND WHAT DID YOU DO WHEN YOU ARRIVED THERE?

10 A ONCE I ARRIVED AT BROAD STREET AT THE CLUB IS CALLED
11 DIAMOND CLUB, IMMEDIATELY WENT IN AND GOT TO THE SITUATION
12 WHICH WAS A SHOOTING. I IMMEDIATELY SECURED THE AREA AND
13 STARTED CROWD CONTROL WITH THE OTHER OFFICERS WHICH
14 ARRIVED AND GOT MOST OF THE PEOPLE OUT OF THE CLUB AND GOT
15 THE MEDICAL PEOPLE THERE, AND AT THAT TIME WE SECURED THE
16 SCENE.

17 Q OKAY. WHEN YOU ARRIVED WAS THERE SOMEWHAT OF A CROWD
18 THERE?

19 A THAT'S CORRECT.

20 Q OKAY. AND THERE WERE OTHER POLICE OFFICERS FROM
21 SUMTER POLICE DEPARTMENT THAT HELPED YOU CROWD CONTROL AT
22 SOME POINT?

23 A THAT'S CORRECT.

24 Q OKAY. AND DID YOU HAVE THE OPPORTUNITY TO BE IN
25 CONTACT WITH SAPRENA DAVIS THAT NIGHT?

PHILLIP MCCOY - DIRECT BY CROFT

1 A THAT'S CORRECT. SHE WAS WORKING SECURITY ON THE
2 PREMISES AND ONCE I ARRIVED THERE, GOT THINGS UNDER
3 CONTROL, SHE SAID THAT THEY RETRIEVED A HANDGUN WHICH SHE
4 GAVE THAT TO ME IN THE BACK PARKING LOT.

5 Q OKAY. AND YOU SECURED THAT WEAPON FROM HER?

6 A THAT'S CORRECT. ONCE I GOT THE WEAPON FROM HER, I
7 REMOVED THE CLIP AND CHECKED THE CHAMBER FOR A ROUND AND I
8 TOOK OUT NINE BULLETS AT THAT TIME AND ONE FROM THE
9 CHAMBER AND PLACED IT IMMEDIATELY INTO MY PATROL VEHICLE
10 AND PLACED IT IN A BAG AND SECURED IT IN THE TRUNK.

11 Q OKAY. I'M GOING TO SHOW YOU WHAT IS MARKED STATE'S
12 EXHIBITS NUMBER 12 -- 12, 13 AND 14 FOR IDENTIFICATION
13 PURPOSES. HAVE YOU SEEN FIRST OF ALL STATE'S EXHIBIT
14 NUMBER 12 BEFORE?

15 A YES, SIR.

16 Q OKAY. AND WHEN DID YOU FIRST SEE THIS PISTOL?

17 A LIKE I SAID, ONCE I ARRIVED -- I WENT ON THE OUTSIDE
18 WHERE THEY HAD THE SUSPECT IN CUSTODY, SAPRENA DAVIS
19 HANDED ME THAT WEAPON AND -- IN THE PARKING LOT.

20 Q IS THAT IN SUBSTANTIALLY THE SAME CONDITION AS IT WAS
21 WHEN YOU RECEIVED IT?

22 A THAT'S CORRECT.

23 Q OKAY.

24 A ONLY THING IT HAD THE CLIP AND NO WRITING ON IT.

25 Q OKAY. I'M GOING TO SHOW YOU WHAT IS MARKED AS

PHILLIP MCCOY - DIRECT BY CROFT

1 STATE'S EXHIBIT NUMBER 13. IS THAT CONSISTENT WITH THE
2 CLIP THAT WOULD HAVE BEEN INSIDE OF IT?

3 A THAT'S CORRECT.

4 Q OKAY. AND NOW SHOW YOU WHAT IS MARKED AS STATE'S
5 EXHIBIT NUMBER 14. THERE ARE FIVE BULLETS IN THERE. I
6 KNOW YOU TOLD ME THERE WERE MORE, SOME HAD BEEN USED, BUT
7 WERE THOSE CONSISTENT WITH WHAT YOU REMOVED FROM THE CLIP?

8 A THAT'S CORRECT. THEY WERE DIFFERENT TYPES OVER BRAND
9 AND BULLETS. YEAH, I REMEMBER THAT.

10 Q AND THESE THREE ITEMS WERE IN FACT THE ITEMS YOU
11 SEIZED FROM SAPRENA DAVIS?

12 A THAT'S CORRECT.

13 MR. CROFT: MOVE STATE'S EXHIBITS 12, 13, 14 INTO
14 EVIDENCE.

15 THE COURT: ANY OBJECTION?

16 MR. WRIGHT: NO, YOUR HONOR.

17 THE COURT: WITHOUT OBJECTION.

18 (STATE'S EXHIBITS NO. 12, 13 AND 14 MARKED FOR
19 EVIDENCE.)

20 (WHEREUPON QUESTIONING RESUMED).

21 Q LET ME ASK YOU THIS. ONCE YOU HAD SECURED THOSE IN
22 YOUR TRUNK, WHAT DID YOU DO WITH THEM LATER ON? DID YOU
23 DO ANYTHING WITH THEM?

24 A AT THE SCENE ONCE I LEFT THE SCENE, I WENT DIRECTLY
25 TO THE LAW ENFORCEMENT CENTER IN WHICH WE HAVE PAPERWORK

PHILLIP MCCOY - DIRECT BY CROFT

1 TO FILL OUT WHICH I FILLED OUT THE PAPERWORK FOR CHAIN OF
2 CUSTODY AT THE SCENE. I GOT BOTH SECURITY OFFICERS TO
3 SIGN THE CHAIN OF CUSTODY.

4 FIRST SECURITY OFFICER, GEORGE MCQUILLA, HE HAD
5 POSSESSION OF THE WEAPON FIRST WHICH I HAD HIM SIGN THE
6 CHAIN OF CUSTODY. AFTER THAT HE GAVE IT TO THE OTHER
7 SECURITY OFFICER WHICH WAS SAPRENA DAVIS.

8 I GOT HER TO SIGN THE CHAIN OF CUSTODY FORM THAT
9 SHE GAVE ME THE GUN AND I LOGGED THE SERIAL NUMBER DOWN ON
10 THE PAPER BAG TO TAKE IT TO THE LAW ENFORCEMENT CENTER AND
11 THAT'S WHEN I COMPLETE THE OTHER SIDE OF THE FORM WHICH
12 GAVE ALL DETAIL AND SERIAL NUMBER AND SO FORTH.

13 Q OKAY. WHEN YOU GOT TO LAW ENFORCEMENT WITH THESE
14 THINGS THAT WERE PLACED IN THIS BAG, WHERE DID YOU PLACE
15 THEM?

16 A AFTER FILLING OUT ALL THE NECESSARY PAPERWORK AND SO
17 FORTH, I SECURED THIS IN WHAT'S CALLED AN EVIDENCE LOCKER
18 WHICH THE EVIDENCE LOCKER CONTAINS ONE LOCK AND THEY HAVE
19 ONE KEY, AND ONCE I SECURE IT I CANNOT GO BACK IN IT.

20 I SECURE THAT IN THAT LOCKER AND THAT'S FOR THE
21 NEXT MORNING PERSON, THE EVIDENCE CUSTODIAN PERSON TO COME
22 IN TO GET THAT.

23 Q OKAY. AND THAT'S IN FACT WHAT YOU DID WITH THESE
24 ITEMS OF EVIDENCE IN THIS CASE?

25 A THAT'S EXACTLY WHAT I DID.

PHILLIP MCCOY - CROSS BY WRIGHT

1 Q OKAY.

2 MR. CROFT: COURT'S INDULGENCE JUST FOR A MOMENT.

3 (WHEREUPON THERE WAS A PAUSE).

4 Q PLEASE ANSWER ANY QUESTION MR. WRIGHT MAY HAVE.

5 THE COURT: HAVE YOU GOT ANY QUESTIONS, MR. WRIGHT?

6 MR. WRIGHT: YES, YOUR HONOR.

7 CROSS-EXAMINATION BY MR. WRIGHT:

8 Q YOU JUST RECEIVED THAT GUN FROM MRS. DAVIS, CORRECT?

9 A THAT'S CORRECT.

10 Q AND YOU HAVE NO IDEA WHO SHOT TONY ROSE; IS THAT
11 CORRECT?

12 A I HAVE NO IDEA, SIR.

13 Q I HAVE NO FURTHER QUESTIONS.

14 THE COURT: YOU CAN COME DOWN. YOU CAN BE EXCUSED.
15 THANK YOU.

16 (WHEREUPON THE WITNESS LEFT THE STAND).

17 THE COURT: FIVE MINUTES TO 5. WE ARE GOING TO START
18 AT 9:30 THE MORNING. REMEMBER WHAT I SAID. DON'T DISCUSS
19 THIS WITH ANYBODY. THE REASON I EMPHASIZE THAT IS THAT
20 I'M REQUIRED TO. I'M GOING TO GIVE YOU A LITTLE PERSONAL
21 OPINION, MY PERSONAL OPINION OF A JUDGE. MY WIFE WAS ON
22 JURY DUTY. SHE WAS THE FORELADY OF THE JURY WITH JUDGE
23 PLEICONES WHO IS NOW ON THE SUPREME COURT.

24 SO AFTER THE FIRST DAY OF TESTIMONY, SHE CAME
25 HOME AND SHE SAID LET ME TELL YOU ABOUT THE CASE I'M

PHILLIP MCCOY - CROSS BY WRIGHT

1 DOING. I SAID IF YOU DO, I'M GOING TO JUDGE PLEICONES AND
2 HAVE HIM HOLD YOU IN CONTEMPT OF COURT. HAVE A NICE
3 EVENING. WE WILL SEE YOU IN THE MORNING AT 9:30. REPORT
4 BACK TO YOUR JURY ROOM.

5 (WHEREUPON THE JURY LEFT THE COURTROOM AT 4:57 P.M.)

6 THE COURT: OKAY. ANYBODY WANT TO ADD ANYTHING
7 BEFORE WE LEAVE?

8 MR. CROFT: NO, SIR, YOUR HONOR.

9 THE COURT: ALL RIGHT. 9:30 IN THE MORNING WE WILL
10 CONTINUE ON. HOW MANY MORE WITNESSES DO YOU HAVE IN THE
11 WHOLE LIST?

12 MR. CROFT: I DON'T KNOW THAT I WILL CALL EVERYBODY
13 ON THAT LIST, YOUR HONOR. ONE WITNESS I'M TRYING TO WORK
14 WITH IS DR. SEXTON. HE IS GOING TO BE HERE IN THE
15 AFTERNOON. I DON'T KNOW HOW FAST WE WILL MOVE IN THE
16 MORNING.

17 TRYING TO GET HIM HERE AS EARLY AS I CAN IN THE
18 AFTERNOON. HE IS TRYING TO WAIT TILL 4:00 TO COME IN, SO
19 THAT WILL BE THE LATEST THAT HE WOULD GET HERE. OTHER
20 THAN THAT...

21 THE COURT: LET'S DO ALL THE ONES ON YOUR LIST BY
22 4:00.

23 MR. CROFT: IF WE FINISHED UP SAY 2:30 OR 3, WOULD BE
24 THE LAST WITNESS, MAY BE A SLIGHT DELAY AS WE WAIT FOR HIM
25 DEPENDING ON THE TIME HE GETS HERE. THAT IS MY ONLY

MARK ROSENSTEEL - DIRECT BY CROFT

1 CONCERN AS FAR AS TOMORROW GOES.

2 THE COURT: THAT'S MY CONCERN, TOO. THEY MAKE US
3 WAIT WHEN WE GO TO THEIR WAITING ROOMS, WE GOT TO WAIT
4 WHEN WE TRY THEIR CASES.

5 MR. CROFT: TRYING TO CONVINCE HIM TO DO THAT. MY
6 GOAL IS TO GET HIM HERE AT 2:30. HE SAID THE LATEST HE
7 WOULD MAKE IT. MIGHT GO DOWNSTAIRS...

8 THE COURT: TELL HIM WE'RE MOVING PRETTY FAST. HE
9 MIGHT NEED TO BE HERE BEFORE 4 TOMORROW. ALL RIGHT. SEE
10 YA'LL AT 9:30 IN THE MORNING.

11 (WHEREUPON THIS CASE WAS IN RECESS FOR THE
12 EVENING)

13 MARCH 6TH, 2001.

14 MR. CROFT: WE ARE READY TO PROCEED, YOUR HONOR.

15 THE COURT: ALL RIGHT. BRING THE JURY IN, PLEASE.

16 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 9:41
17 P.M.)

18 THE COURT: VERY WELL. EVERYBODY MADE IT BACK.
19 THAT'S GOOD. ALL RIGHT. MR. CROFT, CALL YOUR FIRST
20 WITNESS.

21 MR. CROFT: YOUR HONOR, THE STATE WOULD CALL
22 DETECTIVE MARK ROSENSTEEL.

23 MARK ROSENSTEEL, BEING FIRST DULY
24 SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION BY MR. CROFT:

MARK ROSENSTEEL - DIRECT BY CROFT

1 Q DETECTIVE ROSENSTEEL, TELL US HOW YOU ARE EMPLOYED.

2 A EMPLOYED BY THE CITY OF SUMTER POLICE DEPARTMENT AS A
3 DETECTIVE.

4 Q OKAY. HOW LONG HAVE YOU BEEN WITH THEM?

5 A APPROXIMATELY NINE YEARS.

6 Q OKAY. AND YOU WERE EMPLOYED WITH THEM BACK IN
7 SEPTEMBER OF 1998?

8 A YES, SIR, I WAS.

9 Q OKAY. AND WERE YOU WORKING SPECIFICALLY ON THE NIGHT
10 OF SEPTEMBER THE 3RD, 1998?

11 A ON THAT NIGHT I WAS THE ON-CALL DETECTIVE.

12 Q OKAY. WHAT DOES IT MEAN TO BE ON-CALL DETECTIVE?

13 A WE HAVE A ROTATIONAL BASIS WHERE A DETECTIVE WILL BE
14 AVAILABLE IF NEEDED ON A 24 HOUR A DAY BASIS.

15 Q SO DURING REGULAR WORKING HOURS ALL DETECTIVES ARE
16 THERE AND AT NIGHT THERE IS ONLY ONE DETECTIVE ON-CALL?

17 A YES.

18 Q OKAY. SAME THING ON THE WEEKENDS?

19 A YES.

20 Q OKAY. AND DID YOU GET A CALL THAT NIGHT IN REFERENCE
21 TO A SHOOTING AT THE DIAMOND CLUB ON BROAD STREET HERE IN
22 SUMTER?

23 A YES, SIR, I DID.

24 Q OKAY. WHAT DID YOU DO ONCE YOU GOT THAT CALL?

25 A I PROCEEDED TO THE SCENE WHERE I MADE CONTACT WITH

MARK ROSENSTEEL - DIRECT BY CROFT

1 PATROL OFFICERS THAT WERE ON THE SCENE. INITIAL ARRIVAL I
2 WAS BRIEFED BY OFFICERS ON THE SCENE AS TO WHAT THEY HAD
3 UNCOVERED UP TO THAT POINT.

4 Q OKAY. DO YOU REMEMBER APPROXIMATELY WHAT TIME YOU
5 WOULD HAVE ARRIVED?

6 A AS ESTIMATION ANYWHERE FROM 1:15 TO 1:30 IN THE
7 MORNING.

8 Q OKAY. WAS THE VICTIM'S BODY STILL THERE WHEN YOU
9 ARRIVED?

10 A NO, SIR, IT WASN'T.

11 Q WAS THE DEFENDANT STILL THERE WHEN YOU ARRIVED?

12 A NO, SIR.

13 Q OKAY. WHAT DID YOU DO ONCE YOU GOT THERE, RATHER
14 THAN YOU TALKED TO THE PATROL OFFICERS THAT WERE THERE; IS
15 THAT RIGHT?

16 A YES, SIR.

17 Q OKAY. AND DID YOU CALL ON ANY OTHER DETECTIVES AT
18 THAT TIME?

19 A YES, SIR. DUE TO THE TYPE OF OFFENSE, I HAD OUR
20 DISPATCH CENTER NOTIFY DETECTIVE KEN NESBITT. HE WAS OUR
21 FORENSICS PERSON AT THE TIME.

22 Q OKAY. AND HE WAS CALLED OUT TO DO WHAT'S CALLED
23 FORENSIC WORK AT THE SCENE?

24 A YES, SIR, FORENSIC CRIME SCENE PROCESSING.

25 Q OKAY. AND AS PART OF YOUR INVESTIGATION THAT NIGHT,

MARK ROSENSTEEL - DIRECT BY CROFT

1 DID YOU HAVE ANY CONTACT WITH THE DEFENDANT?

2 A YES, SIR, I DID.

3 Q OKAY. AND WHERE WAS THAT?

4 A THAT WAS AT THE COUNTY JAIL.

5 Q OKAY. YOU LEFT THE SCENE TO GO SEE HIM?

6 A PARDON, SIR?

7 Q DID YOU LEAVE THE SCENE TO GO SEE HIM?

8 A YES, SIR, I DID.

9 Q OKAY. AND DO YOU REMEMBER APPROXIMATELY WHAT TIME IT
10 WAS WHEN YOU SAW HIM?

11 A APPROXIMATELY 2 TO 2:15 IN THE MORNING.

12 Q OKAY. AND WHAT WAS HIS CONDITION WHEN YOU SAW HIM?

13 A HE APPEARED TO BE PASSED OUT, UNCONSCIOUS.

14 Q OKAY. DID YOU TRY TO TALK TO HIM?

15 A YES, SIR. I SHOOK HIM SEVERAL TIMES. SAID HIS NAME
16 IN A LOUD VOICE AND OTHER THAN A MUMBLE TYPE RESPONSE,
17 THAT'S ALL I GOT FROM HIM.

18 Q OKAY. SO YOU DIDN'T HAVE A CONVERSATION WITH HIM?

19 A NO, SIR.

20 Q OKAY. WHAT DID YOU DO WITH HIM WHILE YOU WERE THERE?

21 A WHAT I DID WHEN I GOT THERE WAS I PERFORMED A GSR
22 KIT, A GUNSHOT RESIDUE KIT ON SUSPECT'S HANDS.

23 Q OKAY. WHAT PROCEDURES DO YOU FOLLOW WHEN YOU ARE
24 DOING WHAT YOU CALL A GSR KIT, GUNSHOT RESIDUE?

25 A THE KIT COMES IN A BOX. OPEN THE BOX TO REFRESH YOUR

MARK ROSENSTEEL - DIRECT BY CROFT

1 MEMORY, READ THE DIRECTIONS AND THEN JUST BASICALLY FOLLOW
2 THE DIRECTIONS, TELLS HOW YOU TO ADMINISTER THE KIT.

3 Q OKAY.

4 MR. CROFT: COURT'S INDULGENCE JUST ONE MOMENT.

5 (WHEREUPON THERE WAS A PAUSE) .

6 (STATE'S EXHIBITS NO. 15, 16 MARKED FOR
7 IDENTIFICATION) .

8 Q LET ME SHOW YOU WHAT HAS BEEN MARKED STATE'S EXHIBITS
9 15 AND 16 FOR IDENTIFICATION PURPOSES. DO YOU RECOGNIZE
10 THESE TWO ITEMS?

11 A YES, SIR. THESE ARE GUNSHOT RESIDUE KITS THAT I
12 CONDUCTED THE NIGHT OF THE INCIDENT.

13 Q OKAY. AND NOW THERE ARE TWO OF THEM HERE. WHICH --
14 WHICH ITEM, IS ITS 15 OR 16 THAT IS IN REFERENCE TO THE
15 DEFENDANT KEVIN CHOICE?

16 A BE ITEM NUMBER 16 IN REFERENCE TO MR. CHOICE.

17 Q OKAY. NOW, TELL US A LITTLE BIT MORE ABOUT WHAT YOU
18 DO WHEN YOU ARE OBTAINING THE INFORMATION THAT YOU PUT
19 INTO THESE ENVELOPES AS FAR AS GSR KIT GOES. EXPLAIN THAT
20 TO US.

21 A GSR KIT IS MADE UP OF TWO SEPARATE TESTS. IN THE KIT
22 THERE ARE CONTAINERS OR AMPULES DESIGNATED FOR LEFT HAND,
23 RIGHT HAND, PALM OF THE HAND, BACK OF THE HAND. ONE OF
24 THE SAMPLES IS A SMALL ADHESIVE TYPE DEVICE THAT YOU PAT
25 THAT WILL PICK UP ANY PARTICLES ON THE HAND.

MARK ROSENSTEEL - DIRECT BY CROFT

1 AGAIN, LIKE I STATED, THE -- EACH DEVICE IS
2 PLACED IN AN AMPULE OR A CONTAINER THAT IS DESIGNATED FOR
3 THE AREA OF THE HAND AND WHETHER IT BE THE RIGHT OR LEFT
4 HAND. THE SECOND STEP IN THE GSR KIT IS PLACING THE
5 SOLUTION ON A Q-TIP.

6 AGAIN YOU RUB THE SOLUTION OVER THE AREA OF THE
7 HAND. ONCE YOU HAVE COMPLETED IT, YOU PLACE IT IN THE
8 APPROPRIATE CONTAINER OR AMPULE. ONCE YOU HAVE COMPLETED
9 ALL OF THE SAMPLING, YOU PLACE IT IN ONE OF THE ENVELOPES
10 AND APPLY THE EVIDENCE THAT IS SUPPLIED WITH THE TAPE.

11 Q OKAY. DID YOU IN FACT DO THIS WITH KEVIN CHOICE, DID
12 EACH OF THOSE PROCEDURES FOR THE FRONT AND BACK OF BOTH
13 HANDS?

14 A YES, SIR, I DID.

15 Q OKAY. AND THAT'S WHAT YOU PUT INTO THAT ENVELOPE?

16 A YES, SIR.

17 Q OKAY. AND DOES THIS SEAL, IS THIS THE POLICE SEAL
18 THERE OR IS THAT THE SLED SEAL?

19 A THIS WOULD BE THE SEAL THAT CAME WITH THE KIT.

20 Q OKAY. AND IS THAT THE SEAL THAT YOU IN FACT PUT ON
21 THAT ENVELOPE AFTER YOU PLACED THOSE ITEMS INSIDE?

22 A YES, SIR, IT IS.

23 Q OKAY. AND ARE THOSE YOUR INITIALS ON IT?

24 A YES, SIR.

25 Q OKAY. WHERE DID YOU TAKE THIS ENVELOPE ONCE YOU HAD

MARK ROSENSTEEL - DIRECT BY CROFT

1 -- ONCE YOU'D GOTTEN THE KIT AND COMPLETED IT AT THE JAIL
2 WITH MR. CHOICE, WHERE DID YOU TAKE IT?

3 A TOOK IT TO THE LAW ENFORCEMENT CENTER AND PLACED IT
4 IN ONE OF OUR EVIDENCE LOCKERS.

5 Q OKAY. AND EXPLAIN TO US AGAIN WHAT IS AN EVIDENCE
6 LOCKER.

7 A WE HAVE EVIDENCE LOCKERS THAT ARE ACCESSIBLE TO
8 PATROL OFFICERS ON A 24 HOUR A DAY BASIS. DURING THE DAY
9 WE DO HAVE A LOT OF -- AN EVIDENCE CUSTODIAN EMPLOYED WITH
10 THE DEPARTMENT. IF THIS WOULD HAPPEN DURING THE SO CALLED
11 NORMAL DUTY HOURS, KIT LIKE THIS WOULD BE HANDED DIRECTLY
12 TO THE EVIDENCE CUSTODIAN.

13 AT NIGHT AND ON WEEKENDS WHEN THE CUSTODIAN
14 WOULDN'T BE AVAILABLE, WE CAN PLACE ITEMS OF EVIDENCE IN A
15 LOCKER. WE SECURE THE LOCKER, AND THE ONLY PERSON THAT
16 HAS ACCESS TO THE LOCKER AFTER THAT POINT WOULD BE THE
17 EVIDENCE CUSTODIAN.

18 Q OKAY. AND YOU IN FACT SECURED THAT ENVELOPE IN ONE
19 OF THOSE LOCKERS?

20 A YES, SIR, I DID.

21 Q OKAY. AND ONCE YOU DID THAT, WHERE DID YOU GO FROM
22 THERE?

23 A FROM THAT POINT I PROCEEDED OVER TO THE HOSPITAL. MY
24 INTENTIONS THERE WERE TO PERFORM THE SAME TYPE TESTS ON
25 THE VICTIM.

MARK ROSENSTEEL - DIRECT BY CROFT

1 Q OKAY. DID YOU IN FACT FIND THE VICTIM AT THE
2 HOSPITAL?

3 A YES, SIR, I DID.

4 Q AND WHAT WAS HIS CONDITION?

5 A HE WAS DECEASED.

6 Q OKAY. AND DID YOU IN FACT PERFORM THE SAME TEST YOU
7 DESCRIBED ON THE FRONT AND BACK OF BOTH THE VICTIMS HAND?

8 A YES, SIR.

9 Q AND DID YOU PLACE THOSE ITEMS INTO THIS OTHER
10 ENVELOPE WHICH IS MARKED STATE'S EXHIBIT NUMBER 15?

11 A YES, SIR.

12 Q OKAY. AND WAS THAT ALSO SEALED WITH THAT TAPE?

13 A YES, SIR.

14 Q OKAY. AND DID YOU -- ARE THOSE YOUR INITIALS THERE
15 ON THAT ALSO?

16 A YES, SIR.

17 Q AND WHAT DID YOU DO WITH THAT ENVELOPE ONCE YOU HAD
18 COMPLETED THAT TEST?

19 A I AGAIN RETURNED TO THE POLICE STATION AND SECURED
20 THE ITEM IN AN EVIDENCE LOCKER.

21 Q OKAY. AND DID YOU DO ANYTHING FURTHER AFTER THAT,
22 THAT EVENING?

23 A UPON COMPLETION OF THE TWO KITS, I RUSHED TO THE
24 SCENE AND MADE CONTACT WITH DETECTIVE NESBITT IN
25 REFERENCING ANY ASSISTANCE THAT HE WOULD NEED IN

MARK ROSENSTEEL - CROSS BY WRIGHT

1 PROCESSING THE CRIME SCENE.

2 Q OKAY.

3 MR. CROFT: COURT'S INDULGENCE ONE SECOND.

4 (WHEREUPON THERE WAS A PAUSE) .

5 (WHEREUPON QUESTIONING RESUMED) .

6 Q EXCUSE ME. A WITNESS WHO IS GOING TO TESTIFY LATER
7 IS GOING TO TELL US ABOUT THE RESULTS OF THESE GSR KITS.
8 GENERALLY WHAT IS THE PURPOSE BEHIND GETTING THESE KITS
9 FROM THESE INDIVIDUALS?

10 A THEY ARE BASED ON RESIDUE THAT WOULD BE RECEIVED TO
11 THE HAND AREA OF A PERSON FIRED THE WEAPON.

12 Q OKAY. AND THAT IS YOUR INTENTION, SEARCH FOR
13 EVIDENCE WHEN YOU DO THESE KITS?

14 A YES.

15 Q OKAY. PLEASE ANSWER ANY QUESTIONS MR. WRIGHT MAY
16 HAVE?

17 THE COURT: ALL RIGHT, MR. WRIGHT.

18 CROSS-EXAMINATION BY MR. WRIGHT:

19 Q HOW ARE YOU DOING, MR. ROSENSTEEL?

20 A FINE, SIR.

21 Q WHEN YOU USE THESE KITS OR I GUESS IN THIS PARTICULAR
22 CASE IS RESIDUE VISIBLE OR IS THERE SOMETHING THAT CAN BE
23 -- THAT YOU HAVE TO USE THE KIT IN ORDER TO ANALYZE OR IS
24 IT VISIBLE? CAN YOU SEE ANYTHING VISIBLY?

25 A NO, SIR.

MARK ROSENSTEEL - CROSS BY WRIGHT

1 Q YOU CAN'T SEE ANYTHING VISIBLY?

2 A NO, SIR.

3 Q OKAY. YOU STATED THAT WHEN YOU WENT DOWN TO THE
4 DETENTION CENTER AND WENT TO WHERE MR. CHOICE WAS, HE WAS
5 UNCONSCIOUS OR PASSED OUT; IS THAT CORRECT?

6 A YES, SIR, HE APPEARED TO BE.

7 Q AND WHAT IS THE PROCESS OF TAKING THE -- GETTING THE
8 RESIDUE FROM THE HANDS OR TESTING FOR RESIDUE? WHAT'S THE
9 PROCESS YOU WENT THROUGH AGAIN?

10 A AS I EXPLAINED BEFORE, YOU OPEN THE KIT, IT'S A
11 INDIVIDUAL KIT OR CASE PER SUSPECT OR VICTIM, READ THE
12 DIRECTIONS IF YOU FEEL THAT YOU NEED TO REFRESH YOUR
13 MEMORY. AT THAT POINT YOU BEGIN WITH THE SMALL ADHESIVE
14 TYPE, CALL IT A DABBER THAT'S DOING THIS.

15 ONCE YOU COMPLETED THAT, IT GOES INTO A
16 DESIGNATED CONTAINER AND PROCEED WITH THE SECOND TEST WITH
17 THE SOLUTION Q-TIP. AGAIN, GO OVER THE DESIGNATED AREA
18 AND PLACE IT IN THE DESIGNATED CONTAINER.

19 Q OKAY. YOU SAID ADHESIVE. IS IT SORT OF LIKE TAPE
20 OR...

21 A I'M NOT EXACTLY SURE WHAT THE SUBSTANCE IS, BUT IT
22 DOES PICK UP SMALL PARTICLES.

23 Q OKAY. AND YOU STATE YOU DID THIS, WAS HE -- MR.
24 CHOICE STILL IN THE SAME STATE WHILE YOU WERE DOING THIS?

25 A YES.

KEN NESBITT - DIRECT BY CROFT

1 Q OKAY. SO AT NO TIME DID HE WAKE UP AND SAY WHAT ARE
2 YOU DOING OR COMMENT OR DO ANYTHING?

3 A NO, SIR.

4 Q OKAY.

5 MR. WRIGHT: NO FURTHER QUESTIONS, YOUR HONOR.

6 THE COURT: ALL RIGHT. ANYTHING ON REDIRECT?

7 MR. CROFT: NO REDIRECT, YOUR HONOR.

8 THE COURT: ALL RIGHT. YOU CAN COME DOWN.

9 THE WITNESS: THANK YOU, YOUR HONOR.

10 (WHEREUPON THE WITNESS LEFT THE STAND).

11 THE COURT: CALL YOUR NEXT WITNESS.

12 MR. CROFT: BELIEVE HE'S BACK THERE. CHECK AND MAKE
13 SURE THAT WITNESS IS HERE, YOUR HONOR.

14 (WHEREUPON THERE WAS A PAUSE).

15 MR. CROFT: YOUR HONOR, MAY I STEP BACK TO THE ROOM?

16 THE COURT: YES. WE NEED TO GET THESE WITNESSES
17 LINED UP SO WE DON'T HAVE TO LEAVE EVERY TIME. WHAT WE
18 ARE DOING IS WE ARE LEAVING ALL THE WITNESSES OUTSIDE OF
19 THE COURTROOM AND THEY COME IN ONE AT A TIME.

20 MR. CROFT: YOUR HONOR, THE STATE WOULD CALL KEN
21 NESBITT.

22 (WITNESS IN COURTROOM)

23 KEN NESBITT, BEING FIRST DULY SWORN,
24 TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION BY MR. CROFT:

KEN NESBITT - DIRECT BY CROFT

1 Q LIEUTENANT NESBITT, TELL US HOW YOU ARE EMPLOYED.

2 A I'M EMPLOYED BY THE SUMTER POLICE DEPARTMENT AS A
3 LIEUTENANT IN THE DETECTIVE DIVISION.

4 Q OKAY. AS LIEUTENANT, IS THAT DETECTIVE DIVISION?
5 WHAT ARE YOUR DUTIES?

6 A MY DUTIES CURRENTLY ARE TO SUPERVISE THE OTHER
7 DETECTIVES IN THE UNIT.

8 Q HOW LONG HAVE YOU BEEN WITH THE POLICE DEPARTMENT?

9 A APPROXIMATELY 16 YEARS.

10 Q OKAY. AND WERE YOU EMPLOYED WITH THE POLICE
11 DEPARTMENT BACK IN SEPTEMBER OF 1998?

12 A YES, I WAS.

13 Q IN WHAT CAPACITY WERE YOU EMPLOYED WITH THEM AT THAT
14 TIME?

15 A DURING THE YEAR OF '98 MY DUTIES WERE TO GO TO CRIME
16 SCENES AND COLLECT EVIDENCE, TAKE PHOTOGRAPHS AND DOCUMENT
17 CRIME SCENES. I WAS THE EVIDENCE CUSTODIAN -- I'M SORRY
18 THE EVIDENCE TECHNICIAN FOR THE SUMTER POLICE DEPARTMENT.

19 Q AND WHAT TRAINING DO YOU HAVE IN THIS AREA, IF YOU'D
20 TELL US A LITTLE BIT ABOUT THAT.

21 A I HAVE ATTENDED BASIC CRIME SCENE INVESTIGATION
22 CLASSES AT THE SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY AS
23 WELL AS BASIC DETECTIVE CLASSES THAT INCLUDES A LOT OF
24 CRIME SCENE EVIDENCE COLLECTION TRAINING.

25 I HAVE ATTENDED NUMEROUS FINGERPRINT TRAINING

KEN NESBITT - DIRECT BY CROFT

1 CLASSES BOTH AT THE SOUTH CAROLINA CRIMINAL JUSTICE
2 ACADEMY AND ALSO THE F.B.I.'S TRAINING ACADEMY IN
3 QUANTICO, VIRGINIA.

4 I HAVE ATTENDED A THREE WEEK INTERNSHIP TRAINING
5 PROGRAM AT THE STATE LAW ENFORCEMENT DIVISION IN COLUMBIA
6 WHERE I ACTUALLY GO AND WORK IN THE LAB WITH THE DIFFERENT
7 EXPERTS AT THE SLED LAB, GO OUT ON CRIME SCENES WITH SLED
8 THROUGHOUT THE STATE.

9 Q AND DID YOU GET A CALL ON THE NIGHT OF SEPTEMBER THE
10 3RD, 1998?

11 A YES, SIR.

12 Q OKAY. WHERE WERE YOU CALLED OUT TO?

13 A I WAS CALLED TO GO TO THE DIAMOND'S CLUB ON BROAD
14 STREET IN SUMTER.

15 Q OKAY. AND WHAT DID YOU FIND WHEN YOU ARRIVED?

16 A WHEN I ARRIVED ON THE SCENE, I WAS MET BY SERGEANT
17 ROSENSTEEL WHO WAS THE DETECTIVE ON-CALL THAT NIGHT AND HE
18 ADVISED ME THAT A SHOOTING HAD OCCURRED AT THE CLUB AND I
19 WAS CALLED TO WHAT WE CALL DOCUMENT THE CRIME SCENE OR
20 PHOTOGRAPH THE CRIME SCENE AND ALSO TO COLLECT EVIDENCE
21 THERE.

22 Q OKAY. WHAT DID YOU FIND? DID YOU SEARCH THE AREA
23 WHEN YOU WERE THERE?

24 A YES, I DID.

25 Q OKAY. WHAT ITEMS DID YOU FIND?

KEN NESBITT - DIRECT BY CROFT

1 A SERGEANT ROSENSTEEL POINTED OUT TO ME WHEN I ARRIVED
2 THAT THERE WAS AN AREA INSIDE THE BUILDING NEAR THE BACK
3 DOOR, AN AREA OF RED STAIN ON THE FLOOR THAT APPEARED TO
4 BE BLOOD. THIS WAS FROM THE INFORMATION I GATHERED FROM
5 HIM WHERE THE SUSPECT FELL WHEN HE WAS SHOT.

6 ALSO RIGHT IN THAT SAME AREA WAS A SHIRT THAT
7 HAD BLOOD ON IT AND THAT HAD BEEN CUT AND I BELIEVE TO BE
8 THE SHIRT THAT THE VICTIM WAS WEARING AT THE TIME THE
9 MEDICAL PERSONNEL CHECKED HIM AND THERE WAS A SHELL CASING
10 AND FIRED CASING FROM A BULLET THAT WAS FOUND UNDER THE
11 SHIRT WHEN I LIFTED IT UP.

12 ALSO LOOKING CLOSELY IN THE ROOM I FOUND A
13 ACTUAL PROJECTILE WHICH IS THE FIRED PORTION OF A BULLET,
14 THE PART THAT COMES OUT WHEN A BULLET IS FIRED, THE BULLET
15 PART. I FOUND THAT NEAR THE OFFICE DOOR IN THE SAME AREA.

16 Q AND DID YOU RETRIEVE THESE ITEMS OF EVIDENCE?

17 A YES, I DID.

18 Q OKAY. WHAT DID YOU DO WITH THEM ONCE YOU RETRIEVED
19 THEM?

20 A I RETRIEVED THOSE ITEMS AND I ACTUALLY CARRIED THE
21 BULLET MYSELF TO THE STATE LAW ENFORCEMENT DIVISION THE
22 NEXT DAY AFTER THE AUTOPSY AND THE OTHER ITEMS I TURNED
23 OVER TO OUR EVIDENCE CUSTODIAN, MRS. IRENE CULICK.

24 Q WHEN YOU REFERRED TO THE BULLET, YOU DON'T MEAN THE
25 CASING BUT THE ACTUAL FIRED BULLET?

KEN NESBITT - DIRECT BY CROFT

1 A THAT'S CORRECT, THE PORTION THAT ACTUALLY LEAVES THE
2 GUN WHEN A BULLET IS FIRED WAS THE PORTION THAT I TOOK TO
3 SLED ON THE SAME DATE, ACTUALLY LATER THAT DAY AFTER THE
4 AUTOPSY.

5 Q OTHER THAN THAT ONE BULLET IN THAT ONE CASING THERE
6 AT THE SCENE, DID YOU FIND ANY OTHER BULLETS OR CASINGS?

7 A NO, I DID NOT.

8 Q OKAY. WHEN YOU SAY YOU TOOK THE BULLET TO THE
9 AUTOPSY, WAS THAT SO THAT THE PATHOLOGIST COULD USE THAT
10 BULLET TO HELP HIM DURING THE AUTOPSY?

11 A THAT'S CORRECT. THAT'S NORMAL PROCEDURE IF WE HAVE A
12 BULLET, THAT WE TAKE IT SO THAT THE PATHOLOGIST CAN LOOK
13 AT IT AND CONSIDERING THE INJURIES TO THE DECEASED.

14 MR. CROFT: COURT'S INDULGENCE ONE MOMENT.

15 (WHEREUPON THERE WAS A PAUSE) .

16 (STATE'S EXHIBIT NO. 17 AND 18 MARKED FOR
17 IDENTIFICATION) .

18 (WHEREUPON QUESTIONING RESUMED) .

19 MR. CROFT: MAY I APPROACH THE WITNESS AGAIN, YOUR
20 HONOR?

21 THE COURT: YES.

22 (WHEREUPON QUESTIONING RESUMED) .

23 Q GOING TO SHOW YOU WHAT IS MARKED AS STATE'S EXHIBIT
24 NUMBER 17. IF YOU COULD TELL ME WHAT THAT IS.

25 A THIS IS A PLASTIC CONTAINER THAT I PLACED THE BULLET

KEN NESBITT - DIRECT BY CROFT

1 IN, HAS MY INITIALS HERE AND MY HANDWRITING, THE CASE
2 NUMBER THAT I PLACED ON HERE AND IT'S MARKED BULLET FIRED
3 IN PARENTHESIS FIRED, 9-3 OF '98 WITH MY INITIALS ALL IN
4 MY WRITING.

5 Q OKAY. AND CAN YOU OPEN IT AND SEE IF THE BULLET IS
6 IN FACT IN THERE?

7 A YES, IT IS.

8 Q OKAY. DOES IT APPEAR TO BE IN SUBSTANTIALLY THE SAME
9 CONDITION AS WHEN YOU RETRIEVED IT?

10 A IT DOES, YES, SIR.

11 Q OKAY. AND TELL ME AGAIN WHAT DID YOU DO WITH THAT
12 BULLET ONCE YOU PLACED IT IN THAT CONTAINER.

13 A I PACKAGED THE BULLET AND CARRIED IT TO NEWBERRY AND
14 SHOWED IT TO THE PATHOLOGIST WHO CONDUCTED THE AUTOPSY.
15 AFTER THAT I BROUGHT IT BACK WITH ME IN THE SAME CONTAINER
16 TO COLUMBIA AND ACTUALLY TOOK IT TO SLED.

17 Q TELL ME ABOUT THE PROCEDURE. WHEN YOU TAKE AN ITEM
18 OF EVIDENCE TO SLED, WHAT DO YOU DO WITH IT?

19 A YOU TAKE IT INTO AN AREA KNOWN AS THE EVIDENCE LOG-IN
20 AREA WHERE THEY HAVE PEOPLE THAT THEIR ONLY DUTIES ARE TO
21 TAKE IN EVIDENCE AND PREPARE THE PROPER DOCUMENTATION TO
22 BE SENT TO DIFFERENT AREAS IN THE LAB. THIS PARTICULAR
23 ITEM IS TAKEN IN AND -- BY ME AND GIVEN TO THE PEOPLE IN
24 THE EVIDENCE LOG-IN SECTION.

25 Q OKAY. AND WHAT DO THEY DO THERE IN YOUR PRESENCE?

KEN NESBITT - DIRECT BY CROFT

1 A THEY WILL PUT IT INTO A -- THEY WILL EITHER GIVE IT
2 DIRECTLY TO AN EXAMINER THAT COMES DOWN AND PICKS UP THE
3 EVIDENCE WHILE I'M THERE OR THEY WILL PUT IT INTO A LOCKED
4 CONTAINER SUCH AS A -- AN OLD STYLE MAILBOX OR A LOCKED
5 REFRIGERATOR TYPE UNIT THAT HAS A DOOR ON IT THAT YOU
6 CAN'T GET IN AND TAKE STUFF OUT OF BUT YOU CAN DROP ITEMS
7 IN IT. THEY WILL DO THAT IN MY PRESENCE.

8 Q THEY DO THAT IN YOUR PRESENCE?

9 A YES.

10 Q IT'S SEALED IN YOUR PRESENCE THEN PLACED INTO THE
11 BOX?

12 A THAT'S CORRECT. THEY WILL ACTUALLY SEAL THIS INTO
13 ANOTHER CONTAINER IN MY PRESENCE AND I WILL HAVE TO SIGN
14 THE SEAL AND THEN THEY WILL PLACE IT IN THIS CONTAINER, IN
15 THIS BOXED AREA WHILE I'M THERE.

16 Q AND DID YOU IN FACT DO THIS WITH THIS ITEM?

17 A YES, SIR.

18 Q OKAY. I'M GOING TO SHOW YOU NOW WHAT IS MARKED AS
19 STATE'S EXHIBIT NUMBER 18 FOR IDENTIFICATION PURPOSES. DO
20 YOU RECOGNIZE THIS?

21 A YES, SIR, I DO. THIS...

22 Q HOW DO YOU RECOGNIZE THAT?

23 A THIS IS A SHELL CASING, A FIRED SHELL CASING. THIS
24 IS THE PORTION THAT REMAINS. IF IT'S A REVOLVER, THIS
25 PORTION WOULD REMAIN IN THE GUN AFTER IT'S FIRED, BUT

KEN NESBITT - DIRECT BY CROFT

1 AFTER THE BULLET LEAVES IN A SEMIAUTOMATIC HANDGUN, THIS
2 PORTION WILL BE EJECTED FROM THE GUN, BUT IT WON'T COME
3 OUT THE BARREL.

4 AND IT'S NOT THE BULLET PORTION THAT COMES OUT
5 OF THE BARREL, BUT IT IS EJECTED TO THE SIDE FROM -- THIS
6 IS THE SHELL CASING THAT I RECOVERED ON THIS DATE AND I
7 CAN IDENTIFY IT BECAUSE THIS IS THE PLASTIC BAG THAT I
8 SEALED.

9 IT HAS MY INITIAL ACROSS THE SEAL. IT ALSO HAS
10 THE DATE 9-8-98 AND HAS THE CASE NUMBER AND S.P.D. ALL IN
11 MY HANDWRITING.

12 Q OKAY. AND WHAT DID YOU DO WITH THIS PARTICULAR PIECE
13 OF EVIDENCE?

14 A I TURNED THIS OVER TO MRS. CULICK, OUR EVIDENCE
15 CUSTODIAN, ON SEPTEMBER THE 8TH.

16 Q OKAY. AND LET ME ASK YOU THIS. YOU WERE DESCRIBING
17 TO THE JURY ABOUT HOW CASINGS WOULD COME OUT OF THE SIDE
18 OF THE GUN. JUST SO THEY ARE NOT CONFUSED, WE HAVE A RED
19 PEN STUCK IN HERE TO KEEP IT OPEN. IS THAT WHERE THE
20 CASES WOULD SHOOT OUT OF?

21 A YES, THE CASING WOULD COME OUT OF THAT OVER TO THE
22 SIDE OR BACK WOULD NOT GO FORWARD LIKE A BULLET.

23 Q OKAY.

24 (STATE'S EXHIBIT NO. 19 MARKED FOR
25 IDENTIFICATION).

KEN NESBITT - DIRECT BY CROFT

1 Q NOW, I WANT TO SHOW YOU WHAT IS MARKED AS STATE'S
2 EXHIBIT NUMBER 19 FOR IDENTIFICATION PURPOSES AND ASK DO
3 YOU RECOGNIZE THIS ITEM?

4 A THIS WOULD BE THE SHIRT THAT I RECOVERED FROM THE
5 FLOOR INSIDE DIAMOND'S CLUB THAT HAD WHAT APPEARED TO BE
6 BLOOD ON IT AND APPEARED TO HAVE BEEN CUT. IT'S ALSO IN A
7 PLASTIC BAG THAT I SEALED IT IN WITH MY INITIALS AND THE
8 DATE AND MY HANDWRITING ACROSS THE SEAL AS WELL AS THE
9 CASE NUMBER ON THIS ITEM.

10 Q OKAY. WHEN YOU SAW THAT SHIRT AT THE SCENE, YOU WERE
11 IN FACT THE PERSON WHO RETRIEVED IT?

12 A THAT'S RIGHT.

13 Q OKAY. AND DID IT APPEAR TO HAVE -- YOU SAID IT WAS
14 CUT. DID YOU MEAN YOU HAD A HOLE IN IT? WHAT DO YOU
15 MEAN?

16 A IT APPEARED TO HAVE A BULLET HOLE IN IT, BUT I
17 BELIEVE IT ALSO APPEARED TO HAVE BEEN CUT WHICH IS COMMON
18 FOR US TO SEE AFTER MEDICAL PERSONNEL HAS BEEN WORKING ON
19 SOMEONE IN AN EMERGENCY SITUATION.

20 Q OKAY. AND THAT SHIRT THE VICTIM LEFT THERE AT THE
21 SCENE?

22 A THAT'S CORRECT.

23 Q AND THAT ITEM LIKE THE SHELL CASING YOU TURNED OVER
24 TO IRENE CULICK, THE EVIDENCE CUSTODIAN?

25 A THAT'S CORRECT.

KEN NESBITT - DIRECT BY CROFT

1 Q OKAY. LET ME ASK YOU. FOR THIS CASE YOU PREPARED A
2 CRIME SCENE DIAGRAM; IS THAT RIGHT?

3 A YES.

4 Q LET ME SHOW YOU WHAT IS MARKED AS STATE'S EXHIBIT
5 NUMBER 11. IS THIS AN ENLARGED VERSION OF THAT DIAGRAM?

6 A YES, IT IS.

7 Q OKAY. AND IF YOU COULD STEP DOWN?

8 MR. CROFT: YOUR HONOR, COULD THE WITNESS STEP DOWN?
9 YOUR HONOR, MAY THE WITNESS STEP DOWN?

10 THE COURT: YES.

11 (WHEREUPON THE WITNESS LEFT THE STAND).

12 (WHEREUPON QUESTIONING RESUMED).

13 Q SHOW THE JURY WHERE YOU FOUND THE ITEMS WE HAVE JUST
14 BEEN TALKING ABOUT, THE BULLET, THE CASING AND THE SHIRT.

15 A OKAY. THE NUMBERS HERE, ONE, TWO, THREE, AND FOUR
16 REPRESENT THE ITEMS THAT I SAID THAT I SEIZED OR COLLECTED
17 FROM THE CRIME SCENE. IF YOU COME IN THE BACK DOOR HERE,
18 THIS WOULD BE THE BACK DOOR TO DIAMOND'S CLUB, STRAIGHT IN
19 AND OVER TO YOUR LEFT IS THE DOOR GOING INTO THE OFFICE.
20 THAT ONE THERE REPRESENTS THE BULLET.

21 THAT'S WHERE THE PART THAT ACTUALLY WAS FIRED
22 FROM THE GUN WAS RECOVERED, RIGHT OUTSIDE OF THAT
23 DOORWAY. ITEM NUMBER TWO, IF YOU COME STRAIGHT IN THE
24 DOOR AND GO OVER TO THE RIGHT HERE, THERE IS A PARTITION.

25 IT'S JUST A WOODEN PARTITION WHICH IT'S HIGHER

KEN NESBITT - DIRECT BY CROFT

1 THAN MY HEAD, DON'T KNOW EXACTLY HOW -- THE EXACT HEIGHT,
2 BUT IT'S TALLER THAN I AM. RIGHT BESIDE THAT PARTITION I
3 FOUND ALL THREE OF THESE ITEMS.

4 Q WHAT ARE THOSE ITEMS?

5 A TWO IS A RED STAIN THAT WE BELIEVED TO BE BLOOD.
6 ITEM NUMBER THREE WAS A SHIRT.

7 Q THAT'S THE SHIRT?

8 A WITH THE BULLET HOLES, THE SHIRT I JUST IDENTIFIED.
9 ITEM NUMBER FOUR WAS THE BULLET CASING, THE FIRED BULLET
10 CASING THAT I IDENTIFIED AS COMING FROM THERE, SO THOSE
11 ITEMS WERE RIGHT TOGETHER IN THIS AREA.

12 Q OKAY. YOU CAN TAKE A SEAT AGAIN.

13 (WHEREUPON THE WITNESS RESUMED THE STAND).

14 Q YOU ALSO TOOK SOME PHOTOGRAPHS OF THE SCENE AT THE
15 TIME; IS THAT RIGHT?

16 A YES, SIR.

17 Q OKAY. IS THAT TYPICALLY WHAT YOU WILL DO AS THE
18 FORENSIC DETECTIVE IN A CASE?

19 A THAT'S CORRECT.

20 Q OKAY.

21 A YES, SIR.

22 MR. CROFT: YOUR HONOR, WITH THE COURT'S INDULGENCE,
23 WE HAVE A SYSTEM HERE WE CAN PUT THESE PICTURES AND BLOW
24 THEM UP SO THE JURY CAN SEE THEM, WE CAN PULL THAT AROUND.

25 THE COURT: OKAY. YA'LL BOUGHT A NEW T.V. SINCE THE

KEN NESBITT - DIRECT BY CROFT

1 LAST TIME. BIGGER ALWAYS IS BETTER.

2 MR. CROFT: MAY LIEUTENANT NESBITT STEP DOWN AGAIN SO
3 HE CAN EXPLAIN THESE?

4 THE COURT: SURE.

5 MR. CROFT: IS IT POSSIBLE TO DIM THE LIGHTS ON THIS
6 AREA JUST A BIT?

7 BAILIFF: UH-HUH.

8 MR. CROFT: THAT'S GOOD. I'M JUST GOING TO SHOW YOU
9 SEVERAL PICTURES THAT YOU TOOK THAT HAVE BEEN ADMITTED
10 INTO EVIDENCE. IF YOU WOULD JUST DESCRIBE WHAT YOU SEE ON
11 THE SCREEN FOR THE JURY. I'LL SHOW YOU WHAT IS MARKED AS
12 STATE'S EXHIBIT NUMBER 1 FIRST. IF YOU COULD DESCRIBE
13 THAT.

14 A THIS IS A PHOTOGRAPH OF THE FRONT, THE OUTSIDE FRONT
15 OF DIAMOND'S CLUB AS I WAS STANDING ON BROAD STREET TAKING
16 THE PHOTOGRAPH.

17 Q OKAY. SO THAT'S ACTUALLY -- THAT STREET THERE IN
18 FRONT OF IT IS ACTUALLY BROAD STREET?

19 A THAT'S CORRECT.

20 Q OKAY. AND THERE IS THE BAR WHERE ALL OF THIS TOOK
21 PLACE?

22 A THAT'S RIGHT.

23 Q OKAY. NOW I'M GOING TO SHOW YOU WHAT IS MARKED
24 STATE'S EXHIBIT NUMBER 2. IF YOU'D DESCRIBE THAT.

25 A THIS IS THE VIEW FROM THE REAR OUTSIDE OF DIAMOND'S

KEN NESBITT - DIRECT BY CROFT

1 CLUB JUST BEFORE YOU STEP INTO THE DOOR. THAT IS THE REAR
2 DOOR STANDING OPEN.

3 Q OKAY. AND AS YOU LOOK INSIDE, VERY DARK UP THERE ON
4 THE TELEVISION SCREEN, BUT OFFICER DAVIS IS IN THAT
5 PHOTOGRAPH; IS SHE NOT?

6 A THAT'S CORRECT.

7 Q OKAY. WHAT IS SHE DOING, CAN YOU TELL? MAY NEED TO
8 LOOK AT THE ACTUAL PICTURE.

9 A OKAY. SHE IS STANDING RIGHT HERE. SEE, MY FLASH WAS
10 NOT ACTUALLY LIGHTING UP INSIDE OF THE BUILDING YET SO YOU
11 CAN'T SEE HER VERY WELL. SHE IS STANDING RIGHT HERE
12 POINTING DOWN TO THIS AREA AND THAT WAS WHERE THE BULLET
13 THAT I IDENTIFIED CAME FROM. THE ACTUAL PART THAT WAS
14 FIRED FROM THE WEAPON WAS FOUND ON THE FLOOR RIGHT IN THIS
15 AREA HERE WHERE SHE IS POINTING.

16 Q IS THAT DOOR RIGHT THERE WHERE YOU JUST HAD YOUR RED
17 MARKER, IS THAT THE OFFICE YOU WERE REFERRING TO, THAT
18 BLUE DOOR?

19 A YES, IT IS. OVER HERE IN BLUE ON THE SIDE IS THE
20 OFFICE DOOR.

21 Q OKAY. DID -- WAS THERE ANY MARKINGS ON THE BULLET
22 THAT YOU FOUND THERE CONSISTENT WITH THAT WALL?

23 A THERE WERE -- THERE WAS SOME RESIDUE ON THE END OF
24 THE BULLET, ON THE FRONT END OF THE BULLET THAT APPEARED
25 TO ME TO BE THE SAME COLOR AS THIS PAINT, THE DOOR THAT IT

KEN NESBITT - DIRECT BY CROFT

1 WAS LYING BESIDE.

2 Q OKAY. I'M GOING TO SHOW YOU NOW WHAT IS MARKED
3 STATE'S EXHIBIT NUMBER 3, CLOSE-UP OF WHAT WE HAVE JUST
4 BEEN DISCUSSING. DON'T THINK YOU CAN SEE IT THERE. IF
5 YOU CAN DESCRIBE THAT.

6 A RIGHT HERE ON -- NOW IS THE BULLET THAT I FOUND THAT
7 I IDENTIFIED. THAT'S EXACTLY WHERE I FOUND IT WHEN I WENT
8 IN AND SEARCHED IN THE ROOM.

9 Q OKAY. AND AGAIN I'LL SHOW YOU STATE'S EXHIBIT NUMBER
10 4, ONE STEP CLOSER. WHAT IS THAT?

11 A THAT IS JUST A CLOSE-UP PHOTOGRAPH OF THE SAME BULLET
12 THAT I JUST POINTED OUT WITH THE CASE NUMBER SCALE, THE
13 CASE NUMBER, MY INITIALS AND THE DATE THAT I TOOK THIS
14 PHOTOGRAPH. AND YOU CAN SEE ON THE END OF THE BULLET HERE
15 WHAT APPEARS TO BE SOME BLUE COLOR THAT MATCHED THE COLOR
16 OF THE DOOR, THE PAINT ON THE DOOR INSIDE.

17 Q OKAY. I'M GOING TO SHOW YOU STATE'S EXHIBIT NUMBER
18 5. CAN YOU DESCRIBE THIS, WHERE YOU WERE STANDING WHEN
19 YOU TOOK THE PICTURE.

20 A THIS IS A PHOTOGRAPH THAT I TOOK AFTER I STEPPED
21 INSIDE THE REAR DOOR, JUST A COUPLE OF STEPS INSIDE THE
22 DOOR. AND YOU CAN SEE JUST A LITTLE BIT ON THE LEFT SIDE
23 OF THE PHOTOGRAPH A LITTLE BIT OF BLUE HERE. THAT WOULD
24 BE THAT WALL THAT THE DOOR WAS ATTACHED TO THAT YOU JUST
25 LOOKED AT TO YOUR LEFT.

KEN NESBITT - DIRECT BY CROFT

1 SO THERE IS A PARTITION OVER TO THE RIGHT, THE
2 BLUE PARTITION THAT I SPOKE OF, AND YOU CAN SEE JUST ON
3 THE EDGE OF THE PHOTOGRAPH HERE WHERE THE DOT IS NOW IS
4 THE RED STAIN THAT I SAID APPEARED TO BE BLOOD WHERE THE
5 -- I WAS TOLD THAT THE SUSPECT FELL.

6 Q OKAY. AND I'M GOING TO SHOW YOU WHAT IS MARKED
7 STATE'S EXHIBIT NUMBER 6. IF YOU WOULD DESCRIBE THAT.

8 A THIS IS A PHOTOGRAPH THAT I TOOK WHILE I WAS STANDING
9 IN THE AREA OF THE DOOR GOING INTO THE OFFICE. I STOOD
10 WITH MY BACK TO THAT DOOR.

11 SO IN OTHER WORDS I STEPPED IN THE BACK DOOR UP
12 TO THAT OFFICE DOOR AND I TURNED TO MY RIGHT AND TOOK A
13 PHOTOGRAPH OF THE RED STAIN AGAIN WHICH IS RIGHT HERE, THE
14 SHIRT RIGHT BESIDE IT WHICH WAS A MULTI-COLORED SHIRT, THE
15 SHIRT THAT I HAVE IDENTIFIED AS COMING FROM THE SCENE, AND
16 UNDERNEATH THE SHIRT WHEN I LIFTED IT UP IS WHERE THE
17 SHELL CASING WAS FOUND.

18 Q OKAY. AND TO THE BACK BACK THERE, WHAT ARE THOSE
19 ROOMS BACK THERE?

20 A STRAIGHT BACK IS THE END OF THIS PHOTOGRAPH IS THE
21 RESTROOM. THE RESTROOM DOOR IS OPEN RIGHT THERE AND YOU
22 CAN SEE THE RESTROOM.

23 Q OKAY. NOW I'M GOING TO SHOW YOU WHAT IS MARKED
24 STATE'S EXHIBIT NUMBER 7. CAN YOU DESCRIBE THAT?

25 A THIS IS A PHOTOGRAPH THAT I TOOK FROM THE OPPOSITE

KEN NESBITT - DIRECT BY CROFT

1 END OF THE VIEW THAT YOU JUST SAW. I WALKED DOWN PAST THE
2 ITEMS FROM THE OFFICE DOOR, I WALKED DOWN PAST THE ITEMS
3 THAT I JUST DESCRIBED, WALKED ALL THE WAY TOWARDS THE
4 BATHROOM DOOR AND STOOD WITH MY BACK TO THAT BATHROOM AND
5 TOOK THIS PHOTOGRAPH BACK SHOWING AGAIN THE SHIRT, THE RED
6 STAIN AND THE BULLET WOULD HAVE BEEN OVER HERE JUST
7 OUTSIDE OF THAT DOOR.

8 Q OKAY. WHERE IS THE BACK DOOR IN REFERENCE TO HERE?

9 A FROM HERE TO GO OUT THE BACK DOOR WHERE I WAS
10 STANDING WHEN I TOOK THIS PICTURE, WALK STRAIGHT FORWARD
11 AND TURN TO THE LEFT NEAR THIS WALL AND GO STRAIGHT OUT
12 INTO THE REAR PARKING LOT.

13 Q OKAY. I SHOW YOU NOW STATE'S EXHIBIT NUMBER 8,
14 CLOSE-UP VIEW. IF YOU'LL DESCRIBE THAT.

15 A THIS IS A CLOSE-UP VIEW OF THE ITEMS THAT I ALREADY
16 DESCRIBED, THE RED STAIN HERE, THE SHIRT RIGHT BESIDE THE
17 PARTITION IS OVER HERE TO THE LEFT.

18 Q OKAY. AND JUST BRIEFLY I'M GOING TO SHOW YOU NOW
19 STATE'S EXHIBIT NUMBER 9. IS THAT A CLOSER VIEW?

20 A YES, IT IS. THAT'S A CLOSER VIEW. ONCE I MOVED THE
21 SHIRT RIGHT HERE YOU CAN SEE THE SHELL CASING THAT I HAVE
22 IDENTIFIED AS COMING FROM THE SCENE.

23 Q OKAY. AND LASTLY IF YOU WOULD DESCRIBE THAT OTHER
24 STEP CLOSER.

25 A THAT IS A CLOSER PHOTOGRAPH OF THE SHELL CASING JUST

KEN NESBITT - DIRECT BY CROFT

1 AS I FOUND IT WHEN I PULLED THE SHIRT UP WITH A SCALE
2 THERE AND THE CASE NUMBER AND MY INITIALS AND THE DATE AND
3 MY HANDWRITING.

4 Q OKAY. THAT'S ALL THE PHOTOS WE HAVE. YOU CAN
5 RE-TAKE YOUR SEAT.

6 (WHEREUPON THE WITNESS RESUMED THE STAND).

7 Q ONE OTHER QUESTION I HAVE. ON THE DAY OF THIS EVENT,
8 DID YOU GO BACK TO IRENE CULICK, DID YOU HAVE A CHANCE TO
9 LOOK AT THE WEAPON?

10 A I DID.

11 Q OKAY. AND SO DID YOU SIGN IT OUT BRIEFLY THAT DAY?

12 A I DID.

13 Q OKAY.

14 A I RECEIVED THE WEAPON FROM MRS. CULICK THAT HAD BEEN
15 TURNED IN BY SOMEONE ELSE AND I TOOK THE WEAPON INTO MY
16 FINGERPRINT LAB AND TRIED TO DEVELOP ANY FINGERPRINTS ON
17 THE WEAPON. I DID NOT DEVELOP ANY FINGERPRINTS ON THE
18 WEAPON WHICH IS NOT UNCOMMON.

19 ITEMS THAT ARE HANDLED DON'T ALWAYS BARE
20 FINGERPRINTS WHEN YOU TRY TO DEVELOP THEM. FINGERPRINTS
21 -- AND THERE'S A -- THERE'S A REASON FOR THAT.

22 FINGERPRINTS ARE LEFT WHENEVER YOU HAVE SOME TYPE OF
23 RESIDUE ON YOUR HAND AND YOU TOUCH AN ITEM AND YOU
24 TRANSFER THAT RESIDUE IN THE DESIGN OR THE RIDGES OF THE
25 FINGERS.

KEN NESBITT - CROSS BY WRIGHT

1 IF YOU DON'T HAVE ANY RESIDUE ON YOUR HAND WHEN
2 YOU TOUCH AN ITEM, THEN YOU'RE NOT GOING TO LEAVE ANY
3 FINGERPRINTS IF YOUR HAND IS COMPLETELY DRY AND CLEAN.
4 ALSO IF YOU DO HAVE RESIDUE ON YOUR HAND WHEN YOU TOUCH AN
5 ITEM, IF YOU -- IF YOU MOVE YOUR HANDS, SLIDE IT JUST A
6 LITTLE BIT, THAT WILL CAUSE ANY FINGERPRINT THAT MAY HAVE
7 BEEN THERE TO SMUDGE TO WHERE IT MAY LOOK LIKE JUST A DARK
8 SPOT, BUT THERE WON'T BE ANY FINGERPRINT OF ANY VALUE TO
9 IDENTIFY.

10 Q OKAY. LET ME JUST ASK YOU THIS. MAYBE I GUESS THE
11 PURPOSE OF THE QUESTION IS THIS. YOU ARE IN THE CHAIN OF
12 CUSTODY ON THE GUN, WE CALL CHAIN OF CUSTODY?

13 A THAT'S CORRECT.

14 Q YOU SIGNED IT OUT? DID YOU SIGN IT BACK IN THAT DAY?

15 A YES, SIR.

16 Q AND IT WAS TURNED BACK OVER TO IRENE CULICK?

17 A YES.

18 Q OKAY. PLEASE ANSWER ANY QUESTIONS MR. WRIGHT MAY
19 HAVE?

20 THE COURT: ALL RIGHT, MR. WRIGHT. GOT ANY
21 QUESTIONS?

22 MR. WRIGHT: YES, YOUR HONOR.

23 CROSS-EXAMINATION BY MR. WRIGHT:

24 Q IS THERE ANYTHING OTHER THAN THE ACTUAL SCENE, CRIME
25 SCENE INVESTIGATION THAT YOU PARTICIPATED IN?

KEN NESBITT - CROSS BY WRIGHT

1 A NO, SIR.

2 Q JUST THE CRIME SCENE INVESTIGATION AND FINGERPRINTING
3 THE GUN?

4 A THAT'S CORRECT.

5 Q YOU SAID THERE WERE NO FINGERPRINTS DEVELOPED ON THE
6 GUN?

7 A THAT'S CORRECT.

8 Q DID YOU FIND ANY SMUDGE MARKS ON THE GUN?

9 A I DON'T RECALL WHETHER I FOUND ANY SMUDGE MARKS OR
10 NOT. I KNOW I DID NOT FIND ANY RIDGE DETAIL THAT WOULD
11 HAVE BEEN VALUABLE FOR IDENTIFICATION.

12 Q DID YOU -- NOT SURE IF YOU FOUND THE SMUDGE MARKS.
13 YOU SAID YOU SIGNED THE GUN IN OR SIGNED THE GUN OUT AND
14 THEN SIGNED IT IN THE SAME DAY?

15 A I DID SIGN IT BACK IN THE SAME DAY THAT I RECEIVED IT
16 FROM MRS. CULICK, YES, SIR.

17 Q AND HOW MANY DAYS AFTER THE INCIDENT WAS IT OR WAS IT
18 THE SAME DAY?

19 A I WOULD HAVE TO REFER TO THE CHAIN OF CUSTODY. I
20 DON'T RECALL WHETHER IT WAS THE SAME DAY OR MAY HAVE BEEN
21 A FEW DAYS LATER. I DON'T HAVE THAT CHAIN WITH ME.

22 Q OKAY. SO THERE IS A ACTUAL SHEET SOMEWHERE WHERE IT
23 SHOWS WHO SIGNED IN AND SIGNED IT OUT?

24 A YES, SIR.

25 Q OKAY. DO YOU KNOW WHO HAS ACCESS TO THAT SHEET OR

KEN NESBITT - CROSS BY WRIGHT

1 WHO HAS THAT SHEET?

2 A YES, SIR, IT WOULD BE MRS. CULICK, OUR EVIDENCE
3 CUSTODIAN AT THAT TIME.

4 Q OKAY. I WAS WONDERING, WERE YOU THE FIRST PERSON
5 THAT SIGNED IT IN AND SIGNED IT OUT FROM YOUR MEMORY?

6 A I DON'T RECALL, SIR. I KNOW I DID NOT RECOVER THE
7 GUN. THE FIRST TIME I SAW IT WAS IN MRS. CULICK'S
8 POSSESSION AND WHEN I SIGNED IT OUT FROM HER.

9 Q OKAY. AND THIS WAS BACK IN SEPTEMBER OF '98,
10 CORRECT?

11 A YES, SIR.

12 Q OKAY. DID YOU -- OTHER THAN -- SO YOU CAN'T REMEMBER
13 IF YOU FOUND SMUDGES OR NOT. WAS THERE ANYTHING ON THE
14 GUN? YOU SAID YOU COULDN'T FIND ANY FINGERPRINTS, BUT
15 ANYTHING ELSE THAT YOU SEE ON THE GUN, ANY KIND OF RESIDUE
16 OR ANYTHING THAT YOU NOTICED?

17 A I DON'T RECALL ANYTHING ELSE ABOUT IT, NO, SIR.

18 Q OKAY. DID YOU DO A REPORT ABOUT YOUR FINGERPRINT
19 ANALYSIS?

20 A NO, SIR. IF I FIND ANYTHING THAT IS VALUABLE ON IT,
21 I WOULD HAVE WRITTEN THAT ON THERE. IF I -- THE FACT THAT
22 I DIDN'T WRITE ANYTHING ON THERE IS MY INDICATION THAT I
23 DID NOT FIND ANY IDENTIFIABLE FINGERPRINTS, ANY OF VALUE
24 FOR IDENTIFICATION.

25 Q OKAY. WAS THERE ANYTHING AT THE SCENE ITSELF THAT

KEN NESBITT - CROSS BY WRIGHT

1 YOU THOUGHT NECESSARY TO ANALYZE OR FINGERPRINT OR
2 ANYTHING LIKE THAT?

3 A NOTHING THAT I THOUGHT THAT NEEDED TO BE
4 FINGERPRINTED, NO, SIR. SAID JUST GATHERING EVIDENCE AND
5 DOCUMENTING THE CRIME SCENE IS ALL THAT I SAW TO DO AT
6 THAT SCENE AT THAT TIME.

7 Q ALL RIGHT. DID YOU AT ANY TIME -- DID YOU HAVE
8 AVAILABLE FINGERPRINTS FROM MR. CHOICE OR ANYBODY ELSE AT
9 THE SCENE?

10 A AT THE SCENE? NO, SIR, I DIDN'T HAVE ANY -- WHAT
11 KIND OF FINGERPRINTS ARE YOU TALKING ABOUT, MR. WRIGHT?
12 WILL YOU EXPLAIN THAT?

13 Q FINGERPRINTS THAT SHOW IF THERE WAS A POSSIBILITY
14 THAT YOU COULD FIND ANYTHING ON THE GUN, LIKE ANYBODY'S
15 FINGERPRINT ON THE GUN?

16 A I'M NOT SURE THAT I UNDERSTAND YOUR QUESTION STILL,
17 MR. WRIGHT.

18 Q WHEN YOU DO -- WELL, EXPLAIN A FINGERPRINT ANALYSIS.
19 WHAT EXACTLY DO YOU DO WHEN YOU TRY TO ANALYZE A GUN FOR
20 FINGERPRINTS OR ANY ITEM?

21 A WHEN I'M TRYING TO FIND FINGERPRINTS ON A GUN, WHAT
22 DO I DO?

23 Q YES.

24 A I WILL NORMALLY PUT BLACK FINGERPRINT POWDER ON THE
25 GUN WITH A BRUSH AND IF THERE ARE FINGERPRINTS ON THE GUN,

JOHN BARRON - DIRECT BY CROFT

1 THEN THE POWDER WOULD STICK TO THE RESIDUE IN THE
2 FINGERPRINTS AND I WILL BE ABLE TO SEE IT SHINING A LIGHT
3 ON IT.

4 Q OKAY. SO THE POWDER DIDN'T STICK TO ANYTHING?

5 A THERE AGAIN, I -- I KNOW I DID NOT FIND ANY
6 FINGERPRINTS THAT WERE OF VALUE FOR IDENTIFICATION. THE
7 POWDER MAY HAVE STUCK WITH SOME THINGS. IF THERE WAS ANY
8 MOISTURE ON THE GUN, THE POWDER MAY HAVE STUCK TO THAT,
9 BUT NONE OF IT WAS OF ANY VALUE TO TELL WHOSE FINGERPRINTS
10 OR WHO HAD HANDLED THE GUN.

11 Q OKAY. AND YOU DIDN'T DO A REPORT?

12 A THAT'S CORRECT.

13 Q THE -- OKAY. NO FURTHER QUESTIONS.

14 THE COURT: ANY REDIRECT?

15 MR. CROFT: NO, SIR, YOUR HONOR.

16 THE COURT: ALL RIGHT. YOU CAN COME DOWN. CALL YOUR
17 NEXT WITNESS.

18 MR. CROFT: THE STATE WOULD CALL JOHN BARRON.

19 (WHEREUPON THE WITNESS LEFT THE STAND)

20 (WITNESS IN COURTROOM).

21 MR. CROFT: STATE WOULD CALL JOHN BARRON.

22 JOHN BARRON, BEING FIRST DULY SWORN,
23 TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION BY MR. CROFT:

25 Q MORNING, MR. BARRON. TELL US WHAT YOUR OCCUPATION

JOHN BARRON - DIRECT BY CROFT

1 IS.

2 A I'M A FORENSIC SCIENTIST IN AT THE STATE LAW
3 ENFORCEMENT DIVISION IN COLUMBIA.

4 Q OKAY. SO YOU ARE EMPLOYED BY WHAT IS COMMONLY KNOWN
5 AS SLED?

6 A THAT'S CORRECT.

7 Q OKAY. HOW LONG HAVE YOU BEEN EMPLOYED BY SLED?

8 A 25 YEARS.

9 Q OKAY. WHAT ARE YOUR DUTIES THERE CURRENTLY AT SLED?

10 A I'M PRESENTLY ASSIGNED TO THE DNA LABORATORY.

11 Q OKAY. HOW LONG HAVE YOU BEEN WITH THE DNA LAB?

12 A TWO YEARS.

13 Q OKAY. AND WHERE WERE YOU BEFORE YOU MOVED TO THE DNA
14 DEPARTMENT?

15 A TRACE EVIDENCE LABORATORY.

16 Q OKAY. IS THAT WHO YOU WERE WORKING WITH BACK IN
17 SEPTEMBER OF 1998?

18 A THAT'S CORRECT.

19 Q OKAY. TELL US ABOUT YOUR EDUCATIONAL BACKGROUND,
20 TRAINING YOU HAVE HAD AS IT RELATES TO TRACE EVIDENCE AND
21 THINGS LIKE GUNSHOT RESIDUE.

22 A I HAVE A BACHELOR OF SCIENCE DEGREE FROM CLEMSON
23 UNIVERSITY. WHEN I CAME TO SLED I WAS ASSIGNED TO THE
24 SEROLOGY DEPARTMENT. I WAS PART OF IT FOR 13 YEARS AND
25 THEN I BECAME PART OF THE TRACE EVIDENCE DEPARTMENT AS IT

JOHN BARRON - DIRECT BY CROFT

1 WAS FORMING IN 1988.

2 AS PART OF MY TRAINING IN TRACE EVIDENCE, I WAS
3 TRAINED IN COURT QUALIFIED EXAMINER GUNSHOT RESIDUE ALONG
4 WITH SEVERAL OTHER SCIENTISTS, BUT I HAVE COMPLETED THAT
5 TRAINING SUCCESSFULLY, COMPLETED PROFICIENCY TESTING
6 PERIODICALLY TO INSURE THAT YOU KNOW HOW TO CONTINUALLY DO
7 THE TESTS PROPERLY, RECEIVED TRAINING ON HOW TO RUN THE
8 INSTRUMENTS FROM THE INSTRUMENT COMPANIES AND QUALIFIED
9 PEOPLE IN THAT, HAD THE OPPORTUNITY TO ATTEND TRAINING
10 COURSES IN SPECIALIZED ANALYSIS IN DIFFERENT LOCATIONS
11 SUCH AS NORTH CAROLINA STATE UNIVERSITY, MCCROME INSTITUTE
12 IN CHICAGO.

13 I HAVE HAD AN OPPORTUNITY TO TESTIFY IN GUNSHOT
14 RESIDUE APPROXIMATELY 50 TIMES IN THE STATE OF SOUTH
15 CAROLINA.

16 Q YOU ARE QUALIFIED AS AN EXPERT IN THOSE CASES?

17 A YES, SIR.

18 MR. CROFT: YOUR HONOR, WE WOULD MOVE MR. BARRON BE
19 QUALIFIED AS AN EXPERT IN THE TRACE EVIDENCE GUNSHOT
20 RESIDUE.

21 THE COURT: ANY OBJECTION, MR. WRIGHT?

22 MR. WRIGHT: NO OBJECTION.

23 THE COURT: QUALIFIED AS AN EXPERT.

24 (WHEREUPON QUESTIONING RESUMED).

25 Q IF YOU WOULD AT FIRST EXPLAIN TO US WHAT IS GUNSHOT

JOHN BARRON - DIRECT BY CROFT

1 RESIDUE?

2 A RESIDUE, GUNSHOT RESIDUE IS SIMPLY THE RESIDUE FROM
3 FIRING OF A WEAPON. THERE IS TWO TYPES OF GUNSHOT RESIDUE
4 THAT WE ARE INVOLVED IN. ONE IS BASICALLY THE SMOKE CLOUD
5 THAT YOU SEE WHEN A WEAPON IS FIRED. THE RESIDUE OR THE
6 GUN PRIMER THAT IS IN THE CARTRIDGE CASING IS VAPORIZED
7 AND CONDENSES AS A CLOUD AND INSIDE THIS CLOUD IS METALS
8 THAT WE TEST FOR, THESE METALS INCLUDE BARIUM ANTIMONIUM
9 AND LEAD.

10 THESE METALS TOGETHER IN COMBINATION ARE
11 CONCLUSIVE FOR GUNSHOT RESIDUE. BUT WE CAN FIND LEAD IN
12 FISHING LURE, WE CAN FIND IT IN LEAD PIPES, WE CAN FIND
13 BARIUM IN COSMETICS, WE CAN FIND ANTIMONIUM IN BRAKE PADS,
14 BUT THESE THREE METALS IN COMBINATION ARE STRONGLY
15 INDICATIVE OF GUNSHOT RESIDUE.

16 THEN THERE IS OTHER TYPE OF GUNSHOT RESIDUE THAT
17 HAS TO DO WITH DISTANCE DETERMINATION. THIS IS THE
18 BURNING POWDER THAT COMES OUT THE END OF THE BARREL THAT
19 IS SPEWED FORWARD IN A KIND OF A CLOUD.

20 AS IT GOES OUT, IT WILL COME IN CONTACT OF
21 COURSE WITH ANY OBJECT THAT IT'S CLOSE TO THE END OF THE
22 BARREL OF THE WEAPON THAT IS FIRED. AND THESE BURNING
23 GUNPOWDER PARTICLES AND LEAD WILL EMBED INTO THAT
24 PARTICLE.

25 MOST CASES YOU KNOW IF AN INDIVIDUAL IS BEING

JOHN BARRON - DIRECT BY CROFT

1 SHOT, IT WILL BE A SHIRT, PAIR OF PANTS OR SOMETHING LIKE
2 THIS. THEN WE CAN DEVELOP A PATTERN FROM THE BURNING
3 GUNSHOT RESIDUE ON THE GARMENT ITSELF AND THEN IF THE
4 WEAPON IS AVAILABLE, WE CAN TEST FIRE THE WEAPON AND
5 DETERMINE THE APPROXIMATE DISTANCE THAT THE END OF THE
6 BARREL OF THE GUN WAS FROM THE ARTICLE OF CLOTHING WHEN IT
7 WAS FIRED.

8 SO ONE TYPE OF TEST TO THE METALS ARE TESTS TO
9 MOST COMMONLY SEE IF A PERSON IS ASSOCIATED WITH FIRING A
10 WEAPON. SO IF I SHOOT A GUN, THIS SMOKE CLOUD THEN WOULD
11 ENVELOP MY HANDS, DEPOSIT THE METALS ON MY HAND, AND WHEN
12 I TEST FOR THOSE METALS, THEN THAT WILL BE AN INDICATION
13 WHETHER OR NOT THE PERSON WAS INVOLVED IN FIRING A
14 WEAPON.

15 THE OTHER TYPE OF TESTING WOULD BE TO DETERMINE
16 HOW FAR AWAY THE VICTIM WAS WHEN HE WAS SHOT.

17 Q OKAY. I'M GOING TO SHOW YOU -- YOUR HONOR, MAY I
18 APPROACH THE WITNESS? I'M GOING TO SHOW YOU WHAT HAS BEEN
19 MARKED FOR IDENTIFICATION PURPOSES AS STATE'S EXHIBITS 15
20 AND 16. ASK YOU TO EXAMINE THOSE IF YOU WOULD. HAVE YOU
21 EVER SEEN THOSE ITEMS BEFORE?

22 A YES, I HAVE. I HAVE ACTUALLY MARKED THESE ITEMS WITH
23 MY INITIALS AND THE LABORATORY FILE NUMBER.

24 Q HOW DID THEY COME INTO YOUR POSSESSION?

25 A THEY WERE DELIVERED TO ME. THEY WERE -- ACTUALLY

JOHN BARRON - DIRECT BY CROFT

1 THEY WERE DELIVERED TO THE LABORATORY AT SLED BY THE
2 SUMTER COUNTY -- I HAVE TO LOOK IT UP AND SEE WHICH
3 AGENCY.

4 Q SOMEBODY FROM SUMTER COUNTY OR CITY POLICE DEPARTMENT
5 OF SUMTER DELIVERED THIS TO SLED?

6 A THAT'S CORRECT.

7 Q OKAY.

8 A THEY ARE LOGGED INTO THE EVIDENCE LOG-IN, THEY ARE
9 THEN SEALED IN CONTAINERS AND TRANSPORTED TO MY LABORATORY
10 WHEREUPON I THEN OPENED THE CONTAINERS.

11 Q OKAY.

12 A AND AFTER EXAMINING THEM DETERMINED OF COURSE THAT
13 THEY WERE STILL SEALED, AND IN THIS CASE THEY WERE, AND
14 THEN I PROCEEDED TO MY ANALYSIS.

15 Q SO YOU ARE THE ONLY PERSON WHO UNSEALS THESE ITEMS?

16 A CORRECT.

17 Q OKAY. AND DID YOU DO THAT WITH THESE ITEMS THAT YOU
18 HAVE BEFORE YOU?

19 A YES, SIR, I DID.

20 Q OKAY. AND DID YOU MAKE AN EXAMINATION OF THESE
21 ITEMS?

22 A YES, SIR.

23 Q OKAY. TELL US ABOUT THOSE EXAMINATIONS.

24 A FIRST OF ALL, THESE CONTAINERS EACH ARE GUNSHOT
25 RESIDUE EVIDENCE COLLECTION KITS. THESE ARE PROVIDED BY

JOHN BARRON - DIRECT BY CROFT

1 OUR LABORATORY TO THE AGENCY IN THE STATE OF SOUTH
2 CAROLINA. AND INSIDE THE KIT ARE THE ELEMENTS NEEDED TO
3 COLLECT SAMPLES FROM THE HANDS OF A PERSON THAT IS
4 SUSPECTED BEING INVOLVED IN A GUNSHOT CASE.

5 FIRST OF ALL THERE ARE ROUND ALUMINUM PARTICLE
6 LIFTS, THEY ARE CYLINDER IN SHAPE, ABOUT HALF AN INCH IN
7 DIAMETER, AND INSIDE THE KIT IS PIECE PLACED ON THESE AND
8 THERE IS -- AFTER THE ADHESIVE IS PLACED ON THE ALUMINUM
9 DISK, THEY ARE DABBED ON THE BACK AND THE PALM OF THE LEFT
10 AND THE RIGHT HAND.

11 WHAT THIS DOES IS REMOVE GUNPOWDER, GUN PRIMER
12 PARTICLES THAT MAY BE PRESENT ON THE HANDS. AFTER THAT IS
13 DONE, THEN THEY ARE -- THE KIT CONTAINS COTTON SWABS ALONG
14 WITH A MILD ACIDIC SOLUTION. THE SOLUTION IS APPLIED TO
15 THE COTTON TIP SWABS AND THEN THE HANDS ARE SWABBED, BOTH
16 PALMS AND BACKS OF BOTH HANDS.

17 THIS REMOVES ANY RESIDUE THAT THE PARTICLE LIFTS
18 DID NOT PICK UP. FIRST OF ALL THE SWABS ARE ANALYZED AND
19 DETERMINED IF THERE ARE ANY METALS PRESENT THAT WOULD
20 INDICATE GUNSHOT RESIDUE.

21 Q WHAT WAS THE -- ON THE ITEM NUMBER, THE FIRST ITEM,
22 AS IT RELATES TO THE DEFENDANT KEVIN CHOICE, WHAT WAS THE
23 RESULT OF THAT FIRST INITIAL TEST YOU DID?

24 A THE AREAS OF THE HANDS -- WELL, THREE OF THE FOUR
25 AREAS OF THE HANDS WERE WHAT WE CALL POSITIVE FOR THE

JOHN BARRON - DIRECT BY CROFT

1 METALS THAT ARE CONSISTENT WITH GUNSHOT RESIDUE. THOSE
2 INCLUDED THE RIGHT BACK REGION, THE LEFT PALM AND THE LEFT
3 BACK REGIONS.

4 Q OKAY. AND FROM THERE -- NOW, ONCE YOU HAVE THAT
5 CONCLUSIVE TEST, MOVE ON TO THE MORE SPECIFIC TESTS?

6 A CORRECT.

7 Q OKAY. IS THAT WHAT YOU DID IN THIS CASE?

8 A YES, I DID.

9 Q WHAT WERE THE RESULTS OF THAT EXAM?

10 A OKAY. ONCE THE METALS ARE FOUND, THEN WE TAKE THE
11 ALUMINUM DISK THAT HAS ADHESIVE ON IT, THEN WE SUBJECT IT
12 TO SCANNING ELECTRON MICROSCOPE. THE SCANNING ELECTRON
13 MICROSCOPE ACTUALLY THEN SEARCHES FOR A GUN PRIMER
14 PARTICLE.

15 THIS IS A ROUND PARTICLE THAT CONTAINS THE
16 ELEMENTS BARIUM, ANTIMONIUM AND LEAD. IN THIS SEARCH WITH
17 THE SCALE ELECTRON MICROSCOPE, I WAS ABLE TO FIND A ROUND
18 LEAD PARTICLE ON THE RIGHT BACK REGION.

19 Q OKAY.

20 A THE OTHER -- THE LEFT PALM AND BACK I DID NOT FIND
21 ANY PARTICLES.

22 Q OKAY. WHAT IS SIGNIFICANT ABOUT THE ROUND LEAD
23 PARTICLES BEING FOUND ON THE HAND AS FAR AS COMPARED TO
24 JUST ANY OTHER METALS?

25 A WELL, THE -- WHEN THE GUN IS FIRED, THE TREMENDOUS

JOHN BARRON - DIRECT BY CROFT

1 HEAT AND VAPOR HEAT AND PRESSURE VAPORIZES THESE METALS,
2 AND AS THEY CONDENSE, THEY CONDENSE IN A SPHERICAL SHAPE.
3 SO THE SIGNIFICANCE IS THAT BECAUSE IT WAS ROUND, IT'S
4 STRONGLY INDICATED IT CAME FROM GUNSHOT RESIDUE AS OPPOSED
5 TO A NON-ROUND LEAD PARTICLE THAT WOULD BE PICKED UP IF
6 SOMEONE WERE HANDLING A LEAD OBJECT.

7 Q OKAY. NOW, YOU SAY THAT WHEN THIS CLOUD FORMS, THE
8 LEAD IS IN A CONDENSED STATE, KIND OF LIKE A RAIN DROP.
9 WOULD THAT BE A SIMILAR WAY THAT IT CONDENSES INTO A ROUND
10 SHAPE?

11 A EXACTLY, EXACTLY. THAT'S WHAT HAPPENS WITH WATER.
12 WHEN RAIN FORMS, IT CONDENSES AS WATER VAPOR CONDENSES,
13 THE NATURE, YOU KNOW, MOST CONVENIENT SHAPE IS SPHERICAL
14 AND THE SAME THING HAPPENS IN THIS -- THIS CASE AS WELL.
15 IT'S GUNSHOT RESIDUE.

16 Q OKAY. NOW, YOU PERFORMED -- YOU WERE ALSO PROVIDED
17 WITH A SHIRT; IS THAT RIGHT?

18 A YES.

19 Q OKAY. I'M GOING TO SHOW YOU WHAT IS MARKED AS
20 STATE'S EXHIBIT NUMBER 19. DO YOU RECOGNIZE THIS ITEM?

21 A YES, THIS IS THE BLUE AND YELLOW SHORT SLEEVE SHIRT
22 THAT I RECEIVED FOR GUNPOWDER TESTING.

23 Q OKAY. AND YOU PERFORMED SOME TESTS ON THAT ALSO,
24 SOME OF THE TESTS THAT YOU WERE DESCRIBING HERE EARLIER;
25 IS THAT RIGHT?

JOHN BARRON - DIRECT BY CROFT

1 A CORRECT. THIS WOULD BE THE OTHER TYPE OF GUNSHOT
2 RESIDUE, THE GUNPOWDER RESIDUE WHICH WOULD BE THE DISTANCE
3 DETERMINATION THAT I WAS TALKING ABOUT EARLIER.

4 Q OKAY. WHAT WERE YOUR RULES OF THAT EXAMINATION AS
5 FAR AS YOU HANDLED IT?

6 A WHEN WE LOOK AT A GARMENT, WE LOOK FOR HOLES THAT
7 WOULD BE CONSISTENT WITH GUNSHOT WOUND. IN THIS CASE I
8 FOUND THE HOLE IN THE CHEST REGION THAT APPEARED TO BE A
9 GUNSHOT HOLE. I PERFORMED THE CHEMICAL TESTING ON THAT
10 AND DEVELOPED A PATTERN OF GUNPOWDER RESIDUE AROUND THIS
11 HOLE.

12 Q OKAY.

13 A SO I CONCLUSIVELY PROVED THAT THE HOLE WAS INDEED A
14 GUNSHOT HOLE AND THAT IT WAS -- THE GUN WAS CLOSE ENOUGH
15 WHEN IT WAS FIRED TO LEAVE A POWDER RESIDUE PATTERN. NOW,
16 THE SIGNIFICANT THING ABOUT THAT IS THAT AFTER YOU GET A
17 CERTAIN DISTANCE AWAY, THE PATTERN WILL FALL OFF.

18 SO THESE PARTICLES ARE COMING OUT THE END OF THE
19 BARREL IN A ROUND CIRCULAR KIND OF A SHAPE, BUT AS YOU GET
20 FURTHER AWAY, THEY DISPERSE AND EVENTUALLY THEY WILL
21 DISPERSE AWAY AND WILL NOT LEAVE ANY PATTERN ON THE
22 SHIRT. SO IF YOU FIND A PATTERN ON THE SHIRT THAT
23 INDICATES THAT IT WAS A RELATIVELY CLOSE SHOT.

24 Q AND WERE YOUR FINDINGS EVER TURNED OVER TO ANY OTHER
25 SLED AGENTS SO THEY COULD PERFORM FURTHER TESTS ON THIS

JOHN BARRON - CROSS BY WRIGHT

1 THAT YOU KNOW OF?

2 A CORRECT. I DID NOT RUN ANY -- RUN ANY TEST FIRING OF
3 THE WEAPON TO SEE WHAT KIND OF PATTERNS THE WEAPON WOULD
4 PRODUCE. LATER ON AFTER I TRANSFERRED TO THE DNA
5 DEPARTMENT THEN AGENT JOE POWELL, WHO WAS STILL IN THE
6 TRACE EVIDENCE DEPARTMENT, AT LATER APPEARED, LATER TIME
7 ACTUALLY TEST FIRED THE WEAPON TO DETERMINE WHAT KIND OF
8 DISTANCES WOULD GIVE PATTERN THAT WAS DEVELOPED ORIGINALLY
9 BY MYSELF.

10 Q OKAY.

11 MR. CROFT: COURT'S INDULGENCE ONE MOMENT.

12 (WHEREUPON THERE WAS A PAUSE).

13 Q PLEASE ANSWER ANY QUESTIONS MR. WRIGHT MAY HAVE.

14 THE COURT: ALL RIGHT. MR. WRIGHT?

15 CROSS-EXAMINATION BY MR. WRIGHT:

16 Q HOW ARE YOU DOING, MR. BARRON? YOU DID A REPORT ON
17 OCTOBER 15TH, 1998 OF GIVING THE RESULTS OF YOUR
18 EXAMINATION; IS THAT CORRECT?

19 A MY COPY SAYS OCTOBER 9TH.

20 Q WELL, YOUR SIGNATURE, WHERE YOUR SIGNATURE IS.

21 A OH, OKAY. YEAH. I SEE, IT WAS PREPARED ON OCTOBER
22 9TH AND I ACTUALLY SIGNED THE REPORT ON OCTOBER 15TH, YOU
23 ARE CORRECT.

24 Q OKAY. AND IN THAT EXAMINATION YOU STATED THAT THE
25 ANALYSIS FOR THE GUNSHOT WAS RESIDUE LEFT PALM AND BACK

JOHN BARRON - CROSS BY WRIGHT

1 REGIONS WERE -- WHAT WERE THEY?

2 A I STATED THEY WERE INCONCLUSIVE. THE REASON I STATED
3 THAT IS BECAUSE EVEN THOUGH THE FIRST TEST THE METALS WAS
4 POSITIVE, THE SECOND TEST FOR THE ACTUAL VISUALIZATION OF
5 PRIMER PARTICLES WITH THE SCAN ELECTRON MICROSCOPE WAS
6 NEGATIVE.

7 IN OTHER WORDS, I DID NOT FIND ANY PARTICLES,
8 BUT IT IS NOT UNCOMMON TO FIND THE METALS POSITIVE AND THE
9 PARTICLES NEGATIVE. IN SUCH A CASE WE JUST CALL IT
10 INCONCLUSIVE. WE DON'T WANT TO CONCLUDE ONE WAY OR THE
11 OTHER BECAUSE ONE OF THE TEST WAS POSITIVE AND ONE WAS
12 NEGATIVE.

13 Q ALL RIGHT. AND ON THE RIGHT PALM REGION YOU SAID
14 THAT THERE WAS NO INDICATION OF GUNSHOT RESIDUE; IS THAT
15 CORRECT?

16 A CORRECT, THE RIGHT PALM REGION WAS --

17 Q OKAY.

18 A -- WAS NEGATIVE TO BEGIN WITH. IN OTHER WORDS, WHEN
19 I RAN THE METAL TEST TO START WITH WITH THE SWAB, IT WAS
20 NEGATIVE.

21 Q OKAY. SO FOR THE RIGHT PALM REGION, THE RIGHT HAND,
22 IT WAS NEGATIVE ON BOTH TESTS?

23 A WELL, IT WAS NEGATIVE ON THE FIRST TEST. IT WAS
24 NEGATIVE ON THE FIRST TEST, WE DON'T WANT TO RUN THE
25 SECOND. WE KNOW THAT'S GOING TO BE NEGATIVE AS WELL.

JOHN BARRON - CROSS BY WRIGHT

1 Q OKAY. AND IN YOUR REPORT YOU ALSO STATED THAT THERE
2 WAS ONE LEAD PARTICLE FOUND ON ONE REGION; IS THAT
3 CORRECT?

4 A CORRECT, ONE -- I FOUND ONE LEAD PARTICLE ON THE
5 RIGHT BACK REGION.

6 Q OKAY.

7 A AND THESE PARTICLES ARE EXTREMELY SMALL AND THE
8 DETENTION LIMITS OF THE INSTRUMENT MAY NOT PICK UP
9 PARTICLES THAT ARE SMALLER AND ALSO THE PARTICLES ARE
10 BEGINNING TO DISSIPATE BECAUSE OF THE NATURAL ABSORPTION
11 OF THE SKIN, SO MANY TIMES -- WELL, IT'S NOT -- IT WOULD
12 NOT BE SURPRISING TO ME IF SOMEONE WERE TO FIRE A WEAPON
13 AND OVER A PERIOD OF TIME A PERSON ESPECIALLY SWEATING
14 PROFUSELY -- BECAUSE SWEAT IS ACIDIC, IT'S GOING TO BEGIN
15 TO DISSOLVE THE PARTICLES -- TO FIND THE METALS TO BE
16 POSITIVE AND THEN TURN AROUND AND SEARCH FOR THE PARTICLES
17 SCAN, THE ELECTRON MICROSCOPE AND SEE THAT MOST IF NOT ALL
18 OF THEM HAVE DISAPPEARED.

19 Q SO THESE PARTICLES -- IS THERE ANY OTHER WAY THAT
20 THEY COULD BE PRESENT OTHER THAN FROM THIS PERSON ACTUALLY
21 FIRING THE GUN?

22 A THE ROUND LEAD PARTICLES?

23 Q YES.

24 A IT HAS TO BE PRODUCED. THE ROUND LEAD PARTICLE HAS
25 TO BE PRODUCED BY THE VAPORIZING BY A LOT OF HEAT AND

JOHN BARRON - CROSS BY WRIGHT

1 PRESSURE. OF COURSE, LEAD DOES NOT VAPORIZE EASILY, YOU
2 KNOW, IT'S A METAL. HAVE TO HAVE A LOT OF HEAT, HAVE TO
3 HAVE A LOT OF PRESSURE. AND SO THE MOST COMMON WAY TO DO
4 THAT IS WITH SHOOTING A WEAPON.

5 Q IS IT POSSIBLE THAT THIS COULD BE DONE WITH CONTACT
6 WITH THAT WEAPON AFTER IT WAS FIRED?

7 A ON THE RIGHT BACK?

8 Q ANYWHERE. COULD THOSE PARTICLES BE PRODUCED AND IF A
9 PERSON CONTACTED A WEAPON AFTER THE FACT, IS IT POSSIBLE
10 THAT THE PARTICLE WOULD BE ON THE HAND?

11 A RIGHT. I THINK YOU'RE ASKING IF THE WEAPON HAD BEEN
12 FIRED EARLIER AND PARTICLES WERE ON THE GUN THEN SOMEONE
13 HANDLED THE GUN PICKED UP A PARTICLE?

14 Q YEAH, SECONDS LATER OR MINUTES.

15 A RIGHT. YES, THAT'S CERTAINLY POSSIBLE. BUT
16 TYPICALLY WHEN YOU HANDLE A WEAPON, YOU PICK UP PARTICLES
17 ON THE PALM OF THE HAND AS OPPOSED TO THE BACK OF THE
18 HAND.

19 Q BUT SO THAT DEPENDS ON THE TYPE OF CONTACT, CORRECT?

20 A YES, BUT TYPICALLY THOUGH YOU PICK IT UP WITH THE
21 PALM OF YOUR HAND.

22 Q IF YOU PICK IT UP?

23 A CORRECT.

24 Q ALSO IS IT POSSIBLE -- YOU SAID THAT THE RESIDUE
25 DISPERSES. IF YOU ARE IN A CERTAIN AREA, IS IT POSSIBLE

JOHN BARRON - CROSS BY WRIGHT

1 THAT YOU WOULD GET RESIDUE ON YOU IF YOU DID NOT FIRE THE
2 WEAPON?

3 A YES, THAT'S ANOTHER POSSIBLE WAY TO GET RESIDUE IS TO
4 BE IN CLOSE ENOUGH PROXIMITY TO THE WEAPON WHEN IT GOES
5 OFF.

6 Q OKAY. DO YOU ONCE -- I GUESS GENERALLY ONCE THE AREA
7 THAT RESIDUE WOULD DISPERSE, HOW MANY INCHES OR FEET OR
8 HOW MANY, COULD YOU LET US KNOW THAT?

9 A WELL, THAT DEPENDS UPON THE WEAPON.

10 Q OKAY.

11 A AND THE WEAPON WOULD HAVE TO BE TEST FIRED, BUT WE --
12 AS FAR AS I KNOW, UNLESS THEY ARE DOING SOMETHING IN THE
13 LAST TWO YEARS, THERE IS NO TEST TO DETERMINE THE EXTENT
14 OF THE SMOKE CLOUD. IT'S VERY HARD TO DETECT.

15 Q SO IT'S A SMOKE CLOUD THAT IF WE WERE THERE VISUALLY
16 WE COULDN'T SEE IT, CORRECT?

17 A YOU MIGHT SEE SOME OF IT.

18 Q BUT NOT ENTIRELY?

19 A YOU WOULDN'T SEE ENTIRELY ALL OF IT, NO.

20 Q SO BASICALLY--

21 A IT ALSO DEPENDS UPON THE LIGHTING AND EVERYTHING IN
22 THE ROOM AS WELL.

23 Q SO BASICALLY IF SOMEONE IS IN THE AREA OR IF SOMEONE
24 HANDLES THE GUN, EVEN IF THEY DID NOT FIRE THE GUN, THEY
25 CAN GET GUNSHOT RESIDUE ON THEM, CORRECT?

JOHN BARRON - CROSS BY WRIGHT

1 A IT'S POSSIBLE, YES.

2 Q OKAY. IF A PERSON FIRES A GUN, IS IT LIKELY THAT
3 THEY WOULD HAVE A GOOD AMOUNT OF RESIDUE ON THEIR HANDS?

4 A AGAIN IT DEPENDS UPON THE WEAPON AND THE TIME FRAME
5 AND IT DEPENDS UPON WHAT THEY DID FROM THE TIME THEY SHOT
6 THE GUN AND BETWEEN THE TIME THAT THE ACTUAL SWABS WERE
7 TAKEN. PEOPLE CAN WIPE THEIR HANDS, PARTIALLY WASH THEIR
8 HANDS, REMOVE PART OF THE MATERIAL.

9 IF THE WEAPON IS A SMALL CALIBER WEAPON, IT MAY
10 NOT DEPOSIT A LOT OF MATERIAL. IF ENOUGH TIME PASSES, THE
11 MATERIAL DISSIPATES NATURALLY THROUGH SKIN ABSORPTION AND
12 ALSO THROUGH JUST, YOU KNOW, PUTTING YOUR HANDS IN YOUR
13 POCKET, RUB IT OFF. IT'S LIKE A FINE POWDER, IF YOU WILL.
14 EVENTUALLY YOU CAN RUB THE POWDER OFF.

15 Q SO IN MR. KEVIN CHOICE'S HANDS, THE ONLY THING YOU
16 FOUND, ONLY PARTICLE WAS ONE ROUND PARTICLE AND THAT'S ONE
17 MICROSCOPIC LITTLE PARTICLE, CORRECT?

18 A THAT'S CORRECT, BUT THAT'S ATYPICAL OF THIS TEST IS
19 WE FIND THE METALS THERE AND THEN WE SEARCH, AND IN MANY
20 CASES WE ONLY FIND ONE OR TWO PARTICLES.

21 Q OKAY. METALS CAN BE PRESENT BECAUSE OF DIFFERENT
22 FACTORS, CORRECT? NOT JUST GUNSHOTS, CORRECT?

23 A WELL, THE -- WHEN THE COMBINATION OF THE METALS WERE
24 THERE, IT STRONGLY INDICATED THE GUNSHOT RESIDUE. IF WE
25 WERE TO FIND A HIGH LEVEL OF ONE OR TWO, ONE OF THE METALS

JOHN BARRON - CROSS BY WRIGHT

1 AND NOT THE OTHERS, THEN IT WOULD NOT INDICATE GUNSHOT
2 RESIDUE OR WOULD NOT GO TO THE SEARCH FOR THE GUNPOWDER,
3 GUNSHOT RESIDUE PARTICLES.

4 Q BUT IN ANY CASE, IF YOUR REPORT THAT YOU GAVE IN
5 1998, YOU STATED THAT THE LEFT HAND WAS INCONCLUSIVE, THE
6 RIGHT HAND, THE RIGHT PALM REGION WAS NEGATIVE, CORRECT?

7 A RIGHT.

8 Q SO THE ONLY POSITIVE REGION WAS THERE WAS ONE
9 PARTICLE ON THE OUTSIDE OF HIS RIGHT HAND; IS THAT
10 CORRECT?

11 A ON THE BACK OF THE RIGHT HAND WAS ONE ROUND LEAD
12 PARTICLE.

13 Q OKAY.

14 A BUT ALSO THE SWABS CONTAINED OTHER METALS THAT ARE
15 CONSISTENT WITH GUNSHOT RESIDUE AS WELL.

16 Q OKAY. WHICH CAN BE DEPOSITED EVEN IF HE DIDN'T FIRE
17 THE WEAPON, CORRECT?

18 A IT IS POSSIBLE THAT IF YOU ARE CLOSE ENOUGH TO THE
19 WEAPON WHEN IT GOES OFF THAT YOU CAN GET SOME OF THIS
20 RESIDUE ON YOUR HANDS.

21 Q ONE OTHER QUESTION. WAS THE CASE FOR MR. CHOICE AND
22 MR. ROSE WHO IS DECEASED, DID YOU RECEIVE ANY OTHER KITS
23 REGARDING THIS PARTICULAR CASE?

24 A NO. I RECEIVED A KIT FROM KEVIN CHOICE AND TONY ROSE
25 AND NO ONE ELSE.

JOHN BARRON - REDIRECT BY CROFT

1 Q OKAY.

2 MR. WRIGHT: NO FURTHER QUESTIONS, YOUR HONOR.

3 THE COURT: ANY REDIRECT?

4 MR. CROFT: YES, SIR, YOUR HONOR.

5 REDIRECT EXAMINATION BY MR. CROFT:

6 Q HE ASKED YOU ABOUT THE KITS THAT YOU RECEIVED, ONE
7 FROM TONY ROSE AND ONE FROM KEVIN CHOICE, KIT FROM TONY
8 ROSE WAS NEGATIVE AS TO ALL FOUR; IS THAT CORRECT?

9 A THAT'S CORRECT.

10 Q AND ONE THING I THINK YOU NEED, BE HELPFUL TO EXPLAIN
11 HE WAS ASKING ABOUT THE THREE METALS THAT WOULD HAVE TO BE
12 PRESENT ON THAT FIRST TEST BEFORE YOU CAN GO ANY FURTHER.
13 THOSE ARE ALL CONSISTENT WITH GUNSHOT RESIDUE, CORRECT?

14 A THAT'S CORRECT.

15 Q OKAY.

16 A AS A MATTER OF FACT, SOME -- SOMETIMES PEOPLE SUBMIT
17 ONLY THE SWABS WHICH IS -- WOULD BE ONLY THE METAL TEST.
18 THIS IS DONE OFTEN WHEN THEY DON'T USE OUR KIT AND IT'S
19 COMMON KNOWLEDGE UPON POLICE INVESTIGATORS THAT THE
20 GUNSHOT RESIDUE KIT INVOLVES THE ACIDIC SWABS.

21 THAT HAS BEEN AROUND LONGER THAN THE SCANNING
22 ELECTRON MICROSCOPE TEST. AND SO WE WILL REPORT ON THE
23 BASIS OF THAT TEST ONLY METALS CONSISTENT WITH GUNSHOT
24 RESIDUE. SO IN THE CASE OF THE LEFT PALM AND LEFT BACK, I
25 DID FIND METALS CONSISTENT WITH GUNSHOT RESIDUE, BUT I DID

JOHN BARRON - REDIRECT BY CROFT

1 NOT FIND A CONFIRMATION PARTICLE.

2 AND I BELIEVE I EXPLAINED THAT IT IS POSSIBLE TO
3 FIND METALS CONSISTENT WITH GUNSHOT RESIDUE IN AN ACTUAL
4 GUNSHOT CASE AND THE PARTICLES WILL DISAPPEAR OR NOT BE
5 DETECTED.

6 Q WHAT MAKES THIS TEST UNIQUE IS THAT ALL THREE ARE
7 PRESENT, CORRECT, ALL THREE OF THE METALS YOU REFERRED TO?

8 A RIGHT, THE THREE METALS THAT WE ARE CONCERNED WITH
9 ARE BARIUM, ANTIMONIUM AND LEAD.

10 Q OKAY.

11 A LEAD AND ANTIMONIUM IN PARTICULAR ARE MORE RARE THAN
12 BARIUM. BARIUM IS FAIRLY COMMON. LIKE I SAID, BARIUM IS
13 PRESENT IN MOST CONTACTS, EVEN MALES COME IN CONTACT WITH
14 COSMETICS. POWDERS AND LOTIONS WOULD HAVE BARIUM.

15 Q AND IS IT CONSISTENT WITH YOUR TESTIFYING IS THAT IF
16 SOMEBODY FIRES A WEAPON WITH THEIR RIGHT HAND, THOSE LEAD
17 PARTICLES ARE MOST LIKELY GOING TO END UP ON THE BACK OF
18 THEIR HAND AND NOT ON THE PALM?

19 A IF SOMEONE IS HOLDING A WEAPON AND FIRES IT, THEN
20 OBVIOUSLY THE PALM IS NOT NEARLY AS EXPOSED TO THE BACK.
21 AND I HAVE ACTUALLY TEST FIRED WEAPONS ON NUMEROUS
22 OCCASIONS AND DETECTED PARTICLES ON THE BACK OF MY HAND
23 AND NOT ON THE PALM OF MY HAND .

24 MR. CROFT: NOTHING FURTHER, YOUR HONOR.

25 THE COURT: ALL RIGHT. YOU CAN COME DOWN.

JOE POWELL - DIRECT BY CROFT

1 (WHEREUPON THE WITNESS LEFT THE STAND).

2 THE COURT: CALL YOUR NEXT WITNESS.

3 MR. CROFT: THE STATE WOULD CALL JOE POWELL.

4 (WITNESS IN COURTROOM)

5 JOE POWELL, BEING FIRST DULY SWORN,
6 TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION BY MR. CROFT:

8 Q TELL US HOW YOU'RE EMPLOYED IF YOU WOULD, MR.
9 POWELL.

10 A I'M CURRENTLY EMPLOYED AS A SUPERVISOR OVER THE TRACE
11 EVIDENCE SECTION AT THE SOUTH CAROLINA LAW ENFORCEMENT
12 DIVISION COMMONLY KNOWN AS SLED.

13 Q OKAY. HOW LONG HAVE YOU BEEN THERE?

14 A APPROXIMATELY 20 YEARS.

15 Q OKAY. SO AS A SUPERVISOR, IN 1998 WAS JOHN BARRON
16 ONE OF THE PEOPLE WORKING UNDER YOU?

17 A YES, SIR, HE WAS.

18 Q OKAY. AND YOU'RE STILL WORKING IN THAT CAPACITY?

19 A YES, SIR, I AM.

20 Q OKAY. TELL US A LITTLE BIT ABOUT YOUR DUTIES IN THAT
21 CAPACITY.

22 A I'M CURRENTLY RESPONSIBLE FOR BOTH ISSUES INVOLVING
23 PERSONNEL AS FAR AS HIRING AND DEALING WITH TRAINING OF
24 THOSE PERSONNEL. I'M ALSO INVOLVED WITH MEDICAL
25 DEVELOPMENT THE DEPARTMENT DEALING WITH VARIOUS TYPES OF

JOE POWELL - DIRECT BY CROFT

1 INSTRUMENTS AND TESTS THAT WE WILL BE PERFORMING.

2 I TAKE ON THE CASE LOAD AS WELL AS OTHER
3 ANALYSTS WHERE I TAKE THIS EVIDENCE, ANALYZE IT, ISSUE A
4 REPORT AND COME TO COURT AND TESTIFY AS TO MY FINDINGS.

5 Q AND DID YOU DOING THAT SORT OF WORK IN 1998 YOU SAID
6 ALSO?

7 A YES, SIR, I WAS.

8 Q AND TELL US A LITTLE BIT ABOUT YOUR EDUCATIONAL
9 BACKGROUND AND TRAINING SPECIFICALLY TO TRACE EVIDENCE AND
10 GUNSHOT RESIDUE.

11 A YES, SIR. I ORIGINALLY RECEIVED MY BACHELORS OF
12 SCIENCE DEGREE IN CHEMISTRY FROM THE UNIVERSITY OF
13 SOUTHERN MISSISSIPPI. AFTER RECEIVING MY DEGREE IN
14 CHEMISTRY, I CAME TO SOUTH CAROLINA AND BECAME EMPLOYED AT
15 SLED.

16 ORIGINALLY I WAS WORKING IN WHAT'S CALLED THE
17 DRUG EVIDENCE SECTION WHICH INVOLVED BOTH TRACE EVIDENCE
18 AND DRUG ANALYSIS. AFTER COMPLETING MY INITIAL IN-HOUSE
19 TRAINING PROGRAM, I BEGAN TO PERFORM ANALYSIS ON BOTH DRUG
20 ANALYSIS AND DEALING WITH TRACE EVIDENCE.

21 OVER THE PAST 20 YEARS I HAVE ATTENDED NUMEROUS
22 SCHOOLS AROUND THE COUNTRY SPECIFICALLY RELATED TO TRACE
23 EVIDENCE ANALYSIS WHICH INVOLVE UNDERSTANDING BETTER THE
24 CHEMISTRY, THE SCIENCE BEHIND IT, OTHER ISSUES.

25 IN THE PAST FIVE TO SIX YEARS, I HAVE HAD THE

JOE POWELL - DIRECT BY CROFT

1 OPPORTUNITY TO PARTICIPATE AS A GUEST LECTURER IN VARIOUS
2 ISSUES INVOLVING THE TRACE EVIDENCE WHERE I HAVE TAUGHT
3 OTHER -- OTHER SCIENTISTS IN THE AREA DEALING WITH TRACE
4 EVIDENCE AND HOW TO BE ABLE TO APPLY THE SCIENCE.

5 Q OKAY. HAVE YOU TESTIFIED PREVIOUSLY IN REFERENCE TO
6 TRACE EVIDENCE GUNSHOT RESIDUE?

7 A YES, SIR, I HAVE.

8 Q ABOUT HOW MANY TIMES WOULD YOU SAY?

9 A WELL, I HAVE TESTIFIED OVER 600 TIMES IN TOTAL OF
10 WHICH AN AREA OF GUN PRIMER. GUNSHOT RESIDUE I HAVE
11 TESTIFIED APPROXIMATELY 200 TIMES.

12 Q QUALIFIED AS AN EXPERT IN THESE CASES?

13 A YES, SIR, I HAVE.

14 Q OKAY.

15 MR. CROFT: YOUR HONOR, WE WOULD MOVE MR. POWELL BE
16 ADMITTED AS AN EXPERT IN TRACE EVIDENCE GUNSHOT RESIDUE.

17 THE COURT: ANY OBJECTION, MR. WRIGHT?

18 MR. WRIGHT: NO OBJECTION.

19 THE COURT: WITHOUT OBJECTION.

20 (WHEREUPON QUESTIONING RESUMED).

21 Q WE HAVE ALREADY HAD GUNSHOT RESIDUE EXPLAINED TO US
22 IN GENERAL. AND YOU HAVE HAD A CHANCE TO REVIEW WHAT MR.
23 BARRON, HIS FINDINGS IN THIS CASE; IS THAT RIGHT?

24 A THAT IS CORRECT.

25 Q OKAY. AND DID YOU USE SOME OF THOSE FINDINGS IN

JOE POWELL - DIRECT BY CROFT

1 COMING UP WITH YOUR OWN FINDINGS IN THIS CASE IN A LATER
2 TEST?

3 A YES, SIR. I WAS REQUESTED TO BE ABLE TO PERFORM
4 WHAT'S CALLED A DISTANCE DETERMINATION. THIS IS A TEST
5 WHICH INFORMS TO DETERMINE HOW FAR AWAY A WEAPON IS FROM A
6 TARGET TO FORM THE DISTANCE IF YOU WILL. AT THE TIME OF
7 THE REQUEST I PULLED THE REPORT AND LOOKED AND FOUND THERE
8 HAD BEEN A PATTERN FOUND ON THE GARMENT.

9 I TOOK THAT PATTERN AND I THEN TOOK, SUBMITTED
10 AMMUNITION IN THE WEAPON AND I TEST FIRED TO SEE IF I
11 COULD DETERMINE HOW FAR AWAY OR HOW -- AT WHAT POINT THIS
12 PATTERN WOULD BE PRODUCED.

13 Q OKAY.

14 MR. CROFT: MAY I APPROACH THE WITNESS, YOUR HONOR?

15 Q I'M GOING TO SHOW YOU WHAT HAS BEEN ADMITTED INTO
16 EVIDENCE AS STATE'S EXHIBITS NUMBER 12, 3 AND 4. DO YOU
17 RECOGNIZE THESE ITEMS?

18 A YES. WHAT HAS BEEN LISTED AS STATE'S EXHIBIT NUMBER
19 12 IS A WEAPON THAT I WAS SHOOTING. IT BEARS MY INITIALS
20 ON THE STOCK. ALSO I RECEIVED STATE'S EXHIBIT 14 WHICH IS
21 A HEAT SEALED POUCH, IT BEARS MY INITIALS AND ALSO STATE'S
22 EXHIBIT NUMBER 13 WHICH IS A MAGAZINE WHICH WAS USED IN
23 CORRELATION WITH THIS WEAPON.

24 Q OKAY.

25 MR. CROFT: COURT'S INDULGENCE JUST ONE MOMENT.

JOE POWELL - DIRECT BY CROFT

1 (WHEREUPON THERE WAS A PAUSE) .

2 (STATE'S EXHIBIT NO. 20 AND 21 MARKED FOR
3 IDENTIFICATION) .

4 (WHEREUPON QUESTIONING RESUMED) .

5 Q NOW, GOING TO SHOW YOU WHAT HAS BEEN MARKED FOR
6 IDENTIFICATION PURPOSES AS STATE'S EXHIBIT 20 AND 21. ASK
7 YOU IF YOU RECOGNIZE THOSE ITEMS.

8 A YES, SIR. WHAT IS LISTED AS STATE'S EXHIBIT NUMBER 1
9 IS CALLED AN OINTMENT TIN OR FOR SHORT TIN. INSIDE HERE
10 IS GOING TO BE THE SPENT CASINGS THAT WAS GENERATED WHEN
11 WE WERE DOING OUR TEST FIRING. THE HEAT SEALED POUCH
12 BEARING THE LABEL STATE'S EXHIBIT 20 CONTAINS WITHIN IT A
13 PIECE OF CLOTH THAT WE CUT AWAY FROM THE ORIGINAL GARMENT
14 TO USE AS A SAMPLE TO SHOOT INTO TO BE ABLE TO DO THIS
15 TEST.

16 Q OKAY. AND ONE LAST ITEM I WANT TO SHOW YOU IS MARKED
17 STATE'S EXHIBIT NUMBER 19 FOR IDENTIFICATION. DO YOU
18 RECOGNIZE THAT?

19 A YES, SIR, I DO RECOGNIZE THE GARMENT. AT THE TIME IT
20 WAS CONTAINED WITHIN A LARGER CARDBOARD BOX, BUT THIS IS
21 THE ORIGINAL GARMENT THAT THIS SAMPLE, STATE'S NUMBER 20,
22 WAS TAKEN FROM.

23 Q OKAY. TELL US ABOUT HOW THE CHAIN OF CUSTODY WORKS
24 AT SLED AND HOW -- SPECIFICALLY HOW IT WORKED IN THIS CASE
25 AS TO THOSE ITEMS OF EVIDENCE THAT WERE BROUGHT TO YOU

JOE POWELL - DIRECT BY CROFT

1 THAT YOU HAVE IN FRONT OF YOU.

2 A YES, SIR. EVIDENCE IS TAKEN TO OUR LABORATORY,
3 INITIALLY BROUGHT TO WHAT'S CALLED THE LOG-IN SECTION.
4 THIS IS WHERE WE HAVE PERSONNEL WHICH ENTER IN THE DATA
5 INVOLVING THE CASE, SUCH AS SUBJECT'S NAME, VICTIM'S NAME,
6 INFORMATION SUCH AS INCIDENT DATE, THINGS LIKE THIS.

7 ONCE IT HAS BEEN ENTERED INTO THE SYSTEM, THE
8 EVIDENCE CAN EITHER HAVE BEEN EITHER DIRECTLY TURNED OVER
9 TO THE ANALYST OR PLACED INTO AN EVIDENCE VAULT TO LATER
10 BE PICKED UP. IN THIS CASE I BELIEVE THAT I WENT DOWN TO
11 PICK UP THE EVIDENCE. LET ME VERIFY THAT, SIR.

12 YES, SIR. I BELIEVE THIS EVIDENCE BROUGHT TO
13 OUR LABORATORY, I PICKED IT UP, I TOOK IT UP INTO MY AREA,
14 KEPT IT THERE UNTIL I FINISHED WITH THE ANALYSIS AND THEN
15 RETURNED THE EVIDENCE BACK.

16 Q OKAY. WERE YOU THE ONLY PERSON WHO UNSEALED THESE
17 ITEMS WHEN YOU RECEIVED THEM?

18 A YES, SIR. WHEN THESE EVIDENCE WERE SUBMITTED TO ME,
19 THEY WERE CONTAINED WITHIN THE SEALED ENVELOPES IN A
20 SEALED BOX. THEY REMAINED SEALED UNTIL I OPENED THE SEAL,
21 REMOVED THE EVIDENCE FROM INSIDE, RAN MY TESTS, PLACED
22 THEM BACK IN THESE CONTAINERS AND SEALED THEM UP.

23 Q OKAY. TELL US IF YOU WOULD ABOUT THE TEST THAT YOU
24 DID WITH THESE ITEMS AND WHAT THE RESULTS WERE.

25 A YES, SIR. AS DESCRIBED EARLIER, THIS TEST IS LOOKING

JOE POWELL - DIRECT BY CROFT

1 TO SEE HOW FAR AWAY MATERIAL IS DEPOSITED FROM THAT
2 WEAPON. THIS WEAPON HERE, WHICH IS STATE'S EXHIBIT NUMBER
3 12, AS IT'S FIRED THERE IS MATERIAL WHICH IS BEING THRUST
4 OUT OF THE FRONT OF THIS WEAPON.

5 IT WILL COME OUT IN A CONE-LIKE FASHION. IF YOU
6 ARE STANDING FAIRLY CLOSE TO THIS WEAPON, THIS MATERIAL
7 WILL DEPOSIT ITSELF ONTO THE GARMENT. AS YOU MOVE FURTHER
8 AND FURTHER AWAY, LESS AND LESS OF THE MATERIAL WILL BE
9 DEPOSITED TILL THERE WILL BE NO MATERIAL AT ALL
10 DEPOSITED.

11 IN THIS CASE TESTING THIS WEAPON AND USING THE
12 -- INITIALLY SUBMITTED IN THE CASE, I DETERMINED THAT THE
13 DISTANCE THIS WEAPON WAS FROM THE PATTERN I COMPARED TO
14 WAS BETWEEN CONTACT AND 12 INCHES. THAT MEANS AT THE END
15 OF THIS BARREL WAS FROM LITTLE FURTHER AWAY THAN CONTACT
16 ALL THE WAY UP TO 12 INCHES.

17 Q OKAY. AND LET ME ASK YOU THIS. THIS IS THE SAME
18 SORT OF GUNSHOT RESIDUE THAT YOU MIGHT FIND ON SOMEBODY'S
19 HANDS OR SOMEWHERE ELSE. THIS WAS DEPOSITED ON THE SHIRT?

20 A NO, SIR. THE MATERIAL THAT'S DEPOSITED ON THE
21 GARMENT IS A SPECIFIC COMPONENT FOUND WITHIN THE BULLET
22 WHICH IS CALLED GUNPOWDER. THE MATERIAL THAT YOU SEE ON
23 THE HANDS IS GOING TO BE MATERIAL WHICH IS CALLED GUN
24 PRIMER MIXED IN WITH RESIDUE THAT'S -- OFF THE BULLETS
25 BEING FIRED DOWN THE WEAPON.

JOE POWELL - DIRECT BY CROFT

1 WE CALL THAT MATERIAL GUNSHOT RESIDUE, SO YOU
2 HAVE GUNPOWDER AND GUNSHOT ON THE HANDS.

3 Q ALL RIGHT. NOW, WHAT IS DEPOSITED ON THE HANDS IS
4 CONSIDERED ALL ENESEN (SIC), IN OTHER WORDS YOU CAN REMOVE
5 EASILY. IS IT SIMILAR TO WHAT IS FOUND ON THE SHIRT?

6 A THE SHIRT CAN BE REMOVED, BUT NOT AS EASILY. THE
7 MATERIAL ON THE HANDS, THE GUNSHOT RESIDUE, IS VERY
8 FRAGILE. IT'S VERY SIMILAR TO FLOUR SO IT'S EASILY
9 REMOVED EITHER DIRECTLY BY WASHING YOUR HANDS OR
10 UNINTENTIONALLY IF BY JUST NORMAL ACTIVITY WITHIN SIX
11 HOURS MATERIAL IS LOST.

12 THE ONLY EXCEPTION TO THAT IS IF SOMEONE HAS
13 DIED AT WHICH POINT THERE IS NO LONGER ANY LOSS OF
14 MATERIAL TO BE RETAINED UNTIL SOMEONE PHYSICALLY REMOVES
15 THIS MATERIAL. IN THE CASE OF GUNPOWDER, AS IT COMES OUT,
16 IT'S HOT, IT'S STICKY AND IT TENDS TO STICK TO THE
17 GARMENT.

18 SO IF YOU CAN REMOVE IT BY TAKING AND
19 AGGRESSIVELY SHAKING THE GARMENT SUCH AS -- AND KNOCKING
20 OFF THE PARTICLES, BUT IN MOST CASES THEY TEND TO ADHERE.
21 ALSO WE ARE LOOKING FOR HOW MUCH LEAD IS BEING DEPOSITED.
22 THE LEAD ITSELF IS EXTREMELY STICKY AND DOES NOT COME OFF
23 EVEN WITH SOME MILD WASHING.

24 IF YOU PUT INTO THE VERY AGGRESSIVE DETERGENT
25 WITH A VERY AGGRESSIVE WASHING MACHINE, YOU CAN REMOVE IT

JOE POWELL - CROSS BY WRIGHT

1 BETTER.

2 Q OKAY. LET ME ASK YOU THIS. THIS TEST THAT YOU DONE,
3 THAT WAS DONE VERY RECENTLY; WASN'T IT?

4 A YES, SIR IT WAS.

5 Q OKAY. IT WASN'T DONE AT THE SAME TIME AS THE REST OF
6 THESE TESTS?

7 A THAT IS CORRECT.

8 Q MORE FOLLOW-UP TEST?

9 A WELL, THE REQUEST CAME TO ME AND I ACTUALLY COMPLETED
10 THE TEST ON THE FIRST OF THIS MONTH.

11 Q OKAY. WOULD THAT IN ANY WAY EFFECT THE TEST
12 FINDINGS?

13 A NO, SIR. AS LONG AS THE GARMENT HAS NOT GONE THROUGH
14 ANY TYPE OF ABNORMAL TREATMENT, THEN THE TEST IS STILL A
15 VALID TEST. IF HOWEVER SOMEONE TAKES THIS GARMENT AND HAD
16 WASHED IT OR DONE SOME ACTIVITY TO IT, THEN YES, IT WOULD
17 HAVE ADVERSELY AFFECTED THE RESULTS.

18 Q OKAY.

19 MR. CROFT: COURT'S INDULGENCE ONE MOMENT.

20 (WHEREUPON THERE WAS A PAUSE).

21 MR. CROFT: ANSWER ANY QUESTIONS MR. WRIGHT MAY
22 HAVE.

23 THE WITNESS: YES, SIR.

24 CROSS-EXAMINATION BY MR. WRIGHT:

25 Q HOW ARE YOU DOING, MR. POWELL?

JOE POWELL - CROSS BY WRIGHT

1 A JUST FINE, AND YOU?

2 Q ALL RIGHT. YOU STATED THAT THE RESIDUE OR THE
3 POWDER, THE GUNPOWDER GOES FORWARD BASICALLY TOWARDS THE
4 -- IN A CONE-LIKE FASHION?

5 A YES, SIR, THAT IS CORRECT.

6 Q OKAY. IS GUN RESIDUE ALSO CONTAINED IN THAT GUN?

7 A GUN PRIMER? YES, SIR, YOU HAVE A CERTAIN AMOUNT OF
8 RESIDUE WHICH IS ALSO PROJECTED TOWARD WHICH IS CALLED THE
9 GUN PRIMER RESIDUE. IT WILL BE THE SMOKE THAT YOU SEE
10 COMING OUT OF A GUN.

11 Q AND THE RESIDUE IS ACTUALLY SPREAD OVER A LARGER AREA
12 THAN THE FORWARD AREA; IS THAT CORRECT?

13 A IF I UNDERSTAND YOUR QUESTION CORRECTLY, NOT
14 EXACTLY. THE RESIDUE THAT COMES OUT HAS WHAT'S CALLED GUN
15 PRIMER OR THE POWDER. ONCE IT COMES OUT OF THE WEAPON, IT
16 SPREADS OUT FASTER THAN THE GUNPOWDER. THE GUNPOWDER WILL
17 TEND TO STAY TOGETHER AND CONE OUT AS IT GOES OUT
18 FURTHER.

19 THE SMOKE AS IT COMES OUT OF THE WEAPON TENDS TO
20 SLOW DOWN VERY QUICKLY AND WILL STOP. THE GUNPOWDER IN
21 MOST CASES, NOT ALWAYS, WILL TEND TO GO BEYOND THAT POINT
22 TO DEPOSIT ON A TARGET BEFORE IT FALLS AWAY.

23 Q OKAY. AND YOU STATED THAT REGARDING INDIVIDUAL OR
24 GARMENTS THAT LEAD PARTICLES ARE NOT AS EASY AS THE OTHER
25 PARTICLES TO GET OFF?

JOE POWELL - CROSS BY WRIGHT

1 A THE LEAD VAPOR ON THE GARMENT I WAS DESCRIBING WHEN
2 IT COMES OUT OF THE WEAPON BEING SHOT AT SOMEONE IT'S HAVE
3 STILL VERY MOLTEN AND VERY STICKY AND WILL ADHERE TO THE
4 FABRIC. WHAT YOU ARE DESCRIBING FOR EXAMPLE FROM SHOOTING
5 A WEAPON ON THE HANDS, THESE PARTICLES AS THEY COME AROUND
6 WILL COOL TO THE POINT WHERE THEY ARE ACTUALLY SET ON THE
7 SURFACE -- AND NOT ACTUALLY STICK TO THE SKIN, SO THEY ARE
8 MUCH EASIER TO REMOVE.

9 Q OKAY. DO YOU HAVE ANY IDEA OF THE GENERAL AREA IF
10 SOMEONE FIRED A WEAPON THAT POWDER OR RESIDUE WOULD BE
11 PRESENT?

12 A OR...

13 Q THAT PARTICULAR TYPE OF WEAPON, FOR THAT PARTICULAR
14 WEAPON?

15 A WELL, YES, SIR. WE TESTED THIS WEAPON WITH THE
16 AMMUNITION UP CLOSE TO DETERMINE BASED UPON THE PATTERN WE
17 HAD THAT'S WHERE THE DEPOSIT. IN MOST CASES THIS WEAPON
18 WILL DEPOSIT MATERIAL UP TO THREE, MAYBE FOUR FEET AT THE
19 MOST. IF YOU HAVE A VERY LARGE CALIBER WEAPON, IT WILL GO
20 FURTHER BECAUSE IT'S MORE ENERGY. IN A SMALL CALIBER
21 WEAPON SUCH AS A 22, MAY BE MUCH CLOSER. I HAVE HAD A --
22 LIKE A SHOTGUN PROJECT AS MUCH AS 15 FEET.

23 Q OKAY. AND YOU SAID IN THIS PARTICULAR INCIDENT YOU
24 -- AS FAR AS YOUR ANALYSIS, YOUR BELIEFS ARE THAT THE
25 PERSON WHO FIRED THIS WEAPON WAS WITHIN 12 INCHES OF THE

JOE POWELL - REDIRECT BY WRIGHT

1 VICTIM?

2 A WELL, THE WEAPON WAS WITHIN CONTACT OF 12 INCHES.
3 REMEMBER, AND IF I MAY, THIS WEAPON ITSELF IS THE STARTING
4 POINT, NOT THE PERSON.

5 Q UH-HUH.

6 A I CAN HAVE THE GUN UP CLOSE OR I CAN HAVE THE GUN
7 PUSHED FAR AWAY, BUT THE END OF THIS BARREL TO THE TARGET
8 WAS BETWEEN CONTACT AND 12 INCHES.

9 Q OKAY.

10 MR. WRIGHT: NO FURTHER QUESTIONS, YOUR HONOR.

11 MR. CROFT: JUST HAVE ONE BRIEF QUESTION, YOUR HONOR.

12 REDIRECT EXAMINATION BY MR. CROFT:

13 Q HE ASKED YOU ABOUT DEPOSITING OF MATERIAL AND YOU --
14 YOU WERE REFERRING TO THE GUNPOWDER COMING OUT OF THE END
15 OF THE WEAPON.

16 THE COURT: NO, LET'S LET HIM ANSWER THE QUESTION,
17 NOW. HE IS YOUR WITNESS.

18 Q EXPLAIN TO ME IF YOU WOULD WHEN YOU EXPLAINED TO HIM
19 ABOUT THE GUNPOWDER OR THE GUN, YEAH GUNPOWDER COMING OUT
20 OF THE GUN, EXPLAIN THAT AND HOW IT IS IN REFERENCE TO THE
21 GUNSHOT RESIDUE AND HOW THEY ARE DIFFERENT.

22 A YES, SIR. GUNPOWDER IS ONE OF THE COMPONENTS THAT IS
23 FOUND WITHIN THE CARTRIDGE CASE ITSELF. YOU TAKE A
24 CARTRIDGE CASE AND YOU TEAR IT APART, YOU WILL FIND THE
25 VERY BACK OF IT A LITTLE SMALL SILVER OBJECT WHICH

JOE POWELL - REDIRECT BY WRIGHT

1 CONTAINS SOMETHING CALLED GUN PRIMER.

2 THIS MATERIAL IS SHOCK SENSITIVE. THIS IS WHAT
3 THE HAMMER OF THE GUN STRIKES TO BE ABLE TO START THIS
4 EXPLOSION. IN A SEPARATE CHAMBER OF THE BULLET YOU WILL
5 FIND FLECKS OF SMALL RAY LOOKING FLECKS, COULD BE ROUND OR
6 FLAT OR VARIOUS SHAPES, THAT'S CALLED GUNPOWDER.

7 THEN YOU HAVE THE BULLETS ITSELF, AND ALL OF
8 THIS IS CHAMBERED WITHIN THE CARTRIDGE CASE. WHEN THAT
9 HAMMER STRIKES THE BACK OF THE BULLET, THE GUN PRIMER
10 IGNITES FROM THE SHOT BEING HIT, WHICH THEN LIGHTS THE
11 GUNPOWDER. ALL OF THIS, BOTH THE GUN PRIMER AND THE
12 GUNPOWDER, PUSHES THE BULLET OUT OF THE WEAPON.

13 AS THE BULLET IS BEING PUSHED OUT OF THE WEAPON,
14 WHAT HAPPENS IS IS THAT THE BULLET WILL GO TOWARDS THE
15 TARGET, THE GUNPOWDER WILL FOLLOW THE BULLET, IT WILL COME
16 OUT AS A CONE. THE GUN PRIMER IS JUST COMING OUT WILL
17 ALSO MIX IN WITH BITS AND PIECES OF BULLET THAT ARE BEING
18 BURNED OFF AS IT'S GOING DOWN THE BARREL TO FORM WHAT WE
19 ARE CALLING GUNSHOT RESIDUE.

20 GUNSHOT RESIDUE IS A LARGER CLASSIFICATION
21 INCLUDING GUN PRIMER, BITS AND PIECES OF LEAD AND OTHER
22 DEBRIS THAT MAYBE GENERATED BY SHOOTING THIS WEAPON.

23 Q WHEN YOU SAID YOU HAVE SEEN UP TO 15 FEET, WHICH ONE
24 OF THOSE ARE YOU REFERRING TO, GUNPOWDER?

25 A WOULD BE GUNPOWDER. I HAVE SEEN GUNPOWDER PROJECTED

JOE POWELL - REDIRECT BY WRIGHT.

1 BY A SHOTGUN UP TO 15 FEET. A LARGER GUN CAN BE PROJECTED
2 EVEN FURTHER.

3 Q AND HOW ABOUT GUNSHOT RESIDUE, IS IT--

4 A GUNSHOT RESIDUE NORMALLY IS SMALLER THAN THAT BECAUSE
5 IT COMES OUT AS A VERY FINE POWDER. AND THE MOMENT IT
6 STRIKES THE ATMOSPHERE, IT JUST STOPS. IT HANGS IN FRONT
7 OF THE WEAPON. YOU CAN SEE IT WHENEVER YOU SHOOT A
8 WEAPON, YOU SEE THAT LITTLE CLOUD FORM AROUND IT AND THAT
9 IS GUNSHOT RESIDUE. IT COMES OUT AND JUST STOPS.

10 Q NOTHING FURTHER.

11 THE COURT: YOU CAN COME DOWN. YOU ARE FREE TO GO.

12 THE WITNESS: THANK YOU, SIR.

13 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN. LET'S
14 TAKE ABOUT A TEN MINUTE BREAK. GO TO YOUR JURY ROOM.
15 PLEASE DON'T DISCUSS THE CASE. WE WILL COME BACK AND
16 CONTINUE.

17 (WHEREUPON THE JURY LEFT THE COURTROOM AT 11:08 A.M.)

18 (WHEREUPON THE WITNESS LEFT THE STAND).

19 THE COURT: ALL RIGHT. LET'S TAKE ABOUT TEN MORE
20 MINUTES.

21 (WHEREUPON A BRIEF RECESS WAS TAKEN).

22 THE COURT: ALL RIGHT. YA'LL READY? WHERE'S THE
23 LAWYER?

24 MR. CROFT: RIGHT OUTSIDE THE DOOR. WILL YOU GET MR.
25 WRIGHT?

IRENE CULICK - DIRECT BY CROFT

1 THE COURT: ALL RIGHT. BRING THE JURY BACK, PLEASE.
2 (MR. WRIGHT IN COURTROOM).

3 (WHEREUPON JURY ENTERED THE COURTROOM AT 11:29
4 A.M.).

5 THE COURT: THANK YOU. ALL RIGHT. MR. CROFT, CALL
6 YOUR NEXT WITNESS.

7 MR. CROFT: THE STATE WOULD CALL IRENE CULICK.

8 IRENE CULICK, BEING FIRST DULY SWORN,
9 TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION BY MR. CROFT:

11 Q MRS. CULICK, CAN YOU TELL US HOW YOU'RE EMPLOYED?

12 A I'M A POLICE OFFICER FOR THE CITY OF SUMTER.

13 Q AND YOU'RE A PATROLWOMAN NOW, POLICE DEPARTMENT?

14 A YES.

15 Q HOW LONG HAVE YOU BEEN WITH THE POLICE DEPARTMENT IN
16 ONE CAPACITY OR ANOTHER?

17 A THREE YEARS.

18 Q OKAY. BEFORE YOU BECAME A PATROLWOMAN, IN WHAT
19 CAPACITY WERE YOU WORKING WITH THE POLICE DEPARTMENT?

20 A I WAS THE EVIDENCE CUSTODIAN FOR THE CITY OF SUMTER
21 POLICE DEPARTMENT.

22 Q WERE YOU THE EVIDENCE CUSTODIAN BACK IN SEPTEMBER OF
23 1998?

24 A YES, SIR, I WAS.

25 Q OKAY. AND DID YOU HANDLE SOME ITEMS OF EVIDENCE IN

IRENE CULICK - DIRECT BY CROFT

1 REFERENCE TO THE KEVIN CHOICE CASE?

2 A YES, I DID.

3 Q ALL RIGHT. I'M GOING TO ASK YOU ABOUT EACH OF THE
4 ITEMS I BELIEVE YOU HANDLED. IF YOU WOULD TELL ME WHAT
5 YOU DID WITH THOSE ITEMS, HOW THEY CAME INTO YOUR
6 POSSESSION, WHAT YOU MAY HAVE DONE WITH THEM.

7 A OKAY.

8 Q FIRST I'D LIKE TO SHOW YOU WHAT HAS BEEN MARKED AS
9 STATE'S EXHIBIT NUMBER 12 BEEN ADMITTED INTO EVIDENCE. DO
10 YOU RECOGNIZE THAT?

11 A YES, I DO.

12 Q OKAY. AND ALONG WITH THAT ARE STATE'S EXHIBITS 13
13 AND 14 ALSO ADMITTED INTO EVIDENCE. DO YOU RECOGNIZE
14 THOSE ITEMS?

15 A YES, SIR, I DO.

16 Q OKAY. DID THEY COME INTO YOUR POSSESSION AT SOME
17 POINT?

18 A YES, SIR, THEY DID. AS WAS TESTIFIED TO PREVIOUSLY,
19 WE HAVE EVIDENCE LOCKERS, SO IF I'M NOT AVAILABLE FOR
20 OFFICERS TO TURN EVIDENCE DIRECTLY OVER TO ME, TO KEEP ME
21 FROM BEING CALLED OUT EVERY NIGHT, EVERY TIME AN OFFICER
22 GETS EVIDENCE, WE HAVE EVIDENCE LOCKERS THAT THEY CAN
23 PLACE THEIR EVIDENCE IN AND LOCK IT.

24 NO ONE ELSE HAS ACCESS TO IT EXCEPT FOR MYSELF
25 AND MY SUPERVISOR. SO WHEN I COME IN, THE FIRST THING I

IRENE CULICK - DIRECT BY CROFT

1 DO IS GO AND CHECK THE EVIDENCE LOCKERS. WHEN I CHECK THE
2 EVIDENCE LOCKERS THAT MORNING, THESE ITEMS THAT THE GUN,
3 THE CLIP AND THE BULLETS WERE PLACED IN THE EVIDENCE
4 LOCKER AND I RECEIVED THEM FROM THERE.

5 Q OKAY. DID YOU REMOVE THEM FROM THE LOCKER?

6 A YES, SIR, I DID.

7 Q WHAT DID YOU DO WITH THEM AT THAT POINT?

8 A I TOOK THEM INTO THE EVIDENCE ROOM AND LOGGED THEM
9 IN.

10 Q OKAY. DID YOU EVER HAVE THE OPPORTUNITY TO TAKE THEM
11 ANYWHERE?

12 A YES, SIR. THEY WERE SIGNED OUT. I BELIEVE MR.
13 WRIGHT WAS ASKING EARLIER ABOUT KEN NESBITT FINGERPRINTING
14 THESE AND WHEN THAT WAS. I SIGNED THEM OUT TO LIEUTENANT
15 NESBITT ON THE 8TH OF SEPTEMBER.

16 THEY WERE PLACED BACK INTO EVIDENCE ON THE 8TH
17 OF SEPTEMBER FROM LIEUTENANT NESBITT. HE ONLY HAD THEM
18 LONG ENOUGH TO PROCESS THEM AND HAND THEM RIGHT BACK TO ME
19 THE SAME DAY.

20 Q OKAY. AND FROM THERE DID YOU TAKE THESE ITEMS
21 ANYWHERE?

22 A YES. FROM THERE LIEUTENANT NESBITT WANTED THEM SENT
23 TO SLED FOR ANALYSIS, SO ON THE 10TH OF SEPTEMBER I TOOK
24 THEM TO SLED. WHEN I TAKE EVIDENCE TO SLED, IT IS
25 PACKAGED AND SEALED IN MY PRESENCE.

IRENE CULICK - DIRECT BY CROFT

1 AND WHEN I INITIAL A SEAL AND DATE THE SEAL, SO
2 THAT WAY WHEN THE AGENT THAT IS GOING TO BE ASSIGNED TO
3 COMES DOWN AND PICKS THE EVIDENCE UP, THEY CAN SEE THAT
4 IT'S BEEN SEALED BY ME AND THAT NO ONE HAS TAMPERED WITH
5 THE EVIDENCE.

6 Q WAS THAT DONE WITH THIS CASE IN YOUR PRESENCE?

7 A YES, IT WAS.

8 Q OKAY. NOW, I WANT TO SHOW YOU WHAT HAS BEEN MARKED
9 FOR IDENTIFICATION PURPOSES AS STATE'S EXHIBITS 15 AND 16
10 AND ASK IF YOU RECOGNIZE THESE ITEMS.

11 A YES, SIR. THESE ARE THE TWO GSR KITS THAT I RECEIVED
12 FROM THE EVIDENCE LOCKER THAT DETECTIVE MARK ROSENSTEEL
13 PLACED INTO EVIDENCE.

14 Q OKAY.

15 A THESE ITEMS WERE TAKEN IN, LOGGED IN AND THEY WERE
16 SENT TO SLED ON THE SAME DATE THAT I SENT THE GUN, THE
17 BULLETS, THE CLIP. THAT WAS ON THE 10TH OF SEPTEMBER.

18 Q SO--

19 A AND WHEN I TOOK THIS TO SLED, IT WAS HANDLED THE SAME
20 WAY, IT WAS PACKAGED, IT WAS SEALED WITH EVIDENCE TAPE, MY
21 INITIALS WERE PLACED ON IT, THE DATE WAS PLACED ON IT.
22 AND THEN IT'S HELD FOR THE AGENT THAT'S ASSIGNED THE CASE
23 TO COME AND PICK IT UP.

24 Q OKAY. AND SO WHEN YOU SAY THAT YOU GOT THAT OUT OF
25 AN EVIDENCE LOCKER, THAT'S THE SAME SORT OF LOCKER YOU GOT

IRENE CULICK - DIRECT BY CROFT

1 THE GUN OUT OF THAT ONLY YOU HAVE ACCESS TO?

2 A CORRECT.

3 Q OKAY.

4 A IF AN OFFICER WAS TO PUT SOMETHING IN SAY OH, I
5 NEEDED TO PUT SOMETHING ELSE, THEY COULD NOT GAIN ACCESS
6 TO IT AGAIN. THEY WOULD HAVE TO USE ANOTHER LOCKER.

7 Q OKAY. I'M GOING TO SHOW YOU NOW WHAT HAS BEEN MARKED
8 AS STATE'S EXHIBITS 17 AND 18 AND ASK IF YOU RECOGNIZE
9 THESE ITEMS.

10 A YES, SIR, I DO.

11 Q OKAY. HOW DO YOU RECOGNIZE THOSE ITEMS?

12 A I RECOGNIZE THIS ITEM AS BEING ONE THAT WAS GIVEN TO
13 ME FROM LIEUTENANT NESBITT. HE TURNED THIS OVER TO ME.
14 THIS IS WHAT HE COLLECTED AT THE SCENE. THIS EVIDENCE WAS
15 TAKEN TO SLED BY SERGEANT NESBITT. HE WENT TO THE
16 AUTOPSY.

17 Q SO YOU -- ITEM NUMBER 17, STATE'S EXHIBIT 17, YOU
18 DIDN'T ACTUALLY INITIALLY DELIVER?

19 A NO, SIR, THAT WAS LIEUTENANT NESBITT.

20 Q OKAY. AS TO ITEM 15, WERE THE SAME PROCEDURES
21 FOLLOWED THAT YOU JUST REFERRED TO?

22 A STATE'S EXHIBIT 18?

23 Q EXCUSE ME, 18.

24 A YES, SIR.

25 Q OKAY. AND THAT WAS SEALED IN YOUR PRESENCE AT SLED

IRENE CULICK - DIRECT BY CROFT

1 WHEN YOU DELIVERED IT?

2 A YES, SIR, IT WAS.

3 Q OKAY. AND FINALLY I WANT TO SHOW YOU WHAT IS MARKED
4 STATE'S EXHIBIT NUMBER 19. DO YOU RECOGNIZE THAT ITEM?

5 A YES, SIR. THIS IS ALSO A SHIRT THAT LIEUTENANT
6 NESBITT -- THESE TWO ITEMS WERE TURNED INTO EVIDENCE BY
7 LIEUTENANT NESBITT. THESE ARE TWO THAT I HAD TAKEN THE
8 SAME DATE, THE 10TH OF SEPTEMBER, THEY WERE PLACED IN
9 PACKAGES, SEALED WITH MY INITIALS AND DATE.

10 Q OKAY. IN YOUR PRESENCE?

11 A YES, SIR.

12 Q OKAY.

13 A I SEALED THEM, SIGNED MY NAME, DATED IT.

14 Q AND LET ME ASK YOU THIS. WERE ALL OF THESE ITEMS
15 RETURNED TOGETHER TO YOU AT SOME POINT OR DID YOU RETRIEVE
16 THEM? HOW DID THAT WORK?

17 A ITEMS ARE RETURNED AT DIFFERENT TIMES BECAUSE THEY
18 ARE ASSIGNED TO DIFFERENT AGENTS. WHEN THE AGENTS GET
19 THROUGH WITH THE EVIDENCE, THEY TURN IT BACK INTO LOG-IN.
20 I FREQUENTED SLED A LOT, USUALLY EVERY WEEK EVERY OTHER
21 WEEK. TAKING EVIDENCE AND THEY WOULD LET ME KNOW IF THERE
22 WAS EVIDENCE TO BE PICKED UP AND THEY WOULD HAND ME THE
23 EVIDENCE THAT WAS SEALED BY THE AGENT THAT HANDLED THE
24 CASE.

25 I WOULD MAKE SURE IT WAS SEALED, NOT OPENED,

IRENE CULICK - DIRECT BY CROFT

1 NOTHING TAMPERED WITH, AND THEN I WOULD SIGN FOR THE
2 EVIDENCE AND BRING IT BACK AND PLACE IT INTO EVIDENCE THE
3 EVIDENCE ROOM.

4 Q SO WITH EACH ITEM OF EVIDENCE THAT YOU HAVE THERE IN
5 FRONT OF YOU THAT WE HAVE JUST DISCUSSED, YOU RECEIVED
6 THOSE AND CHECKED THAT THEY WERE ALL SEALED BY THE PERSON
7 WHO ACTUALLY EXAMINED THEM, THE SLED AGENTS THAT HAVE
8 TESTIFIED?

9 A CORRECT.

10 Q OKAY. AND WHAT DID YOU DO WITH THOSE ITEMS ONCE YOU
11 RECEIVED THEM?

12 A I LOGGED THEM BAG INTO THE COMPUTER AND THEN I PLACED
13 THEM ON A SHELF IN A CERTAIN BINS AND STORAGE TO HOLD
14 UNTIL IT'S TIME TO COME TO TRIAL. ALL OF THESE ITEMS WERE
15 TURNED OVER TO MR. JORDAN IN SEPTEMBER WHEN I LEFT TO GO
16 TO THE ACADEMY.

17 Q SEPTEMBER?

18 A SEPTEMBER OF 2000. THAT'S WHEN I SWITCHED OVER AS A
19 POLICE OFFICER AND WENT TO THE ACADEMY.

20 Q OKAY. SO THE JOB OF EVIDENCE CUSTODIAN SWITCHED
21 HANDS?

22 A YES, IT DID. ALL EVIDENCE WAS TURNED OVER TO MR.
23 JORDAN AT THAT TIME ALONG WITH ALL KEYS AND ENTRANCE TO
24 AND ACCESS TO ALL THE EVIDENCE.

25 Q OKAY.

IRENE CULICK - CROSS BY WRIGHT

1 MR. CROFT: COURT'S INDULGENCE ONE SECOND.

2 (WHEREUPON THERE WAS A PAUSE).

3 MR. CROFT: NOTHING FURTHER, YOUR HONOR.

4 THE COURT: ALL RIGHT. MR. WRIGHT, YOU GOT ANY
5 QUESTIONS?

6 MR. WRIGHT: YES, SIR, YOUR HONOR.

7 CROSS-EXAMINATION BY MR. WRIGHT:

8 Q DO YOU HAVE THE ACTUAL SIGN-IN OR LOG-IN SHEET FOR
9 THE EVIDENCE?

10 A YES, SIR, I DO.

11 Q MIND IF I TAKE A LOOK AT IT?

12 A NO, I DON'T. WHICH ONE WOULD YOU LIKE?

13 Q FOR THE...

14 A OKAY.

15 Q OKAY. AND WHO DID YOU RECEIVE THE WEAPON FROM
16 ORIGINALLY?

17 A I RECEIVED THE WEAPON FROM THE EVIDENCE LOCKER.

18 Q OKAY. AND WHO?

19 A IT WAS TURNED INTO THE EVIDENCE LOCKER FROM PHILLIP
20 MCCOY.

21 Q OKAY. IF SOMEONE WANTS TO DO SOME TESTS ON THE
22 WEAPON AND THEY WANT TO SIGN IT OUT, DO THEY HAVE TO
23 CONTACT YOU FIRST OR -- HOW DO THEY GET ACCESS?

24 A YES, SIR.

25 Q CONTACT YOU?

IRENE CULICK - CROSS BY WRIGHT

1 A YES, SIR.

2 Q AND THEN YOU--

3 A THE PEOPLE, USUALLY WHEN I RECEIVE EVIDENCE -- AND I
4 WORK CLOSELY WITH THE FORENSICS DIVISION. AT THAT TIME IT
5 WAS LIEUTENANT NESBITT. I SIGNED THE GUN OUT TO
6 LIEUTENANT NESBITT ON THE 8TH.

7 HE DID HIS TESTING, RETURNED IT BACK TO ME ON
8 THE 8TH AND HE IS THE ONE WHO INSTRUCTED ME TO SEND IT TO
9 SLED. THAT'S WHY IT SAYS TO SLED FIREARMS TO HAVE IT
10 ANALYZED. I DO NOT MAKE THESE DECISIONS.

11 Q OKAY. DID ANYONE ELSE ASK TO SEE THE WEAPON OR ANY
12 OF THE OTHER EVIDENCE OTHER THAN MR. NESBITT?

13 A NO, SIR.

14 Q OKAY. AND YOU SAID ONLY YOU AND YOUR SUPERVISOR HAVE
15 ACCESS?

16 A YES, SIR.

17 Q WHO IS YOUR--

18 A NOT--

19 Q WHO IS YOUR SUPERVISOR AT THE TIME?

20 A AT THE TIME IT WAS CAPTAIN DALE ATKINSON.

21 Q OKAY.

22 A THAT'S IN CASE OF AN EMERGENCY OR I WAS IN AN
23 ACCIDENT OR KILLED, SOMEBODY ELSE HAS TO HAVE ACCESS.

24 Q AND ONE MORE QUESTION.

25 A YES, SIR.

CARL JORDAN - DIRECT BY CROFT

1 Q WHEN WERE YOU NOTIFIED THAT YOU WOULD HAVE TO BE HERE
2 FOR THIS CASE?

3 A I'M NOT SURE. NOTIFIED THAT I HAD TO COME TESTIFY?

4 Q YES, MA'AM.

5 A I'M NOT SURE OF THE DATE, RECENTLY.

6 Q OKAY.

7 MR. WRIGHT: NO FURTHER QUESTIONS, YOUR HONOR.

8 THE COURT: ANY REDIRECT?

9 MR. CROFT: NO, SIR, YOUR HONOR.

10 THE COURT: ALL RIGHT. YOU CAN COME DOWN.

11 THE WITNESS: THANK YOU.

12 (WHEREUPON THE WITNESS LEFT THE STAND).

13 THE COURT: CALL YOUR NEXT WITNESS.

14 MR. CROFT: THE STATE WOULD CALL CARL JORDAN.

15 CARL JORDAN, BEING FIRST DULY SWORN,
16 TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION BY MR. CROFT:

18 Q TELL ME AGAIN, MR. JORDAN, TELL US HOW YOU'RE
19 EMPLOYED NOW.

20 A I'M EMPLOYED WITH THE SUMTER POLICE DEPARTMENT
21 CURRENTLY AS EVIDENCE CUSTODIAN.

22 Q OKAY. HOW LONG HAVE YOU BEEN WITH THE POLICE
23 DEPARTMENT?

24 A SINCE 1989.

25 Q OKAY. AND WHEN DID YOU BECOME THE EVIDENCE

CARL JORDAN - DIRECT BY CROFT

1 CUSTODIAN?

2 A SEPTEMBER OF 2000.

3 Q OKAY. AND THE DAY THAT YOU CAME, BECAME EVIDENCE
4 CUSTODIAN WHEN YOU TOOK OVER CONTROL OF ALL THE ITEMS OF
5 EVIDENCE IN THE EVIDENCE LOG-IN ROOM THAT IRENE CULICK
6 TURNED OVER TO YOU; IS THAT RIGHT?

7 A YES, SIR, I DID.

8 Q OKAY. AND YOU RECENTLY TOOK SOME OF THOSE ITEMS THAT
9 WE REFERRED HERE TO SLED; IS THAT RIGHT?

10 A YES, SIR.

11 Q OKAY. WHAT IS BEFORE YOU IS STATE'S EXHIBIT NUMBERS
12 12, 13 AND 14 WHICH HAS BEEN MOVED INTO EVIDENCE. ALSO
13 STATE'S EXHIBIT NUMBER 19 FOR IDENTIFICATION PURPOSES
14 BEFORE YOU. DO YOU RECOGNIZE ALL OF THESE ITEMS?

15 A YES, SIR, I DO.

16 Q ARE THOSE THE ITEMS THAT YOU TOOK TO SLED?

17 A YES, SIR, I DID.

18 Q OKAY. AND WHEN--

19 A YES, SIR.

20 Q AND DO YOU REMEMBER WHEN YOU DID THAT?

21 A YES, SIR, 12 -- FEBRUARY 21ST, 2001.

22 Q OKAY. AND ARE THOSE THE ONLY ITEMS OF EVIDENCE AS
23 RELATES TO THIS CASE THAT YOU SPECIFICALLY HANDLED OTHER
24 THAN BRINGING THEM ALL HERE THIS WEEK?

25 A YES. YES, SIR, THAT IS, THAT'S CORRECT.

CARL JORDAN - DIRECT BY CROFT

1 Q AND YOU TOOK THOSE TO SLED; IS THAT RIGHT?

2 A YES, SIR, I DID.

3 Q OKAY. WHAT DID YOU DO WHEN YOU TOOK THEM TO SLED?

4 A I TOOK THEM UP THERE, THEN I -- I BASICALLY PACKAGES,
5 SIR, THAT I FOUND THEM IN AND AT THE LOG-IN PART OF SLED.
6 THE WEAPON, THE SHIRT WERE PUT IN A BOXES BY SLED AND SAID
7 THE BOX WITH THE SHIRT IS RIGHT THERE BEHIND YOU AND ALSO
8 THE ENVELOPE THAT SLED SEALED THE GUN, THE BULLETS, THE
9 MAGAZINE IN IS CURRENTLY BEHIND YOU ALSO. THEY SEALED
10 THEM, I SIGNED THEM AND THAT WAS IT.

11 Q SO ALL OF THOSE ITEMS WERE SEALED IN YOUR PRESENCE?

12 A YES, SIR, THEY WERE.

13 Q OKAY.

14 A AND THE TAPE, THE EVIDENCE TAPE THAT WAS PUT OVER THE
15 PACKAGES, I SIGNED, INITIALED AND DATED THEM.

16 Q OKAY. AND DID YOU EVENTUALLY GO RETRIEVE THESE ITEMS
17 OF EVIDENCE?

18 A YES, SIR, I DID.

19 Q OKAY. I'M GOING TO SHOW YOU ALSO WHAT'S MARKED AS
20 STATE'S EXHIBITS 12 AND 20. WERE THOSE PART OF WHAT YOU
21 RETRIEVED ALSO?

22 A YES, SIR, THEY WERE.

23 Q OKAY. WHY ARE THERE ADDITIONAL ITEMS, CAN YOU
24 EXPLAIN THAT?

25 A THE WEAPON WAS TEST FIRED, SWATCHES FROM THE SHIRT

CARL JORDAN - DIRECT BY CROFT

1 THAT THE GUN WAS FIRED AGAINST. THIS IS THE REASON FOR
2 THE ADDITIONAL MATERIAL, AND THIS IS THE PROJECTILE HERE
3 THAT WAS RECOVERED.

4 Q SO THE PROJECTILE IS THE FIRED BULLETS THAT YOU
5 TURNED OVER TO THEM UNFIRED?

6 A YES, SIR.

7 Q AND THAT PIECE OF MATERIAL HAS BEEN CUT OUT OF THE
8 ORIGINAL SHIRT?

9 A YES, SIR.

10 Q OKAY. AND WHAT DID YOU DO ONCE YOU RECEIVED THOSE
11 AGAIN?

12 A BROUGHT THEM BACK INTO SUMTER, LOGGED THEM INTO THE
13 COMPUTER AND FOR THE EXCEPTION OF THIS RED PIECE OF
14 PLASTIC IN HERE, THEY ARE THE SAME. I JUST INSTALLED
15 THESE WHEN THEY'RE IN COURT.

16 Q PEN TOP IN THERE TO KEEP IT OPEN?

17 A YES, SIR.

18 Q OKAY.

19 A TO INDICATE THAT IT'S UNLOADED AND SAFE.

20 Q AND ALL OF THOSE ITEMS HAVE BEEN IN YOUR CUSTODY
21 SINCE YOU RETRIEVED THEM?

22 A YES, SIR, THEY HAVE.

23 Q OKAY.

24 MR. CROFT: COURT'S INDULGENCE FOR JUST ONE SECOND.

25 (WHEREUPON THERE WAS A PAUSE).

CARL JORDAN - CROSS BY WRIGHT

1 Q ONE LAST QUESTION. THOSE -- WHEN YOU RECEIVED THEM
2 FROM SLED, THEY ALL HAD BEEN SEALED BY AGENT JOE POWELL
3 WHO IS THE PERSON WHO TESTED THEM, RIGHT?

4 A YES, SIR, THEY WERE.

5 Q ANSWER ANY QUESTIONS MR. WRIGHT MAY HAVE.

6 THE COURT: GOT ANY QUESTIONS, MR. WRIGHT?

7 MR. WRIGHT: YES, SIR.

8 CROSS-EXAMINATION BY MR. WRIGHT:

9 Q MR. JORDAN, WHEN DID YOU RECEIVE THOSE BACK FROM
10 SLED?

11 A LAST FRIDAY, SIR.

12 Q LAST FRIDAY? EVERYTHING INCLUDING?

13 A YES, SIR WITH THE ADDITION OF WHEN THEY HAD TO CUT
14 AWAY THE SWATCH FROM THE SHIRT AND THE ROUNDS THAT -- THE
15 ROUNDS THAT WAS FIRED AS FAR AS THE TEST, THE LAST TEST
16 THAT WAS CONDUCTED.

17 Q THAT WAS THIS PAST FRIDAY LAST WEEK?

18 A YES, SIR.

19 MR. WRIGHT: NO FURTHER QUESTIONS, JUDGE.

20 MR. CROFT: NO REDIRECT, YOUR HONOR.

21 THE COURT: ALL RIGHT. YOU CAN COME DOWN.

22 THE WITNESS: THANK YOU, SIR.

23 THE COURT: CALL YOUR NEXT WITNESS.

24 MR. CROFT: THE STATE WOULD CALL DAVID COLLINS.

25 DAVID COLLINS, BEING FIRST DULY SWORN,

DAVID COLLINS - DIRECT BY WRIGHT

1 TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION BY MR. CROFT:

3 Q MR. COLLINS, TELL US WHAT YOUR OCCUPATION IS.

4 A I'M EMPLOYED BY THE SOUTH CAROLINA LAW ENFORCEMENT
5 DIVISION COMMONLY KNOWN AS SLED. THERE I'M EMPLOYED AS A
6 FIREARMS TOOLMARKS EXAMINER IN FORENSIC SERVICES
7 LABORATORY.

8 Q OKAY. AND HOW LONG HAVE YOU BEEN WITH SLED?

9 A I'VE BEEN WITH SLED APPROXIMATELY 11 YEARS NOW.

10 Q OKAY. AND WHAT ARE YOUR DUTIES THERE IN THE SLED
11 CAPACITY?

12 A AT SLED I PRIMARILY DO DUTIES AS A FIREARMS TOOLMARKS
13 EXAMINER WHEN CALLED UPON. I ALSO DO OTHER LAW
14 ENFORCEMENT WORK AS I AM A SWORN AGENT. THE PRIMARY
15 DUTIES THAT A FIREARMS EXAMINER WILL ACCOMPLISH WILL BE TO
16 EXAMINE FIRED BULLETS AND CARTRIDGE CASES FROM AN INCIDENT
17 PERHAPS TO DETERMINE WHAT TYPE OF FIREARM COULD HAVE FIRED
18 THEM OR IF A SUSPECT FIREARM IS AVAILABLE TO DETERMINE IF
19 THEY WERE FIRED BY THAT PARTICULAR FIREARM.

20 OTHER EXAMINATIONS THAT WE PERFORM WILL BE
21 DISTANCE DETERMINATIONS IN SOME CASES. WE RESTORE SERIAL
22 NUMBERS ON FIREARMS WHERE SOMEONE HAS OBLITERATED OR
23 REMOVED THE SERIAL NUMBER. WE ALSO DO FUNCTION TESTING
24 AND SAFETY TESTING ON FIREARMS.

25 Q WHAT IS YOUR EDUCATIONAL BACKGROUND AND TRAINING

DAVID COLLINS - DIRECT BY CROFT

1 SPECIFICALLY AS RELATES TO THAT AREA?

2 A MY EDUCATIONAL BACKGROUND CONSISTS -- IT'S PRIMARILY
3 A BACHELORS DEGREE RECEIVED FROM THE CITADEL IN 1984.
4 AFTER I BECAME EMPLOYED AT SLED, I ENTERED WHAT IS
5 ESSENTIALLY AN ON THE JOB TRAINING PROGRAM OR
6 APPRENTICESHIP IN FIREARMS, TOOLMARK EXAMINATION.

7 THERE IS NO REAL COLLEGE COURSE OR SCHOOL THAT
8 YOU CAN GO TO TO LEARN THIS TYPE OF EXPERTISE. IT'S
9 PRETTY MUCH DONE ON THE JOB IN A PROGRAM THAT LASTS FOR
10 APPROXIMATELY TWO TO THREE YEARS.

11 AFTER I WAS CERTIFIED BY SLED AS SUCCESSFULLY
12 COMPLETED THAT TRAINING PROGRAM IN 1992 TO 1993, I JOINED
13 OUR PROFESSIONAL ASSOCIATION WHICH IS KNOWN AS THE
14 ASSOCIATION OF FIREARMS AND TOOLMARK EXAMINERS OR AFTE.

15 THROUGH THAT ASSOCIATION I RECEIVED CONTINUING
16 EDUCATION AND TRAINING IN MY FIELD. I ALSO ATTENDED AND
17 SUCCESSFULLY COMPLETED THE FIREARM OR ARMORER COURSES
18 PROVIDED BY THE GLOCK, SIG, BERETTA AND COLT FIREARMS
19 MANUFACTURERS.

20 Q HAVE YOU TESTIFIED PREVIOUSLY AS TO FIREARMS
21 IDENTIFICATION?

22 A YES, I TESTIFIED APPROXIMATELY 200 TIMES IN STATE
23 COURTS OF SOUTH CAROLINA IN FIREARMS RELATED TESTIMONY AND
24 I HAVE ALSO TESTIFIED AS AN EXPERT IN STATES OF GEORGIA,
25 NORTH CAROLINA AND IN THE FEDERAL COURT SYSTEM.

DAVID COLLINS - DIRECT BY CROFT

1 MR. CROFT: YOUR HONOR, WE WOULD MOVE MR. COLLINS BE
2 ADMITTED AN EXPERTS.

3 THE COURT: ANY OBJECTION, MR. WRIGHT?

4 MR. WRIGHT: NO OBJECTION.

5 THE COURT: NO OBJECTION.

6 (WHEREUPON QUESTIONING RESUMED).

7 Q OKAY. TELL US EXACTLY WHAT IS FIREARMS
8 IDENTIFICATION IF YOU WOULD.

9 A OUR BREAD AND BUTTER WORK CONSISTS AS I STATED BEFORE
10 PRIMARILY OF IDENTIFYING WHETHER SPECIFIC BULLETS OR A
11 CARTRIDGE CASE WAS FIRED BY A SPECIFIC FIREARM. THE WAY
12 THAT WE CAN DO THIS IS WE LOOK AT THE MICROSCOPIC MARKS
13 LEFT ON THE SURFACE OF A BULLET OR CARTRIDGE CASE BY THE
14 FIREARM THAT FIRED IT.

15 WHEN A FIREARM IS MANUFACTURED, VARIOUS
16 MANUFACTURING TECHNIQUES OR MACHINING TECHNIQUES ARE USED
17 THAT LEAVE BEHIND ON METAL SURFACES OF THE FIREARM SMALL
18 OR MICROSCOPIC DEFECTS.

19 THESE DEFECTS ARE COMPLETELY RANDOM IN THEIR
20 LOCATION ON THE FIREARM AND WILL SCRATCH. FOR INSTANCE, A
21 BULLET THAT PASSES THROUGH THE BARREL OF A FIREARM OR WILL
22 IMPRESS OR DENT PERHAPS THE SURFACE OF THE CARTRIDGE CASES
23 THAT FIRED IN THE FIREARM.

24 ONE OF THE PROCESSES THAT IS EMPLOYED IN
25 MANUFACTURING FIREARMS IS THE CREATION OF RIFLING IN THE

DAVID COLLINS - DIRECT BY CROFT

1 BARREL OF THE GUN. THIS RIFLING IS SET SPIRALING OR
2 TWISTING GROOVES IN THE BARREL THAT SERVE TO STABILIZE THE
3 BULLET IN FLIGHT BECAUSE IT'S SPENT.

4 WHEN THAT RIFLING IS PRODUCED, A CONSIDERABLE
5 AMOUNT OF DEFECTS ARE LEFT BEHIND IN THE BARREL OF -- IN
6 THAT PROCESS AND THE BULLET PASSES THROUGH THE BARREL,
7 IT'S IN CONTACT WITH THE BARREL ALL THE WAY THROUGH THAT
8 BARREL AND IT IS SCRATCHED IF YOU WILL BY THOSE DEFECTS.

9 NO TWO FIREARMS WILL LEAVE THE EXACT SAME MARKS
10 ON THE SURFACE OF THE BULLET. YOU CAN SAY -- YOU CAN
11 STATE FOR INSTANCE THE MARKS LEFT ON A BULLET BY A FIREARM
12 ARE SIMILAR TO IN THEIR ABILITY TO BE IDENTIFIED TO A GUN
13 AS A FINGERPRINT IS TO A PERSON.

14 WHAT I WILL DO IN THE LABORATORY IS I WILL TAKE
15 AN EVIDENCE BULLET AND I WILL TAKE A TEST BULLET THAT I
16 HAVE FIRED FROM THAT EVIDENCE FIREARM AND I WILL PLACE
17 THEM SIDE BY SIDE UNDER WHAT WE CALL A COMPARISON
18 MICROSCOPE.

19 THIS ALLOWS ME TO VIEW BOTH OBJECTS AT THE SAME
20 MAGNIFICATION SIDE BY SIDE AND I WILL TURN THEM LOOKING
21 FOR AREAS WHERE THESE MARKINGS WILL MATCH. IF I FIND THAT
22 THERE IS ENOUGH SUFFICIENT MATCHING INDIVIDUAL
23 CHARACTERISTICS, AS WE CALL THEM, I CAN CONCLUDE THAT
24 BULLET WAS FIRED BY THAT GUN.

25 THE SAME PROCESS HOLDS TRUE FOR CARTRIDGE

DAVID COLLINS - DIRECT BY CROFT

1 CASES. I WILL PUT -- LOOK AT A FIRED CARTRIDGE CASE FOR
2 INSTANCE FROM AN INCIDENT OR EVIDENCE CARTRIDGE CASE SIDE
3 BY SIDE WITH THE TEST CARTRIDGE CASE THAT I HAVE FIRED IN
4 THE FIREARM. I AM LOOKING FOR MARKINGS LEFT BY THE GUN ON
5 THAT CARTRIDGE CASE THAT ARE UNIQUE TO THAT PARTICULAR
6 FIREARM.

7 Q MAY I APPROACH THE WITNESS, YOUR HONOR? GET SOME OF
8 THIS OUT OF YOUR WAY. I'M GOING TO SHOW YOU WHAT HAS BEEN
9 MARKED IN EVIDENCE AS STATE'S EXHIBITS NUMBER 12, 13, AND
10 14 AND ALSO WANT TO SHOW YOU WHAT HAS BEEN MARKED FOR
11 PURPOSES OF IDENTIFICATION AS STATE'S EXHIBITS 17, 18 AND
12 21 AND ASK YOU IF YOU HAVE SEEN THOSE ITEMS OF EVIDENCE
13 BEFORE.

14 A YES, I HAVE EXAMINED STATE'S EXHIBIT 12. IT BEARS
15 MARKINGS I PLACED ON IT IN THE LABORATORY SO THAT I CAN
16 IDENTIFY IT LATER. STATE'S EXHIBIT 13 APPEARS TO BE
17 CONSISTENT WITH THE MAGAZINE THAT I EXAMINED IN THIS
18 CASE. MARKINGS THAT I PLACED ON IT COULD BE UNDERNEATH
19 THE EXHIBIT STICKER AT THIS POINT, BUT I DID EXAMINE THE
20 MAGAZINE CONSISTENT WITH THAT.

21 Q OKAY. AND WAS THERE -- WAS SOME AMMUNITION THERE
22 ALSO THAT WAS TURNED OVER TO YOU?

23 A STATE'S EXHIBIT 14 IS A POUCH CONTAINING FIVE UNFIRED
24 NINE MILLIMETER CALIBER CARTRIDGES. IT BEARS MARKINGS
25 PLACED ON IT IN THE LABORATORY AS WELL, ALSO BEARS MY

DAVID COLLINS - DIRECT BY CROFT

1 INITIAL AND DATES ON THE SEAL I PLACED ON THE CONTAINER.

2 Q WHEN YOU INITIALLY RECEIVED THE BULLETS WITH THIS
3 CASE, THEY WERE MORE THAN FIVE; IS THAT RIGHT?

4 A THAT'S CORRECT. THERE WERE A TOTAL OF NINE OF THE
5 FIRED CARTRIDGES RECEIVED WITH THIS CASE.

6 Q OKAY. AND AFTER YOUR DID YOUR TESTING, I'M GOING TO
7 SHOW YOU WHAT IS MARKED AS STATE'S EXHIBIT NUMBER 1. YOU
8 RAN OTHER TESTS WERE DONE WITH THIS AMMUNITION?

9 A IT'S NOT UNCOMMON AFTER I COMPLETED EXAMINATION FOR
10 IT TO BE EXAMINED PERHAPS BY ANOTHER DEPARTMENT IN THE
11 LABORATORY. THE TRACE CHEMISTRY DEPARTMENT OFTEN IS
12 REQUIRED TO TEST FIRE THE FIREARM AND THERE TENDS TO
13 PROCESSES AND SOMETIMES THEY USE AMMUNITION PERCEIVED WITH
14 THE FIREARM OF THOSE TESTS.

15 Q OKAY. AND STATE'S EXHIBITS 17 AND 18, DO YOU
16 RECOGNIZE THOSE?

17 A STATE'S EXHIBIT 17 IS A FIRED BULLET THAT I HAVE
18 EXAMINED. IT ALSO BEARS MARKINGS I PLACED ON IT FOR
19 IDENTIFICATION PURPOSES. STATE'S EXHIBIT 18 IS A FIRED
20 CARTRIDGE CASE. THE CONTAINER OR THE BAG CONTAINING THIS
21 CARTRIDGE CASE ALSO BEARS MY INITIALS, AND THE SEAL ON THE
22 BAG IS INITIALED BY MYSELF AND DATED. IT IS STILL IN THE
23 SEALED CONDITION.

24 Q OKAY. AND WERE ALL OF THESE ITEMS SUBMITTED TO YOU
25 IN THE NORMAL FASHION OR WERE THEY SEALED WHEN YOU

DAVID COLLINS - DIRECT BY CROFT

1 RECEIVED THEM?

2 A YES, SIR THEY WERE.

3 Q OKAY. AND WERE THERE THE INITIALS OF THE OFFICIAL
4 FROM SUMTER POLICE DEPARTMENT WHO TURNED THEM OVER AND
5 SEALED THEM?

6 A I TYPICALLY DO NOT ALWAYS MAKE A NOTE OF THE INITIALS
7 OF THE PERSON THAT WAS ON THE CONTAINERS BECAUSE OFTEN I
8 CAN'T TELL WHOSE INITIALS THEY ARE IF I'M NOT FAMILIAR
9 WITH THAT INDIVIDUAL. HOWEVER, I -- WHEN I RECEIVED THE
10 EVIDENCE, IT WAS SEALED AND IT WAS SEALED IN WHAT WE
11 DETERMINED, CONSIDERED TO BE IN PROPER CONDITION.

12 Q AND THESE ARE THE ITEMS YOU IN FACT TESTED IN THIS
13 CASE?

14 A YES, THEY ARE.

15 MR. CROFT: YOUR HONOR, WE WOULD OFFER STATE'S
16 EXHIBITS 17 AND 18 INTO EVIDENCE.

17 THE COURT: ANY OBJECTION?

18 MR. WRIGHT: CAN I LOOK AT IT?

19 (WHEREUPON THERE WAS A PAUSE).

20 MR. WRIGHT: NO OBJECTION, YOUR HONOR.

21 THE COURT: WITHOUT OBJECTION.

22 (STATE'S EXHIBITS NO. 17 AND 18 MARKED FOR
23 EVIDENCE.)

24 (WHEREUPON QUESTIONING RESUMED).

25 Q TELL US WHAT EXAMINATION YOU PERFORMED ON THIS

DAVID COLLINS - DIRECT BY CROFT

1 EVIDENCE.

2 A THE FIRST THING I DO WITH ANY EVIDENCE I RECEIVE IS I
3 TAKE NOTES AS TO ITS CONDITION, ITS PHYSICAL APPEARANCE.
4 FOLLOWING NOTE TAKING PROCESS, I TEST FIRE ANY SUBMITTED
5 FIREARM. I DO THIS FOR TWO REASONS.

6 FIRST I DO THIS TO OBTAIN TEST STANDARDS AS I
7 DISCUSSED BEFORE THAT I COMPARE WITH THE FIRED EVIDENCE
8 ITEMS. IT ALSO ENABLES ME TO DETERMINE IF THE FIREARM IS
9 FUNCTIONING PROPERLY.

10 ONCE I TEST FIRE THE FIREARM, I WILL TAKE THE
11 TEST BULLETS OR CARTRIDGE CASES OR BOTH, WHICHEVER IS
12 APPROPRIATE, AND COMPARE THEM WITH ANY EVIDENCE BULLETS
13 AND CARTRIDGE CASES, MICROSCOPICALLY LOOK THROUGH THESE
14 AREAS THAT MATCH WITH THIS PARTICULAR FIREARM.

15 Q WHAT WERE THE CONCLUSIONS OF YOUR EXAMINATION?

16 A BASED ON MY MICROSCOPIC ANALYSIS OF STATE'S EXHIBIT
17 17 AND STATE'S EXHIBIT 18 WITH TEST SAMPLES FIRED BY
18 STATE'S EXHIBIT 12, I WAS ABLE TO CONCLUDE THAT BOTH
19 STATE'S EXHIBIT 17 AND 18 WERE INDEED FIRED BY STATE'S
20 EXHIBIT 12 AND NO OTHER FIREARM.

21 Q OKAY. HOW SURE OF THAT CAN YOU BE?

22 A ONE HUNDRED PERCENT.

23 Q AND AGAIN TELL US WHAT IT IS THAT MAKES YOU ABLE TO
24 BE SO SURE ABOUT THESE THINGS?

25 A IT'S A PROVEN FACT THAT FIREARMS WILL MARK BULLETS

DAVID COLLINS - DIRECT BY CROFT

1 AND CARTRIDGE CASES FIRED IN THEM OR THROUGH THEM IN A
2 MANNER THAT IS UNIQUE TO THAT SPECIFIC FIREARM. THEY HAVE
3 EVEN GONE TO THE EXTENT OF TESTING CONSECUTIVELY
4 MANUFACTURED PISTOLS AND PISTOL BARRELS TO DETERMINE IF
5 THEY LEAVE MARKS THAT ARE UNIQUE TO THEMSELVES.

6 AND INDEED YOU CAN -- YOU CAN MAKE THE
7 DIFFERENTIATION BETWEEN TWO BARRELS AND A MANUFACTURED
8 CONSECUTIVELY ON THE SAME ASSEMBLY LINE WITH THE SAME
9 TOOL.

10 Q OKAY. AND WHAT YOU HAVE DONE, SO THERE IS NO
11 CONFUSION, WHEN YOU SAY STATE'S EXHIBITS 17 AND 18, THAT
12 IS THE CARTRIDGE AND BULLET THAT HAVE ALREADY BEEN FIRED
13 THAT WERE TURNED OVER TO YOU?

14 A THAT IS FIRED BULLETS AND THE FIRED CARTRIDGE CASE
15 THAT I EXAMINED IN THIS CASE.

16 Q THAT WAS COMPARED TO THIS WEAPON?

17 A THAT'S CORRECT.

18 Q AND YOU ARE A HUNDRED PERCENT SURE THEY MATCH EACH
19 OTHER?

20 A MATCH THE FIREARM.

21 Q MATCH THE FIREARMS. OKAY. AND NOT -- DO BOTH THE
22 BULLET AND THE CASING HAVE SEPARATE MARKINGS THAT HELPED
23 YOU IDENTIFY THEM?

24 A THAT'S CORRECT. THE BULLET IS MANUFACTURED -- EXCUSE
25 ME. THE BULLET IS MARKED BY THE INTERIOR SURFACE OF THE

DAVID COLLINS - CROSS BY WRIGHT

1 BARREL AS IT PASSES THROUGH THIS RIFLING GROOVES AS I HAVE
2 DISCUSSED BEFORE, THE CARTRIDGE CASE MARKED BY SEVERAL
3 DIFFERENT PARTS OF THE FIREARM THAT IT COMES IN CONTACT
4 WITH.

5 ONE OF THESE AREAS IS THE BREACH FACE OR THE
6 BACK OF THE SLIDE WHERE IT COMES WHERE IT'S SUPPORTED
7 AGAINST THE FIRE PIN. OTHER AREAS COULD BE THE AREA
8 AROUND THE CHAMBER WHERE THE CARTRIDGE IS INSERTED. IT
9 ALSO MARK -- IT IN THIS CASE I WAS ABLE TO MATCH THIS
10 PARTICULAR CARTRIDGE CASE TO BOTH BREACH FACE IMPRESSIONS
11 AND TO THE CHAMBER MARKS.

12 Q PLEASE ANSWER ANY QUESTIONS MR. WRIGHT MAY HAVE.

13 THE COURT: ALL RIGHT. MR. WRIGHT?

14 CROSS-EXAMINATION BY MR. WRIGHT:

15 Q HOW YOU DOING, MR. COLLINS? JUST A COUPLE OF
16 QUESTIONS. YOU STATED THE BULLETS AND THE CARTRIDGE
17 CASING MATCHED THE GUN?

18 A YES, THEY WERE FIRED BY THIS FIREARM.

19 Q AND DID THEY MATCH EACHOTHER OR CAN YOU TELL THAT?

20 A THERE IS NO CONSISTENT WAY TO BE ABLE TO MATCH A
21 PARTICULAR FIRED BULLET WITH A PARTICULAR FIRED CARTRIDGE
22 CASE. IN SOME RARE CASES IT IS POSSIBLE TO DO THAT
23 EXAMINATION. IN THIS CASE THERE WERE NOT SUFFICIENT
24 MARKINGS LEFT ON THE BULLET BY THE CARTRIDGE CASE FOR ME
25 TO PERFORM THAT EXAMINATION.

DAVID COLLINS - CROSS BY WRIGHT

1 Q OKAY. AND YOU SAID IN THIS CASE THERE WASN'T
2 SUFFICIENT MARKINGS ON THE CARTRIDGE OR THE BULLET OR
3 EITHER?

4 A YOU'RE LOOKING AT MARKINGS LEFT ON THE SURFACE OF THE
5 BULLET BY THE CARTRIDGE CASE WHEN IT IS SEEDED INTO THE
6 CARTRIDGE CASE AT POINT OF MANUFACTURE, WHEN IT IS PUT
7 TOGETHER, WHEN IT'S ASSEMBLED IN THE FACTORY.

8 IN THIS PARTICULAR CASE THERE WEREN'T ENOUGH
9 MARKINGS OF THAT NATURE OF THE BULLET FOR ME TO DETERMINE
10 IF IT HAD BEEN ORIGINALLY LOADED IN THAT PARTICULAR
11 CARTRIDGE CASE OR ANY PARTICULAR CARTRIDGE CASE.

12 Q OKAY. WERE THERE A NUMBER OF MARKINGS ON THE BULLET
13 FROM THE GUN ITSELF OR...

14 A THERE WERE A NUMBER OF MARKINGS ON THE BULLET CAUSED
15 BY THE BARREL OF THE FIREARM BEING -- THAT IS THE AREA
16 THAT WE TYPICALLY CONCENTRATE OUR STUDIES ON.

17 Q AND YOU SAID YOU YOURSELF FIRED THE GUN TO TEST IT?

18 A YES, I DID.

19 Q AND YOU DID THE ANALYSIS ALSO?

20 A YES, I DID.

21 Q OKAY. NO FURTHER QUESTIONS.

22 MR. CROFT: NO REDIRECT, YOUR HONOR.

23 THE COURT: YOU CAN COME DOWN.

24 (WHEREUPON THE WITNESS LEFT THE STAND).

25 THE COURT: IS THE DOCTOR THE LAST WITNESS?

1 MR. CROFT: YES, SIR.

2 THE COURT: OKAY. ALL RIGHT. LADIES AND GENTLEMEN,
3 THE STATE HAS ONE MORE WITNESS, DR. SEXTON WHO IS COMING
4 FROM NEWBERRY. HE IS GOING TO BE HERE AT -- GOING TO BE
5 HERE 2:00 OR 2:30?

6 MR. CROFT: EXCUSE ME, YOUR HONOR?

7 THE COURT: GOING TO BE HERE AT 2:00 OR 2:30?

8 MR. CROFT: HE SAID 2:30. I ASKED HIM TO AIM FOR
9 2:00. THAT'S WHAT HE'S AIMING FOR, BUT HE WASN'T ABLE TO
10 SAY HE WOULD BE HERE BY 2:30.

11 THE COURT: LET'S BREAK FOR LUNCH, LET'S COME BACK AT
12 2:15. THAT WILL BE THE LAST STATE'S WITNESS. HOLD ON
13 EVERYBODY. EVERYBODY KEEP YOUR SEAT. KEEP YOUR SEAT.
14 GET THE JURY OUT OF THE ROOM AND THEN YOU CAN MOVE.

15 DON'T DISCUSS THE CASE WITH ANYBODY. DON'T LET
16 ANYBODY DISCUSS IT WITH YOU. I WILL SEE YOU BACK IN THE
17 JURY ROOM AT 2:15.

18 (WHEREUPON THE JURY LEFT THE COURTROOM AT 12:01 P.M.)

19 THE COURT: ALL RIGHT. MR. JORDAN (SIC), YOU PLEASE
20 RISE? GOING TO GO AHEAD AND ADVISE YOU OF YOUR
21 CONSTITUTIONAL RIGHTS. I'M SURE YOUR LAWYER HAS DONE
22 THIS.

23 WHEN YOU COME BACK AFTER LUNCH, THE STATE WOULD
24 HAVE ONE MORE WITNESS AND THEY WILL CONCLUDE THEIR CASE,
25 THEN YOU HAVE THE OPPORTUNITY TO PRESENT A CASE. IN A

1 CRIMINAL TRIAL YOU HAVE THE RIGHT TO TESTIFY AND YOU HAVE
2 THE RIGHT NOT TO TESTIFY.

3 YOU HAVE A CONSTITUTIONAL RIGHT NOT TO TESTIFY
4 AND THUS INCRIMINATE YOURSELF AND SUBJECT YOURSELF TO
5 CROSS-EXAMINATION. WHETHER YOU DECIDE TO TESTIFY IS
6 SOLELY UP TO YOU. YOU WILL DISCUSS THIS MATTER WITH YOUR
7 ATTORNEY AND WITH YOUR FAMILY MEMBERS AND WHATEVER TO
8 DECIDE WHETHER OR NOT YOU WANT TO GIVE TESTIMONY IN THIS
9 CASE.

10 IF YOU DECIDE NOT TO TESTIFY, I WILL INSTRUCT
11 THE JURY THAT THEY CANNOT HOLD THIS AGAINST YOU, THEY
12 CANNOT TALK ABOUT THAT IN THE JURY ROOM, THAT YOU EXERCISE
13 YOUR CONSTITUTIONAL RIGHT NOT TO INCRIMINATE YOURSELF, YOU
14 HAVE THE RIGHT NOT TO TESTIFY AND THE STATE HAS THE TOTAL
15 BURDEN OF PROOF IN THIS CASE. YOU UNDERSTAND ALL OF
16 THAT?

17 THE DEFENDANT: YES, SIR.

18 THE COURT: YOU DISCUSS THAT WITH YOUR LAWYER, YOUR
19 FAMILY MEMBERS OR WHATEVER IN THIS TIME FRAME. YOU MAKE A
20 DECISION ON YOUR OWN, OKAY? THANK YOU VERY MUCH.
21 EVERYBODY BE BACK AT 2:15.

22 MR. CROFT: YOUR HONOR, I HAVE ONE QUESTION. IF
23 SCHEDULING-WISE DO YOU ANTICIPATE WE WILL BE DOING CLOSING
24 ARGUMENTS TODAY OR WAITING TILL TOMORROW?

25 THE COURT: WELL, HOW MANY -- LET'S ASSUME THE

1 DEFENDANT DOES NOT TESTIFY, AND THEN HOW LONG DO YOU THINK
2 IT WILL TAKE TO PUT YOUR CASE UP?

3 MR. WRIGHT: WE HAVE A COUPLE OF WITNESSES WE DO WANT
4 TO PUT UP.

5 THE COURT: OKAY.

6 MR. WRIGHT: SO IT'S...

7 THE COURT: 30 MINUTES?

8 MR. WRIGHT: 30, 45 IF HE DOESN'T.

9 THE COURT: DO YA'LL WANT TO ARGUE AND CHARGE IN THE
10 MORNING?

11 MR. CROFT: EITHER WAY IS FINE WITH ME, YOUR HONOR.
12 I JUST WOULD LIKE TO PREPARE FOR LUNCH IF WE ARE DOING...

13 THE COURT: WELL, THIS IS A SERIOUS CASE. I HATES TO
14 SEND THE JURY OUT ABOUT 3:30 OR SO WITH A MURDER CASE.
15 MIGHT JUST GET TESTIMONY IN AND THEN ARGUE AND CHARGE IN
16 THE MORNING.

17 MR. WRIGHT: THAT'S FINE WITH ME.

18 THE COURT: IS THAT OKAY? LET'S DO THAT.

19 MR. CROFT: MAY WE GET THE NAMES AND SOCIAL SECURITY
20 NUMBERS, BIRTHDATES OF THE WITNESSES SO I CAN RUN THEIR
21 RECORDS TO MOVE THINGS ALONG?

22 MR. WRIGHT: YES, SIR, WE WILL GIVE HIM...

23 THE COURT: TAKE CARE OF THAT AND SEE YA'LL BACK AT
24 2:15.

25 (WHEREUPON COURT WAS IN RECESS FOR LUNCH).

1 MR. CROFT: YES, SIR, YOUR HONOR. WE WENT OVER SOME
2 OF THOSE EXHIBITS DR. SEXTON IS GOING TO BE USING FOR
3 TRIAL. THERE'S GOING TO BE NO OBJECTION. STATE'S EXHIBIT
4 22, 23, 24 AND 25.

5 (STATE'S EXHIBITS NO. 22, 23, 24 AND 25 MARKED
6 FOR EVIDENCE.)

7 THE COURT: OKAY. ALL RIGHT. LET'S BRING THE JURY
8 PANEL IN. GO AHEAD, GET ALL THE TESTIMONY IN. AFTER WE
9 GO OVER THE STATE'S CASE, WHY DON'T WE MARK YOUR MOTIONS
10 FOR A D.V. HEARD AND THEN AS IF WE ARGUE AT THE END OF THE
11 STATE'S CASE. DOES THAT SUIT YOU? THAT SUIT YOU, MR.
12 CROFT?

13 MR. CROFT: THAT'S FINE WITH ME, YOUR HONOR. I DO
14 HAVE ONE QUESTION ABOUT ONE OF THEIR POTENTIAL WITNESSES.

15 THE COURT: I'M SAYING FOR THE STANDPOINT OF HAVING
16 TO SEND THE JURY RIGHT BACK OUT, ARGUE THE MOTIONS. IF
17 EVERYBODY AGREES, I'M SURE THE SUPREME COURT, COURT OF
18 APPEALS WOULD AGREE THAT WE CAN DO THAT. IT'S STANDARD
19 PROCEDURE TO GO AHEAD AND ARGUE.

20 MR. WRIGHT: A COUPLE OF -- WE HAD A COUPLE OF ISSUES
21 ABOUT HIS RECORD IF HE TESTIFIES.

22 THE COURT: OKAY. LET'S GET THOSE STRAIGHTENED OUT
23 RIGHT NOW.

24 MR. CROFT: I DON'T KNOW -- NECESSARILY CALL IT AN
25 ISSUE, YOUR HONOR. HE DOES HAVE A PRIOR RECORD, THOSE

1 THINGS THAT I FEEL LIKE FALL UNDER THE RULES AS TO BE USED
2 TO CROSS-EXAMINE HIM. HE HAS A VIOLATION OF SOUTH
3 CAROLINA GUN LAW CONVICTION FROM SEPTEMBER OF 1992.

4 THE COURT: HAS WHAT NOW?

5 MR. CROFT: CARRYING A PISTOL CHARGE. ONE YEAR, I
6 BELIEVE.

7 THE COURT: OKAY.

8 MR. CROFT: AND NOVEMBER OF 1993 HE HAS POSSESSION OF
9 CRACK COCAINE AND POSSESSION OF A SAWED OFF SHOTGUN. IN
10 JUNE OF 1994 HE HAS FALSE INFORMATION TO THE POLICE.
11 DECEMBER OF 1995 CONTRIBUTING TO THE DELINQUENCY OF A
12 MINOR.

13 SERIES OF THINGS WERE PLED AT ONE TIME, BUT I
14 WILL GIVE THE DATES THAT I HAVE -- THE ARREST DATE.
15 FEBRUARY OF '97 HE HAS A POSSESSION WITH INTENT TO
16 DISTRIBUTE MARIJUANA AND POSSESSION WITH INTENT TO
17 DISTRIBUTE WITHIN PROXIMITY OF A SCHOOL.

18 THE COURT: THAT'S WHAT YEAR?

19 MR. CROFT: THAT IS 1997, FEBRUARY.

20 MR. WRIGHT: HE WAS CONVICTED IN '99.

21 MR. CROFT: HE PLED TO ALL THESE CHARGES I'M ABOUT TO
22 GO THROUGH ON MARCH 23RD OF 1999. THE DATES I'M READING
23 ARE THE ARREST DATES, WHAT THEY DISTINGUISH.

24 THE COURT: OKAY.

25 MR. CROFT: ALONG WITH THOSE TWO CHARGES HE PLED TO

1 VIOLATION OF -- EXCUSE ME.

2 THE COURT: IN '99 HE PLED GUILTY TO WHAT NOW?

3 MR. CROFT: GETTING READY TO GO THROUGH A SERIES OF
4 THINGS. THE FIRST INDICTMENT WAS THAT P.W.I.D. MARIJUANA
5 AND PROXIMITY CHARGE THAT JUST REFERRED TO. HE ALSO PLED
6 TO A -- FROM OCTOBER OF '97 HE PLED ON THAT AT THE SAME
7 DATE, VIOLATION OF SOUTH CAROLINA GUN LAW, PLED ON FROM
8 ALSO FROM OCTOBER OF '97 CARRYING A PISTOL ON ABC PREMISES
9 AND POSSESSION OF A STOLEN PISTOL. HE ALSO PLED ON--

10 THE COURT: ONE GUN ON ONE DAY, THE CHARGES WERE?

11 MR. CROFT: YES, SIR, YOUR HONOR.

12 THE COURT: SOCKED IT TO HIM, HUH? ALSO OPEN
13 CONTAINER ALSO?

14 MR. CROFT: GOT A FEW ON THERE, BUT HE'S ALSO GOT ON
15 THAT SAME DAY PLED TO ANOTHER COUNT, A DIFFERENT INCIDENT
16 FOR POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA AGAIN
17 AND A PROXIMITY CHARGE. HE ALSO HAS FAILURE TO STOP FOR
18 BLUE LIGHT AROSE IN APRIL OF '98, WHICH IS IN THAT SAME
19 PLEA, I BELIEVE. AND FINALLY APRIL OF '98 IS A FALSE
20 INFORMATION TO POLICE.

21 THE COURT: THAT'S IN '98?

22 MR. CROFT: YES, SIR, YOUR HONOR.

23 THE COURT: OKAY. ALL RIGHT. WHICH ONE COULD NOT BE
24 USED FOR IMPEACHMENT? ALL CARRY TEN YEARS.

25 MR. WRIGHT: YOUR HONOR, I THINK THAT PRIOR TO '94

1 MR. -- '94 OR '93, MR. CHOICE WAS A JUVENILE AT THE TIME,
2 SO I DON'T THINK THOSE SHOULD BE ABLE TO BE USED BECAUSE--

3 THE COURT: HOW OLD IS HE NOW? WHAT'S YOUR DATE OF
4 BIRTH?

5 THE DEFENDANT: 9-5-75.

6 THE COURT: THAT MAKES HIM 26 NOW.

7 MR. CROFT: 25. HE WILL BE 26 IN SEPTEMBER I THINK,
8 YOUR HONOR. I THINK THE CASE LAW IS CLEAR, YOUR HONOR,
9 THE JUVENILE CONVICTION -- ALTHOUGH THESE ARE NOT JUVENILE
10 CONVICTIONS, THEY ARE NOT ON THE JUVENILE RECORD ELIGIBLE
11 TO BE USED FOR IMPEACHMENT.

12 THE COURT: LET'S FORGET ABOUT -- YEAH, JUVENILE
13 ADJUDICATION CASE CAN BE USED JUST LIKE ANYTHING ELSE.

14 MR. WRIGHT: ALSO, YOUR HONOR, I THINK THAT THE
15 PROBATIVE VALUE OF THIS IS OUTWEIGHED BY THE PREJUDICIAL--

16 THE COURT: WELL NOW, AS TO WHICH CONVICTION? WHICH
17 ONE? WHICH ONE DO YOU ADMIT ARE OKAY TO GO INTO?

18 MR. WRIGHT: BASICALLY THE PROBLEM IS I HAVE A
19 PROBLEM WITH THE WEAPONS CHARGES, THE POSSESSION, THE ONES
20 HE PLED TO IN '99 AS FAR AS THE POSSESSION CHARGE, THE
21 FIREARM.

22 THE COURT: OKAY.

23 MR. WRIGHT: VIOLATION OF SOUTH CAROLINA GUN LAW.
24 THERE'S ONE IN '92. THE REST HE PLED TO IN '99. THE DRUG
25 CHARGES, I DON'T HAVE A PROBLEM WITH THE OTHER, JUST THE

1 PISTOL CHARGE BASICALLY AS FAR AS THE PREJUDICIAL--

2 THE COURT: WELL, WHY? WHY WOULD THE FACT HE HAS
3 BEEN CONVICTED OF TWO GUN CHARGES IN THIS PAST NOT BE
4 PROBATIVE IN THIS CASE?

5 MR. WRIGHT: YOUR HONOR, IF HE STATES TO THE FACT
6 THAT--

7 THE COURT: LET'S ASSUME.

8 MR. WRIGHT: SEPARATE CHARGE LIKE A SEPARATE INCIDENT
9 HE SAYS THAT THEY ARE JUST ONE THING, EVEN THOUGH IT MIGHT
10 BE SEPARATE, LIKE THREE OR FOUR SEPARATE CHARGES.

11 THE COURT: LET ME SAY SOMETHING. I DON'T THINK THEY
12 CHARGE HIM WITH EVERY CRIME UNDER THE SUN FOR ONE GUN AT
13 ONE TIME. YOU PICK OUT ONE AND NOT ALL OF THEM, OKAY?

14 MR. CROFT: THAT'S FINE, YOUR HONOR.

15 THE COURT: YOU FIGURE OUT -- REALLY GOT TWO GUN
16 CHARGES, ONE IN '92 AND ONE IN '99, RIGHT? EVEN THOUGH
17 YOU HAD THREE OF THEM IN '99, ALL THE SAME TIME, SAME
18 PLACE, SAME THING.

19 MR. CROFT: AS FAR AS I CAN TELL, YOUR HONOR, THEY'RE
20 ON THE SAME INDICTMENT, SO THAT WOULD BE MY GUESS.

21 THE COURT: YEAH. LIKE CHARGES SOMEBODY WITH 25
22 COUNTS OF SELLING MARIJUANA. ALL COUNTS RUN ON THE
23 RECORD, RIGHT?

24 MR. WRIGHT: THAT'S FINE, YOUR HONOR.

25 THE COURT: WHY WOULDN'T THE PRIOR GUN CHARGE BE

1 PROBATIVE IN THIS CASE?

2 MR. WRIGHT: I GUESS GIVEN THE FACTS OF THE CASE, I
3 THINK THAT BECAUSE THEY WILL LOOK AT THE FACT THAT OKAY HE
4 HAS BEEN CONVICTED OF THIS KIND OF CHARGE PRIOR, THAT
5 MEANS THAT HE IS GUILTY OF THIS PARTICULAR INCIDENT WHICH
6 IS NOT CORRECT.

7 THE COURT: WELL, LET'S ASSUME -- I DON'T KNOW
8 WHETHER YOUR CLIENT IS GOING TO TESTIFY OR NOT, BUT LET'S
9 ASSUME THAT YOUR CLIENT TAKES THE STAND AND SAYS I DIDN'T
10 HAVE THE GUN BECAUSE I WAS LEAVING THE BAR, SOMEBODY STUCK
11 THE GUN IN MY BACK WAISTBAND, OKAY?

12 SO THEY INTRODUCE THE FACT OF THAT PRIOR CHARGE,
13 THAT WOULD BE RELEVANT TO PROVE THAT THIS GUY HAS HAD GUNS
14 IN THE PAST, GUNS IN, YOU KNOW, FOR SHOW AND LACK OF
15 MISTAKE OR IDENTITY OF THE GUY WHO PULLED THE TRIGGER.

16 MR. WRIGHT: YES, YOUR HONOR. BUT WHAT THAT ACTUALLY
17 GOES TO SHOW IS THE TRUTH OF WHETHER HE ACTUALLY HAD A GUN
18 OR NOT BECAUSE HIS RECORD IS GOING TO BE USED TO IMPEACH
19 HIM.

20 THE COURT: I KNOW. I KNOW, BUT IT'S--

21 MR. WRIGHT: I THINK THAT WOULD BE GOING BEYOND
22 IMPEACHMENT INTO SUBSTANCE.

23 THE COURT: IT WOULDN'T BE SUBSTANTIVE. YOU CAN
24 IMPEACH THE CRIMINAL RECORD. WHEN THE DEFENDANT TAKES THE
25 STAND, THEY GET TO IMPEACH HIM ON HIS CRIMINAL RECORD.

1 HIS TESTIMONY TAKES THE STAND PROBABLY WOULD BE IT WASN'T
2 MY GUN, I DIDN'T HAVE THE GUN. YOU WOULDN'T BE ABLE TO GO
3 INTO THAT IN THEIR CASE IN CHIEF BECAUSE WIDER, RIGHT?

4 MR. WRIGHT: YES, SIR.

5 THE COURT: BUT IMPEACHMENT IS WIDE OPEN.

6 MR. WRIGHT: JUST WANT TO MAKE SURE IT'S BECAUSE OF
7 IMPEACHMENT AND NOT BECAUSE OF SUBSTANCE OF VALUE. ALSO
8 AS RESTRICTED TO THE ACTUAL INCIDENT, THE KNOWN INCIDENT,
9 NOT EVERY SEPARATE CHARGE AS YOU STATED EARLIER.

10 THE COURT: YEAH, ONE IN '92, ONE IN '99.

11 MR. WRIGHT: THAT'S FINE, YOUR HONOR.

12 THE COURT: ANYTHING ELSE?

13 MR. CROFT: YOUR HONOR, IF WE ARE GOING TO MOVE
14 STRAIGHT INTO HIS WITNESSES, I WANT TO KNOW WHO HE IS
15 GOING TO CALL. FIRST ONE OF THE WITNESSES NAMES HE HAS
16 GIVEN TO ME I THINK FROM WHAT I CAN SEE FROM READING THE
17 STATEMENT AND BRIEFLY SPEAKING TO HER THAT HER TESTIMONY
18 IS GOING TO FALL UNDER A THIRD PARTY GUILT
19 CLASSIFICATION.

20 THERE WAS JUST A CASE CAME OUT JANUARY OF 2001
21 THE SUPREME COURT CASE STATE V GAY SAID THE EVIDENCE WHICH
22 CAN HAVE NO OTHER AFFECT, CAST A VERY SUSPICION UPON
23 ANOTHER WHILE RAISING CONJECTURE IS NOT ADMISSIBLE.

24 BEFORE SUCH TESTIMONY CAN BE RECEIVED, THERE
25 MUST BE PROOF OF CONNECTION WITH IT SUCH AS TRAIN OF FACTS

1 OR CIRCUMSTANCES AS TENDS TO CLEARLY POINT OUT SUCH OTHER
2 PERSON AS THE GUILTY PARTY. I WOULD MOVE THAT WE PROFFER
3 THE TESTIMONY OF MRS. BAILEY BEFORE SHE TESTIFIES BEFORE
4 THE JURY, YOUR HONOR.

5 MR. WRIGHT: YOUR HONOR, WE HAVE -- SHE GAVE HER
6 STATEMENT TO THE POLICE. WE JUST WANT TO QUESTION HER
7 ABOUT WHAT HE SAID, NOT WHAT SHE SAID IN THE STATEMENT OR
8 WHAT HAPPENED ON THAT NIGHT. SHE STATES SHE WAS THERE AT
9 THE CLUB, SO ALL SHE'S GOING TO TESTIFY IS TO WHAT
10 HAPPENED.

11 THE COURT: WHAT DID SHE SAY IN THE STATEMENT?

12 MR. WRIGHT: WANT TO SEE A COPY?

13 THE COURT: YEAH. YEAH. THAT'S STATE V GAY, G-A-Y?

14 MR. CROFT: YES, SIR, YOUR HONOR. I HAVE A CASE HERE
15 IF YOU'D LIKE ME TO PASS IT UP.

16 THE COURT: YEAH, IF YOU DON'T MIND.

17 (WHEREUPON THERE WAS A PAUSE).

18 THE COURT: ACCORDING TO THAT STATEMENT SHE DOESN'T
19 POINT THE FINGER AT ANYBODY.

20 MR. WRIGHT: YES, SIR, YOUR HONOR.

21 THE COURT: AND SOMEBODY ELSE THAT SAID SOMETHING
22 THAT HE SAYS WRONG M.F., RIGHT? I HAVE A HARD TIME, I
23 HAVE A HARD TIME UNDERSTANDING WHAT THAT MEANS, BUT SHE
24 CAN'T TESTIFY TO WHAT MR. SPANN SAID.

25 MR. WRIGHT: THAT'S NOT WHAT WE ARE TRYING TO GET.

1 WE WANT HER TO TESTIFY THAT SHE WAS THERE. WE WANT HER TO
2 TESTIFY TO WHAT SHE SAW, WHAT SHE DID, WHAT HAPPENED, WHAT
3 SHE KNOWS. THAT'S THE ONE STATEMENT AND THAT'S NOT OUR
4 BIG CONCERN. OUR BIG CONCERN IS WHAT SHE SAID HAPPENED.

5 THE COURT: SHE DIDN'T SAY WHAT HAPPENED IN THAT.

6 MR. WRIGHT: SHE STATED WHAT SHE DID AND THE FACT
7 THAT SHE WAS TALKING TO MR. ROSE WHEN HE GOT SHOT SHE SAYS
8 WHO WAS STANDING AROUND, WHO WASN'T STANDING AROUND, WHO
9 SHE DIDN'T SEE. THAT IS WHAT WE ARE CONCERNED ABOUT.

10 THE COURT: ALL RIGHT. I'M NOT GOING TO PROFFER HER
11 TESTIMONY. YOU GOT ALL THE INVESTIGATIVE PEOPLE COULD
12 HAVE TALKED TO HER AND ASKED HER ABOUT WHAT SHE'S GOING TO
13 TESTIFY. I DON'T PUT HER ON TO SEE WHAT SHE'S GOING TO
14 SAY, PUT HER ON IN FRONT OF THE JURY.

15 SO I HOPE MR. WRIGHT UNDERSTANDS THE PRINCIPAL
16 OF THIRD PARTY GUILT. SHE CAN'T POINT THE FINGER AT
17 ANYBODY ELSE, RIGHT?

18 MR. WRIGHT: I UNDERSTAND THAT, YOUR HONOR.

19 THE COURT: OKAY. ARE WE GOING TO HAVE ANY OTHER
20 PROBLEMS WITH ANY OF THESE OTHER WITNESSES?

21 MR. CROFT: I UNDERSTAND THE OTHER WITNESSES ARE
22 CHARACTER WITNESSES, SO...

23 THE COURT: ALL RIGHT. LET'S BRING THE JURY IN.

24 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:30
25 P.M.)

DR. SEXTON - DIRECT BY CROFT

1 THE COURT: THANK YOU. ALL RIGHT. MR. CROFT, CALL
2 YOUR NEXT WITNESS.

3 MR. CROFT: YOUR HONOR, THE STATE CALLS DR. JOEL
4 SEXTON.

5 DR. JOEL SEXTON, BEING FIRST DULY
6 SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION BY MR. CROFT:

8 Q GOOD AFTERNOON, DR. SEXTON.

9 A GOOD AFTERNOON.

10 Q COULD YOU TELL US WHAT YOUR OCCUPATION IS?

11 A I'M A PHYSICIAN WITH A SPECIALIZATION IN PATHOLOGY
12 AND A SUB-SPECIALIZATION IN FORENSIC PATHOLOGY.

13 Q OKAY. AND HOW LONG HAVE YOU BEEN LICENSED IN THOSE
14 AREAS?

15 A SINCE 1968.

16 Q OKAY. AND WHAT IS YOUR EDUCATIONAL BACKGROUND AND
17 TRAINING IN THOSE AREAS?

18 A I TRAINED WITH THE MEDICAL UNIVERSITY IN CHARLESTON,
19 GRADUATED IN 1968 FROM MED SCHOOL AND BECOMING LICENSED IN
20 THE STATE. I THEN TRAINED IN THE FIELD OF PATHOLOGY AT
21 THE UNIVERSITY BECOMING NATIONALLY BOARD CERTIFIED IN
22 ANATOMIC PATHOLOGY, CLINICAL PATHOLOGY AND FORENSIC
23 PATHOLOGY IN 1972.

24 Q AND HAVE YOU PREVIOUSLY TESTIFIED AS AN EXPERT IN THE
25 AREA OF PATHOLOGY, FORENSIC PATHOLOGY?

DR. SEXTON - DIRECT BY CROFT

1 A I HAVE, OVER 700 TIMES.

2 MR. CROFT: YOUR HONOR, WE WOULD OFFER DR. SEXTON AS
3 AN EXPERT IN PATHOLOGY.

4 THE COURT: ANY OBJECTION?

5 MR. WRIGHT: NO OBJECTION.

6 THE COURT: HE IS SO QUALIFIED.

7 (WHEREUPON QUESTIONING RESUMED).

8 Q DID YOU HAVE AN OCCASION TO PERFORM AN AUTOPSY ON
9 TONY ROSE ON SEPTEMBER 3RD OF 1998?

10 A YES, I DID.

11 Q AND WHERE DID THIS TAKE PLACE?

12 A IN NEWBERRY.

13 Q OKAY. IS THAT WHERE YOUR PRACTICE IS BASED OUT OF?

14 A YES, THAT'S CORRECT.

15 Q AND WAS THIS THE FIRST TIME YOU HAD EVER SEEN MR.
16 ROSE?

17 A YES, IT WAS.

18 MR. CROFT: AND YOUR HONOR, MAY I APPROACH THE
19 WITNESS?

20 Q I'M GOING TO SHOW YOU A COUPLE OF EXHIBITS THAT HAVE
21 ALREADY BEEN MARKED INTO EVIDENCE AND ASK THAT YOU
22 DESCRIBE THEM FIRST TO ME. I WILL SHOW THEM TO YOU FIRST
23 AND THEN TO THE JURY. DO YOU RECOGNIZE THESE?

24 A YES, THOSE ARE BLOW-UPS OF THE DIAGRAMS I MADE AT THE
25 TIME OF THE AUTOPSY.

DR. SEXTON - DIRECT BY CROFT

1 Q OKAY. AND YOU PREPARED THESE?

2 A YES, I DID.

3 Q OKAY. I WILL MOVE ON. I'M GOING TO LEAVE THESE
4 RIGHT HERE. AND AT ANY POINT YOU THINK THAT WILL BE
5 HELPFUL TO DESCRIBE YOUR TESTIMONY, PLEASE USE THEM. IF
6 YOU WOULD PLEASE BASED UPON THIS PARTICULAR AUTOPSY WITHIN
7 REASONABLE MEDICAL CERTAINTY, CAN YOU TELL ME WHAT OPINION
8 YOU FORMED AS FAR AS AN EXPERT OPINION ON THE CAUSE OF THE
9 DEATH OF TONY ROSE.

10 A I HAVE FORMED AN OPINION AND THE OPINION I HAVE
11 WITHIN REASONABLE MEDICAL CERTAINTY THAT HE ESSENTIALLY
12 BLED TO DEATH WE REFER TO AS EXAMINATION DUE TO A GUNSHOT
13 WOUND OF THE CHEST WITH A BULLET HAVING PASSED THROUGH THE
14 HEART AND CAUSED BLEEDING INTO BOTH CHEST CAVITIES AS WELL
15 AS INTO THE SAC AROUND THE HEART. SO IN MY OPINION HIS
16 DEATH WAS DUE TO A GUNSHOT WOUND THAT CAUSED INTERNAL
17 BLEEDING.

18 Q OKAY. AND COULD YOU STEP DOWN FROM THE WITNESS STAND
19 AND SHOW US HERE ON THE DIAGRAMS WHERE THE GUNSHOT WOUND
20 WAS?

21 (WHEREUPON THE WITNESS LEFT THE STAND) .

22 A LOOKING FIRST AT THE DIAGRAM TO YOUR RIGHT WHICH
23 SHOWS THE BACK AND THE FRONT OF THE BODY AND IS LABELED
24 EXHIBIT 24. AS YOU NOTICE ON THE FRONT OF THE BODY, HERE
25 IN THE CHEST JUST BELOW THE NIPPLE LINE AND NEAR THE

DR. SEXTON - DIRECT BY CROFT

1 MIDLINE IS AN ENTRANCE WOUND THAT I CHARACTERIZED BY A
2 ROUND HOLE AND THOSE STIPPLE MARKS ARE AROUND IT.

3 I WILL DESCRIBE THOSE IN A MOMENT. THE BULLET
4 ENTERS AT THIS POINT, PASSES TO THE RIGHT UPWARD AND TO
5 THE REAR. HERE I HAVE GOT A DOTTED STAR WHICH REPRESENTS
6 THE EXIT WOUND THAT'S HERE IN THE RIGHT BACK THAT YOU SEE
7 ON THE RIGHT HAND DRAWING SHOWING THE BACK OF THE BODY.

8 SO ON THIS FRONT OF THE BODY YOU CAN SEE AN
9 ENTRANCE WOUND, YOU CAN SEE A DOTTED PATH WITH AN
10 ARROWHEAD AND AN EXIT WOUND INDICATING THE BULLET ENTERED
11 HERE JUST A LITTLE OVER THE LEFT OF THE MIDLINE ON THE
12 LOWER CHEST, EXITED SLIGHTLY HIGHER ON THE RIGHT BANK OF
13 THE BODY.

14 IT PASSED THROUGH THE HEART, IT PASSED THROUGH
15 THE ESOPHAGUS WHICH IS THE TUBE THAT LEADS FROM YOUR MOUTH
16 TO YOUR STOMACH AND IT ALLOWED BLEEDING INTO BOTH CHEST
17 CAVITIES AS WELL AS INTO THE SAC AROUND THE HEART.

18 EXHIBIT 25 SHOWS THE BODY FROM THE SIDE AND YOU
19 CAN SEE ON EXHIBIT 25 THAT THE BULLET ENTERS HERE ON THE
20 FRONT ON THE -- SLIGHTLY TO THE LEFT OF THE MIDLINE AND
21 EXITS IN THE REAR. AND YOU CAN SEE IT'S -- IT'S GOING
22 SLIGHTLY UPWARD.

23 Q OKAY. I AM GOING TO SHOW YOU A PHOTOGRAPH THAT HAS
24 BEEN MARKED AS STATE'S EXHIBIT NUMBER 2 ALSO NOTED IN
25 EVIDENCE AND ASK IF YOU CAN DESCRIBE THAT FOR ME.

DR. SEXTON - DIRECT BY CROFT

1 A THIS MORE CLEARLY SHOWS THE ENTRANCE WOUND. I WILL
2 SHOW IT FIRST TO THE LEFT SIDE OF THE JURY. HERE IS A
3 SCALE AT THE BOTTOM OF THE PHOTOGRAPH. IT'S A ONE INCH
4 RULER.

5 THE WOUND IS A HOLE THAT IS SLIGHTLY OVAL WHICH
6 YOU CAN SEE THE HOLE AT THIS POINT WHERE I'M POINTING DOWN
7 TO THE -- TO MY OR TO THE LEFT OF THE HOLE AND TO BELOW IT
8 IS AN AREA OF ABRASION INDICATING THAT THE BULLET INSTEAD
9 OF GOING STRAIGHT IN WENT IN AT A SLIGHT ANGLE, SO IT
10 FIRST STRUCK THE SKIN HERE AND THAT'S CONSISTENT WITH THE
11 FACT THE PATH GOES UPWARDS AND TO THE REAR AND TO THE
12 RIGHT. WHAT'S EVEN MORE IMPORTANT PART ARE THE LITTLE
13 TATTOOS AROUND ALL IT.

14 WHEN A GUN FIRES, IN ADDITION TO THE BULLET
15 COMING OUT THERE ARE PLANES. IF YOU'VE EVER SEEN A GUN
16 FIRED AT NIGHT, PARTICULARLY A SHOTGUN, THERE ARE FLAMES
17 THAT COME OUT. IF YOU SHOOT IT CLOSE ENOUGH TO SOMETHING
18 LIKE CLOTH, YOU WILL SEE THAT IN ADDITION TO THE BULLET
19 AND THE FLAMES, THERE IS COMPLETELY BURNED POWDER WHICH IS
20 SOOT WHICH CAN BE WASHED OFF OR WIPED OFF IN SOME CASES
21 THAT COMES OUT.

22 AND THIS CASE THAT WAS TRAPPED BY THE OVERLYING
23 FOLIAGE, BUT THE POWDER FLAMES THAT COME OUT SOME OF WHICH
24 ARE BURNING, SOME OF WHICH ARE NOT BURNING AT THAT TIME
25 CAN EITHER HIT THE SKIN AND FORM A LITTLE CRATER AND BOW

DR. SEXTON - DIRECT BY CROFT

1 OUT WHICH WE CALL A STIPPLING MARK OR THEY CAN HIT THE
2 SKIN, PENETRATE AND CHEMICALLY BOND WITH THE SKIN
3 PRODUCING A LITTLE RED TO SORT OF MAROON COLORED TATOO.

4 THERE ARE NOT MANY OF THEM HERE, BUT YOU CAN SEE
5 THEM PARTICULARLY HERE BELOW THE WOUND. THERE ARE FOUR
6 HERE, THREE, FOUR OR FIVE THERE, FOUR OR FIVE ACROSS HERE,
7 ONE OUT THERE AND A FEW UP HERE ABOVE.

8 WHAT THIS INDICATES IS THE GUN WAS CLOSE ENOUGH
9 THAT THE POWDER GRAINS WERE TRAVELING FAST ENOUGH NOT ONLY
10 TO PENETRATE THE CLOTHING BUT THE SHIRT HE WAS WEARING BUT
11 TO PENETRATE THE SKIN AND CHEMICALLY BOND WITH THE SKIN.

12 THIS TYPE OF TATOO WON'T COME OFF WITHOUT
13 SURGICALLY REMOVING IT, SO WE CAN EASILY SEE AFTER WE
14 WASHED THE BODY UP. FOR THE BENEFIT OF THE OTHER HALF OF
15 THE JURY, AGAIN THIS IS A PHOTOGRAPH OF THE ENTRANCE WOUND
16 ON THE FRONT OF THE CHEST.

17 THE ONE INCH RULER BELOW IT AND AROUND THIS
18 ENTRANCE WOUND YOU SEE LITTLE RED DOTS. THESE ARE AREAS
19 OF TATTOOING WHERE THE POWDER GRAINS HAVE ACTUALLY
20 PENETRATED THE SKIN AND CHEMICALLY BONDED WITH THE SKIN
21 AND PRODUCED A SMALL TATOO.

22 AND THEY ARE IN A ROUGHLY CIRCULAR PATTERN WITH
23 MORE OVER HERE BELOW THE GUNSHOT WOUND AND THE OVERALL
24 WIDTH OF THE PATTERN ABOUT ONE INCH. A GUN THAT FIRES
25 -- A PISTOL THAT FIRES GENERALLY WILL THROW POWDER FOR

DR. SEXTON - DIRECT BY CROFT

1 ABOUT A FOOT AND A HALF OR TWO FEET WITH STILL ENOUGH
2 VELOCITY OR THE POWDER OF THE GUN TO PENETRATE THE SKIN.

3 WITH THE CLOTHING BETWEEN THE GUN AND THE SKIN,
4 IT MAY PENETRATE AT A CLOSER DISTANCE THAN SAY TWO FEET OR
5 FOOT AND A HALF. THIS INDICATES THE GUN WAS FAIRLY CLOSE
6 TO THE INDIVIDUAL, LESS THAN SAY A FOOT OR FOOT AND A HALF
7 AT THE TIME THE GUN FIRED IN ORDER FOR IT TO PRODUCE THESE
8 TATTOOS.

9 NEXT THE OTHER HALF OF THE JURY THERE'S
10 ABRASIONS HERE ON THIS STICKER INDICATING THE BULLET IS
11 GOING UPWARD AND TO THE RIGHT AND TO THE REAR AND IT CUTS
12 THIS PART OF THE SKIN FIRST, SO IT SCRAPES THAT PART OF
13 THE SKIN.

14 Q ALL RIGHT. AND JUST SO THERE IS NO CONFUSION, YOU
15 HAVE -- WHAT IS THIS MARK YOU HAVE DRAWN ON HERE? HOW
16 DOES THAT RELATE TO THE FACT THIS PICTURE IS CUT IN A
17 STRANGE WAY?

18 A THE MARK HERE ON THIS DIAGRAM SHOWS THE FRONT OF THE
19 BODY. ON EXHIBIT 24 ON THE LEFT SIDE OF THE CHEST IS
20 WHERE THEY OPENED THE CHEST IN ORDER TO TRY TO SAVE MR.
21 ROSE BY COMPRESSING THE HEART, WHAT WE CALL OPEN CARDIAC
22 MASSAGE, ONE WAY IS TO SIMPLY PRESS ON THE CHEST.

23 ANOTHER MORE EFFICIENT WAY WHEN IT'S A VERY
24 SERIOUS CONDITION IS FEEL LIKE YOU'RE NOT GOING TO BE ABLE
25 TO SAVE THE PATIENT IS TO ACTUALLY OPEN THE CHEST AND

DR. SEXTON - DIRECT BY CROFT

1 PRESS ON THE HEART PLUS STIMULATE THE HEART WITH
2 ELECTRODES AND SO THIS IS WHAT'S CALLED AN OPEN
3 THORACOTOMY OR AN OPENING IN THE CHEST IN ORDER TO DO THAT
4 OPEN CARDIAC MASSAGE, AND THE PHOTOGRAPH HAS BEEN TRIMMED
5 TO DOES NOT TO SHOW THAT INCISION ON THE CHEST WHICH WAS
6 ADJACENT TO THE WOUND.

7 Q I'M GOING TO SHOW YOU ONE OTHER PHOTOGRAPH THAT IS
8 MARKED AS STATE'S EXHIBIT NUMBER 23 IN EVIDENCE. IF YOU
9 COULD DESCRIBE THAT, PLEASE.

10 A NUMBER 23 SHOWS THE BACK RIGHT OF THE DECEASED AND
11 YOU SEE AGAIN THE ONE INCH LABEL WITH OUR NUMBER 98-405
12 INDICATING 405TH AUTOPSY FOR THE YEAR 1998. AND THIS
13 SIMPLY SHOWS THE EXIT WOUND WHICH DOES NOT HAVE THE SAME
14 APPEARANCE OF THE -- AS THE ENTRANCE. ENTRANCE WOUNDS ARE
15 CHARACTERIZED BY HAVING AN ABRASION COLLAR.

16 THIS IS A LARGER PHOTOGRAPH. I THINK YOU CAN
17 SEE THE EDGE OF THE WOUND IS A DEEP SORT OF A BROWNISH
18 MAROON COLOR BECAUSE IT'S STRAIGHT BY THE BULLET COMING
19 IN. WHEN THE BULLET EXITS THE SKIN, THE FIRST PUSHES THE
20 SKIN AWAY FROM THE BODY AND THEN POPS ON THROUGH AND SO
21 THERE IS NOTHING TOUCHING THE EXTERNAL PART OF THE SKIN AT
22 THE TIME THE BULLET EXITS UNLESS THE PERSON IS AGAINST THE
23 WALL OR A FLOOR OR HAD VERY TIGHT CLOTHING, BELT OR
24 SOMETHING AT THAT SITE.

25 SO WE SEE A DIFFERENT TYPE OF WOUND. IT'S

DR. SEXTON - CROSS BY WRIGHT

1 GENERALLY NOT ROUND. IN THIS CASE IT'S SORT OF LINEAR.
2 IT HAS NO ABRASION COLLAR. SO THERE IS THE EXIT IN THE
3 UPPER RIGHT BACK WHICH IS DIFFERENT FROM THE ENTRANCE
4 WOUND. FOR THE BENEFIT OF THE OTHER HALF OF THE JURY,
5 THIS IS THE EXIT TO THE RIGHT BACK.

6 THIS POINT AND IT'S DIFFERENT FROM THE ENTRANCE
7 WOUND BECAUSE IT DOESN'T HAVE ANY ABRASION COLLAR AROUND
8 THE EDGE OF IT WHICH YOU WILL BE ABLE TO SEE BETTER IF YOU
9 EXAMINE THIS AT CLOSE RANGE.

10 THIS IS THE ENTRANCE WOUND FROM THE CHEST WITH
11 THE POWDER STIPPLING AND TATTOOING. THIS IS THE EXIT IN
12 THE RIGHT BACK. ON EXHIBIT 23 IS THE EXIT. EXHIBIT 22 IS
13 THE ENTRANCE.

14 Q DR. SEXTON, THANK YOU FOR YOUR TIME. PLEASE ANSWER
15 ANY QUESTIONS MR. WRIGHT MAY HAVE.

16 CROSS-EXAMINATION BY MR. WRIGHT:

17 Q HOW ARE YOU DOING, DR. SEXTON?

18 A FINE, THANK YOU.

19 Q YOU STATED THAT WHOEVER FIRED THE GUN WAS CLOSE UP ON
20 HIM, ON THE VICTIM?

21 A THAT'S CORRECT, THERE'S A GUN IN MY OPINION WAS LESS
22 THAN TWO FEET OR PROBABLY EVEN CLOSER THAN THAT BEING THE
23 MUZZLE OF THE GUN -- BETWEEN THE DISTANCE BETWEEN THE
24 CHEST AND THE MUZZLE OF THE GUN WITH IT BEING A LITTLE BIT
25 TO THE DECEDENT'S LEFT SINCE THE PATH IS TO THE RIGHT AND

DR. SEXTON - CROSS BY WRIGHT

1 UPWARD.

2 Q CAN YOU TELL I GUESS -- CAN YOU TELL WHERE THE GUN
3 WAS ACTUALLY AS FAR AS POSITION LIKE WHETHER IT WAS FRONT,
4 SIDE -- I GUESS IN RELATION TO THE DECEDENT'S BODY?

5 A CORRECT. THE PATH TELLS ME THAT. I HAVE DONE
6 THOUSANDS OF AUTOPSIES, OVER 8,000, MANY OF WHICH
7 UNFORTUNATELY BEEN GUNSHOT WOUNDS. AND UNLIKE WHAT WE SEE
8 ON T.V. BULLETS RARELY RICOCHET THE BODY. THE VELOCITY IS
9 SUCH THAT THEY GENERALLY GO STRAIGHT ON THROUGH TO WHERE
10 THEY STOP ON THE OTHER SIDE.

11 OCCASIONALLY THEY WILL BOUNCE OFF THE INSIDE OF
12 A SKULL ONCE THEY SLOW DOWN, BUT NOT IN THE REST OF THE
13 BODY. AND THE PATH IN THE BODY REFLECTS MOST EVERY CASE
14 THE PATH OUTSIDE OF THE BODY.

15 AND THE PATH IN THE BODY IS INDICATED WITH THE
16 GUN WAS SOMEWHERE ABOUT WHERE I WAS HOLDING MY HAND TO THE
17 LEFT AND AT A LEVEL OF ABOUT THE LOWER PART OF THE CHEST
18 AND DIRECTED SLIGHTLY UPWARD SO THAT THE PATH WOULD ENTER
19 THE CHEST SLIGHTLY TO THE LEFT OF MIDLINE AND PASS TO THE
20 REAR AND EXIT ON THE RIGHT SIDE OF THE CHEST.

21 SO THE GUN AT THE TIME IT WAS FIRED, THE GUN,
22 NOT SURE OF THE INDIVIDUAL BECAUSE OBVIOUSLY A LEFT HANDED
23 PERSON COULD PERHAPS BE TO THE LEFT SIDE OF THE DECEASED
24 AND REACH AROUND IN FRONT OR RIGHT HANDED OR LEFT HANDED
25 PERSON CAN BE IN FRONT OF THE DECEDENT AND SLIGHTLY TO HIS

SHARON BAILEY - DIRECT BY WRIGHT

1 LEFT.

2 I DON'T KNOW WHICH OF THOSE SCENARIOS HAPPENED,
3 BUT THE GUN AT THE TIME IT WAS FIRED WAS DIRECTED TOWARD
4 THE DECEDENT, WAS TO HIS LEFT DIRECTED SLIGHTLY UPWARD AND
5 WAS ABOUT A FOOT TO A FOOT AND A HALF AWAY AT THE TIME THE
6 SHOT WAS FIRED.

7 Q THANK YOU.

8 A YOU'RE WELCOME.

9 MR. WRIGHT: NO FURTHER QUESTIONS, YOUR HONOR.

10 MR. CROFT: NO REDIRECT, YOUR HONOR.

11 THE COURT: ALL RIGHT. YOU CAN COME DOWN AND YOU ARE
12 FREE TO GO, DOCTOR.

13 THE WITNESS: THANK YOU, YOUR HONOR.

14 (WHEREUPON THE WITNESS LEFT THE STAND).

15 MR. CROFT: THE STATE RESTS, YOUR HONOR.

16 THE COURT: ALL RIGHT. WHY DON'T YA'LL COME UP FOR
17 JUST ONE SECOND?

18 (WHEREUPON A BENCH CONFERENCE WAS HELD).

19 THE COURT: ALL RIGHT, MR. WRIGHT. CALL YOUR FIRST
20 WITNESS.

21 MR. WRIGHT: YES, YOUR HONOR. I'D LIKE TO CALL MRS.
22 SHARON WILLIAMS TO THE STAND.

23 SHARON BAILEY, BEING FIRST DULY SWORN,
24 TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION BY MR. WRIGHT:

SHARON BAILEY - DIRECT BY WRIGHT

1 Q MS. BAILEY, DO YOU HAVE ANY PRIOR CRIMINAL RECORD?

2 A YES.

3 Q OKAY. WHAT TYPES OF CHARGES DO YOU HAVE ON YOUR
4 RECORD?

5 A DISTRIBUTION OF MARIJUANA.

6 Q MARIJUANA? OKAY. ANYTHING -- ANY OTHER KIND OF
7 CHARGES?

8 A MISDEMEANORS.

9 Q OKAY. AND ON THE NIGHT OF SEPTEMBER 3RD, 1998, WERE
10 YOU AT THE DIAMOND CLUB HERE IN SUMTER COUNTY?

11 A YES.

12 Q OKAY. DO YOU REMEMBER APPROXIMATELY WHAT TIME YOU
13 WENT TO THE CLUB?

14 A NO.

15 Q OKAY. DO YOU REMEMBER WERE THERE ANY PEOPLE WITH YOU
16 AT THE CLUB?

17 A YES.

18 Q WHO WERE THOSE PEOPLE?

19 A ME, ANTIONETTE ANDERSON, JANICE JOHNSON.

20 Q ANYBODY ELSE?

21 THE COURT: SPEAK UP A LITTLE BIT SO WE CAN HEAR
22 YOU.

23 Q ANYBODY ELSE?

24 A NATASHA TOMLIN.

25 Q OKAY. AND AT ANY POINT DID YOU GIVE -- DID YOU TALK

SHARON BAILEY - DIRECT BY WRIGHT

1 TO THE POLICE ABOUT WHAT HAPPENED THAT NIGHT?

2 A YES.

3 Q OKAY. DID YOU GIVE A WRITTEN STATEMENT TO THEM?

4 A YES.

5 Q AND WOULD YOU GIVE YOUR ACCOUNT OF WHAT HAPPENED?

6 A ALL I CAN REMEMBER IS THE GUY TONY HAD ASKED ME FOR A
7 CIGARETTE GOING BACK IN THE CLUB AND WHEN I WENT DOWN GET
8 MY PURSE--

9 COURT REPORTER: I COULDN'T UNDERSTAND.

10 THE COURT: HAVE TO START OVER. YOU HAVE TO SPEAK UP
11 AND YOU HAVE TO TALK MORE SLOWLY. WE ARE HAVING A HARD
12 TIME HEARING YOU. START OVER. TELL US WHAT HAPPENED THAT
13 NIGHT.

14 A WHEN I WAS ON MY WAY BACK INTO THE CLUB, TONY HAD
15 STOPPED ME, ASKED ME FOR A CIGARETTE. WHEN I WENT TO
16 UNZIP MY PURSE, HE FELL.

17 Q OKAY. SO YOU WERE OUTSIDE THE CLUB WHEN YOU WERE
18 COMING BACK IN?

19 A YES.

20 Q AND WHERE DID HE FALL? WHERE WERE YOU IN RELATION TO
21 HIM WHEN YOU WERE TALKING TO HIM?

22 A EXCUSE ME?

23 Q WHEN YOU WERE TALKING TO HIM, YOU SAID HE ASKED YOU
24 FOR A CIGARETTE?

25 A UH-HUH.

SHARON BAILEY - DIRECT BY WRIGHT

- 1 Q HOW FAR AWAY FROM HIM WERE YOU?
- 2 A HE WAS LIKE STANDING RIGHT IN FRONT OF ME.
- 3 Q RIGHT IN FRONT OF YOU?
- 4 A UH-HUH.
- 5 Q OKAY. WERE--
- 6 THE COURT: DON'T ASK HER A LEADING QUESTION, NOW.
- 7 Q WHO ELSE WAS AROUND YOU AT THE TIME?
- 8 A SEVERAL PEOPLE.
- 9 Q OKAY. AND--
- 10 THE COURT: WHO?
- 11 Q DO YOU KNOW WHOSE -- PEOPLE'S NAMES?
- 12 A NO.
- 13 Q WERE THE PEOPLE WHO YOU JUST NAMED AROUND?
- 14 A NO.
- 15 Q ALL RIGHT. WHO WAS AROUND TONY AT THE TIME?
- 16 A HARRY SPANN AND LOUIS.
- 17 Q LOUIS?
- 18 A JENKINS.
- 19 Q DID YOU SEE ANYBODY ELSE AROUND TONY AT THE TIME?
- 20 A A FEW OTHER PEOPLE. I CAN'T REMEMBER WHO EXACTLY IT
- 21 WAS.
- 22 Q ANYBODY ELSE IN THIS COURTROOM?
- 23 A NO.
- 24 Q SO YOU WERE THERE AT THE TIME TONY ROSE WAS SHOT, YOU
- 25 WERE ACTUALLY TALKING TO HIM?

SHARON BAILEY - DIRECT BY WRIGHT

1 A YES.

2 Q AND DO YOU KNOW WHY WE ARE HERE TODAY AS FAR AS
3 TRIAL, RIGHT?

4 A YES.

5 Q DID YOU SEE HIM, KEVIN CHOICE?

6 A NO, SIR.

7 Q AND IS IT TRUE THAT IN SEPTEMBER OF 19--

8 MR. CROFT: YOUR HONOR?

9 THE COURT: NO, NO.

10 (WHEREUPON QUESTIONING RESUMED).

11 Q WHEN DID YOU NOTIFY THE POLICE THAT YOU -- WHO YOU
12 SAW AND WHO YOU DIDN'T SEE AND WHAT YOU KNEW AS FAR AS THE
13 INCIDENT?

14 A A FEW DAYS LATER.

15 Q SO IT WASN'T 1998, SEPTEMBER?

16 A YES.

17 Q OKAY. WHO DID YOU TALK TO AT THE POLICE -- IN THE
18 POLICE DEPARTMENT?

19 A I THINK IT WAS DETECTIVE WILLIAMS.

20 Q OKAY. DO YOU SEE HIM HERE TODAY?

21 A YES.

22 Q IS THAT HIM RIGHT THERE?

23 A (NO VERBAL RESPONSE).

24 Q AND YOU DID GIVE A WRITTEN STATEMENT?

25 A YES.

SHARON BAILEY - DIRECT BY WRIGHT

1 Q IS THIS STATEMENT TRUE AND CORRECT TO YOUR KNOWLEDGE?

2 A YES.

3 Q OKAY. AT ANY TIME WERE YOU -- AFTER YOU GAVE THIS
4 STATEMENT, DID YOU EVER TALK TO THE POLICE AGAIN?

5 A NO, SIR.

6 Q DID THEY CONTACT YOU?

7 A NO, SIR.

8 Q DID THEY CONTACT YOU SAYING THAT THEY WERE HAVING A
9 TRIAL?

10 A NO, SIR.

11 Q OKAY. AND YOU STATED YOU WERE A WITNESS, CORRECT?

12 A YES.

13 Q AND EVERYTHING YOU HAVE TESTIFIED RIGHT HERE, DID
14 YOU--

15 THE COURT: NO, DON'T ASK HER THAT QUESTION. DON'T
16 TRY TO BOLSTER YOUR WITNESS.

17 (WHEREUPON QUESTIONING RESUMED).

18 Q ALL RIGHT. THAT NIGHT AFTER MR. ROSE WAS SHOT, WHAT
19 HAPPENED? WHAT DID YOU DO?

20 A AT FIRST I PANICKED AND THEN I SAW EVERYBODY RUNNING,
21 SO I RAN, TOO.

22 Q SO YOU RAN?

23 A YES.

24 MR. WRIGHT: NO FURTHER QUESTIONS, YOUR HONOR.

25 THE COURT: YOU GOT ANY QUESTIONS, MR. CROFT?

SHARON BAILEY - CROSS BY CROFT

1 MR. CROFT: YES, SIR, YOUR HONOR.

2 THE COURT: NOBODY EVER TAKES ME UP ON MY OFF NOT TO
3 ASK ANY QUESTIONS. YA'LL EVER NOTICE THAT?

4 CROSS-EXAMINATION BY MR. CROFT:

5 Q GOOD AFTERNOON, MS. BAILEY. HOW ARE YOU DOING?

6 A FINE.

7 Q NOW, LET ME ASK YOU A FEW QUESTIONS ABOUT LEADING UP
8 TO ALL OF THESE EVENTS. YOU HAD BEEN AT THE BAR. DO YOU
9 REMEMBER SAYING IN YOUR STATEMENT THAT YOU HAD BEEN THERE
10 SINCE ABOUT 10:45?

11 A YES, I COULD HAVE BEEN THERE BEFORE THEN BECAUSE I
12 WAS BROWSING OUT IN THE PARKING LOT.

13 Q WHAT'S THAT?

14 A I WAS OUT IN THE PARKING LOT BEFORE I ENTERED THE
15 CLUB.

16 Q OKAY. AND YOU SAID YOU HAD BEEN DRINKING A GOOD BIT
17 THAT NIGHT; IS THAT RIGHT?

18 A YES.

19 Q OKAY. AND YOU REMEMBER -- THAT HAS BEEN A WHILE AGO;
20 HAS IT NOT?

21 A YES.

22 Q YOUR MEMORY IS NOT SO GOOD OF THAT NIGHT; IS IT?

23 A YES.

24 Q YES, IT'S NOT GOOD; IS THAT RIGHT?

25 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

SHARON BAILEY - CROSS BY CROFT

1 THE COURT: NEED TO SPEAK UP. SHE HAS TO TAKE DOWN
2 YOUR ANSWER SO YOU HAVE TO SAY YES OR NO. SHE CAN'T TAKE
3 DOWN A NOD.

4 Q NOW, IN YOUR STATEMENT YOU SAID THAT YOU HAD BEEN
5 INVOLVED IN AN ALTERCATION YOURSELF, THOUGH; ISN'T THAT
6 RIGHT?

7 A YES.

8 Q AND HAD YOU BEEN ASKED TO LEAVE THE CLUB OR DID YOU
9 JUST LEAVE ON YOUR OWN? YOU WENT OUTSIDE AT SOME POINT;
10 IS THAT RIGHT?

11 A I WAS OUTSIDE TALKING TO THE SECURITY.

12 Q OKAY. AND THAT WAS AFTER YOU GOT IN SOME SORT OF
13 ALTERCATION WITH ANOTHER FEMALE?

14 A YES.

15 Q OKAY. AND THEN YOU CAME BACK. WHEN DID YOU GET IN
16 THE ALTERCATION INSIDE THE BAR? YOU DON'T REMEMBER?

17 A NO, I DON'T REMEMBER.

18 Q OKAY. DO YOU REMEMBER IF THEY ASKED YOU TO LEAVE THE
19 BAR OR IF YOU JUST WALKED OUTSIDE ON YOUR OWN?

20 A I WENT OUTSIDE ON MY OWN.

21 Q OKAY. AND YOU CAME BACK INSIDE THE BAR AT SOME
22 POINT; IS THAT RIGHT?

23 A YES.

24 Q OKAY. AND YOU SAID IN YOUR STATEMENT THAT AFTER YOU
25 WENT TO THE BAR, YOU WERE GOING BACK OUTSIDE; ISN'T THAT

SHARON BAILEY - CROSS BY CROFT

1 RIGHT?

2 A YES.

3 Q AND THAT'S WHEN YOU RAN INTO TONY YOU SAY?

4 A YES, ON MY WAY BACK IN.

5 Q OKAY. AND IT'S SAFE TO SAY THAT YOU WEREN'T REALLY
6 PAYING ATTENTION TO WHAT HE WAS DOING AT THAT POINT; WERE
7 YOU?

8 A NO, SIR.

9 Q OKAY. YOU SAID HE HAD ASKED YOU FOR A CIGARETTE OR
10 SOMETHING?

11 A YES.

12 Q AND YOU DIDN'T REALLY PAY ATTENTION TO WHO WAS AROUND
13 HIM; DID YOU? HE HAD ASKED YOU A QUESTION?

14 A YES.

15 Q OKAY. AND YOU WERE LOOKING DOWN AND UNZIPPING YOUR
16 POCKETBOOK; IS THAT RIGHT?

17 A YES.

18 Q OKAY. AND IS THAT WHEN YOU -- THAT'S WHEN YOU HEARD
19 THE SHOT; ISN'T IT?

20 A YES.

21 Q OKAY. AND AT THAT POINT IT'S SAFE TO SAY YOU
22 PROBABLY DUCKED FOR COVER HEARING A GUNSHOT; ISN'T THAT
23 RIGHT?

24 A YES.

25 Q OKAY. AND IS THAT WHEN YOU -- AFTER YOU KIND OF

SHARON BAILEY - CROSS BY CROFT

1 DUCKED FOR COVER AND RELAXED, ISN'T IT ABOUT THAT POINT
2 YOU FINALLY LOOKED UP TO SEE WHAT WAS GOING ON?

3 A YES.

4 Q OKAY. AND IS IT SAFE TO SAY THAT AT THAT POINT
5 THAT'S WHEN YOU DIDN'T SEE KEVIN CHOICE?

6 A YES.

7 Q OKAY. AND IS IT ALSO SAFE TO SAY THAT WHILE YOU SAID
8 HARRY SPANN WAS STILL STANDING THERE, THAT HE WAS STANDING
9 THERE BECAUSE HE HADN'T DONE ANYTHING?

10 A I GUESS HE WAS JUST STANDING THERE.

11 Q OKAY. YOU DIDN'T SEE A GUN IN HIS HAND OR ANYTHING
12 LIKE THAT?

13 A NO, SIR.

14 Q IT'S SAFE TO SAY THAT IN BETWEEN THOSE TIMES, THAT
15 TIME THAT YOU HEARD A SHOT AND KIND OF DUCKED FOR COVER
16 THAT KEVIN WOULD HAVE HAD TIME TO HEAD FOR THE DOOR, WAS
17 JUST A FEW FEET AWAY, RIGHT, IF HE HAD BEEN STANDING
18 THERE?

19 A YES.

20 Q BUT YOU DON'T REALLY KNOW FOR SURE WHO WAS STANDING
21 THERE, RIGHT?

22 A NO.

23 Q ONE OTHER QUESTION. I DO HAVE TO ASK YOU ABOUT YOUR
24 CRIMINAL RECORD AS HE DID. IT'S TRUE YOU HAVE A COUPLE
25 DIFFERENT DISTRIBUTION OF MARIJUANA CHARGES ON YOUR

SHARON BAILEY - REDIRECT BY WRIGHT

1 RECORD, RIGHT?

2 A YES.

3 Q AND A COUPLE SHOPLIFTINGS?

4 A YES.

5 Q OKAY. OH, AND DIDN'T YOU ALSO GET CONVICTED OF
6 GIVING FALSE INFORMATION TO POLICE IN JULY OF '99?

7 A YES.

8 MR. CROFT: I HAVE NOTHING FURTHER, YOUR HONOR.

9 THE COURT: ANY REDIRECT?

10 MR. WRIGHT: YES, SIR.

11 REDIRECT EXAMINATION BY MR. WRIGHT:

12 Q MR. CROFT JUST ASKED YOU ABOUT WHAT YOU SAW, WHO WAS
13 STANDING AROUND. IN YOUR STATEMENT YOU DID STATE WHO WAS
14 THERE, CORRECT? YOU GAVE SPECIFIC NAMES; DID YOU NOT?

15 A YES.

16 Q AND WHAT WERE THOSE NAMES?

17 A HARRY SPANN AND LOUIS JENKINS.

18 Q AND WHERE DID YOU SAY THEY WERE STANDING?

19 A BEHIND TONY.

20 Q OKAY. HARRY WHO WAS -- HARRY AND LOUIS WERE STANDING
21 WHERE?

22 A BEHIND TONY.

23 Q DO YOU REMEMBER GIVING THIS STATEMENT, CORRECT?

24 A YES.

25 THE COURT: YOU'RE NOT PUTTING THE STATEMENT INTO

SHARON BAILEY - REDIRECT BY WRIGHT

1 EVIDENCE, MR. WRIGHT. NOT PUTTING IT INTO EVIDENCE.

2 MR. WRIGHT: CAN I LET HER LOOK AT IT?

3 THE COURT: NO, NO. DON'T ASK HER THE SAME QUESTION
4 YOU HAVE ALREADY ASKED ON DIRECT EXAMINATION. JUST
5 GETTING TO REPEAT STUFF NOW.

6 MR. WRIGHT: YES, SIR, YOUR HONOR. I'M STATING WHAT
7 SHE STATED IN HER STATEMENT ABOUT WHERE THEY WERE
8 STANDING.

9 THE COURT: NO, THE STATEMENTS ARE USED FOR TWO
10 PURPOSES, NEITHER OF WHICH ARE APPLICABLE HERE. YOU WANT
11 TO IMPEACH HER WITH THE STATEMENT, DO SO.

12 MR. WRIGHT: THAT'S THE FACTS SHE'S SAYING SOMETHING
13 A LITTLE DIFFERENT THAN WHAT SHE SAID IN HER STATEMENT.

14 THE COURT: THE STATEMENT DOES NOT COME INTO
15 EVIDENCE.

16 MR. WRIGHT: THAT'S WHY I WAS LETTING HER READ IT SO
17 SHE CAN SAY WHAT SHE WROTE TWO YEARS AGO.

18 THE COURT: LET ME SEE YOU UP HERE A SECOND. LET ME
19 SEE IT.

20 MR. WRIGHT: THIS IS WHERE MR. JENKINS WAS STANDING
21 AND MR. SPANN--

22 (HANDED DOCUMENT UP TO COURT).

23 THE COURT: OKAY.

24 MR. WRIGHT: THANK YOU.

25 (WHEREUPON QUESTIONING RESUMED).

EUGENE WILLIAMS - DIRECT BY WRIGHT

1 Q DID YOU READ IN YOUR STATEMENT THE SENTENCE WHERE IT
2 STARTS WITH LOUIS JENKINS? READ IT OUT LOUD, PLEASE.

3 A LOUIS JENKINS HAD BEEN STANDING NEXT TO TONY AND
4 HARRY SPANN WAS STANDING IN FRONT OF TONY.

5 Q OKAY. AND IN YOUR STATEMENT, WAS THERE ANYBODY ELSE
6 YOU SAID WAS AROUND?

7 A NO, SIR.

8 Q OKAY. AND YOU TESTIFIED IN COURT EARLIER AND IN YOUR
9 STATEMENT, WHAT DID YOU SAY ABOUT KEVIN CHOICE?

10 A I DIDN'T SEE HIM.

11 MR. WRIGHT: NO FURTHER QUESTIONS.

12 THE COURT: ALL RIGHT. YOU CAN COME DOWN.

13 (WHEREUPON THE WITNESS LEFT THE STAND).

14 THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS.

15 MR. WRIGHT: YOUR HONOR, I'D LIKE TO CALL MR. EUGENE
16 WILLIAMS TO THE STAND.

17 THE COURT: OKAY.

18 EUGENE WILLIAMS, BEING FIRST DULY
19 SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION BY MR. WRIGHT:

21 Q HOW YOU DOING, MR. WILLIAMS?

22 A JUST FINE.

23 Q OKAY. WHAT IS YOUR CAPACITY RIGHT NOW WITH THE
24 SUMTER LAW ENFORCEMENT?

25 A I'M A LIEUTENANT IN CHARGE OF A SHIFT.

EUGENE WILLIAMS - DIRECT BY WRIGHT

1 Q OKAY. WHAT WAS YOUR CAPACITY IN 1998?

2 A I WAS A SENIOR DETECTIVE.

3 Q WERE YOU THE LEAD DETECTIVE ON THIS PARTICULAR CASE?

4 A IN THE VERY BEGINNING THE CASE WAS GIVEN TO ME AND I
5 WAS THE LEAD DETECTIVE. BEFORE THE CASE WAS COMPLETE, I
6 GOT TRANSFERRED BACK OUT ON -- NOW GOT A PROMOTION AND I
7 GOT TRANSFERRED OUT AND THE CASE WAS THEN TURNED OVER TO
8 MY PARTNER.

9 Q WHO WAS THAT?

10 A DETECTIVE HOLSTON.

11 Q AND APPROXIMATELY WHEN DID THIS HAPPEN, THE TRANSFER?

12 A IT WAS JUST A FEW MONTHS, I GUESS MAYBE A MONTH,
13 MONTH AND A HALF AFTER THIS INCIDENT HAD TAKEN PLACE.

14 Q OKAY. AND DID YOU GIVE -- DID YOU INTERVIEW ANY
15 WITNESSES TO THIS INCIDENT?

16 A YES, I DID.

17 Q COULD YOU TELL ME WHO THOSE PEOPLE ARE?

18 A THE YOUNG LADY THAT WAS JUST ON THE STAND WAS ONE,
19 SHARON GREEN, ALSO THE SECURITY OFFICERS THAT WE HAD UP
20 HERE PREVIOUSLY.

21 Q OKAY.

22 A I THINK IT WAS THREE SECURITY OFFICERS AND SHARON AND
23 I THINK IT WAS LIKE MAYBE TWO OTHER YOUNG LADIES, THINK
24 ONE OF THEM WAS A MS. TOMLIN.

25 Q AND OTHER THAN THE SECURITY OFFICERS THAT TESTIFIED

EUGENE WILLIAMS - DIRECT BY WRIGHT

1 HERE, WAS THERE ANY MORE?

2 A OTHER THAN THE SECURITY OFFICERS.

3 Q OTHER THAN THE TWO THAT TESTIFIED, THERE WERE TWO
4 THAT TESTIFIED?

5 A RIGHT.

6 Q WERE THERE ANY OTHER SECURITY OFFICERS THAT YOU
7 INTERVIEWED?

8 A YES, THERE WAS.

9 Q OKAY. DO YOU REMEMBER WHO THAT WAS?

10 A OFFICER SEAN HARDY.

11 Q OKAY. AND HE GAVE A WRITTEN STATEMENT, CORRECT?

12 A YES, HE DID.

13 Q DID YOU WITNESS THAT STATEMENT?

14 A EITHER MYSELF OR DETECTIVE HOLSTON, ONE OF US
15 WITNESSED IT.

16 MR. WRIGHT: YOUR HONOR, MAY I APPROACH?

17 Q IS THAT YOUR SIGNATURE?

18 A THAT IS MY SIGNATURE, THAT'S CORRECT.

19 Q AND DO YOU REMEMBER WHAT TIME PERIOD YOU TOOK ALL OF
20 THESE STATEMENTS OR GOT TO TALK TO ALL THESE PEOPLE?

21 A IT HAD TO BE WITHIN I WOULD GIVE OR TAKE MAYBE A
22 WEEK, MAYBE TWO WEEKS FROM THE TIME OF THE INCIDENT.

23 Q OKAY. AND SO THAT'S ABOUT FIVE OR SIX PEOPLE THAT
24 YOU TALKED TO; IS THAT CORRECT?

25 A THEREABOUTS, RIGHT.

EUGENE WILLIAMS - DIRECT BY WRIGHT

1 Q DID YOU ASK THEM WHAT HAPPENED?

2 A YES, SIR, THAT'S...

3 Q AND THEY TOLD YOU WHAT THEY KNEW?

4 A THEY TOLD ME WHAT THEY KNEW AND THEY CAME DOWN AND
5 GAVE STATEMENTS WHICH YOU HAVE IN FRONT OF YOU.

6 Q WAS THERE ANYBODY ELSE YOU TALKED TO?

7 A WELL, WE TALKED TO A SERIES OF PEOPLE. I MEAN, YOU
8 KNOW, WE TRY TO -- AND BEING A DETECTIVE, WE TRY TO GO OUT
9 AND TALK TO ANY AND EVERYBODY THAT WE KNOW WAS AT THE
10 CLUB. SO THERE WAS A LOT, A LOT OF PEOPLE THAT WE TALKED
11 WITH, YOU KNOW.

12 YOU GET HEARSAY THINGS ABOUT THIS PERSON BEING
13 THERE, THIS PERSON BEING THERE. BUT WHEN YOU APPROACH
14 THEM AND ASK THEM ABOUT IT, NO, I WASN'T THERE. WE TALKED
15 TO A LOT OF PEOPLE.

16 Q AND OTHER THAN LOUIS JENKINS BEFORE THIS WEEK, THIS
17 PAST WEEK, THE PEOPLE THAT GAVE STATEMENTS REGARDING KEVIN
18 CHOICE AND THE INCIDENT, ANYBODY SAID HE SHOT MR. ROSE?

19 A NOBODY TOLD ME DIRECTLY THAT HE SHOT MR. ROSE, NO.

20 Q AND--

21 A BUT I GATHERED THE FACTS AND INFORMATION IS WHAT I
22 TURNED OVER TO THE SOLICITOR'S OFFICE.

23 Q AND MR. LOUIS JENKINS, DID YOU TALK TO HIM BACK THEN?

24 A NO, I DID NOT.

25 Q DID YOU EVER INTERVIEW HIM?

EUGENE WILLIAMS - DIRECT BY WRIGHT

1 A NO, I DIDN'T. LET ME BACK UP. WE SPOKE TO MR.
2 JENKINS I THINK IT WAS LIKE MAYBE THE SECOND OR THE THIRD
3 DAY HE WAS OVER AT HIS WIFE'S MOM'S HOUSE. HE WAS IN THE
4 YARD.

5 THERE WAS A LOT OF PEOPLE THERE AND DETECTIVE
6 HOLSTON AND I WENT OVER, WE SAW HIM AND WE TOLD HIM AT
7 THAT TIME WE WANTED TO GET WITH HIM LATER, BUT BECAUSE OF
8 THINGS THAT JUST HAPPENED, WE WAS GOING TO LET IT RIDE FOR
9 A FEW DAYS.

10 Q OKAY.

11 A BUT WE NEVER GOT BACK IN TOUCH WITH HIM BECAUSE WE
12 COULDN'T -- COULDN'T RUN HIM DOWN AFTER THAT.

13 Q OKAY. AND WHEN WERE YOU NOTIFIED ABOUT THIS TRIAL?

14 A WHEN WAS I NOTIFIED?

15 Q YES.

16 A I THINK ABOUT A WEEK AGO THEY TOLD ME THAT IT WAS
17 COMING UP.

18 Q AND BEFORE YOU HEARD KEVIN JENKINS TESTIFY, LOUIS
19 JENKINS TESTIFY, WHEN YOU DID TALK TO HIM, DID HE SAY
20 ANYTHING ABOUT WHO SHOT--

21 MR. CROFT: YOUR HONOR, HE'S ASKING FOR HEARSAY
22 ANSWERS.

23 THE COURT: RIGHT, HE'S NOT HERE.

24 (WHEREUPON QUESTIONING RESUMED).

25 Q YOU INTERVIEWED MS. BAILEY WHO JUST LEFT HERE,

EUGENE WILLIAMS - DIRECT BY WRIGHT

1 CORRECT?

2 A THAT'S CORRECT.

3 Q SHE STATED WHO WAS NEAR MR. CHOICE OR MR. -- NOT MR.
4 CHOICE BUT MR. ROSE AT THE TIME, CORRECT?

5 A PEOPLE THAT SHE REMEMBERED SEEING THERE, YEAH.

6 Q DID YOU INTERVIEW THOSE PEOPLE? SHE NAMED TWO
7 SPECIFICALLY. DID YOU INTERVIEW THOSE PEOPLE?

8 A NO, I DID NOT.

9 Q THE PEOPLE WHO SHE STATED WAS AROUND HIM?

10 A NO, I DID NOT.

11 Q WERE THERE ANYBODY ELSE THAT WERE EVER SUSPECTS
12 BESIDES MR. CHOICE?

13 A WELL, WHEN WE WORK -- WHEN WE WORKING A MURDER CASE,
14 THERE'S QUITE A FEW PEOPLE THAT ARE SUSPECTS ESPECIALLY IN
15 A NIGHTCLUB LIKE THAT, BUT EVIDENCE AND EVERYTHING WAS SAY
16 THINGS THAT WE WERE LOOKING FOR, WE GATHERED AND TURNED
17 OVER TO THE SOLICITOR'S OFFICE WITH -- WHICH POINT TO A
18 PARTICULAR PERSON.

19 Q AND DID YOU DO AN INVESTIGATION REGARDING THE OTHER
20 PEOPLE THAT WERE SUSPECTS?

21 A QUESTIONS AND STUFF WERE ASKED, YES, SIR.

22 Q TO THEM?

23 A NOT NECESSARILY TO THEM, BUT TO OTHER PEOPLE.

24 Q OKAY. DO YOU--

25 A A COMPLETE INVESTIGATION WAS DONE.

EUGENE WILLIAMS - DIRECT BY WRIGHT

1 Q YOU WERE HERE JUST WHEN MS. BAILEY SPOKE AND SAID WHO
2 WAS AROUND, CORRECT?

3 A THAT'S CORRECT.

4 Q YOU REMEMBER THE NAMES, THE TWO NAMES THAT SHE SAID
5 WAS AROUND MR. ROSE?

6 A SHE SAID HARRY SPANN AND LOUIS.

7 Q WHAT DID YOU JUST STATE ABOUT LOUIS JENKINS?

8 A WHAT DID I JUST STATE ABOUT HIM? WE COULDN'T FIND
9 LOUIS JOHNSON. HE NEVER REALLY GAVE US A STATEMENT.

10 Q AND DID YOU TALK TO MR. SPANN?

11 A NO, SIR. WELL I SAW MR. SPANN AT ONE TIME WHEN I WAS
12 IN A COURTROOM AND HE REFUSED TO TALK TO ME.

13 Q OKAY. BESIDES MR. CHOICE OR MR. ROSE, ANY RESIDUE
14 KITS WERE DONE ON ANYBODY ELSE, ANY GUNSHOT RESIDUE?

15 A NOW, THAT I DIDN'T DO ANYTHING. I DON'T KNOW IF
16 FORENSICS LAB DIDN'T POINT OUT TO ME THAT THEY DID IT ON
17 ANYBODY ELSE.

18 Q WERE YOU THE INVESTIGATOR ON THE CASE?

19 A YES, SIR.

20 Q DID YOU--

21 A BUT ANY INVESTIGATION YOU DIVIDED UP INTO, I AM THE
22 LEAD INVESTIGATOR FOR THE -- BUT YOU HAVE THE FORENSIC
23 PART THAT DOES THIS AND THE KITS THAT THEY BROUGHT ME,
24 NOBODY ELSE'S BUT HIS WAS THE ONLY ONE THAT WAS BROUGHT TO
25 ME ON KEVIN AND ON THE DECEASED, SO THEY DIDN'T HAVE ANY

EUGENE WILLIAMS - DIRECT BY WRIGHT

1 OTHERS TO TURN OVER TO ME.

2 Q OKAY. AND AS THE LEAD INVESTIGATOR, NOBODY ELSE --
3 YOU DIDN'T TELL ANYBODY ELSE TO DO ANY KITS?

4 A NO, SIR.

5 Q DID YOU HAVE ANYTHING TO DO WITH THIS INVESTIGATION
6 AFTER YOU LEFT?

7 A NO, SIR. DETECTIVE HOLSTON TOOK OVER THE CASE AFTER
8 I LEFT.

9 Q DURING THIS INVESTIGATION, AT ANY TIME DID YOU TALK
10 TO MR. CHOICE HIMSELF?

11 A NO, SIR, I DIDN'T. WELL, I TRIED. I WENT OUT TO THE
12 JAIL AND HE SAID THAT HE DIDN'T WANT TO TALK TO ME.

13 Q HOW MANY TIMES DID YOU GO OUT TO THE JAIL?

14 A TWICE.

15 Q HE NEVER TALKED TO YOU?

16 A NO.

17 Q DID YOU TALK TO ANY FAMILY MEMBERS?

18 A I SPOKE WITH HIS FATHER. I WENT BY THE RESIDENCE A
19 FEW TIMES AND I RAN INTO HIS FATHER AT THE MARKET EXPRESS
20 ONE AFTERNOON AT THE CORNER OF LIBERTY AND GUIGNARD AND HE
21 AND I SPOKE BRIEFLY ABOUT THE MATTER AND HE SAID THAT HE
22 THOUGHT THAT HIS SON WAS NOT GUILTY. AND MY WORDS TO HIM
23 WAS IF YOU THINK THAT YOUR SON IS NOT, YOU SHOULD ASK YOUR
24 SON TO TALK WITH ME.

25 HE SAID I WILL BE GOING BACK OUT TO THE JAIL AND

EUGENE WILLIAMS - CROSS BY CROFT

1 I'M GOING TO TRY TO GET HIM TO TALK TO YOU, BUT IT NEVER
2 PREVAILED.

3 Q DID AT ANY TIME YOU GIVE YOUR OPINION TO ANYBODY
4 ABOUT THE CASE?

5 A GIVE YOU MY OPINION?

6 Q YES, SIR.

7 A NO, SIR.

8 Q DID YOU GIVE AN OPINION TO THE SOLICITOR BEFOREHAND
9 ABOUT THE MERITS OF THE CASE OR--

10 A I MEAN, WE SAT DOWN AND WE TALKED, YEAH. I MEAN, YOU
11 KNOW, THAT'S PART OF THE JOB. GOT TO SIT DOWN AND DISCUSS
12 THE CASE, YEAH.

13 Q DO YOU KNOW HOW MANY OFFICERS PARTICIPATED IN THE
14 INVESTIGATION?

15 A TOTALLY BE HONEST WITH YOU, NO. THERE'S QUITE A FEW.

16 Q OKAY.

17 MR. WRIGHT: NO FURTHER QUESTIONS, YOUR HONOR.

18 THE COURT: ANY QUESTIONS?

19 MR. CROFT: JUST A FEW, YOUR HONOR.

20 CROSS-EXAMINATION BY MR. CROFT:

21 Q WHEN YOU SAY THAT IT'S SAFE TO SAY THAT THIS HAPPENED
22 THE NIGHT, YOU WERE NOT THE ON-CALL INVESTIGATOR, CORRECT?

23 A THAT'S CORRECT.

24 Q SO YOU WERE NOT AT THE SCENE ANY TIME THE TIMEFRAME
25 AFTER THIS ACTUALLY OCCURRED, RIGHT?

EUGENE WILLIAMS - CROSS BY CROFTR

1 A THAT'S CORRECT. I WENT BACK TO THE CRIME SCENE THE
2 FOLLOWING AFTERNOON.

3 Q OKAY. AND AT THAT POINT ALL FORENSIC INVESTIGATION
4 HAD BEEN TAKEN CARE OF; IS THAT RIGHT?

5 A THAT'S CORRECT.

6 Q OKAY. AND SO IN LARGE PART, BOTH YOU -- AND WHEN YOU
7 TURNED IT OVER TO INVESTIGATOR HOLSTON, YA'LL WERE
8 RELEGATED TO SIMPLY TALKING TO OTHER PEOPLE, RIGHT?

9 A THAT'S CORRECT.

10 Q AND AS YOU STATED, YOU INTERVIEWED LOTS OF PEOPLE,
11 CORRECT?

12 A THAT'S CORRECT.

13 Q AND SOME OF THE PEOPLE THAT YA'LL TALKED TO, AS A
14 MATTER OF FACT MOST OF THEM DID NOT GIVE STATEMENTS; IS
15 THAT RIGHT?

16 A THEY DID NOT, THAT'S CORRECT.

17 Q AND IS IT CORRECT YA'LL DID TALK TO FRANCIS MARION
18 HOWARD BEFOREHAND?

19 A THAT'S CORRECT.

20 Q HE DID NOT GIVE A WRITTEN STATEMENT EITHER?

21 A RIGHT.

22 Q AND YOU SAID YOU DID IN FACT GO OUT TO THE JAIL AND
23 ATTEMPT TO TALK WITH MR. CHOICE; IS THAT RIGHT?

24 A TWO OCCASIONS.

25 Q AND HE REFUSED TO TALK TO YOU?

ALVIN HOLSTON - DIRECT BY WRIGHT

1 A THAT'S CORRECT.

2 Q IT WASN'T THAT YOU DIDN'T MAKE THE EFFORT TO CALL
3 HIM, RIGHT?

4 A NO, SIR.

5 Q OKAY.

6 MR. CROFT: COURT'S INDULGENCE.

7 (WHEREUPON THERE WAS A PAUSE).

8 MR. CROFT: I HAVE NOTHING FURTHER, YOUR HONOR.

9 THE COURT: ALL RIGHT. ANY REDIRECT?

10 MR. WRIGHT: NO, SIR, YOUR HONOR.

11 THE COURT: ALL RIGHT. YOU CAN COME DOWN. CALL YOUR
12 NEXT WITNESS.

13 (WHEREUPON THE WITNESS LEFT THE STAND).

14 MR. WRIGHT: YES, YOUR HONOR. LIKE TO CALL MR. ALVIN
15 HOLSTON TO THE STAND.

16 ALVIN HOLSTON, BEING FIRST DULY SWORN,
17 TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION BY MR. WRIGHT:

19 Q HOW ARE YOU DOING, MR. HOLSTON? WHAT IS YOUR
20 CAPACITY IN AT LAW ENFORCEMENT HERE?

21 A I'M A DETECTIVE SERGEANT ASSIGNED TO THE CRIMINAL
22 INVESTIGATION DIVISION FOR THE SUMTER CITY POLICE
23 DEPARTMENT.

24 Q OKAY. HOW LONG HAVE YOU BEEN DOING THAT?

25 A APPROXIMATELY SEVEN YEARS.

ALVIN HOLSTON - DIRECT BY WRIGHT

1 Q OKAY. IS THAT YOUR CAPACITY IN '98 AND '99?

2 A I WAS JUST A -- AT THAT TIME STILL WORKING IN THE
3 DETECTIVE CAPACITY ASSIGNED TO THE VIOLENT CRIMES
4 DIVISION.

5 Q OKAY. AND YOU JUST HEARD MR. WILLIAMS STATED THAT
6 YOU TOOK OVER THIS CASE FROM HIM ONCE HE WAS PROMOTED; IS
7 THAT CORRECT?

8 A THAT'S CORRECT.

9 Q DO YOU REMEMBER WHEN THAT WAS?

10 A THE INCIDENT OCCURRED IN SEPTEMBER OF 1998 AND I
11 THINK MAYBE A MONTH OR TWO AFTER HE WAS TRANSFERRED BACK
12 TO THE UNIFORMED PATROL.

13 Q DID YOU PARTICIPATE BEFORE THAT?

14 A I WORKED AS A SECONDARY INVESTIGATOR. HE WAS THE
15 PRIMARY, SO IT WOULD BE SAFE TO SAY THAT WE WORKED IT AS
16 PARTNERS BUT HE BEING THE PRIMARY INVESTIGATOR.

17 Q AFTER -- DURING THAT TIME OR AFTER YOU BECAME THE
18 PRIMARY INVESTIGATOR, DID YOU QUESTION ANY WITNESSES?

19 A I ATTEMPTED TO SPEAK TO FOLKS THAT LIVED AROUND IN
20 THE GENERAL AREA WHERE THE INCIDENT TOOK PLACE, NORMAL
21 PROCEDURES FOR US OR ANYONE THAT I COULD COME IN CONTACT
22 WITH THAT WOULD -- THAT COULD GIVE ME SOME INFORMATION ON
23 IT.

24 Q AND YOU WERE AWARE OF THE STATEMENTS THAT WERE GIVEN
25 AND THE NAMES THAT WERE GIVEN IN THOSE STATEMENTS THAT YOU

ALVIN HOLSTON - DIRECT BY WRIGHT

1 TALKED TO THE PEOPLE NAMED IN THE STATEMENTS?

2 A I REVIEWED WHAT LIEUTENANT WILLIAMS HAD GATHERED AND
3 ANYTHING THAT I FELT AT THAT TIME THAT MAY NEEDED ANY
4 FOLLOWING UP ON I ATTEMPTED TO FOLLOW UP ON.

5 Q OKAY. CAN YOU TELL ME WHO YOU INTERVIEWED?

6 A THERE WASN'T MUCH LEFT FROM THE STATEMENTS REVIEWING
7 WHAT HE HAD. I ATTEMPTED TO TALK TO A HARRY SPANN WHO WAS
8 INCARCERATED MAYBE A MONTH OR TWO AFTER THE INCIDENT AND
9 HE DID NOT WANT TO TALK.

10 Q OKAY. ANY TIME DID YOU GO SPEAK TO MR. CHOICE?

11 A NO, SIR.

12 Q ALL RIGHT. WHAT ABOUT MS. BAILEY?

13 A NO, SIR.

14 Q MR. LOUIS JENKINS?

15 A I WAS AWARE THAT MR. -- WELL, EXCUSE ME. LIEUTENANT
16 WILLIAMS AT THE TIME THAT WE BOTH HAD ATTEMPTED TO TALK
17 WITH HIM AND I HADN'T SEEN HIM UNTIL HERE RECENTLY
18 SOMETIME THIS YEAR TO BE HONEST.

19 Q OKAY. DID YOU CONTACT HIM AND NOTIFY HIM ABOUT THE
20 TRIAL OR DID SOMEONE ELSE?

21 A I'M SURE THE SOLICITOR'S OFFICE MADE CONTACT WITH THE
22 VICTIMS IN THIS CASE.

23 Q OKAY. DID YOU ORDER ANYTHING, ANY OTHER THINGS DONE
24 AS FAR AS OTHER THAN WHAT MR. WILLIAMS DID?

25 A NO, SIR.

ALVIN HOLSTON - CROSS BY CROFT

1 Q OKAY. NO NEW WITNESSES OR ANYTHING?

2 A NO, SIR.

3 Q NO NEW ANALYSIS OR TESTS?

4 A NO, SIR.

5 Q OKAY.

6 MR. WRIGHT: NO FURTHER QUESTIONS, YOUR HONOR.

7 THE COURT: ALL RIGHT.

8 CROSS-EXAMINATION BY MR. CROFT:

9 Q IN REFERENCE TO MS. BAILEY THAT HE ASKED YOU ABOUT,
10 YOU DO RECALL A SUBPOENA BEING SENT OUT TO HER; DO YOU
11 NOT?

12 A YES, SIR.

13 Q OKAY. AND WAS THERE ANY SUCCESS WITH THE POLICE
14 DEPARTMENT FINDING HER?

15 A NO, SIR, NOT WITH THE POLICE DEPARTMENT.

16 Q OKAY. AND MUCH LIKE WHAT WE ASKED DETECTIVE
17 WILLIAMS, ONCE YOU TOOK OVER, MOST OF THE GROUNDWORK WAS
18 DONE; IS THAT RIGHT?

19 A IN MY OPINION FROM EVERYTHING THAT I REVIEWED FROM
20 THE CASE, YES, SIR.

21 Q OKAY. AND MUCH LIKE DETECTIVE WILLIAMS, YA'LL WERE
22 TO -- IN LARGE PART RELEGATED TO TRYING TO INTERVIEW
23 PEOPLE AND FIND OUT WHAT THEY SAID, IN OTHER WORDS
24 HEARSAY?

25 A YES.

ALVIN HOLSTON - CROSS BY CROFT

1 MR. CROFT: I HAVE NOTHING FURTHER, YOUR HONOR.

2 THE COURT: ALL RIGHT. YOU CAN COME DOWN.

3 (WHEREUPON THE WITNESS LEFT THE STAND).

4 THE COURT: CALL YOUR NEXT WITNESS.

5 MR. WRIGHT: CAN WE APPROACH, YOUR HONOR?

6 (WHEREUPON A BENCH CONFERENCE WAS HELD).

7 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I HAVE
8 TO TAKE UP A MATTER WITH THE ATTORNEYS QUICKLY. I'M GOING
9 TO ASK YOU TO GO TO YOUR JURY ROOM. WE WILL HAVE FIVE
10 MINUTES. LET ME DISPOSE OF THIS MATTER AND THEN WE WILL
11 COME BACK IN AND FINISH UP.

12 (WHEREUPON THE JURY LEFT THE COURTROOM AT 3:20 P.M.)

13 THE COURT: ALL RIGHT. NOW, THE QUESTION HAS ARISEN
14 ABOUT THE -- I RAISED THE ISSUE OFF THE RECORD A WHILE AGO
15 THAT A COUPLE OF THE GUN CHARGES IN THE PAST DID NOT CARRY
16 MORE THAN A YEAR, SO THEY COULDN'T BE ADMISSIBLE.

17 THAT WOULD BE THE '92 CONVICTION WITH THE PISTOL
18 AND ONE OF THE MARIJUANA CHARGES IN '99 WHICH OCCURRED IN
19 '97. SO I GUESS WHAT WE HAVE IS WE HAVE A SAWED-OFF
20 SHOTGUN CHARGE IN '93, AND WHAT ARE THE OTHER PISTOL
21 CHARGES HE PLED TO IN '99?

22 MR. CROFT: THEY ARE POSSESSION OF PISTOL ON ABC
23 PREMISES AND POSSESSION OF STOLEN PISTOL. YOUR HONOR,
24 WHAT YOU PREVIOUSLY SAYS THAT I SHOULD PICK ONE OF THOSE,
25 AND IF IT WOULD BE EASIER TO KEEP IT FROM BEING SO SIMILAR

1 TO WHAT HE IS CHARGED WITH.

2 NOW, I SIMPLY ASK ABOUT POSSESSION OF STOLEN
3 FIREARM AS OPPOSED TO POSSESSION OF PISTOL ON ABC PREMISES
4 AND ALSO POSSESSION OF SAWED-OFF SHOTGUN WHICH IS NOVEMBER
5 OF 1993.

6 THE COURT: WELL, HE -- THIS CASE HE IS CHARGED WITH
7 MURDER, POSSESSION OF A WEAPON DURING A VIOLENT CRIME AND
8 POSSESSION OF A WEAPON ON PREMISES, ABC PREMISES. I DON'T
9 SEE WHERE THE POSSESSION OF A STOLEN PISTOL HAS ANY
10 PROBATIVE VALUE IN THIS CASE.

11 MR. CROFT: YOUR HONOR, IT -- I WOULD THINK IT WOULD
12 BE SIMILAR TO POSSESSION OF STOLEN GOODS. I THINK IT GOES
13 TO HIS CREDIBILITY. THINK IT -- THAT COULD BE AND IN THAT
14 SENSE LOOKED AT AS A CRIME.

15 THE COURT: WELL, I DON'T THINK SO. IT'S NOT A CRIME
16 OF MORAL TURPITUDE. YOU HAVE A GUN DOESN'T MEAN YOU ARE
17 GOING TO LIE.

18 MR. CROFT: IF YOU HAVE A STOLEN GUN, HE'S IN
19 POSSESSION OF STOLEN PROPERTY.

20 THE COURT: I DON'T THINK ANYBODY OWNS THOSE GUNS OUT
21 THERE. JUST GET PASSED FROM PEOPLE TO PEOPLE, RIGHT?

22 MR. CROFT: IN ORDER TO CONVICT SOMEBODY OF
23 POSSESSION OF A STOLEN WEAPON, GOING TO HAVE TO BE SOME
24 EVIDENCE THAT IT WAS STOLEN, YOUR HONOR, IN THAT SENSE I
25 THINK IT IS PROBATIVE TO HIS CREDIBILITY. ALSO THINK--

1 THE COURT: THE PROBLEM IS THIS, YOU KNOW. EVEN
2 THOUGH I SAID A WHILE AGO IT'S PROBABLY PROBATIVE ISSUES
3 IN THIS CASE, I'M NOT SO SURE THAT PROBATIVE OUTWEIGHS THE
4 PREJUDICIAL EFFECT. GETTING INTO A GUN CHARGE.

5 PROBABLY DEPENDS ON -- DEPENDS A LOT ON WHAT HE
6 GETS ON THE STAND AND SAYS IF HE TAKES THE STAND. I
7 ASSUME HE IS GOING TO GET ON THE STAND AND SAY I DIDN'T
8 HAVE THE GUN AT ALL, SOMEBODY STUCK IT IN MY WAISTBAND.
9 THAT'S JUST SPECULATION ON MY PART.

10 MR. CROFT: AS WE DISCUSSED EARLIER ABOUT WHAT WAS
11 SAID, THIS WOULD BE IMPEACHMENT EVIDENCE THAT SHOWS THAT
12 HE IS THE SORT OF INDIVIDUAL WHO HAS A GUN OR IS KNOWN TO
13 CARRY ONE. JUST TRYING TO FIGURE OUT WHAT YOU ARE
14 INDICATING.

15 THE COURT: TRYING TO FIGURE IT OUT. TRYING TO KEEP
16 THE RECORD CLEAN AND THIS CASE I GUESS READ -- SINCE I
17 NEED TO MAKE AN ON THE RECORD ANALYSIS OF THIS SITUATION,
18 SO THAT'S WHAT I AM DOING. AND SO I GUESS IT'S UP TO YOU
19 TO PERSUADE ME THAT THE PROBATIVE VALUE OUTWEIGHS THE
20 PREJUDICIAL EFFECT.

21 MR. CROFT: YES, SIR, YOUR HONOR. NOT SURE WHAT THE
22 -- IS THERE AN ANSWER TO THE QUESTION. I JUST ASKED AS
23 FAR AS HYPOTHETICALLY HE SAYS SOMEBODY STUCK THIS WEAPON
24 IN MY WAIST, IF THIS EVIDENCE GOES TO SHOW THAT HE IS--

25 THE COURT: HE'S HAD GUNS BEFORE.

1 MR. CROFT: YES, SIR. AND OUTSIDE OF THAT, I WOULD
2 SIMPLY POINT OUT POSSESSION OF A SAWED-OFF SHOTGUN, YOUR
3 HONOR, IS A TEN YEAR FELONY WHICH IS SOMETHING -- A VERY
4 SERIOUS OFFENSE, AND I THINK IT DOES GO TO SOMEBODY'S
5 CREDIBILITY.

6 IT'S NOT JUST SIMPLY CARRYING A PISTOL OR EVEN
7 CARRYING A PISTOL ON ABC PREMISES -- TO ALLOW A TEN YEAR
8 PENALTY. AND AGAIN ON POSSESSION OF STOLEN FIREARM, I
9 THINK IT DEFINITELY HAS PROBATIVE VALUE AS TO THE FACT
10 THAT HE -- WHETHER IT'S A FIREARM OR SOME OTHER PROPERTY,
11 HE'S IN POSSESSION OF STOLEN PROPERTY.

12 JUST SO HAPPENS THAT IT'S A FIREARM, SO THAT IS
13 WHAT HE HAS BEEN CHARGED WITH AND IN FACT CONVICTED OF.

14 THE COURT: WELL, I THINK YOU USE A 403 ANALYSIS FOR
15 THE EXAMINING 609, RIGHT, WHICH IS THE RELEVANCE? SO WHAT
16 DOES IT PROVE? WHAT ELEMENT IN THIS CASE DOES IT MAKE
17 MORE LIKELY SO THAN NOT SO?

18 MR. CROFT: YOUR HONOR, I DON'T KNOW SO MUCH THAT IT
19 PROVES ANY ELEMENT OF THE CRIME OF MURDER OR THESE OTHER
20 WEAPONS CHARGES. IT'S MORE MY PURPOSES OFFERED TO SHED
21 LIGHT ON HIS CREDIBILITY AS A PERSON, HIS BELIEVABILITY ON
22 THE STAND AND THE SORT OF INDIVIDUAL...

23 THE COURT: DON'T YOU THINK THAT THE ADMISSION OF ALL
24 THESE OTHER CRIMES, POSSESSION OF CRACK COCAINE, GIVING
25 FALSE INFORMATION TO POLICE OFFICERS TWO COUNTS,

1 CONTRIBUTING TO THE DELINQUENCY OF MINOR, POSSESSION OF
2 MARIJUANA, P.W.I.D. MARIJUANA TWO COUNTS, TWO PROXIMITY
3 CHARGES, FAILURE TO STOP FOR BLUE LIGHT -- OF COURSE BLUE
4 LIGHT DOESN'T COME IN.

5 MR. CROFT: BLUE LIGHT DOES COME IN, DOESN'T IT, YOUR
6 HONOR? THREE YEAR STATUTE.

7 THE COURT: YES, I GUESS IT WOULD. DON'T YOU THINK
8 IT'S ENOUGH TO SHOW LACK OF CREDIBILITY WITHOUT GOING INTO
9 THE GUN CHARGES?

10 MR. CROFT: FROM -- MY PERSPECTIVE IS THIS, YOUR
11 HONOR. THOSE CHARGES ARE TO SOME EXTENT SIMILAR TO THE
12 CHARGES OF THE TWO WITNESSES, FIRST TWO WITNESSES THAT
13 TESTIFIED. AND I THINK THESE OTHER CHARGES SET THEM APART
14 FROM THOSE OTHER WITNESSES AND SHED MORE LIGHT ON HIS
15 CREDIBILITY.

16 THE COURT: WELL, YOU KNOW, EVIDENCE IS RELEVANT IF
17 IT TENDS TO MAKE THE EXISTENCE OF ANY FACT MORE PROBABLE
18 OR LESS PROBABLE. NOW, THE FACT THAT HE HAD A PRIOR GUN
19 CHARGE, WHAT DOES THAT PROVE?

20 MR. CROFT: AGAIN, YOUR HONOR, I DON'T KNOW IT'S
21 GOING TO PROVE ANYTHING OTHER THAN HE'S PROBABLY THE KIND
22 OF PERSON WHO'LL GET ON THIS WITNESS STAND AND LIE TO US.
23 AND THAT'S THE PERSPECTIVE I'M LOOKING AT, THE
24 CREDIBILITY.

25 THE COURT: A LOT OF PEOPLE GET ON THE STAND AND

1 LIE. I SEE IT EVERY DAY, BUT I DON'T GET UPSET BY IT WHEN
2 THAT QUESTION IS IT'S GOT TO BE PROBATIVE VALUE. IT'S GOT
3 TO OUTWEIGH THE PREJUDICIAL EFFECT.

4 WE KNOW IT'S PREJUDICIAL IF HE GETS ON THE
5 STAND, YOU GO INTO ALL THE PRIOR GUN CHARGES, SAWED-OFF
6 SHOTGUN, IT'S PREJUDICIAL. AND THAT'S A JOB OF A
7 CROSS-EXAMINER IS TO PREJUDICE THE WITNESS'S TESTIMONY,
8 RIGHT?

9 MR. CROFT: YOUR HONOR, I THINK MOST EVERY PIECE OF
10 EVIDENCE THAT WE PRODUCED IS PROBABLY PREJUDICIAL TO THE
11 DEFENDANT.

12 THE COURT: THAT'S YOUR JOB. QUESTION IS WHAT DOES
13 IT PROVE. THAT'S THE THING I'M HUNG UP ON.

14 MR. CROFT: I THINK THE DIFFERENCE IN MY PERSPECTIVE
15 ARE IT'S NOT PROVING ANY ELEMENT OF THE CRIME, BUT WHAT IT
16 IS PROVING IS WHAT HIS CREDIBILITY IS LIKE, AND THAT'S --
17 THAT'S HOW I THINK IT'S -- IT'S PROBATIVE AS TO HIS
18 CREDIBILITY, NOT TO ANY PARTICULAR ELEMENT OF ANY OF THESE
19 CRIMES.

20 AND I THINK THAT I DON'T EVEN KNOW THAT IT WOULD
21 BE PROPER TRYING TO USE HIS PRIOR RECORD TO PROVE SOME
22 ELEMENT OF THE CRIME OTHER THAN JURISDICTION. I THINK
23 WHAT WE ARE TRYING TO DO IS SHOW IT'S PROBATIVE TO HIS
24 CHARACTER.

25 THE COURT: ALL RIGHT. LET ME FIND THAT RULE. I

1 WILL HAVE AN ANSWER IN ONE MINUTE.

2 (WHEREUPON THERE WAS A PAUSE).

3 THE COURT: WELL, THEY DO LIST A SECTION OF A WEAPON
4 AS A CRIME INVOLVING CRIMINAL FORTITUDE PER SAY. ALL
5 RIGHT. I'M GOING TO ALLOW THE GUN CHARGE, POSSESSION OF A
6 SAWED-OFF PISTOL, SAWED-OFF SHOTGUN, BUT NOT THE OTHER --
7 NOT THE OTHER GUN CHARGE.

8 MR. WRIGHT: MR. CHOICE HAS DECIDED HE DOES NOT WANT
9 TO TESTIFY.

10 THE COURT: OKAY. YOU HAVE ANY OTHER WITNESSES?

11 MR. WRIGHT: NO, SIR, YOUR HONOR.

12 THE COURT: ALL RIGHT. LET'S BRING THE JURY IN, SEND
13 THEM HOME FOR THE DAY, TELL THEM WE WILL ARGUE AND CHARGE
14 AT 9:30 IN THE MORNING. HOW ABOUT THAT?

15 MR. CROFT: THAT'S FINE. IF YOU'D LIKE TO START
16 EARLIER, WOULDN'T HAVE ANY OBJECTION. THE ONLY REASON I
17 BRING THAT UP, YOUR HONOR, THEY NEXT TO ME. UNTIL THEY'RE
18 FINISHED DELIBERATING, WE CAN'T PICK ANOTHER JURY.

19 THE COURT: I WILL BE HERE AT 9. 9:00 SUITS ME.
20 BRING THE JURY PANEL IN.

21 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 3:32
22 P.M.)

23 THE COURT: LADIES AND GENTLEMEN, I THINK WE HEARD
24 ALL THE EVIDENCE WE ARE GOING TO HEAR IN THIS CASE, SO THE
25 NEXT STEP WOULD BE CLOSING ARGUMENTS AND MY INSTRUCTION ON

1 THE LAW. NOW, IT'S 3:30 IN THE AFTERNOON, SO WE ARE GOING
2 TO BREAK FOR THE DAY BECAUSE I DON'T WANT YOU TO GET BACK
3 THERE AND HAVE TO STAY ALL NIGHT DELIBERATING THIS CASE.

4 SO IN MY EXPERIENCE HAD BEEN YOU GET CASES LIKE
5 THIS TO THE JURY AT 3:30 IN THE AFTERNOON, MIGHT BE HERE A
6 WHILE. SO WHAT WE ARE GOING TO DO IS WE ARE GOING TO
7 REALLY -- CAN'T PICK ANOTHER JURY TILL YA'LL REACH A
8 VERDICT.

9 COME BACK AT 9:00 IN THE MORNING. 9:00. WE
10 WILL HAVE CLOSING ARGUMENTS, MY INSTRUCTION ON THE LAW AND
11 WE WILL GIVE YOU THE CASE. SO AT 9:00, NOT 9:30 BUT
12 9:00. COME OVER HERE EARLY IN THE MORNING AND WE WILL GET
13 THIS THING FINISHED UP.

14 REMEMBER, DON'T DISCUSS THE CASE WITH ANYBODY,
15 DON'T LET ANYBODY DISCUSS IT WITH YOU. I KNOW IT'S ABOUT
16 TO DRIVE YOU CRAZY TO TALK TO YOUR HUSBAND AND WIFE ABOUT
17 IT, BUT DON'T DO IT. YOU CAN DO IT TOMORROW AFTER YOU
18 FINISH YOUR VERDICT, OKAY? HAVE A NICE EVENING. BE BACK
19 IN YOUR JURY ROOM AT 9:00 AND WE WILL START THEN.

20 (WHEREUPON THE JURY LEFT THE COURTROOM AT 3:34 P.M.)

21 THE COURT: ANYBODY GOT ANY CHARGES THEY WANT TO
22 CHARGE TOMORROW?

23 MR. CROFT: YOUR HONOR, YOU--

24 THE COURT: I DON'T NEED ANY, BUT IF YOU GOT ANY YOU
25 WANT TO HAND UP.

1 MR. WRIGHT: DON'T THINK I HAVE ANYTHING OTHER TO
2 ARGUE OTHER THAN THE ORDINARY CHARGES.

3 THE COURT: ALL RIGHT. WHY DON'T YA'LL COME UP HERE
4 JUST ONE SECOND?

5 (WHEREUPON A BENCH CONFERENCE WAS HELD).

6 THE COURT: ALL RIGHT. SEE YOU IN THE MORNING. WE
7 WILL ARGUE AND CHARGE.

8 (WHEREUPON THIS CASE WAS IN RECESS FOR THE
9 EVENING)

10 MARCH 7TH, 2001.

11 THE COURT: OKAY. LET'S GO BACK ON THE RECORD AND
12 LET ME STATE FIRST OF ALL THAT I HAD A MEETING WITH THE
13 ATTORNEYS IN CHAMBERS AND I ADVISED THEM AND I AM NOW
14 ADVISING THEM ON THE RECORD THAT OVER THE EVENING AFTER
15 SOME RESEARCH WAS DONE, I AM CHANGING MY RULING ON THE
16 ADMISSIBILITY OF THE PRIOR CONVICTIONS INVOLVING THE GUN
17 CHARGE, ALL GUN CHARGES.

18 UNDER STATE V SCRIVEN, I THINK THAT WOULD BE
19 HIGHLY PREJUDICIAL AND THE PREJUDICIAL EFFECT OUTWEIGHS
20 THE PROBATIVE VALUE, SO ANY IMPEACHMENT OF THE DEFENDANT
21 IF HE TAKES THE STAND WILL BE LIMITED TO THOSE OFFENSES
22 WHICH DO NOT INCLUDE GUNS. THAT ALSO SHOULD BE SAWED-OFF
23 SHOTGUNS.

24 AND I THINK WE ALSO HAD THE DISCUSSION ABOUT THE
25 JURY CHARGE. I BROUGHT UP THE ISSUE OF A VOLUNTARY

1 MANSLAUGHTER CHARGE. THE SOLICITOR OBJECTED. THE
2 DEFENDANT SAID HE DOESN'T WANT A MANSLAUGHTER CHARGE, IT'S
3 ALL OR NOTHING. RIGHT, MR. WRIGHT?

4 MR. WRIGHT: YES, YOUR HONOR.

5 THE COURT: ALL RIGHT. I WON'T CHARGE MANSLAUGHTER.
6 AND I UNDERSTAND WE'VE GOT ONE MORE WITNESS; IS THAT
7 CORRECT?

8 MR. WRIGHT: YES, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 MR. WRIGHT: YOUR HONOR, ONE QUESTION. WHEN WILL WE
11 BE MAKING -- OR I GUESS MIGHT DO IT NOW -- MOTIONS? WE
12 NEVER DID.

13 THE COURT: LET'S GO AHEAD AND MAKE YOUR MOTIONS NOW
14 WHICH WOULD HAVE BEEN HEARD AT THE END OF THE STATE'S
15 CASE.

16 MR. WRIGHT: YES, SIR. I'D LIKE TO MOVE FOR A
17 DIRECTED VERDICT GIVEN THE FACT THAT IN THE LIGHT MOST
18 FAVORABLE TO THE PROSECUTION, THAT THE JURY COULD NOT FIND
19 MR. CHOICE GUILTY OF THESE CHARGES.

20 THE COURT: ALL RIGHT. I THINK THERE IS EVIDENCE IN
21 THE RECORD OF THE DEFENDANT COMMITTED THE SHOOTING, SO IT
22 WILL GO TO THE JURY.

23 MR. WRIGHT: THANK YOU, YOUR HONOR.

24 THE COURT: ALL RIGHT. YA'LL READY TO BRING THE JURY
25 IN?

KEVIN CHOICE - DIRECT BY WRIGHT

1 MR. CROFT: YES, SIR, YOUR HONOR.

2 THE COURT: ALL RIGHT. BRING THE JURY IN, PLEASE.

3 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 9:17
4 A.M.)

5 BAILIFF: ALL THE JURORS AND THE ALTERNATE ARE
6 PRESENT IN THE COURTROOM.

7 THE COURT: GOOD MORNING, EVERYONE. WE ARE GOING TO
8 HAVE ONE MORE WITNESS IN THIS CASE. WE WILL HAVE ONE MORE
9 WITNESS THEN WE WILL HAVE OUR CLOSING ARGUMENT AND
10 CHARGE. ALL RIGHT. MR. WRIGHT?

11 MR. WRIGHT: LIKE TO CALL MR. KEVIN CHOICE TO THE
12 STAND.

13 KEVIN CHOICE, BEING FIRST DULY SWORN,
14 TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION BY MR. WRIGHT:

16 Q GOOD MORNING, MR. CHOICE.

17 A GOOD MORNING. HOW YOU DOING?

18 Q I'M OKAY. HOW OLD ARE YOU RIGHT NOW?

19 A 25 YEARS OLD.

20 Q OKAY. HOW OLD WERE YOU ON SEPTEMBER 3RD, 1998?

21 A TWENTY-TWO.

22 Q AND AT THAT TIME, WHAT WAS YOUR OCCUPATION?

23 A I WAS SMALL ENGINE MECHANIC ALONG WITH MY FATHER.

24 Q OKAY. AND HOW LONG HAD YOU BEEN DOING THAT?

25 A SINCE I WAS ABOUT SEVEN OR EIGHT YEARS OLD, EVERY DAY

KEVIN CHOICE - DIRECT BY WRIGHT

1 AFTER SCHOOL.

2 Q AND WHEN DID YA'LL OPEN UP THE BUSINESS?

3 A IN 1997.

4 Q AND DID YOU WORK ANYWHERE BEFORE THAT?

5 A YES, SIR. I WORKED EMPIRE STACKING COMPANY ALONG
6 WITH MY FATHER.

7 Q OKAY. AND WHAT DID YOU DO THERE?

8 A SMALL ENGINES, BICYCLE REPAIR.

9 Q AND I GUESS IN YOUR YOUNGER DAYS OR BEFORE YOU GOT
10 THIS CHARGE, YOU DID HAVE SOME THINGS ON YOUR RECORD;
11 THAT'S CORRECT?

12 A YES, SIR.

13 Q YOU HAVE SOME DRUG CHARGES?

14 A YES, SIR.

15 Q COULD YOU LET US KNOW A LITTLE BIT ABOUT THOSE? DID
16 YOU TAKE ANY DRUGS AT THE TIME BACK WHEN YOU GOT THE
17 CHARGES?

18 A YES, SIR.

19 Q THINK YOU ALSO HAVE A FAILURE TO STOP FOR POLICE OR
20 FOR BLUE LIGHT?

21 A YES, SIR.

22 Q OKAY. WHAT -- COULD YOU EXPLAIN THAT INCIDENT?

23 THE COURT: HE CAN'T EXPLAIN THE SPECIFICS OF THE
24 CRIME.

25 Q AND BUT ON THIS TIME WHEN YOU WERE 22 YEARS OLD, DID

KEVIN CHOICE - DIRECT BY WRIGHT

1 YOU STILL HAVE A DRUG PROBLEM?

2 A YES, SIR.

3 Q OKAY. LET'S GO TO I GUESS THAT EVENING OR BEFORE
4 THAT. DID YOU KNOW MR. TONY ROSE?

5 A YES, SIR.

6 Q OKAY. HOW DID YOU KNOW HIM?

7 A I REMEMBER HIM -- I REMEMBER HE USED TO COME TO THE
8 NEIGHBORHOOD. I REMEMBER WHEN AS WE WAS KIDS GROWING UP.

9 Q SO YOU KNEW HIM BECAUSE YA'LL GREW UP AS KIDS?

10 A UH-HUH.

11 Q OKAY. HOW WELL DID YA'LL KNOW EACH OTHER?

12 A ALL THE WAY BACK IN MIDDLE SCHOOL.

13 Q OKAY. AT ANY TIME DID YOU EVER HAVE ANY PROBLEMS
14 WITH MR. TONY ROSE?

15 A NO, SIR.

16 Q OKAY. LET US -- LET'S GO BACK TO SEPTEMBER 3RD,
17 1998. PRIOR TO THAT DAY, WHAT -- JUST TELL US WHAT
18 HAPPENED THAT DAY AND THEN THAT NIGHT. WHAT DID YOU DO
19 THAT DAY?

20 A WELL, FOR THE MOST PART DID A LOT OF DRINKING THAT
21 DAY.

22 Q OKAY. AND THIS WAS IN THE WEEK, A WEEKDAY, CORRECT?

23 A YES, SIR. IT WAS ON A WEDNESDAY.

24 Q ALL RIGHT. WHAT MADE YOU DECIDE TO DRINK THAT
25 PARTICULAR DAY?

KEVIN CHOICE - DIRECT BY WRIGHT

1 A BECAUSE I WAS OFF OF WORK THAT DAY.

2 Q YOU DIDN'T HAVE TO WORK?

3 A (NO VERBAL RESPONSE).

4 Q WHEN DID YOU DECIDE TO GO TO THE DIAMOND CLUB?

5 A LATER ON THAT EVENING.

6 Q WHAT MADE YOU DECIDE THAT?

7 A I WANT TO GO OUT THERE AND SHOOT SOME POOL AND THEY
8 WAS GIVING FREE DRINKS THAT NIGHT ON WEDNESDAY NIGHTS.

9 Q ALL RIGHT. AND SO YOU WERE DRINKING BEFOREHAND?

10 A YES, SIR.

11 Q AND YOU WENT THERE TO DRINK SOME MORE?

12 A YES, SIR.

13 Q WHEN YOU GOT THERE, DID YOU DRINK SOME MORE?

14 A YES, SIR.

15 Q AND JUST EXPLAIN WHAT YOU DID ONCE YOU GOT TO THE
16 CLUB.

17 A WELL, WHEN I GOT THERE, BEFORE I ENTERED THE CLUB I
18 STOOD OUTSIDE AND TALKED SO SAPRENA DAVIS OUTSIDE BY THE
19 BACK RAMP FOR ABOUT 15 OR 20 MINUTES BEFORE ENTERING
20 BECAUSE SHE BEEN MARRIED MY COUSIN. AND I STOOD BACK
21 THERE HOLDING A CASUAL CONVERSATION WITH THEM ABOUT AT
22 LEAST 15 MINUTES BEFORE I EVER WENT INSIDE THE PLACE.

23 Q DO YOU REMEMBER ABOUT WHAT TIME OF NIGHT THAT WAS?

24 A I COULDN'T TELL YOU THE EXACT TIME.

25 Q OKAY. AND WERE YOU INTOXICATED AT THE TIME?

KEVIN CHOICE - DIRECT BY WRIGHT

1 A YES, SIR.

2 Q OKAY. TELL US WHAT HAPPENED AFTER YOU GOT INSIDE THE
3 CLUB.

4 A AFTER I GOT INSIDE, I WENT TO THE BAR, START DRINKING
5 FIRST.

6 Q AND AT ANY TIME DID YOU SEE MR. TONY ROSE?

7 A NOT WHEN I FIRST ENTERED THE CLUB, NO.

8 Q WHEN WAS THE FIRST TIME YOU SAW TONY ROSE IN THE
9 CLUB?

10 A IT WAS APPROXIMATELY AFTER I TOOK A COUPLE DRINKS AND
11 SHOT A GAME OR TWO OF POOL.

12 Q OKAY. AND DID YA'LL EXCHANGE ANY WORDS?

13 A NO, NONE AT ALL.

14 Q DID YA'LL HAVE AN ARGUMENT?

15 A NO, SIR, WASN'T NO ARGUMENT.

16 Q DID YA'LL TALK AT ALL?

17 A NO, SIR.

18 Q SO YA'LL DIDN'T SPEAK TO EACH OTHER?

19 A NO, SIR. I WAS THERE TO DRINK AND SHOOT POOL.

20 Q AND JUST GO THROUGH WHAT HAPPENED INSIDE THE CLUB
21 THAT NIGHT.

22 A WELL, UPON DRINKING AND SHOOTING POOL, I CAN REMEMBER
23 WHEN I HEARD -- I HEARD THE GUNSHOT. BEFORE THE GUNSHOT
24 WENT OFF, IT WAS DARK. ALL THE LIGHTS WENT OUT, INCLUDING
25 THE POWER. EVERYTHING WENT BLACK.

KEVIN CHOICE - DIRECT BY WRIGHT

1 SO EVERYBODY WAS TRYING TO GO FOR THE DOOR WHICH
2 THAT'S THE ONLIEST (SIC) PART YOU CAN SEE LIGHT WAS THAT
3 THE BACK DOOR WAS MADE OUT OF GLASS AND YOU COULD SEE THE
4 LIGHT FROM THE OUTSIDE SHINING THROUGH THE DOOR.

5 THAT'S WHERE EVERYBODY WAS HEADED FOR INCLUDING
6 MYSELF. AND UPON GOING TO THE DOOR, I WAS PASSED A GUN
7 AND THAT'S WHERE MR. MCQUILLA, THE BIG HEAVY SET SECURITY
8 GUARD, HE SAW ME AND WHEN I APPROACHED HIM, THAT'S WHEN HE
9 -- HE GRABBED ME AND ME AND HIM GOT IN A TUSSELE.

10 Q ALL RIGHT. YOU SAID THAT YOU WERE PASSED A GUN?

11 A YES, SIR.

12 Q DO YOU REMEMBER I GUESS HOW THAT PASSED, HOW IT WAS
13 PASSED TO YOU OR WHEN IT WAS PASSED TO YOU?

14 A UPON -- UPON APPROACHING THE DOOR.

15 Q OKAY. WHEN YOU WAS RUNNING TOWARD THE DOOR?

16 A YES, SIR.

17 Q AND DO YOU HAVE ANY IDEA WHO PUT THE GUN THERE OR
18 GAVE IT TO YOU?

19 A I COULDN'T SAY BECAUSE ALL THE POWER WENT OFF INSIDE
20 THE PLACE. IT WAS DARK. THE ONLY LIGHT WAS LIGHT THAT
21 WAS SHINING THROUGH THE BACK DOOR.

22 Q OKAY. AND DO YOU KNOW LOUIS JENKINS?

23 A I HAVE SEEN HIM BEFORE.

24 Q BUT YOU DON'T KNOW HIM WELL?

25 A NO, SIR, I DON'T KNOW HIM PERSONALLY.

KEVIN CHOICE - CROSS BY CROFT

1 Q WHAT ABOUT HARRY SPANN?

2 A I KNEW OF HIM.

3 Q OKAY. AND DO YOU KNOW WHO SHOT TONY ROSE?

4 A NO, SIR.

5 Q DID YOU SEE WHO SHOT TONY ROSE?

6 A NO, SIR.

7 Q WERE YOU STANDING UP THERE WITH TONY ROSE WHEN HE GOT
8 SHOT?

9 A NO, SIR.

10 Q WOULD YOU HAVE ANY REASON TO SHOOT TONY ROSE?

11 A NO, SIR, NONE AT ALL.

12 Q AND YOU STATED THAT IS IT -- AT THE TIME YOU WERE 22?

13 A YES, SIR.

14 Q AND WAS WORKING WITH YOUR FATHER?

15 A YES, SIR.

16 Q OPENING A BUSINESS?

17 A YES, SIR.

18 Q ALL RIGHT.

19 MR. WRIGHT: NO FURTHER QUESTIONS, YOUR HONOR.

20 THE COURT: ALL RIGHT, MR. CROFT?

21 CROSS-EXAMINATION BY MR. CROFT:

22 Q SO YOU WERE VERY INTOXICATED THAT NIGHT; ISN'T THAT
23 RIGHT?

24 A YES, SIR.

25 Q OKAY. AND IS IT SAFE TO SAY THAT INTOXICATION

KEVIN CHOICE - CROSS BY CROFT

1 AFFECTS WHAT YOUR MEMORY IS OF THAT NIGHT; IS THAT SAFE TO
2 SAY?

3 A A LITTLE, LITTLE.

4 Q NOW, YOU WERE INTOXICATED ENOUGH TO BE PASSED OUT
5 ABOUT AN HOUR AFTER ALL THIS HAPPENED; ISN'T THAT RIGHT?

6 A I DON'T REMEMBER THE -- I DON'T REMEMBER THE OFFICER
7 -- OFFICER SAID THAT HE PERFORMED A GSR ON MY HAND. I
8 DON'T REMEMBER NONE OF THAT TAKING PLACE.

9 Q BECAUSE YOU WERE PASSED OUT, CORRECT?

10 A CORRECT.

11 Q AND SO IF YOU WERE DRUNK ENOUGH TO BE PASSED OUT OR
12 HIGH ENOUGH, AND WHAT WAS IT DRUGS AND ALCOHOL OR JUST
13 ALCOHOL?

14 A JUST ALCOHOL.

15 Q SO YOU SAID YOU HAD A DRUG PROBLEM AT THAT TIME?

16 A NO, I HAD A DRUG PROBLEM AT THE TIME THAT I CAUGHT
17 THE DRUG CHARGES.

18 Q YOU ALSO SAID YOU HAD A DRUG PROBLEM IN 1998; ISN'T
19 THAT RIGHT?

20 A IN 1998?

21 Q WHEN ALL THIS HAPPENED. YOU JUST TOLD MR. WRIGHT YOU
22 HAD A DRUG PROBLEM THEN; DIDN'T YOU?

23 A HE ASKED ME ABOUT THE DRUG CHARGES. THAT WAS 1993 IF
24 IT SERVES ME RIGHT.

25 Q YOU ONLY HAD DRUG CHARGES IN 1993?

KEVIN CHOICE - CROSS BY CROFT

1 A POSSESSION OF CRACK.

2 Q THOSE ARE THE ONLY DRUG CHARGES YOU HAVE HAD?

3 A NO, I HAVE HAD POSSESSION OF MARIJUANA CHARGES, TOO
4 IN WHICH I -- IN WHICH I'M SERVING THE TEN YEAR SENTENCE
5 FOR THAT PRESENTLY.

6 Q AND WE ARE GOING TO TALK ABOUT YOUR RECORD IN JUST A
7 MOMENT, BUT LET ME ASK YOU ABOUT THIS. YOU HAD -- YOU
8 WERE WORKING FOR YOUR DAD SOME; IS THAT RIGHT? THAT'S
9 WHAT YOU SAID?

10 A YES, SIR.

11 Q AND THE TRUTH IS THIS IS A WEDNESDAY, MIDDLE OF THE
12 WEEK AND YOU DRANK ALL DAY LONG THAT DAY; ISN'T THAT
13 RIGHT?

14 A PRETTY MUCH.

15 Q PRETTY MUCH. AND THE TRUTH IS YOU HAD A LOT OF DAYS
16 OFF; DIDN'T YOU?

17 A HUH?

18 Q YOU COULD TAKE A LOT OF DAYS OFF; DIDN'T YOU?

19 A I DIDN'T TAKE MANY DAYS OFF. WE HAD A LOT OF WORK TO
20 DO.

21 Q THE TRUTH IS YOU ONLY WORK WHEN YOU FELT LIKE IT;
22 ISN'T THAT RIGHT?

23 A NO, WE HADN'T BEEN -- JUST THAT ONE PARTICULAR -- WE
24 DIDN'T WORK THAT DAY.

25 Q DO YOU HAVE ANY OTHER SOURCES OF INCOME?

KEVIN CHOICE - CROSS BY CROFT

1 A NO, JUST WORK FOR MY FATHER.

2 Q DIDN'T MAKE MONEY ANY OTHER WAYS?

3 A NO.

4 Q LET ME ASK YOU THIS. THE EVENTS OF THAT NIGHT, WHEN
5 THE POWER TURNED OFF, YOU ARE SAYING THERE WAS NO POWER IN
6 THE BUILDING BUT THERE WAS POWER OUTSIDE OF THE BUILDING?
7 IS THAT WHAT YOU TESTIFIED TO?

8 A IT WAS LIGHT SHINING THROUGH, THROUGH THE DOOR.

9 Q WHICH WOULD HAVE BEEN THE LIGHTS IN THE PARKING LOT I
10 GUESS?

11 A THE LIGHT FROM -- FROM THE PARKING LOT OFF THE POLE.

12 Q IS IT POSSIBLE THAT YOU WERE SO INTOXICATED THAT ONE
13 LIGHT BEING TURNED OFF WAS ENOUGH TO MAKE YOU THINK ALL
14 THE LIGHTS WERE TURNED OFF?

15 A NO, SIR, THE WHOLE PLACE WAS DARK.

16 Q DOES IT SURPRISE YOU THAT NOBODY ELSE HAS SAID THAT?

17 A I -- ONLY THING I CAN TESTIFY TO WHAT I REMEMBER.

18 Q AND YOU WERE HIGHLY INTOXICATED THAT NIGHT; ISN'T
19 THAT RIGHT?

20 A YES, SIR.

21 Q OKAY. AND YOU WERE AWARE THAT -- SHOW YOU WHAT IS
22 MARKED AS STATE'S EXHIBIT NUMBER 12. THAT'S THE WEAPON
23 THAT WAS PASSED TO YOU; IS THAT RIGHT?

24 A YES, SIR.

25 Q YOU NEVER SEEN THIS WEAPON BEFORE; IS THAT RIGHT?

KEVIN CHOICE - CROSS BY CROFT

1 A I COULD REMEMBER THE LIGHT SHINING REFLECTING OFF IT.

2 Q WHAT LIGHT WAS THAT?

3 A THE LIGHT THAT WAS COMING THROUGH THE BACK DOOR.

4 Q AND WHEN DID YOU SEE THE LIGHT REFLECTING ON IT IF IT
5 WAS PUT INTO IN YOUR WAISTBAND BY SOMEBODY ELSE?

6 A TILL IT WAS PASSED TO ME.

7 Q WHEN YOU STUCK IT IN YOUR WAISTBAND?

8 A YES, SIR, I STUCK IT IN.

9 Q KNOWING SOMEONE HAD JUST GOTTEN SHOT, YOU STUCK THAT
10 GUN IN YOUR WAISTBAND THAT SOMEBODY PASSED YOU?

11 A I WASN'T IN THE RIGHT MIND STATE.

12 Q I DON'T DOUBT THAT. AND YOU STUCK THIS GUN IN YOUR
13 WAISTBAND AND KNOWING THIS IS THE GUN THAT HAD JUST SHOT
14 SOMEBODY, CORRECT?

15 A SEE, I DIDN'T HAVE TIME TO THINK ABOUT ALL OF THAT.

16 Q YOU DIDN'T HAVE TIME TO THINK ABOUT IT? YOU KNEW A
17 SHOT WAS FIRED AND THAT'S WHY YOU WERE HEADING FOR A
18 DOOR. YOU HAD TIME ENOUGH TO THINK ABOUT RUNNING, RIGHT?

19 A NATURAL INSTINCT.

20 Q NATURAL INSTINCT? AND YOU DIDN'T HIT THE GROUND WHEN
21 YOU HEARD THE SHOT?

22 A I DON'T RECALL HITTING THE GROUND.

23 Q YOU DON'T RECALL? IS IT POSSIBLE?

24 A COULD BE POSSIBLE.

25 Q YOU DON'T REMEMBER? AND ISN'T IT TRUE THAT EARLIER

KEVIN CHOICE - CROSS BY CROFT

1 ON THAT NIGHT YOU CALLED TONY OFF TO TALK TO HIM?

2 A NO, I DON'T RECALL SPEAKING WITH MR. ROSE AT ALL.

3 Q OKAY. BUT IS IT POSSIBLE YOU TALKED TO HIM AND DON'T
4 REMEMBER?

5 A I WOULDN'T SAY THAT. I DON'T REMEMBER TALKING TO HIM
6 AT ALL.

7 Q I DIDN'T ASK YOU IF YOU REMEMBERED. I SAID IS IT
8 POSSIBLE YOU COULD HAVE TALKED TO HIM AND DON'T REMEMBER?

9 A NO.

10 Q BUT IT IS POSSIBLE THAT YOU COULD HAVE HIT THE GROUND
11 AFTER HEARING THE SHOT AND DON'T REMEMBER THAT?

12 A WHEN YOU HEAR A GUNSHOT, YOU KNOW, YOU REACT OFF
13 NATURAL INSTINCT YOU REACT WITHOUT THINKING.

14 Q BUT YOU HAVE TESTIFIED YOU DON'T REALLY REMEMBER
15 EXACTLY WHAT YOU DID THAT NIGHT; ISN'T THAT RIGHT?

16 A IT'S POSSIBLE.

17 Q OKAY.

18 A IF YOU ARE INTOXICATED, YOU CAN DO ANYTHING.

19 Q YOU ARE EXACTLY RIGHT. SO I'M ASKING YOU AGAIN. IS
20 IT POSSIBLE THAT YOU TALKED TO TONY ROSE?

21 A AS I STATED, I DON'T RECALL SPEAKING TO HIM AT ALL.

22 Q JUST DON'T RECALL. IS IT POSSIBLE THAT YOU WOULD
23 HAVE BEEN STANDING THERE WITH TONY ROSE, LOUIS JENKINS AND
24 HARRY SPANN JUST BEFORE YOU TALKING--

25 A REPEAT THE QUESTION, SIR?

KEVIN CHOICE - CROSS BY CROFT

1 Q IS IT POSSIBLE THAT YOU WOULD HAVE BEEN STANDING
2 THERE FACING TONY ROSE TALKING TO HIM ALONG WITH LOUIS
3 JENKINS AND HARRY SPANN?

4 A NO, SIR.

5 Q THAT'S NOT POSSIBLE EITHER?

6 A (SHOOK HEAD).

7 Q AND ISN'T IT TRUE THAT ONCE YOU GOT OUT THE DOOR THAT
8 YOU LIED TO THE SECURITY GUARDS, YOU TRIED TO DECEIVE
9 THEM; ISN'T THAT TRUE OR DO YOU NOT REMEMBER THAT EITHER?

10 A TRIED TO DECEIVE THEM HOW?

11 Q DECEIVE THEM BY TELLING THEM HEY BIG MAN, SOMEBODY IS
12 SHOOTING IN THERE?

13 A IT'S POSSIBLE.

14 Q YOU DIDN'T HAND HIM THE GUN; DID YOU?

15 A NO, HE -- WHEN I CAME OUT THE DOOR, HE GRABBED ME.

16 Q OKAY. YOU WALKED BY HIM BEFORE HE GRABBED YOU; DID
17 YOU NOT OR DO YOU NOT REMEMBER?

18 A NO, HE WAS STANDING IN FRONT OF ME WHEN I CAME OUT
19 THE DOOR AND HE GRABBED ME. I NEVER MADE IT PAST THE
20 SECURITY GUARD.

21 Q AND YOU LIED TO HIM WHEN YOU SAID I AM SHOT, I'M
22 SHOT; ISN'T THAT RIGHT?

23 A I TOLD HIM I WAS HURT BECAUSE WE WERE IN A TUSSLE.
24 HE'S A VERY BIG GUY.

25 Q ISN'T IT TRUE YOU FOUGHT WITH THEM FOR ABOUT 15

KEVIN CHOICE - CROSS BY CROFT

1 MINUTES FORCING THEM TO EVENTUALLY MACE YOU?

2 A NO, WHEN I WAS ACTUALLY -- WHEN I GOT MACED, I WAS
3 ALREADY HANDCUFFED. I WAS HANDCUFFED AND WENT OVER THE
4 POLICE CAR AND HE -- SOMEONE SHOOK THE MACE AND SPRAYED IT
5 DIRECTLY IN MY EYE. I WERE RESTRAINED WHEN THE MACE--

6 Q ISN'T IT TRUE YOU STRUGGLED WITH THEM SOMEWHERE IN
7 THE NEIGHBORHOOD OF 15 MINUTES?

8 A I DON'T RECALL.

9 Q STRUGGLING INCLUDING YOUR COUSIN?

10 A I DON'T RECALL STRUGGLING WITH THEM THAT NIGHT.

11 Q YOU DON'T RECALL STRUGGLING WITH THEM?

12 A THE BIG GUY GRABBED ME AND I REMEMBER THE HANDCUFFS
13 BEING PUT ON ME AND I WAS MACED AFTER I WAS HANDCUFFED.

14 Q IT'S POSSIBLE YOU DON'T REMEMBER EXACTLY WHAT
15 HAPPENED THEN EITHER?

16 A WELL, AFTER BEING MACED, I COULDN'T SEE NO MORE THAN
17 TODAY I BEEN TO THE JAIL WHERE THEY -- WHERE THEY -- THEY
18 WASHED MY FACE FOR ME AND I WAS STILL IN THE HANDCUFFS
19 THEN.

20 Q DO YOU REMEMBER WHEN THEY TOOK THE HANDCUFFS OFF?

21 A NO, THE HANDCUFFS WAS STILL ON ME WHEN I GOT TO JAIL
22 WHEN THEY WASHED MY FACE BECAUSE I COULDN'T SEE.

23 Q I'M ASKING YOU DO YOU REMEMBER WHEN THEY TOOK THEM
24 OFF?

25 A ACTUALLY, NO.

KEVIN CHOICE - CROSS BY CROFT

1 Q DO YOU REMEMBER WHEN YOU PASSED OUT?

2 A NO.

3 Q DO YOU REMEMBER SEEING MARION HOWARD THAT NIGHT?

4 A HE WAS THE ONE PASSING DRINKS OUT.

5 Q HE WAS ONE OF THE OWNERS THERE, RIGHT?

6 A YEAH, HE WAS THE ONE PASSING OUT THE DRINK.

7 Q AND DID YOU NOTICE HIM AS YOU RAN TOWARD THE DOOR?

8 A DID I NOTICE HIM?

9 Q YEAH.

10 A LIKE I TOLD YOU, THE LIGHTS WAS OUT.

11 Q OKAY. I WANT YOU TO STEP DOWN OFF THE WITNESS STAND
12 FOR A MOMENT IF YOU WOULD. I'M GOING TO SHOW YOU WHAT IS
13 MARKED AS STATE'S EXHIBIT NUMBER 11. I WANT YOU TO SHOW
14 ME ON HERE WHERE THIS PERSON PASSED YOU THIS GUN. THIS IS
15 THE BACK DOOR.

16 A THIS IS THE DOOR. THE LIGHT WAS SHINING THROUGH THE
17 DOOR.

18 COURT REPORTER: I CAN'T HEAR.

19 THE COURT: NEED TO SPEAK UP SO SHE CAN TAKE DOWN
20 WHAT YOU'RE SAYING.

21 A THAT DOOR OVER HERE, RIGHT, THIS IS THE DOOR THE
22 LIGHT WAS SHINING IN, THIS DOOR RIGHT HERE WE WAS AT.
23 UPON COMING IN THE DOOR RIGHT HERE, I WAS PASSED THE GUN
24 ON THIS SIDE HERE, ON MY SIDE HERE.

25 Q SO IT'S RIGHT THERE NEAR THAT DOOR?

KEVIN CHOICE - CROSS BY CROFT

1 A YEAH, AND MR. MCQUILLA WAS STANDING RIGHT ON THE RAMP
2 RIGHT IN FRONT OF THE DOOR. HE WAS STANDING RIGHT IN THE
3 MIDDLE OF THE RAMP LIKE THIS.

4 Q YOU ARE AWARE MARION HOWARD WAS STANDING RIGHT HERE
5 UNDER THAT LIGHT?

6 A NO.

7 Q THE LIGHT BULB?

8 A I WASN'T AWARE.

9 Q WEREN'T AWARE OF THAT?

10 A BEING THERE AT ALL.

11 Q YOU WEREN'T AWARE THAT HE WAS WATCHING YOU AT THAT
12 POINT?

13 A LIKE I JUST STATED, I DIDN'T, I WASN'T AWARE OF MR.
14 HOWARD BEING THERE AT ALL BECAUSE THE LIGHTS WERE OUT.

15 Q IT'S POSSIBLE HE WAS THERE?

16 A I DON'T KNOW.

17 Q YOU DON'T KNOW?

18 A LIGHTS WERE OUT. I DIDN'T SEE HIM.

19 Q AND WHEN THIS PERSON PASSED YOU THE GUN, THEY HANDED
20 IT TO YOU, CORRECT? THEY PUT IT IN YOUR HAND? IS THAT
21 WHAT YOU SAID?

22 A YES, SIR.

23 Q OKAY. AND THEN YOU STUCK IT IN YOUR BELT?

24 A THAT'S I -- INSTINCT, IT RIGHT IN FRONT OF ME.

25 Q IN YOUR PANTS?

KEVIN CHOICE - CROSS BY CROFT

1 A YES, SIR.

2 Q SO YOU DIDN'T GRAB IT LIKE THAT, YOU GRABBED IT LIKE
3 THAT, RIGHT?

4 A I DON'T KNOW EXACTLY HOW I GRABBED IT.

5 Q YOU DON'T KNOW HOW HE GRABBED IT? DOES IT MAKE SENSE
6 THAT YOU WOULD GRAB IT LIKE THIS, LIKE THIS WITH THE PALM
7 OF YOUR HAND?

8 A IT WOULD MAKE SENSE.

9 Q IT WOULD? LET ME ASK YOU THIS. YOU TALKED ABOUT
10 YOUR PRIOR RECORD. ISN'T IT TRUE YOU SAID YOU HAVE
11 POSSESSION OF CRACK COCAINE IN NOVEMBER OF 1993?

12 A YES, SIR, I DO.

13 Q AND YOU HAVE FALSE INFORMATION TO POLICE FROM JUNE OF
14 1994?

15 A YES, SIR, YEAH I DO.

16 Q OKAY. AND IN DECEMBER OF 1995 YOU HAVE A
17 CONTRIBUTING TO THE DELINQUENCY OF A MINOR CHARGE; ISN'T
18 THAT RIGHT?

19 A YES, SIR.

20 Q AND FROM FEBRUARY OF 1997 YOU WERE CHARGED WITH
21 POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA AND
22 POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA IN
23 PROXIMITY TO A SCHOOL; IS THAT RIGHT?

24 A YES, SIR.

25 Q AND AGAIN IN 1997, IN OCTOBER OF 1997 YOU WERE

KEVIN CHOICE - REDIRECT BY WRIGHT

1 CHARGED WITH POSSESSION WITH INTENT TO DISTRIBUTE
2 MARIJUANA AND POSSESSION WITH INTENT TO DISTRIBUTE
3 MARIJUANA WITHIN PROXIMITY TO A SCHOOL?

4 A YES, SIR, I WAS CHARGED.

5 Q OKAY. AND THEN LATER ON IN 1998 WAS WHEN YOU WERE
6 CHARGED WITH FAILURE TO STOP FOR A BLUE LIGHT; IS THAT
7 RIGHT?

8 A YES, SIR.

9 Q AND THEN ALSO IN 1998 YOU WERE AGAIN CHARGED WITH
10 FALSE INFORMATION TO POLICE; ISN'T THAT RIGHT?

11 A YES, SIR.

12 Q BUT EVERYTHING YOU ARE TELLING US TODAY IS THE TRUTH?

13 A YES, SIR.

14 MR. CROFT: COURT'S INDULGENCE ONE MOMENT.

15 (WHEREUPON THERE WAS A PAUSE).

16 MR. CROFT: ONE LAST -- LAST QUESTION I WANT TO
17 CONFIRM.

18 Q THIS PERSON HANDED YOU THE GUN AND YOU NEVER TURNED
19 TO LOOK AND SEE WHO IT WAS?

20 A NO, SIR.

21 Q OKAY.

22 MR. CROFT: NOTHING FURTHER, YOUR HONOR.

23 THE COURT: ANY REDIRECT?

24 MR. WRIGHT: YES, YOUR HONOR.

25 REDIRECT EXAMINATION BY MR. WRIGHT:

KEVIN CHOICE - REDIRECT BY WRIGHT

1 Q YOU STATED BEFORE MR. CROFT IN ANSWER, ASKED YOU
2 QUESTIONS THAT YOU DID HAVE SOME THINGS ON YOUR RECORD BUT
3 IT'S MOSTLY DRUG CHARGES, CORRECT?

4 A YES.

5 Q AND YOU STATED THAT YOU HAD A DRUG PROBLEM BEFORE,
6 CORRECT?

7 A YES, I HAVE.

8 Q SO YOU DIDN'T TRY TO HIDE THAT FACT; DID YOU?

9 A NO, SIR.

10 Q AND YOU STILL SAY THAT WHAT YOU SAID HAPPENED
11 HAPPENED, CORRECT?

12 A YES, SIR.

13 Q IS THAT THE TRUTH?

14 A YES, SIR.

15 Q ARE YOU LYING TODAY?

16 A NO, SIR.

17 Q DID YOU LIE ABOUT THE DRUG CHARGES?

18 A NO, SIR. I PLED GUILTY TO THEM.

19 Q AND IS THIS YOUR FIRST TIME COMING TO TRIAL FOR
20 SOMETHING?

21 A YES, SIR.

22 Q WHY ARE YOU COMING TO TRIAL FOR THIS?

23 A BECAUSE I'M NOT GUILTY.

24 Q AND YOU STATED YOU WERE PASSED THAT GUN, CORRECT?

25 A YES, SIR.

KEVIN CHOICE - REDIRECT BY WRIGHT

1 Q AND WHEN DID YOU SAY YOU WERE PASSED THE GUN?

2 MR. CROFT: YOUR HONOR, HE'S ALREADY COVERED ALL OF
3 THIS.

4 THE COURT: YEAH, LET'S DON'T REPEAT EVERYTHING HE'S
5 ALREADY SAID.

6 (WHEREUPON QUESTIONING RESUMED).

7 Q YOU SAID YOU WERE PASSED THE GUN AND YOU ARE TELLING
8 THE TRUTH, CORRECT?

9 A YES, SIR.

10 Q NO FURTHER QUESTIONS.

11 THE COURT: ALL RIGHT. YOU CAN COME DOWN. TAKE YOUR
12 SEAT.

13 (WHEREUPON THE WITNESS LEFT THE STAND).

14 THE COURT: IS THAT EVERYTHING FOR THE DEFENSE?

15 MR. WRIGHT: YES, YOUR HONOR.

16 THE COURT: STATE HAVE ANYTHING IN REPLY?

17 MR. CROFT: NO, SIR, YOUR HONOR.

18 THE COURT: LADIES AND GENTLEMEN YOU HAVE NOW HEARD
19 ALL THE EVIDENCE YOU WILL HEAR IN THIS CASE AND WE ARE
20 GOING TO NOW HAVE CLOSING ARGUMENTS BY THE ATTORNEYS. THE
21 STATE WAIVE OPENING?

22 MR. CROFT: YES, SIR, YOUR HONOR.

23 THE COURT: ALL RIGHT. SO WE WILL HEAR FROM THE
24 DEFENSE COUNSEL FIRST AND THEN WE WILL HEAR FROM THE
25 SOLICITOR AND THEN I WILL CHARGE YOU ON THE LAW, GIVE YOU

1 A VERDICT FORM, ASK YOU TO TRY THIS CASE. ALL RIGHT. MR.
2 WRIGHT?

3 MR. WRIGHT: MAY IT PLEASE THE COURT, YOUR HONOR.

4 CLOSING ARGUMENT BY MR. WRIGHT:

5 TELL ME NOT IN WONDERFUL NUMBERS LIFE IS BUT --
6 FOR THE SOLE IS DEAD IN SLUMBERS AND THINGS ARE NOT WHAT
7 THEY SEEM. THINGS ARE NOT WHAT THEY SEEM. THAT IS THE
8 FIRST THING FROM AMERICAN -- GREAT AMERICAN POET CALLED
9 HENRY WADSWORTH LONGFELLOW.

10 THE FACTS OF THIS PARTICULAR CASE, BECAUSE AS
11 YOU HAVE HEARD THE TESTIMONY, MR. KEVIN CHOICE WHEN HE
12 CAME OUT THE DOOR DID HAVE A GUN IN THE WAISTBAND AND HE
13 DID NOT SHOOT TONY ROSE. HE DID NOT KILL TONY ROSE.

14 LOOK AT THE EVIDENCE. THINGS ARE NOT WHAT THEY
15 SEEM. FIRST OF ALL ILLUSTRATES -- I DON'T KNOW IF YA'LL
16 HAVE BROTHERS AND SISTERS OR ANYTHING LIKE THAT, BUT WHEN
17 YOU ARE KIDS, THINK OF A SITUATION WHERE THE MOTHER GOING
18 OUT THE HOUSE, SHE'S LIKE WHATEVER YOU DO, WHEN I COME
19 BACK TO THIS HOUSE I WANT TO KNOW IF ANYBODY TOUCHED THE
20 COOKIE DOUGH.

21 DON'T WANT ANYBODY TO TOUCH THE COOKIE DOUGH.
22 SHE WALKS OUT OF THE HOUSE. AFTER A LITTLE WHILE THE
23 BROTHER, YOUR SISTER COMES UP TO YOU AND HANDS YOU A
24 COOKIE AND LICKING THE BOWL, GUESS WHO WALKS IN THE DOOR,
25 SEES YOU WITH THE COOKIE IN YOUR HAND.

1 YOU TURN YOUR HEAD, YOU SEE BROKEN COOKIE JAR ON
2 THE FLOOR. THINGS ARE NOT ALWAYS WHAT THEY SEEM. YOU GET
3 THE WHIPPING OF YOUR LIFE. WHY? BECAUSE YOU HAD THE
4 COOKIE IN YOUR HAND. YOU BREAK THE COOKIE JAR OR NOT.

5 THAT IS THE SITUATION THAT WILL HAPPEN TO YOU OR
6 YOU KNOW SITUATION HAPPENED TO ANYBODY, YOU MIGHT HAVE A
7 SMALL FRACTION OF -- MIGHT UNDERSTAND A SMALL FRACTION OF
8 WHAT KEVIN CHOICE IS FEELING HERE TODAY AND HAS FELT FOR
9 THE PAST TWO AND A HALF YEARS.

10 THINK ABOUT IT. THINGS ARE NOT ALWAYS WHAT THEY
11 SEEM. ON SEPTEMBER 3RD, 1998, A MURDERER TOOK THE LIVES
12 OF TWO YOUNG MEN, TONY ROSE AND KEVIN CHOICE.
13 UNFORTUNATELY THERE'S NOTHING WE CAN DO FOR TONY ROSE.
14 CAN'T GET HIM BACK. YOU CAN GIVE KEVIN CHOICE BACK HIS
15 LIFE.

16 WHAT I WANT YOU TO DO IS LOOK AT THE EVIDENCE.
17 I CAN'T SAY I WOULD WANT TO BE IN YOUR POSITION TODAY ON
18 THIS JURY BECAUSE IT'S A DIFFICULT TASK THAT YOU HAVE
19 AHEAD OF YOU, A VERY DIFFICULT, VERY SERIOUS BECAUSE IT'S
20 A VERY SERIOUS MATTER.

21 BUT I AM GLAD THAT YOU ARE HERE TO TAKE ON
22 THAT. I'M CONFIDENT YOU WILL DO WHAT YOU ARE HERE TO DO,
23 DO THE RIGHT JOB, DO THE RIGHT THING. THAT'S WHY YOU WERE
24 PICKED TO BE ON THIS JURY BECAUSE BOTH OF US HAVE
25 CONFIDENCE THAT YOU WILL DO THE RIGHT THING.

1 NOW, THE BURDEN OF PROOF IS ON THE STATE TO
2 PROVE THAT KEVIN CHOICE SHOT AND KILLED MR. TONY ROSE.
3 PROOF THE BURDEN OF PROOF IS ON THE STATE. IT ALWAYS
4 IS. FROM SEPTEMBER 3RD TO THIS PRESENT DATE TO RIGHT NOW,
5 KEVIN CHOICE IS INNOCENT.

6 HE HAS A VEIL OF INNOCENCE PLACED UPON HIM BY
7 THE LAW. ACCORDING TO THE LAW RIGHT NOW HE'S INNOCENT
8 UNTIL THEY PRESENT THE FACTS TO YOU TO CONVINCE YOU BEYOND
9 A REASONABLE DOUBT THAT HE IS GUILTY OF THESE CHARGES.
10 HAS TO BE BEYOND A REASONABLE DOUBT.

11 IF THERE IS A REASONABLE DOUBT, THEN YOU SHOULD
12 FIND HIM NOT GUILTY. AND REASONABLE DOUBT IS SIMPLE. THE
13 JUDGE WILL CHARGE YOU THE LAW, BUT TO PUT IT IN LAYMAN'S
14 TERMS, REASONABLE DOUBT IS A DOUBT FOR WHICH YOU CAN GIVE
15 A REASON.

16 THIS CASE THERE ARE SO MANY REASONS TO DOUBT
17 THAT KEVIN CHOICE SHOT AND KILLED TONY ROSE. FIRST LET'S
18 LOOK AT THE EVIDENCE. THE FIRST WITNESS THEY PUT UP,
19 LOUIS JENKINS.

20 MR. LOUIS JENKINS. HE WAS CONVICTED OF
21 POSSESSION OF CRACK COCAINE. BUT UNLIKE MR. CHOICE WHO
22 SAID THAT -- WHO ADMITTED THAT HE DID TAKE THE CRACK
23 COCAINE, HIS OWN CRACK COCAINE, MR. LOUIS JENKINS SAID
24 THAT HE DIDN'T DO DRUGS, HE DIDN'T SELL DRUGS.

25 I MEAN, HE WAS POSSESSING DRUGS UNLESS CRACK

1 GROWS IN PEOPLE'S POCKETS, I DON'T KNOW. HE WASN'T
2 TELLING THE TRUTH. ALSO HE WAS STOPPED FOR FAILURE TO
3 STOP FOR BLUE LIGHT, RUNNING FROM THE POLICE.

4 AND LADIES AND GENTLEMEN, HE WAS CONVICTED OF
5 CARRYING A PISTOL ALSO. THESE THREE CONVICTIONS HE STATED
6 ON THERE. AND ALSO IF YOU BELIEVE LOUIS JENKINS, HE
7 WITNESSED ON SEPTEMBER 3RD, 1998, HE WITNESSED KEVIN
8 CHOICE PULL OUT A GUN AND SHOOT HIS BROTHER-IN-LAW, TONY
9 ROSE, HE SAW IT THAT NIGHT.

10 HE DIDN'T TELL THE POLICE ONE WORD ABOUT IT, NOT
11 ONE WORD UNTIL LAST WEEK. THIS HAPPENED TWO AND A HALF
12 YEARS, AND TWO AND HAVE HALF YEARS HAVE GONE BY, 1998,
13 1999, 2000 AND MARCH 2001.

14 OH, GUESS WHAT, I REMEMBER KEVIN CHOICE SHOT MY
15 BROTHER-IN-LAW. DIDN'T HALF -- DIDN'T SAY IT IN '98, '99,
16 2000. DIDN'T HAPPEN. ALSO DETECTIVE WILLIAMS STATED THAT
17 HE AND DETECTIVE HOLSTON WENT TO TALK TO LOUIS JENKINS
18 SOON AFTER THE INCIDENT AND GUESS WHAT, DETECTIVE WILLIAMS
19 SAID HE DISAPPEARED, COULDN'T FIND HIM AFTER THAT.

20 TWO AND A HALF YEARS COULDN'T FIND HIM UNTIL
21 LAST WEEK, A WEEK BEFORE KEVIN CHOICE IS ON TRIAL FOR
22 MURDER. DON'T BELIEVE THAT HE SAW KEVIN CHOICE PULL A GUN
23 OR SHOOT ANYBODY OR HAVE A GUN AT ALL.

24 AND ALSO, LADIES AND GENTLEMEN, LOUIS JENKINS
25 HIS TESTIMONY, ENTIRE TESTIMONY IS UNBELIEVABLE, LITERALLY

1 UNBELIEVABLE. DON'T BELIEVE IT. IT'S NOT REASONABLE,
2 IT'S NOT LOGICAL. WITH MR. JENKINS WE HAD TESTIMONY FROM
3 THIS WITNESS STAND FROM MS. SHARON JENKINS -- MS. SHARON
4 BAILEY, THAT SHE SAW TWO PEOPLE AROUND TONY ROSE WHEN HE
5 GOT SHOT.

6 THOSE TWO PEOPLE ARE LOUIS JENKINS. SHE GAVE A
7 STATEMENT BY THE WAY SOON AFTER THIS INCIDENT IN SEPTEMBER
8 1998. SHE DIDN'T WAIT TWO AND A HALF YEARS LATER TO SAY
9 OH BY THE WAY, THIS IS WHAT I SAW.

10 SHE GAVE IT SEPTEMBER OF 1998, SOON AFTER THE
11 INCIDENT OF WHAT SHE SAID IN HER STATEMENT THAT SHE RAN UP
12 THERE WHEN HE WAS ON THE STAND, I SAW LOUIS JENKINS
13 STANDING BESIDE TONY ROSE, MR. HARRY SPANN STANDING IN
14 FRONT OF HIM.

15 SHE SAYS SHE WAS ONLY A COUPLE OF FEET FROM HIM
16 BECAUSE SHE WAS TALKING TO HIM. HE ASKED HER FOR A
17 CIGARETTE, SHE WAS ABOUT TO HAND HIM A CIGARETTE AND
18 THAT'S WHEN HE GOT SHOT.

19 MR. CROFT WOULD HAVE YOU BELIEVE THAT SOMEHOW
20 MR. KEVIN CHOICE SOMEHOW IN THE MIDST OF HER TALKING TO
21 TONY ROSE AND HANDING HIM A CIGARETTE, HE RAN IN, SHOT
22 TONY ROSE AND RAN OUT WITHOUT HER EVER SEEING IT.

23 SHE WALKED UP HERE PRETTY GOOD FROM THE BACK OF
24 THE COURTROOM UP HERE, SWORE ON THE BIBLE, SAT UP HERE.
25 SHE DIDN'T STUMBLE, DIDN'T FALL. I DON'T THINK SHE WAS

1 LYING, HAPPENED NOT TO SEE KEVIN CHOICE COME BECAUSE SHE'S
2 LIKE TWO FEET OR A COUPLE OF FEET LIKE SHE SAID AWAY FROM
3 TONY ROSE AND TALKING TO HER TRYING TO HAND HIM A
4 CIGARETTE.

5 IT'S NOT POSSIBLE THAT SHE'S THAT CLOSE TO HIM
6 THAT SHE COULD HAVE SEEN HIM. AND WHY SHE COULDN'T SEE
7 HIM, SHE SAW HARRY SPANN. SHE SAW LOUIS JENKINS. WHY
8 COULDN'T SHE SEE KEVIN CHOICE?

9 IN ORDER FOR YOU TO BELIEVE WHAT MR. CROFT WOULD
10 HAVE YOU BELIEVE THAT HE RAN IN, SHOT HIM AND RAN BACK OUT
11 REAL QUICK, HE WOULDN'T NEED TO BE -- HE WOULD HAVE TO BE
12 FASTER THAN A SPEEDING BULLET. IT'S NOT POSSIBLE AND IT
13 DIDN'T HAPPEN.

14 IN HER STATEMENT SHE SAID, AND AS SHE SAID UP
15 HERE ON THE STAND, SHE SAID MR. JENKINS STANDING BESIDE
16 TONY ROSE, SHE SAW HARRY SPANN STANDING IN FRONT OF TONY
17 ROSE, SHE NEVER SAW KEVIN CHOICE. SHE SAID SHE NEVER SAW
18 KEVIN CHOICE.

19 AND ALSO DETECTIVE ROSENSTEEL -- HE STATED THAT
20 HE INTERVIEWED MANY PEOPLE THAT DIDN'T GET ON THE STAND.
21 THERE WERE FIVE PEOPLE THAT HE SAID THAT HE GOT STATEMENTS
22 FROM, PEOPLE THAT DIDN'T TAKE THE STAND.

23 I ASKED HIM ON THE STAND DID THESE PEOPLE SAY
24 THAT KEVIN CHOICE SHOT TONY ROSE? HE SAID YEAH, AT LEAST
25 ONE OF THEM SAID NO, HE DIDN'T SAY THAT. HE DIDN'T SAY

1 ANYBODY HAD SHOT, SAID KEVIN CHOICE SHOT TONY ROSE. HE
2 SAID HE GOT FIVE STATEMENTS FROM DIFFERENT PEOPLE.

3 ANY OF THESE STATEMENTS -- PEOPLE CAME DOWN,
4 GAVE WRITTEN STATEMENTS, DID HE SAY ONE OF THESE
5 STATEMENTS SAID THAT KEVIN CHOICE SHOT TONY ROSE? NO, NOT
6 ONE, NOT ONE.

7 GUESS WHAT. FIRST TIME ANYBODY CAME AND SAID
8 THAT KEVIN CHOICE SHOT TONY ROSE WAS YESTERDAY WHEN MR.
9 JENKINS WHO JUST APPEARED OUT OF NOWHERE AFTER TWO AND A
10 HALF YEARS WITH BRAND NEW MEMORY SAID THAT HE SAW KEVIN
11 CHOICE SHOT TONY ROSE. THE FIRST TIME.

12 LISTEN TO ALL THE EVIDENCE. IF ANYBODY SAID --
13 AND THE ONLY TIME THAT ANYBODY SAID THAT THEY SAW KEVIN
14 CHOICE SHOOT TONY ROSE. THINK ABOUT IT. MR. JENKINS IS
15 NOT THE MOST BELIEVABLE PERSON IN THE WORLD. HE DID LIE
16 ON THAT STAND.

17 AND WE ALSO HAVE TESTIMONY FROM MR. GEORGE
18 MCQUILLA WHO WAS THE SECURITY GUARD AND HE STATED THAT HE
19 WAS OUTSIDE AS KEVIN CHOICE SAID, HE SAW HIM AT THE DOOR,
20 HE SAW THE GUN GO IN HIS BELT OR HIS PANTS AND THAT'S ALL
21 HE SAW.

22 THAT'S WHY HE GRABBED HIM. THAT'S WHY HE GOT
23 MR. CHOICE. HE DIDN'T SEE ANY -- MR. CHOICE SHOOT
24 ANYBODY. HE JUST SAW THE GUN AND THAT'S WHY HE SHOT HIM.
25 HE DID HIS JOB. HE IS A SECURITY OFFICER. HE HEARD A

1 SHOT.

2 AFTERWARDS HE SAW THIS PERSON WITH A GUN, HE
3 STOPPED HIM. HE DID A GOOD JOB. THAT'S WHAT HE WAS
4 SUPPOSED TO DO. HE EVEN TOLD THE TRUTH AND SAID THAT
5 WELL, HE WASN'T SURE WHO PUT THE GUN IN HIS PANTS, BUT
6 BECAUSE HE WAS JUST TELLING WHAT HE KNEW.

7 HE WASN'T TRYING TO LIE. HE TOLD WHAT HE KNEW.
8 HE SHOULD HAVE STOPPED HIM, THAT WAS HIS JOB. HE SHOULD
9 HAVE STOPPED HIM. HE SAW A GUN, HE DID. SAID THAT CROWD
10 WAS COMING AFTER HIM ALSO.

11 AND ALSO MS. SAPRENA DAVIS. SHE SAID THE SAME
12 THING, THE CROWD WAS RUNNING OUT THE CLUB AND COMING OUT
13 TO US, WHY WAS THE CROWD COMING TO HER? COMING FOR
14 SECURITY? THEY SAW HIM WITH HIM, THE SECURITY OFFICER
15 MCQUILLA AND SAPRENA DAVIS, THEY SAW HIM WITH KEVIN
16 CHOICE.

17 THEY WERE RUNNING UP TO HIM LIKE, YOU KNOW, YOU
18 REMEMBER WHAT WAS SAID ON THE STAND. THINK THE CROWD WHO
19 WAS INSIDE, THEY KNOW WHAT HAPPENED. THEY KNOW WHO DIDN'T
20 SHOOT TONY ROSE. THE WITNESSES THAT GAVE STATEMENTS, THEY
21 TOLD THE TRUTH. THEY TOLD WHAT THEY KNOW.

22 AND ANOTHER THING, I -- I FIND IT KIND OF ODD
23 MYSELF THAT THE FACT THAT THESE PEOPLE WHO WERE INSIDE THE
24 CLUB AS WELL AS THE SECURITY GUARD OUTSIDE OF THE CLUB,
25 THE MAIN PEOPLE INSIDE THE CLUB THAT GAVE WRITTEN

1 STATEMENTS THAT MR. WILLIAMS SAID THAT HE GOT THE WRITTEN
2 STATEMENTS FROM, WE'RE HERE ON TRYING TO PROSECUTE THIS
3 MAN FOR MURDER.

4 THE STATE DIDN'T CALL NOT ONE OF THEM FROM THE
5 PEOPLE INSIDE THE CLUB THAT GAVE WRITTEN STATEMENTS. THEY
6 CALLED MR. HOWARD WHO SAID HIMSELF HE DIDN'T KNOW WHO SHOT
7 HIM. SOMEBODY SAID THERE WAS AN ARGUMENT. HE DIDN'T EVEN
8 SAY THAT HE KNEW WHO THE ARGUMENT WAS BETWEEN.

9 THE ONLY -- AND THAT'S ANOTHER THING. THE ONLY
10 PERSON THAT SAID THE ONLY EVIDENCE PRESENTED THE ONLY
11 PERSON THAT SAYS THAT KEVIN CHOICE WAS ARGUING OR HAVING
12 WORDS WITH TONY ROSE WAS GUESS WHO, LOUIS JENKINS.

13 APPEARS TWO AND A HALF YEARS LATER SAYS I DIDN'T
14 SAY ANYTHING AT THE TIME, BUT NOW BY THE WAY, I SAW TONY
15 AND KEVIN ARGUING, THEN I SAW KEVIN PULL OUT A GUN AND
16 SHOOT. HIS BROTHER-IN-LAW, TWO AND A HALF YEARS LATER,
17 BACK THEN HE DIDN'T SAY A WORD.

18 '99, HE -- I DON'T SEE WHY HE WOULD BE
19 THREATENED BY HIM. HE CAN'T DO ANYTHING TO HIM RIGHT
20 NOW. HE COULDN'T DO ANYTHING TO HIM FOR THE PAST TWO AND
21 A HALF YEARS. WHY WOULD HE BE THREATENED BY HIM AND WHY
22 DID HE DISAPPEAR?

23 THE POLICE SAID THEY COULDN'T FIND HIM. LOUIS
24 JENKINS UNTIL A WEEK AGO. HE IS THE ONLY PERSON THAT GOT
25 UP ON THE STAND, HE DIDN'T GIVE A WRITTEN STATEMENT.

1 ANYBODY IN A WRITTEN STATEMENT SAID ANYTHING ABOUT THERE
2 BEING AN ARGUMENT BETWEEN KEVIN CHOICE AND TONY ROSE.

3 THE ONLY PERSON THAT SAID THAT IS THE SAME
4 PERSON THAT SAID HE SAW HIM SHOOT THE GUN WAS LOUIS
5 JENKINS, THE ONLY PERSON, MR. JENKINS, LOUIS JENKINS, THE
6 ONLY PERSON. AS MR. CHOICE STATED HE HAD NO REASON TO
7 SHOOT TONY ROSE, NO REASON.

8 ONE, EVEN LOUIS JENKINS, IF YOU BELIEVE ANYTHING
9 HE SAID, EVEN HE SAID THAT MR. CHOICE, KEVIN CHOICE WAS
10 DRUNK WHEN THEY WALKED IN THE CLUB. HE WAS DEAD DRUNK
11 BASICALLY.

12 MR. CHOICE SAID YEAH, HE HAD BEEN DRINKING
13 PRETTY MUCH ALL DAY. HE DRANK SOME MORE ONCE HE GOT IN
14 THE CLUB BECAUSE THEY HAD FREE NIGHT, LIKE MR. MCQUILLA
15 SAID, FREE NIGHTS WE DRINK, COME TO THE CLUB, HAD HIS FREE
16 DRINKS, DRANK SOME MORE FOR FREE. THAT'S WHAT HE WAS
17 DOING.

18 APPARENTLY SOMEBODY KNEW THAT AND AFTER THE SHOT
19 WAS FIRED HE WAS DRUNK, WASN'T IN HIS RIGHT MIND, SO GUESS
20 WHAT THEY DID. WHO IS THE BEST PERSON IF YOU WANT TO GET
21 RID OF A WEAPON IN A CLUB SO THAT YOU WON'T HAVE IT? WHO
22 IS THAT PERSON?

23 THE DRUNKEST PERSON THERE WHEN YOU KNOW WILL NOT
24 BE ABLE TO RECALL EVERYTHING THAT WENT ON. THINK ABOUT
25 IT. THERE IS NOBODY ELSE THAT SAID ANYTHING ABOUT A

1 ARGUMENT. HE HAD NO REASON TO SHOOT, TO KILL TONY ROSE,
2 NONE WHATSOEVER.

3 THAT'S WHY HE DIDN'T SHOOT, HE DIDN'T KILL HIM.
4 HE DIDN'T DO IT. KEVIN AS DETECTIVE ROSENSTEEL STATED
5 WHEN HE WENT TO THE JAIL AN HOUR LATER AFTER THIS INCIDENT
6 HAPPENED, MR. CHOICE WAS PASSED OUT DRUNK. HE DID THE
7 ADHESIVE TESTS. HE DID THE SWABS ON BOTH HANDS.

8 GUESS WHAT. HE DIDN'T GIVE IT UP. HE DIDN'T
9 GET UP, JUMP UP, HE DIDN'T REACT, HE DIDN'T SAY ANYTHING.
10 WHY? HE DIDN'T KNOW. HE WAS PASSED OUT. HE WAS DRUNK.
11 HE WAS PASSED OUT. THIS IS AN HOUR AFTER THE INCIDENT
12 HAPPENED.

13 AND ALSO LISTENING TO WHAT AGENT BARRON SAID,
14 SLED AGENT BARRON SAID, AS FAR AS GUNSHOT RESIDUE SHE SAID
15 WHEN A PERSON FIRES A GUN, THERE'S A CLOUD THAT ENVELOPS
16 THE PERSON'S GUN AND THE HAND AND THE ASHES SPREAD OUT,
17 THE GUN ENVELOPS AND RESIDUE GETS ON THE HAND.

18 HE SAID WELL, THERE'S A WAY TO GET IT OFF ONE
19 WAY BEING IF THE PERSON IS SWEATING A LOT AND OR IF LIKE
20 SIX OR SO HOURS BEFORE THEN. THIS IS ONE HOUR. IT WASN'T
21 SIX OR SEVEN HOURS AFTER THIS INCIDENT THAT THEY WERE
22 GOING TO GET THE SWABS.

23 ONE HOUR. HE WAS IMMEDIATELY HANDCUFFED. AFTER
24 THAT HE PASSED OUT. HE DIDN'T HAVE A CHANCE TO WASH HIS
25 HANDS. IT WASN'T SEVEN OR EIGHT HOURS THAT HE SWEAT OR

1 ANYTHING THAT RUB THEM OFF.

2 IF THE RESIDUE ENVELOPED HIS HAND, THERE WOULD
3 BE MORE THAN ONE SINGLE MICROSCOPIC LEAD PARTICLE ON HIS
4 HAND. EVEN MR. BARRON STATED THAT OTHER THAN METALS THAT
5 ARE FOUND COMMON HOUSEHOLD OBJECTS, HE SAID IF YOU TOUCH
6 IT YOU CAN GET THE METALS ON YOU AND YOU WILL GET EVEN THE
7 LEAD PARTICLES.

8 ALL HE SAID IS SOME TRACE OF THE DIFFERENT LEAD,
9 DIFFERENT METAL PARTICLES AND ONE WHICH IS THE MAIN THING
10 THAT YOU FIND FOR GUNSHOT RESIDUE IS ROUND LEAD
11 PARTICLES. MICROSCOPIC, ONE MICROSCOPIC LEAD PARTICLE.

12 THIS WAS DONE AN HOUR AFTER THE GUN WAS SHOT.
13 MS. BAILEY GAVE A STATEMENT OR AT THE TIME SHE WAS AROUND
14 THE STORE IS HARRY SPANN, DID HE HAVE A GUNSHOT RESIDUE
15 KIT? NO. MR. JENKINS HAVE A GUNSHOT RESIDUE KIT, NO.
16 WHO DID?

17 KEVIN CHOICE. WHAT WAS THE RESULTS IN HIS? HIS
18 REPORT HE SAID WELL, THERE IS SOME TRACE METAL ON HIS HAND
19 BUT IT'S REALLY INCONCLUSIVE BECAUSE, YOU KNOW, YOU ONLY
20 FOUND THAT ONE LEAD PARTICLE. ON THE PALM IT'S REALLY AN
21 INDICATION THAT THEY HAD CONTACT WITH A GUN, NO
22 MICROSCOPIC EVIDENCE.

23 I THINK WE TRIED -- WE WANTED TO HELP OUT SAY
24 THESE PARTICLES IN THE HAND -- FIRED BY A GUN. BUT THE
25 FACT IS LIKE HE SAID THESE PARTICLES ARE NOT ANYWHERE, HE

1 SAID HE TOUCHED THEM. AND WE ARE SORRY, THAT'S NOT
2 EVIDENCE THAT YOU FIRED A GUN.

3 IF YOU FIRED A GUN, WHY ONLY ONE MICROSCOPIC
4 PARTICLE ON YOUR HAND? TOUCH YOUR GUN, HAVE ANY CONTACT
5 WITH THE GUN? YEAH, IT'S POSSIBLE. AND THE POLICE
6 INVESTIGATION THAT WAS DONE.

7 THIS IS A MURDER CASE. I MEAN, YOU DON'T GET
8 ANY MORE SERIOUS CHARGES THAN THIS. THIS IS A MURDER
9 CASE. YOU HAD A WITNESS SAYING SPECIFICALLY SAW TWO
10 PEOPLE STANDING AROUND.

11 THEY DID NOT SEE THE PERSON WHO WAS ARRESTED AT
12 ALL, BUT YET NEITHER ONE OF THESE PEOPLE ARE INVESTIGATOR,
13 NEITHER ONE. HAVE AN EYE WITNESS WHO SAY THESE PEOPLE
14 WERE THERE, THEY WERE THE ONLY PEOPLE THEY SAW AROUND AND
15 NEITHER ONE OF THESE TWO PEOPLE ARE ARRESTED?

16 MR. WILLIAMS SAID THAT AND THAT HIM AND ALVIN
17 TRIED THE GUN, TALKED TO MR. JENKINS AND THEN AFTER THAT
18 DAY MR. JENKINS DISAPPEARED. SAY WELL, THEY SAW HARRY
19 SPANN IN COURT ONE TIME, HE COULDN'T SAY ANYTHING. SAW
20 HIM IN JAIL ONE TIME, HE COULDN'T SAY ANYTHING.

21 THAT IS THE ONLY THING SAID THEY DID FIND ARE
22 THOSE TWO PEOPLE. THERE IS A GUN RIGHT HERE. HAD A
23 SERIAL NUMBER ON IT. SERIAL NUMBERS ARE FOR? TELL YOU
24 WHERE THE GUN CAME FROM, WHO IT'S REGISTERED TO AND ALL OF
25 THAT STUFF.

1 DID WE HAVE ANY TESTIMONY SAYING THIS GUN HAD
2 BEEN CHECKED OUT, WHO THIS GUN BELONGED TO OR WAS
3 REGISTERED TO, ANYTHING LIKE THAT? I HAVE NO IDEA. SEE
4 SERIAL NUMBERS IS RIGHT ON HERE. DID THEY DO THAT?

5 IS THAT A GOOD INVESTIGATION? THAT COULD HAVE
6 DONE IT RIGHT THERE. WHO DOES THE GUN BELONG TO?
7 HOPEFULLY AFTER TODAY THEY WILL TRY TO FIGURE THAT OUT.
8 AND ALSO AS I STATED, THE STATE IS TRYING TO PROSECUTE
9 THIS MAN WHEN THEY DON'T EVEN CALL THE CHIEF
10 INVESTIGATOR.

11 I HAD TO CALL THE CHIEF INVESTIGATORS FOR THE
12 POLICE DEPARTMENT. WHY IN THE WORLD YOU TALKING ABOUT
13 DOING A POLICE INVESTIGATION TRYING TO CONVICT THIS MAN,
14 BUT YOU HAVE THIS MAN ON TRIAL FOR MURDER AND THE PEOPLE
15 WHO ARE CHARGED WITH DOING THE INVESTIGATION, THEY DON'T
16 SAY A WORD TO YOU, DON'T CALL THEM TO SAY WHAT THEY DID OR
17 WHAT THEY TOLD THE PEOPLE TO DO OR WHAT WASN'T DONE OR
18 WHATEVER?

19 DOESN'T MAKE SENSE TO ME. THE MAIN EYE
20 WITNESSES INSIDE THE CLUB THAT GAVE WRITTEN STATEMENTS,
21 YOU DON'T CALL THEM? THEY WEREN'T CALLED TO THE STAND. I
22 HAD TO CALL SHARON BAILEY TO STAND.

23 MR. WILLIAMS SAID OR MR. HOLSTON SAID WELL, THEY
24 HAD TROUBLE FINDING THEM. SHE WAS HERE. I FOUND HER.
25 THEY HAD TWO AND HALF YEARS TO FIND HER. I FOUND HER IN

1 ONE DAY. DOES THAT MAKE SENSE? NOT TO ME, ESPECIALLY
2 WHEN YOU HAVE A GUY ON TRIAL FOR MURDER.

3 SHE'S THE EYE WITNESS, SAID SHE WAS THERE ABOUT
4 TWO FEET AWAY FROM THE VICTIM. SHE WAS TALKING TO THE
5 VICTIM WHEN HE GOT SHOT. SHE WAS ABOUT TO HAND HIM A
6 CIGARETTE. YOU ARE NOT GOING TO CALL HER TO THE STAND?
7 THAT'S UNREAL.

8 ALL I WANT YOU TO DO IS LOOK AT THE EVIDENCE
9 THAT WAS PRESENTED OVER THE PAST FEW DAYS. LOOK AT IT,
10 LISTEN TO WHAT YOU HEARD, LISTEN TO WHAT YOU DIDN'T HEAR.
11 MAKE A LOGICAL DECISION. THAT'S ALL I'M ASKING.

12 YOU DECIDE WHO YOU ARE GOING TO BELIEVE, WHO GOT
13 UP THERE AND WHO YOU ARE NOT GOING TO BELIEVE. AS I
14 STATED BEFORE, TWO LIVES WERE TAKEN BY A MURDERER ARE
15 STILL OUT THERE ON SEPTEMBER 3RD, 1998.

16 TONY ROSE, HIS LIFE WAS TAKEN AND LIKE I SAID
17 THERE'S NOTHING WE CAN DO TO BRING HIM BACK. KEVIN
18 CHOICE'S LIFE WAS TAKEN ALSO. CAN GET HIS LIFE BACK BY
19 COMING BACK FINDING HIM NOT GUILTY AND CLEARING HIM OF
20 THESE CHARGES THAT HE IS INNOCENT OF.

21 TONY ROSE IS AN INNOCENT MAN. HE DIED. KEVIN
22 CHOICE IS AN INNOCENT MAN. FIND HIM INNOCENT. THAT'S
23 WHAT WE WANT YOU TO DO. LISTEN TO THE EVIDENCE THAT YOU
24 HAVE HEARD THAT WAS PRESENTED AT THIS POINT AND THAT'S WHY
25 WE ARE HERE TODAY.

1 AND AS I STATED, HE HAD THE GUN, YOU CAN SEE BY
2 THE EVIDENCE THINGS ARE NOT ALWAYS WHAT THEY SEEM. THEY
3 ARE NOT. EVIDENCE SHOWS WHAT ACTUALLY BEEN ON, WHAT
4 HAPPENED OR SHOWS LIFE. THAT'S ALWAYS LISTEN TO THE
5 EVIDENCE.

6 AND ALL YOU ACTUALLY DO IF YOU FIND HIM NOT
7 GUILTY IS ONE THING. REASONABLE DOUBT. ANY REASONABLE
8 DOUBT THEY HAVE TO PROVE KEVIN CHOICE SHOT AND KILLED THIS
9 MAN BEYOND A REASONABLE DOUBT. YOU HAVE A DOUBT YOU CAN
10 GIVE A VALID REASON, THAT'S ALL YOU DO.

11 IN THIS CASE THERE IS EVERY DOUBT, THERE IS SO
12 MANY DIFFERENT SPECIFIC INSTANCES OF REASONABLE DOUBT IT'S
13 JUST -- ESPECIALLY FOR A MURDER CASE, MURDER TRIAL. USE
14 YOUR HEADS. YOU ARE LOGICAL PEOPLE.

15 THAT'S WHAT WE ASK YOU TO DO IN THESE CASES, USE
16 YOUR COMMON SENSE MAKE DECISIONS. THAT'S ALL I'M ASKING
17 YOU. I THANK YOU.

18 THE COURT: ALL RIGHT. MR. CROFT?

19 MR. CROFT: MAY IT PLEASE THE COURT.

20 CLOSING ARGUMENT BY MR. CROFT:

21 LADIES AND GENTLEMEN, I TOLD YOU ON MONDAY IN MY
22 VERY OPENING STATEMENTS THAT IT WOULD BE IMPORTANT TO
23 LISTEN TO ALL OF THE WITNESSES CLOSELY THAT YOU HEARD AND
24 TO PAY ATTENTION CLOSELY TO EACH PIECE OF EVIDENCE THAT
25 WAS INTRODUCED AND IMMEDIATELY LOOK AT THOSE AND THE

1 TOTALITY OF THE CIRCUMSTANCES.

2 BECAUSE WHEN YOU COMPARE THOSE TO EACH OTHER,
3 YOU COMPARE THE WITNESSES TO THE EVIDENCE, THEN THEY WILL
4 COMPLIMENT EACHOTHER TO FORM A WHOLE PICTURE. AND I
5 BELIEVE YOU NOW HAVE THE WHOLE PICTURE, AND I BELIEVE THAT
6 THAT PICTURE EXCLUDES REASONABLE DOUBT.

7 IS THE CASE PERFECT? NO, NO CASE IS PERFECT,
8 LADIES AND GENTLEMEN, BUT THAT DOESN'T MEAN THERE IS
9 REASONABLE DOUBT. DIDN'T BRING YOU A VIDEOTAPE, OF
10 COURSE, DOES THAT MEAN THAT THIS DIDN'T HAPPEN? NO.

11 DOES THAT MEAN THERE IS REASONABLE DOUBT? NO.
12 CRIMINAL INVESTIGATION IS NOT MAGIC. THEY DO NOT CREATE
13 THE PERFECT EVIDENCE. BUT WHAT THEY CAN DO, WHAT THEY
14 HAVE DONE IS BRING YOU SUBSTANTIAL EVIDENCE AND ALLOW YOU
15 TO USE YOUR COMMON SENSE TO COME BACK WITH A PROPER
16 CONCLUSION.

17 THAT'S WHY YOU ARE HERE. THAT'S WHAT JURIES
18 DO. I WANT TO NOW TAKE YOU BACK TO THE CHAIN OF EVENTS
19 THAT HAVE BEEN PROVIDED TO US FROM THIS WITNESS STAND AND
20 I WILL REMIND YOU THAT THE EVIDENCE WE CONSIDER IN TRIALS
21 COME FROM THIS WITNESS STAND, DOES NOT COME FROM
22 SPECULATION, DOES NOT COME FROM MY ARGUMENT OR MR.
23 WRIGHT'S ARGUMENT OR THINGS HE MAY HAVE SPECULATED ABOUT.

24 THINK HE SPECULATED ABOUT A LOT AND MADE A LOT
25 OF PROMISES. IT COMES FROM WHAT YOU HEARD FROM THE

1 WITNESS STAND. THE FIRST THING I WANT TO BRING TO YOUR
2 ATTENTION, LADIES AND GENTLEMEN, IS THE LEVEL OF
3 INTOXICATION OF THE DEFENDANT.

4 I THINK IT'S IMPORTANT TO UNDERSTAND HIS MIND
5 SET AS WE CONSIDER HIS ACTION. THE FIRST ACTION, LADIES
6 AND GENTLEMEN, AS WE BEGIN THIS CHAIN OF EVENTS IS THAT IT
7 IS THE DEFENDANT WHO INITIATES THE CONVERSATION WITH TONY
8 ROSE WHO ACCORDING TO THE TWO WITNESSES THERE, THE
9 DEFENDANT INITIATED A CONVERSATION AND TONY ROSE CALLS HIM
10 OVER NEAR THIS DOOR IN THIS AREA. AND IT IS THERE THAT
11 THOSE TWO ALONE STOOD AND TALKED IN EXCHANGED WORDS.

12 I WILL REMIND YOU OF THAT, LADIES AND
13 GENTLEMEN. THE NEXT STEP YOU NEED TO CONSIDER IS THIS,
14 LADIES AND GENTLEMEN. THAT EVEN AS LOUIS JENKINS WALKED
15 OVER AND HARRY SPANN WALKED OVER, IT IS STILL ONLY THE
16 VICTIM AND THE DEFENDANT WHO WERE EXCHANGING WORDS, WHO
17 WERE ARGUING.

18 ²
AND AS MR. LOUIS SAID HIS IMPRESSION WAS THAT
19 HARRY SPANN WAS THERE TRYING TO CALM THINGS DOWN AS HE
20 WAS, YET THE DEFENDANT CONTINUED TO ARGUE WITH THE VICTIM
21 AND ONLY THOSE TWO EXCHANGING WORDS.

22 THE NEXT THING YOU NEED TO CONSIDER, LADIES AND
23 GENTLEMEN, IS THAT IS WHERE EACH PERSON WAS STANDING.

24 ³
ACCORDING TO LOUIS JENKINS AND ACCORDING TO POWELL, BOTH
25 ⁴
LOUIS JENKINS AND TONY ROSE WERE STANDING SOMEWHERE IN

1 THIS AREA WITH THEIR BACKS FACING THE OFFICE AND THEM
2 FACING THE RESTAURANTS.

3 DIRECTLY IN FRONT OF THEM IS KEVIN CHOICE, THE
4 DEFENDANT AND ALSO HARRY SPANN. AND THIS IS CONSISTENT
5 WITH THE PATH THAT THE BULLET FOLLOWED, LADIES AND
6 GENTLEMEN.

7 AS YOU HEARD TESTIFIED THAT HE WENT INTO TONY'S
8 CHEST, OUT OF HIS BACK AND ENDED UP OVER HERE IN FRONT OF
9 THIS DOOR. IT HAD TO BE FIRED IN THIS DIRECTION. AND THE
10 TWO OF THEM, TWO PEOPLE HAVE TESTIFIED TO -- WERE BOTH
11 STANDING THERE.

12 IT'S ALSO CONSISTENT WITH THE FACT IT'S BEEN
13 TESTIFIED TO BY THE PATHOLOGIST AND BY MR. POWELL FROM
14 SLED THAT THIS SHOT HAD TO BE FIRED FROM CONTACT TO ABOUT
15 12 INCHES.

16 IN OTHER WORDS, THE PERSON HAD TO BE STANDING
17 RIGHT IN FRONT OF THEM WHEN HE FIRED THAT SHOT AND FIRED
18 HIM DIRECTLY THIS WAY. AND ALL -- BOTH OF THOSE WITNESSES
19 WILL TESTIFY THAT THOSE FOUR INDIVIDUALS STANDING OVER
20 HERE, LADIES AND GENTLEMEN.

21 NEXT YOU HAVE TO CONSIDER THE EYE WITNESS
22 TESTIMONY, THE DIRECT EVIDENCE OF LOUIS JENKINS. HE CAME
23 IN HERE AND HE TOLD YOU WHO HAD THE GUN IN HIS WAISTBAND,
24 THE DEFENDANT. WHO PULLED IT OUT OF HIS WAISTBAND, AIMED
25 IT AT TONY ROSE, SHOT SHOOTING HIM DEAD RIGHT THERE IN

1 FRONT?

2 YOU HAVE TO CONSIDER THAT, LADIES AND
3 GENTLEMEN. THERE WERE ONLY TWO PEOPLE OTHER THAN THE
4 DEFENDANT AND THE VICTIM IN THIS CONVERSATION PAYING
5 ATTENTION TO THIS CONVERSATION, PAYING ATTENTION TO WHAT
6 WAS GOING ON IN THIS AREA.

7 6
8 ONE OF THOSE IS LOUIS JENKINS, THE OTHER IS THE
9 DEFENDANT HARRY SPANN WHO YOU HEARD WOULD NOT COOPERATE
10 WITH THE POLICE. AND I REMIND YOU ALSO, LADIES AND
11 GENTLEMEN, AND YOU WILL SEE THE PICTURE WHEN YOU GET BACK
12 THERE, THERE'S A WALL RIGHT HERE.

13 ANYBODY ON THE OTHER SIDE OF THIS WALL WHICH IS
14 MOST PEOPLE IN THE BAR CAN'T SEE WHAT'S GOING ON OVER
15 HERE. THIS IS WHERE THE BLOODSTAIN WAS, THERE IS WHERE
16 THE BODY FELL AND THIS IS WHERE HE WAS SHOT. AND YOU HAVE
17 TO CONSIDER THAT, LADIES AND GENTLEMEN.

18 YOU ALSO HAVE THE EYE WITNESS TESTIMONY. NEXT
19 THING YOU NEED TO CONSIDER OF MARION HOWARD. HE DOES NOT
20 HAVE A DOG IN THIS FIGHT, LADIES AND GENTLEMEN. HE HAS
21 NOTHING TO GAIN OR LOSE BY HIS TESTIMONY.

22 YOU'RE FRIENDS WITH THE DEFENDANT OR WITH THE
23 VICTIM, HE WAS STANDING RIGHT OVER HERE WHERE HE SAID
24 THERE WAS A LIGHT WHICH HE PULLED THE STRING OFF OF. HE
25 SAID HE TURNED THAT LIGHT ON TO GIVE MORE LIGHT BECAUSE HE
HEARD THERE WAS AN ARGUMENT IN THESE PHOTOGRAPHS.

1 HE WANTED TO SEE WHAT WAS GOING ON, AND HE --
2 AND EVERYTHING WAS INDICATED IT WAS FINE AND HE PULLED
3 THAT STRING AND TURNED THAT LIGHT OFF. NEVER SAID THE
4 POWER WENT OFF IN THE BAR. NOBODY EVER SAID THAT. IT
5 NEVER HAPPENED.

6 HE HAD ONE LITTLE LIGHT ON A STRING AND HE SAID
7 HE PULLED IT. AND AS SOON AS HE TURNED THAT LIGHT BACK
8 OFF, LADIES AND GENTLEMEN, HE HEARD THE SHOT AND A SPLIT
9 SECOND LATER HE LOOKS UP AND HE SEES THE DEFENDANT RUNNING
10 TOWARD THE DOOR WITH GUN IN HAND.

11 SAYS HE DOESN'T SEE ANYBODY ELSE WITH A GUN. HE
12 DOESN'T SEE ANYBODY EXCHANGING GUNS. HE IS STANDING RIGHT
13 HERE UNDER THIS LIGHT. HE SEES THE DEFENDANT RUNNING
14 TOWARD THE DOOR WITH GUN IN HAND. NEVER SAW ANYBODY
15 EXCHANGING A WEAPON, LADIES AND GENTLEMEN.

16 THE NEXT THING YOU NEED TO CONSIDER, LADIES AND
17 GENTLEMEN, IS THE TESTIMONY OF SHARON BAILEY. AND WHAT
18 SHE SAID TO US, I DON'T KNOW HOW RELIABLE IT IS. SHE TOLD
19 US SHE WAS VERY INTOXICATED.

20 SHE TOLD US HER MEMORY WAS NOT THAT GOOD AND
21 SOME OF WHAT SHE SAID DOESN'T MAKE SENSE, BUT SOME OF IT
22 DOES MAKE SENSE. SHE SAYS FIRST I DIDN'T SEE KEVIN
23 CHOICE.

24 BUT YOU REMEMBER WHEN SHE WAS QUESTIONED FURTHER
25 WHAT SHE SAID WAS WHEN I WALKED OVER AND I WAS WALKING BY

1 THAT BACK TO GO OUT OF THE BAR, I WASN'T PAYING ATTENTION
2 TO WHAT WAS GOING ON, I REACHED IN MY PURSE TO GET A
3 CIGARETTE, I LOOKED DOWN, I HEARD A SHOT.

4 I DUCKED FOR COVER AND WHEN I LOOKED UP, I SAW
5 HARRY SPANN STANDING THERE AND I SAW LOUIS JENKINS THERE.
6 I ASKED HER IS IT POSSIBLE THAT KEVIN CHOICE HAD BEEN
7 THERE AND YOU DIDN'T NOTICE OR IS IT POSSIBLE THAT HE HAD
8 BEEN THERE BEFOREHAND? SHE SAID YES.

9 LADIES AND GENTLEMEN, THE QUESTION THAT BRINGS
10 US TO -- AND THE QUESTION WE MUST ASK IS WHY IS KEVIN
11 CHOICE THE ONLY ONE RUNNING FROM THAT BODY OUT OF THAT
12 CIRCLE OF PEOPLE?

13 OUT OF THOSE FOUR PEOPLE OR FIVE PEOPLE
14 INCLUDING MARION HOWARD, WHY IS HE THE ONLY ONE RUNNING
15 TOWARD THE DOOR? AND THE REASON IS HE JUST SHOT
16 SOMEBODY. WHEN SHE LOOKS UP, HARRY SPANN IS STILL
17 ⁸STANDING THERE, LOUIS JENKINS IS STILL THERE.

18 KEVIN CHOICE IS RUNNING FOR THE DOOR WITH GUN IN
19 HAND. KEVIN CHOICE IS GETTING THE HECK OUT OF DODGE
20 BECAUSE SHOT SOMEBODY. NEXT YOU HAVE TO CONSIDER WHAT THE
21 SECURITY GUARD SAW, LADIES AND GENTLEMEN.

22 I WANT TO BRING UP A POINT HERE WHILE I'M
23 TALKING ABILITY THE SECURITY GUARD. MR. WRIGHT HAS MISLED
24 YOU. HE TALKED ABOUT FIVE STATEMENTS HE ASKED MR.
25 WILLIAMS ABOUT. INVESTIGATOR WILLIAMS TOLD YOU HE HAD

1 THREE OTHER STATEMENTS CAME FROM SECURITY GUARDS.

2 IT WASN'T FIVE PEOPLE INSIDE THE BAR GAVE HIM
3 STATEMENTS. WHAT THAT SECURITY GUARD SAID HE SAW MR.
4 MCQUILLA IS HE LOOKED AND SAW THE CRACK OF THAT DOOR AND
5 SAW A WEAPON BEING PUT IN HIS WAISTBAND AND JUST FEET FROM
6 WHERE TONY LAY DYING, JUST SECONDS AFTER HE WAS SHOT, THEY
7 APPREHEND KEVIN CHOICE RIGHT HERE WITH GUN IN HAND.

8 LADIES AND GENTLEMEN, NEXT HAVE TO CONSIDER THAT
9 HE DID IN FACT TRY THE SECURITY GUARDS, SAID HEY,
10 SOMEBODY'S IN THERE SHOOTING, HE'S GOT THE GUN SHOVED IN
11 HIS BELT. HE KNOWS AS MUCH AS ANYBODY THERE WAS A
12 SHOOTING IN THERE.

13 THEN HE SAYS I'M SHOT, I'M HURT AGAIN TRYING TO
14 GET AWAY, STRUGGLES WITH THEM TO THE EXTENT THEY HAVE TO
15 MACE HIM IN ORDER TO GET HIM CALMED DOWN. TRYING TO GET
16 AWAY FROM THAT SECURITY GUARD, LADIES AND GENTLEMEN.

17 THE NEXT THING YOU HAVE TO CONSIDER IS ONCE HE
18 IS APPREHENDED, THEY GET THE GUN FROM HIM, THE GUN THAT
19 YOU HAVE SEEN HERE. THIS GUN AS THE SLED AGENT TESTIFIED
20 HAS BEEN CONCLUSIVELY MATCHED ONE HUNDRED PERCENT TO THE
21 WEAPON AND TO THE BULLET -- EXCUSE ME -- THAT KILLED TONY
22 ROSE.

23 THERE IS NO ROOM FOR DOUBT THAT THE GUN FOUND IN
24 HIS POSSESSION WAS THE GUN THAT KILLED TONY ROSE JUST A
25 FEW FEET AWAY A FEW SECONDS BEFORE. AND MR. WRIGHT TALKED

1 A LOT ABOUT GUNSHOT RESIDUE, LADIES AND GENTLEMEN.

2 THE NEXT THING YOU HAVE TO CONSIDER IS THIS.
3 THERE WAS NO GUNSHOT RESIDUE FOUND IN HIS RIGHT PALM.
4 THAT WAS CONCLUSIVE. AND I THINK HE MISSPOKE SEVERAL
5 TIMES.

6 THE BACK OF HIS RIGHT HAND WAS CONCLUSIVE FOR
7 GUNSHOT RESIDUE AND FOR THE ROUND LEAD PARTICLES AND ON
8 HIS LEFT HAND WAS INCONCLUSIVE ON BOTH SIDES. AND AS THEY
9 TESTIFIED, LADIES AND GENTLEMEN, THAT IS PERFECTLY
10 CONSISTENT WITH SOMEONE WHO HAS FIRED A WEAPON, PROTECTING
11 THEIR RIGHT PALM AND BEING EXPOSED TO THAT GUNSHOT
12 RESIDUE, EXPOSING THE BACK OF THEIR RIGHT HAND, LADIES AND
13 GENTLEMEN.

14 HE TOLD YOU THAT THIS GUNSHOT RESIDUE MAY HAVE
15 BEEN SOME OF THESE METALS FOUND IN PARTICULAR PLACES, BUT
16 IT IS VERY UNUSUAL TO FIND THEM ALL TOGETHER. AND THAT'S
17 WHAT GUNSHOT RESIDUE TESTS ARE ALL ABOUT.

18 NOT ONLY WAS THERE THE GUNSHOT RESIDUE BUT ROUND
19 LEAD PARTICLES HE TOLD YOU CAN ONLY BE FORMED WITH
20 PRESSURE AND THE HEAT THAT YOU GET FROM SUCH THINGS AS
21 FIRING A WEAPON, ROUND LEAD PARTICLES THAT GO UP INTO THIS
22 CLOUD, AND IT'S LEAD AND MOLTEN FORM IN A SPHERE.

23 IT'S VAPORIZED AND THEN IT LANDS ON THE BACK OF
24 YOUR HAND. WHAT HE TOLD YOU WAS THAT IT IS NOT UNUSUAL TO
25 FIND NO ROUND LEAD PARTICLES FROM SOMEBODY WHO HAS FIRED A

1 GUN. THINK MR. WRIGHT MISSPOKE ABOUT THAT.

2 AND IT'S IN FACT NOT UNUSUAL TO ONLY FIND ONE
3 AND THAT THERE IS NO WAY YOU CAN GET THESE ROUND LEAD
4 PARTICLES, LADIES AND GENTLEMEN, SIMPLY BY TOUCHING A GUN
5 AND HIS STORY HE GRABBED THIS GUN, PUT IT IN HIS
6 WAISTBAND, THAT'S HOW HE GOT THIS GUNSHOT RESIDUE IS
7 RIDICULOUS.

8 HE HAS NOTHING ON HIS RIGHT HAND, NO GUNSHOT
9 RESIDUE. IT'S ALL ON THE BACK OF HIS RIGHT HAND, LADIES
10 AND GENTLEMEN. AND THAT'S WHAT YOU HAVE TO CONSIDER.
11 EVERY SECOND THIS CHAIN OF EVENTS FROM THE TIME TONY ROSE
12 IS SHOT UNTIL THE TIME THE DEFENDANT IS APPREHENDED IS
13 ACCOUNTED FOR.

14 LADIES AND GENTLEMEN, EVERY SECOND OF THAT
15 TIME. AND AT ALL TIMES IT IS THE DEFENDANT WITH GUN IN
16 HAND. NO ONE ELSE HAS EVER SEEN HIM WITH A GUN IN THEIR
17 HANDS. NO ONE HAS EVER SEEN PASSING A GUN.

18 THIS IS ONLY A MATTER OF FEET, LADIES AND
19 GENTLEMEN, AND AT ALL TIMES THE DEFENDANT WHO WAS SEEN
20 WITH THE GUN IN HIS HAND. THE DEFENSE IS DESPERATELY
21 REACHING, GRASPING AT STRAWS AND THEIR ONLY HOPE IS THAT
22 YOU'RE GOING TO GRASP.

23 THEY TALK ABOUT SUCH THINGS AS THE CROWD, WHAT
24 THE CROWD WAS DOING. WELL, YOU HEARD THE SECURITY GUARD
25 SAY LADIES AND GENTLEMEN THIS CROWD IS A CROWD THAT KEVIN

1 CHOICE'S FRIENDS WITH, THIS CROWD THAT THEY DESCRIBED AS
2 HOSTILE, THE CROWD THEY HAD TO PULL THEIR GUNS ON TO GET
3 THEM TO BACK OFF.

4 HE TALKED ABOUT THE FACT THAT THESE
5 INVESTIGATORS DID NOT TESTIFY, LADIES AND GENTLEMEN.
6 WELL, IF THERE IS ONE LESSON WE LEARNED THIS WEEK IT'S
7 ABOUT HEARSAY AND WHAT THE JUDGE HAS TOLD YOU IS ONE
8 PERSON CANNOT TESTIFY TO WHAT ANOTHER SAID.

9 AND ONCE THIS CRIME SCENE INVESTIGATION WAS DONE
10 THAT NIGHT, THAT WAS THEIR JOB WAS TO INTERVIEW
11 WITNESSES. AT THE TIME THERE WERE A LOT OF WITNESSES WHO
12 SIMPLY HAD NOTHING TO SAY.

13 THERE WERE TIMES WERE SOME WHO DIDN'T COOPERATE
14 AND SOME OTHERS COULDN'T BE FOUND, LADIES AND GENTLEMEN.
15 BUT ESSENTIALLY WHAT YOU NEED TO CONSIDER IS WHAT THEY DID
16 TALK TO YOU, WHO DID COME IN HERE AND TALK TO YOU AND THEY
17 TOLD YOU THAT THEY INTERVIEWED LOTS OF WITNESSES.

18 AND THOSE PEOPLE THAT WERE PAYING ATTENTION TO
19 THIS CONVERSATION WALKED OUT HERE. HARRY SPANN IS NOT
20 HERE, LADIES AND GENTLEMEN, BECAUSE HE COULDN'T
21 COOPERATE. THEY HAD JUST AS MUCH ACCESS TO HIM AS WE DID
22 AND THEY CERTAINLY HAD ACCESS TO ANY OTHER WITNESSES THEY
23 WANTED TO CALL IN.

24 AND IF YOU THINK IT'S UNUSUAL THE DEFENDANT'S
25 PRIZE INVESTIGATOR WAS ABLE TO FIND A WITNESS, THAT WOULD

1 HAVE BEEN A POLICE OFFICER, POLICE OFFICER DRIVING DOWN
2 THOSE NEIGHBORHOODS, THEN THEY ARE WRONG.

3 VERY OFTEN PRIVATE INVESTIGATORS WILL BE ABLE TO
4 FIND PEOPLE. AND WHY MS. BAILEY DIDN'T COME IN, HAD TO BE
5 SENT A SUBPOENA I DON'T KNOW. SHE NEVER SHOWED.
6 REASONABLE DOUBT IS NOT CREATED BY MERE SPECULATION.

7 THE DOUBT MUST BE REASONABLE, LADIES AND
8 GENTLEMEN, A DOUBT THAT YOU CAN GIVE A REASON FOR. IN THE
9 LAW, LADIES AND GENTLEMEN, THERE ARE TWO TYPES OF EVIDENCE
10 I WANT TO TALK TO YOU ABOUT.

11 THERE'S DIRECT EVIDENCE AND THERE'S
12 CIRCUMSTANTIAL EVIDENCE, AND THE JUDGE IS GOING TO TELL
13 YOU MORE ABOUT THIS IN A FEW MOMENTS, BUT I ONCE HEARD A
14 JUDGE DESCRIBE THE DIFFERENCE BETWEEN THE TWO IN THIS WAY
15 BY GIVING THESE TWO EXAMPLES.

16 HE SAID EXAMPLE NUMBER ONE, PERSON NUMBER A.
17 WALKS INTO A ROOM, SEES PERSON NUMBER B, PERSON B. SHOOT
18 PERSON C., HE CAN THEN COME GIVE DIRECT TESTIMONY, DIRECT
19 EVIDENCE AS TO WHAT HE SAW. THAT'S USUALLY WHAT YOU WANT
20 TO DO.

21 YOU READ -- YOU HAVE THAT SO THE LAW OF SOUTH
22 CAROLINA SAYS THAT DIRECT EVIDENCE AND CIRCUMSTANTIAL
23 GIVEN THE EXACT SAME WEIGHT. AND CIRCUMSTANCE EVIDENCE
24 GAVE IS THIS.

25 PERSON A. STANDING OUTSIDE OF A CAR, HE HEARS A

1 GUNSHOT, HE WALKS IN, HE SEES A PERSON WHO IS STANDING
2 THERE WITH THE GUN AND THE PERSON DECEDENT LYING ON THE
3 FLOOR SHOT. YOU COME TO THE SAME CONCLUSION, LADIES AND
4 GENTLEMEN.

5 AND THAT IS WHAT AS I INITIALLY PREPARED FOR THE
6 CASE, THE REASON I'M TALKING ABOUT THIS CIRCUMSTANTIAL
7 EVIDENCE IS I INITIALLY PREPARED FOR THE CASE. I THOUGHT
8 ESSENTIALLY IT WAS GOING TO BE CIRCUMSTANTIAL EVIDENCE
9 THAT WE HAD, BUT NONETHELESS SUBSTANTIAL CIRCUMSTANTIAL
10 EVIDENCE TO THE SCENE.

11 BUT AS NORMAL COURSE, LOOK THROUGH THE WITNESS
12 LIST, YOU LOOK THROUGH THE OFFICER'S NOTES FOR THE PEOPLE
13 WHO MAY HAVE BEEN THERE AND THOSE PEOPLE ARE CALLED IN,
14 AND LOUIS JENKINS IS ONE OF THOSE PEOPLE.

15 AND HE LIKE MANY OF THOSE WITNESSES LIKE MARION
16 HOWARD DIDN'T GIVE A WRITTEN STATEMENT. NOT ONLY DIDN'T
17 GIVE A WRITTEN STATEMENT, DIDN'T GIVE MUCH OF A STATEMENT
18 AT ALL.

19 BUT WHEN HE CAME IN, LADIES AND GENTLEMEN, AS
20 MANY PEOPLE DO THEY ARE NOT WILLING TO TALK ABOUT THE TIME
21 OF THE INCIDENT, BUT AS TIME GOES BY THEY BEGIN TO BE
22 WILLING TO OPEN UP.

23 AND I AM GOING TO ASK YOU LADIES AND GENTLEMEN
24 NOT TO OVERLOOK THE FEAR THAT WE TALKED ABOUT, AND I DON'T
25 THINK THAT IT CAN BE OVEREMPHASIZED. THE KIND OF PERSON

1 WHO WILL WALK INTO A PUBLIC PLACE AND GUN SOMEBODY DOWN IS
2 THE KIND OF PERSON WHO SHOULD BE FEARED BECAUSE NOT ONLY
3 COULD THEY NOT HAVE ANY RESPECT FOR OTHER PEOPLES LIVES,
4 THEY DON'T HAVE ANY CONCERN FOR THEIR OWN WELL BEING AND
5 THEIR OWN FUTURE.

6 AND THAT IS CERTAINLY THE KIND OF PERSON WHO
7 SHOULD BE FEARED. AND OFTEN TIMES THAT FEAR IS BY
8 DESIGN. THAT SORT OF ACTION IS THERE TO CREATE FEAR, TO
9 CREATE THESE, SO DON'T SIMPLY BLOW OFF THE FACT THAT THERE
10 WAS FEAR, LADIES AND GENTLEMEN.

11 HE HAS NOT ONLY FEAR FOR HIMSELF BUT FEAR FOR
12 THOSE CLOSEST TO HIM WHO ARE OFTEN MOST VULNERABLE. THERE
13 ARE VERY FEW TIMES IN LIFE WE ARE GIVEN AN OPPORTUNITY TO
14 DO SOMETHING THAT IS SO CLEARLY RIGHT, AND LOUIS¹⁰ JENKINS
15 WAS GIVEN AN OPPORTUNITY TO COME IN HERE AND DO SOMETHING
16 THAT IS RIGHT, TO MAKE AMENDS FOR MAKING A POOR DECISION
17 IN THE PAST, MAYBE FOR A WEAKNESS IN NOT COMING IN AT THE
18 TIME HE SAW IT.

19 HE TOOK ADVANTAGE OF THAT OPPORTUNITY AND HE
20 CAME TO YOU, GAINED NOTHING, TOLD YOU THE TRUTH AS BEST HE
21 COULD. LADIES AND GENTLEMEN, AND I TELL YOU ABOUT THE
22 DIRECT OR CIRCUMSTANTIAL EVIDENCE FOR THIS REASON. THIS
23 CASE HAS NOT...

24 THERE WAS A MOUNTAIN OF CIRCUMSTANTIAL EVIDENCE
25 THAT ALL LED TO ONE CONCLUSION, THE DEFENDANT IS GUILTY OF

1 THIS MURDER. THAT IS NOW BEEN VERIFIED BY DIRECT
2 TESTIMONY OF LOUIS JENKINS AND BOTH THE DIRECT TESTIMONY
3 AND THE CIRCUMSTANTIAL EVIDENCE ALL LEAD TO THE SAME
4 CONCLUSION, THAT THE DEFENDANT IS GUILTY OF ALL COUNTS.

5 AT THE BEGINNING OF THIS TRIAL I TALKED TO YOU
6 ABOUT RESPECT. AND I WANT TO REMIND YOU WHAT THE
7 DEFENDANT SAID RIGHT BEFORE HE KILLED TONY ROSE. HE SAID
8 WHAT, YOU THINK I'M A PUNK?

9 IN OTHER WORDS, WHAT, YOU DON'T RESPECT ME?
10 WELL, RESPECT THIS, FEAR THIS, LADIES AND GENTLEMEN.
11 THAT'S WHAT HE WAS SAYING. IT'S TIME THAT KEVIN CHOICE
12 LEARNED A LESSON ABOUT RESPECT.

13 IT'S TIME HE LEARNED RESPECT OF HUMAN LIFE. THE
14 JURORS OF SUMTER COUNTY ARE THE CONSCIENCE OF THIS
15 COMMUNITY. AND AS SUCH, IF SOMEONE VIOLATES THE LAW, THEY
16 MUST ANSWER TO THAT CONSCIENCE. IF THEY ARE NOT MADE TO
17 ANSWER TO WHAT THEY HAVE LEARNED, THEN ALL THE CITIZENS OF
18 SUMTER COUNTY EVENTUALLY HAVE TO ANSWER FOR THEM.

19 I ASK THAT YOU BRING BACK A VERDICT THAT SPEAKS
20 THE TRUTH AND THAT'S A VERDICT OF GUILTY ON ALL THREE
21 COUNTS. IT IS THE ONLY VERDICT PROVIDES THE JUSTICE OF
22 THIS COMMUNITY, DEMANDS JUSTICE THE ROSE FAMILY NEEDS AND
23 THE JUSTICE THAT KEVIN CHOICE SO VERY MUCH DESERVES.
24 THANK YOU.

25 CHARGE OF THE COURT.

1 ALL RIGHT, LADIES AND GENTLEMEN. NOW THAT YOU
2 HEARD ALL THE EVIDENCE IN THE CASE AND YOU HAVE HEARD THE
3 ARGUMENTS OF THE ATTORNEYS, IT BECOMES MY JOB TO INSTRUCT
4 YOU ON THE LAW, CHARGES THE JURY ON THE LAW.

5 I'VE BEEN AROUND A LONG TIME. LAST TIME WAS IN
6 OUR CONSTITUTION IN 1995 AND SAYS THE JUDGES CHARGE JURIES
7 ON THE LAW AND JURIES DECIDE ISSUES OF FACT. NOW, THIS
8 INDICTMENT I HOLD IN MY HAND THAT I TOLD YOU ABOUT AT THE
9 BEGINNING OF THIS TRIAL CHARGES THE DEFENDANT WITH THREE
10 CRIMES, ONE IS MURDER, ONE IS POSSESSION OF A WEAPON
11 DURING A VIOLENT CRIME AND ONE OF CARRYING A PISTOL ONTO
12 PREMISES WHICH SERVE ALCOHOLIC BEVERAGES.

13 AND I WILL GET TO THE SPECIFICS OF EACH ONE OF
14 THOSE CRIMES IN JUST A MINUTE. I ALSO TOLD YOU THAT THIS
15 INDICTMENT IS SIMPLY THE PROCESS BY WHICH CASES COME FROM
16 THE GRAND JURY OVER TO THIS COURT.

17 AND WE PICK A JURY OVER HERE AND THE JURY OVER
18 HERE DECIDES WHETHER OR NOT THE STATE HAS MET ITS BURDEN
19 OF PROOF BEYOND A REASONABLE DOUBT. NOW ON WHEN THIS
20 INDICTMENT WAS HANDED DOWN THE DEFENDANT PLED NOT GUILTY.

21 AND THAT CASTS THE BURDEN UPON THE STATE OF
22 SOUTH CAROLINA THROUGH THE SOLICITOR'S OFFICE OF THIS
23 THIRD JUDICIAL CIRCUIT TO PROVE HIS GUILT BEYOND A
24 REASONABLE DOUBT.

25 NOW, A PERSON CHARGED WITH COMMITTING A CRIMINAL

1 OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIS
2 INNOCENCE. IT'S A VERY IMPORTANT RULE OF OUR LAW THAT A
3 DEFENDANT IN A CRIMINAL TRIAL NO MATTER HOW SERIOUS THE
4 CHARGE MADE AGAINST HIM MAY BE, WILL ALWAYS BE PRESUMED TO
5 BE INNOCENT OF A CRIME FOR WHICH HE IS INDICTED UNLESS HIS
6 GUILT IS PROVEN TO YOU BY EVIDENCE SATISFYING YOU OF THAT
7 GUILT BEYOND A REASONABLE DOUBT.

8 NOW, THIS PRESUMPTION OF INNOCENCE DOES NOT
9 CEASE WHEN HE RETIRES, BUT IT ACCOMPANIES THE DEFENDANT
10 FROM THE TIME OF HIS APPEARANCE THROUGHOUT THE TRIAL
11 UNLESS YOU REACH A VERDICT OF GUILT BASED ON THE EVIDENCE
12 SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

13 NOW, THIS IS NOT SIMPLY A MERE LEGAL PHRASE THAT
14 WE HAVE. IT IS A SUBSTANTIAL IMPORTANT RIGHT WHICH
15 EVERYBODY IN THIS COUNTRY IS ENTITLED TO AND THAT IS THE
16 PRESUMPTION OF INNOCENCE.

17 NOW, THE STATE HAS THE BURDEN OF PROVING EACH
18 AND EVERY ELEMENT OF A CRIME BEYOND A REASONABLE DOUBT.
19 AND ANY REASONABLE DOUBT THAT YOU MAY HAVE IN YOUR
20 DELIBERATIONS SHOULD BE RESOLVED IN FAVOR OF THE
21 DEFENDANT.

22 NOW, THE DEFENDANT IS ENTITLED TO ANY REASONABLE
23 DOUBT. A REASONABLE DOUBT MAY EXIST BECAUSE OF THE
24 EVIDENCE AND TESTIMONY IN THE CASE OR FROM THE LACK OF
25 EVIDENCE AND TESTIMONY IN THE CASE.

1 IF YOU HAVE A REASONABLE DOUBT AS TO THE GUILT
2 OF THE DEFENDANT, HE IS ENTITLED TO THAT DOUBT AND WOULD
3 BE ENTITLED TO AN ACQUITTAL. NOW, YOU ARE THE SOLE JUDGES
4 OF THE FACTS IN THIS CASE.

5 IT IS MY DUTY TO RULE UPON THE ADMISSIBILITY OF
6 THE TESTIMONY, BUT THE WEIGHT OR THE PROBATIVE VALUE OF
7 THE EVIDENCE IS ENTIRELY UP TO YOU. IT IS YOUR DUTY TO
8 WEIGH AND CONSIDER THE EVIDENCE AND TO DETERMINE WHAT THE
9 FACTS ARE FROM THE TESTIMONY AS YOU HAVE HEARD IT FROM THE
10 WITNESSES ON THE STAND.

11 NOW, SINCE YOU ARE THE SOLE JUDGES OF THE FACTS,
12 YOU ARE THE SOLE JUDGES OF THE CREDIBILITY AND
13 BELIEVABILITY. YOU MUST DECIDE WHETHER OR NOT TO BELIEVE
14 A WITNESS. AND OF COURSE YOU HAVE A RIGHT TO BELIEVE ONE
15 WITNESS AND DISBELIEVE ANOTHER IF IN YOUR JUDGMENT THERE
16 IS A SOUND REASON FOR DOING SO.

17 YOU MAY ALSO BELIEVE ALL OR PART OF WHAT A
18 WITNESS SAYS. IN DETERMINING THE BELIEVABILITY OF A
19 WITNESS YOU MAY TAKE INTO CONSIDERATION THEIR OPPORTUNITY
20 FOR ACCUSATION, THEIR ABILITY TO OBSERVE, THEIR KNOWLEDGE
21 OF THE MATTERS THEY HAVE TESTIFIED ABOUT AND ANY PREJUDICE
22 OR BIAS OR FRIENDSHIP THEY MAY OR MAY NOT HAVE.

23 YOU MAY ALSO CONSIDER THEIR DEMEANOR ON THE
24 STAND AND IN FACT YOU MAY CONSIDER ANYTHING WHICH IS IN
25 YOUR GOOD JUDGMENT TENDS TO SHOW WHETHER A WITNESS OR NOT

1 IS TELLING THE TRUTH. YOU HAVE BUT ONE OBJECTIVE AND
2 THAT'S TO FIND THE TRUTH.

3 NOW, THE SAME IT'S MY DUTY TO CHARGE YOU ON THE
4 LAW AS APPLICABLE TO THE FACTS OF THIS CASE. IT'S NOT A
5 QUESTION OF WHAT YOU THINK THE LAW OUGHT TO BE BECAUSE
6 UNDER YOUR OATH YOU MUST DECIDE THE CASE BASED ON THE LAW
7 AS I GIVE IT TO YOU.

8 IT WOULD ALSO BE MY DUTY TO RULE ON THE
9 ADMISSIBILITY OF THE QUESTIONS THAT WERE ASKED AND ANSWERS
10 THAT WERE GIVEN. SO YOU SHOULD ONLY BASE YOUR DECISION ON
11 THE EVIDENCE THAT WAS ALLOWED IN AND NOT ANY EVIDENCE THAT
12 WAS NOT ALLOWED IN.

13 NOW AS JURORS IN THE CASE, YOU HAVE CERTAIN
14 FUNCTIONS AND RESPONSIBILITIES THAT ARE DIFFERENT FROM
15 MINE. I CAN'T CHARGE YOU ON THE FACTS OF THE CASE. I
16 CANNOT DISCUSS THE FACTS OF THE CASE IN YOUR PRESENCE.

17 I CAN'T INTIMATE TO YOU ANY FEELINGS I MAY HAVE
18 ABOUT THIS CASE. AND IF YOU HAVE LEFT WITH ANY -- WITH
19 ANY IMPRESSION THAT I HAVE ANY OPINION ABOUT THIS CASE
20 WHATSOEVER, YOU ARE TO DISMISS THAT BECAUSE YOU ARE THE
21 ONES WHO HAVE TO DECIDE ALL THE ISSUES OF FACT IN THIS
22 CASE.

23 NOW, THIS CASE WE HAVE TWO TYPES OF EVIDENCE.
24 IN BOTH CASES WE HAVE TWO TYPES OF EVIDENCE, WE HAVE
25 DIRECT EVIDENCE AND WE HAVE CIRCUMSTANTIAL EVIDENCE.

1 DIRECT EVIDENCE IS TESTIMONY OF A PERSON WHO
2 ASSERTS OR CLAIMS TO HAVE ACTUAL KNOWLEDGE OF FACTS SUCH
3 AS AN EYE WITNESS. I SAW SOMETHING, I HEARD SOMETHING, I
4 FELT SOMETHING, THAT'S DIRECT TESTIMONY.

5 CIRCUMSTANTIAL EVIDENCE IS A PROOF OF A CHAIN OF
6 FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A
7 FACT. THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE
8 WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT EVIDENCE OR
9 SECOND NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF
10 CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE.

11 YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THIS
12 CASE. AFTER WEIGHING ALL THE EVIDENCE IN THIS CASE, IF
13 YOU ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND
14 A REASONABLE DOUBT, YOU MUST FIND THE DEFENDANT NOT
15 GUILTY.

16 NOW, EVIDENCE OF A DEFENDANT'S PRIOR CONVICTION
17 WHEN ADMITTED IN THIS TRIAL FOR IMPEACHMENT PURPOSES ONLY
18 AND CANNOT BE USED BY YOU AS EVIDENCE TO PROVE THE
19 DEFENDANT'S GUILT IN THIS CASE.

20 NOW, TO THE FIRST CHARGE IN THE INDICTMENT
21 CHARGES THE DEFENDANT WITH MURDER. I WILL EXPLAIN TO YOU
22 WHAT MURDER IN SOUTH CAROLINA IS. MURDER IS THE UNLAWFUL
23 KILLING OF ANY PERSON WITH MALICE AFORETHOUGHT EITHER
24 EXPRESSED OR IMPLIED.

25 I WILL REPEAT THAT. MURDER IS THE UNLAWFUL

1 KILLING OF ANY PERSON WITH MALICE AFORETHOUGHT EITHER
2 EXPRESSED OR IMPLIED. IN ORDER TO CONVICT ONE OF MURDER,
3 THE STATE MUST NOT ONLY PROVE THE KILLING OF THE DECEASED
4 BY THE DEFENDANT, BUT THAT IT WAS DONE WITH MALICE
5 AFORETHOUGHT, AND SUCH PROOF MUST BE BEYOND A REASONABLE
6 DOUBT.

7 BEYOND A REASONABLE DOUBT. MALICE AFORETHOUGHT
8 IS AN ESSENTIAL ELEMENT IN THE CRIME OF MURDER. NOW, WHAT
9 IS MALICE? MALICE IS DEFINED IN THE LAW OF HOMICIDE AS A
10 TERM OF ART. THIS IS A TECHNICAL TERM IMPORTING
11 WICKEDNESS AND EXCLUDING JUST CAUSE OR LEGAL EXCUSE.

12 IT IS SOMETHING WHICH SPRINGS FROM WICKEDNESS,
13 FROM DEPRAVITY, FROM A DEPRAVED SPIRIT, FROM A HEART
14 DEVOID OF SOCIAL DUTY AND FATALLY BENT ON MISCHIEF. THE
15 WORDS EXPRESS OR INFERRED MALICE DO NOT MEAN DIFFERENT
16 KIND OF MALICE BUT MERELY THE MANNER IN WHICH THE ONLY
17 KIND OF MALICE KNOWN TO THE LAW MAY BE SHOWN TO EXIST.

18 THAT IS TO SAY EITHER BY DIRECT EVIDENCE, BY
19 DIRECT EVIDENCE OR BY INFERENCE. NOW, MALICE MAY BE
20 EXPRESSED WHERE A -- MAY BE EXPRESSED AS WHERE A PREVIOUS
21 THREAT OF -- ARE LYING IN WEIGHT OR OTHER CIRCUMSTANCES TO
22 SHOW DIRECTLY THAT AN INTENT TO KILL WAS ENTERTAINED.

23 MALICE IS SAID TO BE EXPRESSED WHEN THERE IS
24 MANIFESTED A VIOLENT, DELIBERATE INTENTION UNLAWFULLY TO
25 TAKE AWAY THE LIFE OF ANOTHER. MALICE MAY BE INFERRED

1 WHERE THOUGH NO EXPRESSED INTENT TO KILL IS PROVED BY
2 DIRECT EVIDENCE, IT MAY BE INFERRED FROM THE FACTS AND
3 CIRCUMSTANCES WHICH ARE PRUDENT.

4 NOW, MALICE MAY BE INFERRED FROM THE WILLFUL,
5 DELIBERATE AND INTENTIONAL DOING OF AN UNLAWFUL ACT
6 WITHOUT JUST OR LEGAL CAUSE. IN OTHER WORDS, MALICE MEANS
7 THE DOING OF A WRONGFUL ACT INTENTIONALLY WITHOUT
8 JUSTIFIED CAUSE OR LEGAL EXCUSE.

9 WHEN ANY OF THE FACTS PROVED ARE SUFFICIENT TO
10 RAISE AN INFERENCE OF MALICE, THIS INFERENCE WOULD SIMPLY
11 BE AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY
12 YOU ALONG WITH ALL THE OTHER EVIDENCE IN THIS CASE. YOU
13 MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE
14 AS TO WHETHER OR NOT MALICE HAS BEEN PROVED BEYOND A
15 REASONABLE DOUBT.

16 NOW, THE TERM AFORETHOUGHT WHICH MUST ACCOMPANY
17 MALICE IS BEST UNDERSTOOD IN THE CONTRAST TO
18 AFTERTHOUGHT. SO LONG AS THE MALICE COMES IN THE ACTIVE
19 KILLING INSTEAD OF APPEARING AFTER THE ACT OF KILLING, IT
20 IS SUFFICIENT TO ESTABLISH MALICE AFORETHOUGHT. MALICE
21 WOULD NOT HAVE TO EXIST FOR ANY APPRECIABLE PERIOD OF TIME
22 BEFORE THE ACTUAL KILLING OCCURRED.

23 MALICE MAY BE CONCEIVED AT THE MOMENT THE ACT OF
24 KILLING OCCURS. THE MAIN POINT HERE IS THAT THERE MUST BE
25 A CONJUNCTION BETWEEN THE MENTAL STATE OF MALICE AND THE

1 ACT OF KILLING.

2 EVEN IF THE DEFENDANT HAD MALICE AT SOME POINT
3 IN THE PAST, HE HAS NOT COMMITTED MURDER UNLESS THAT
4 MALICE EXISTED AT THE TIME OF THE KILLING. NOW, THE LAW
5 SAYS ONE INTENTIONALLY KILLS ANOTHER WITH A WEAPON, AND A
6 PISTOL IS A DEADLY WEAPON, THE INDICATION OF MALICE MAY
7 ARISE.

8 THE FACTS ARE PROVED BEYOND A REASONABLE DOUBT
9 SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR
10 SATISFACTION, THIS INFERENCE WOULD SIMPLY BE AN
11 EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU
12 ALONG WITH ANY OTHER EVIDENCE IN THE CASE AND YOU MAY GIVE
13 IT SUCH WEIGHT AS YOU DETERMINE IT MAY RECEIVE.

14 NOW, THE SECOND CRIME FOR WHICH THE DEFENDANT IS
15 CHARGED IS ONE OF -- BEFORE I GET TO THAT SECOND CHARGE.
16 I CHARGE YOU THAT VOLUNTARY INTOXICATION IS NEVER AN
17 EXCUSE OR A DEFENSE TO A CRIME. A PERSON WHO VOLUNTARILY
18 RENDERS HIMSELF INTOXICATED IS NO LESS RESPONSIBLE FOR HIS
19 ACTS WHILE IN SUCH CONDITION.

20 IF A PERSON VOLUNTARILY DRINKS INTOXICATING
21 LIQUORS AND BECOMES INTOXICATED AND IF WHILE IN THAT
22 CONDITION COMMITS AN ACT WHICH WOULD BE A CRIME IF IT HAD
23 BEEN COMMITTED BY A SOBER PERSON, THE FACT THAT
24 DRUNKENNESS DOES NOT RELIEVE AN INTOXICATED PERSON FROM
25 RESPONSIBILITY.

1 ALL RIGHT. NOW, THE SECOND CRIME HE IS CHARGED
2 WITH, STATUTE WE ARE IN SOUTH CAROLINA SAYS THIS. IT IS
3 UNLAWFUL FOR ANY PERSON TO BE IN POSSESSION OF A FIREARM
4 DURING THE COMMISSION OF A VIOLENT CRIME. MURDER IS A
5 VIOLENT CRIME IN SOUTH CAROLINA LAW.

6 BEFORE YOU CAN FIND THE DEFENDANT GUILTY OF
7 POSSESSION OF A FIREARM, YOU MUST FIRST FIND HIM
8 GUILTY OF MURDER. AND ON MY VERDICT FORM I'M GOING TO
9 HAVE THE CHOICES, YOU HAVE ALL THREE CRIMES LISTED PLUS
10 THE VERDICT OF NOT GUILTY.

11 THE THIRD CRIME FOR WHICH HE IS CHARGED IS A
12 VIOLATION OF STATUTE WHICH MAKES IT UNLAWFUL TO CARRY A
13 PISTOL ONTO PREMISES WHICH SERVE ALCOHOLIC BEVERAGES SUCH
14 AS LIQUOR, BEER, WINE, WHATEVER. THOSE ARE THE THREE
15 CRIMES HE IS CHARGED WITH.

16 MR. FOREMAN, HERE IS THE VERDICT FORM AND I HAVE
17 PUT THE CAPTION OF THE CASE UP HERE. AND SAY WE THE JURY
18 UNANIMOUSLY FIND THE DEFENDANT, KEVIN CHOICE, AND THEN IT
19 GIVES YOU CHOICES DOWN HERE.

20 THE FIRST CHOICE IS NOT GUILTY. IF THE STATE
21 HAS NOT MET ITS BURDEN OF PROOF OF PROVING HIM GUILTY
22 BEYOND A REASONABLE DOUBT, YOU WOULD FIND HIM NOT GUILTY.
23 THE SECOND THING IS GUILTY OF MURDER. IF ALL 12 OF YOU
24 AGREE, THAT YOUR VERDICT MUST BE UNANIMOUS ON EACH CHARGE
25 WHAT YOU WOULD DO IS SIMPLY CHECK OFF THE ONE, WRITE

1 GUILTY OF MURDER, GUILTY OF POSSESSION OF A FIREARM IN THE
2 COMMISSION OF A VIOLENT CRIME AND GUILTY OF CARRYING A
3 PISTOL IN THE PREMISES WHICH SERVE ALCOHOLIC BEVERAGES,
4 TOP ONE IS NOT GUILTY.

5 I THINK IT'S COVERED. PRETTY EASY TO
6 UNDERSTAND. JUST CHECK OFF THE ONE, SIGN YOUR NAME ON THE
7 BOTTOM ONCE ALL 12 OF YOU AGREE AND KNOCK ON THE DOOR OR
8 MAYBE A BUTTON TO PUSH OR SOMETHING? KNOCK ON THE DOOR?

9 BAILIFF: YES, SIR.

10 THE COURT: KNOCK ON THE DOOR WHEN YOU GET A VERDICT
11 AND WE'LL TAKE YOUR VERDICT. NOW, I ASK YOU TO GO TO YOUR
12 JURY ROOM. ASK THE ALTERNATES TO STAY AROUND. WE GOT TO
13 THE POINT WHERE NOBODY FELL OUT OF OUR JURY SERVICE, SO 12
14 OF YOU REGULAR JURORS GO TO THE JURY ROOM.

15 I WILL SEND THE EXHIBITS IN, I WILL SEND THE
16 VERDICT IN AND THEN YA'LL CAN BEGIN YOUR DELIBERATIONS.

17 (WHEREUPON THE JURY LEFT THE COURTROOM AT 10:40 A.M.)

18 (ALTERNATE EXCUSED).

19 THE COURT: ANY EXCEPTIONS TO THE CHARGE FROM THE
20 STATE?

21 MR. CROFT: NO, SIR.

22 THE COURT: ANY EXCEPTION FROM THE DEFENDANT?

23 MR. WRIGHT: NO, SIR.

24 THE COURT: ALL RIGHT. LET'S GIVE THEM THE VERDICT
25 FORM AND THE EXHIBITS AND LET THEM GO TO IT. I DON'T KNOW

1 HOW LONG THE JURY IS GOING TO BE, HOW -- WHATEVER IT IS
2 WHEN THE JURY COMES IN, THERE WILL BE NO EXPRESSION OF
3 EMOTION OR ANYTHING, ANY NOISE MADE OR ANYTHING ELSE IN
4 THE COURTROOM.

5 IF YOU HAVE ANY EMOTIONS TO EXPRESS, YOU WILL
6 HAVE TO GO OUTSIDE OF THE COURTHOUSE IN THE PUBLIC STREET
7 AND DO IT. IF YOU DO IT IN THIS COURTROOM, YOU ARE
8 SUBJECT TO BEING HELD IN CONTEMPT.

9 KEEP THAT IN MIND WHEN THE VERDICT COMES IN.
10 THANK YOU. WE WILL STAND DOWN TILL WE GET A VERDICT.

11 (JURY BEGAN DELIBERATIONS AT 10:43 A.M.)

12 (WHEREUPON A BRIEF RECESS WAS TAKEN).

13 THE COURT: NOTE FROM THE JURY ASKING VARIOUS
14 QUESTIONS ABOUT THIS TRIAL. I'M WRITING I CANNOT ANSWER
15 YOUR QUESTION. YOU HAVE TO BASE YOUR VERDICT ON THE
16 EVIDENCE YOU HEARD. IS THAT ALL RIGHT?

17 MR. CROFT: THAT'S FINE.

18 MR. WRIGHT: THAT'S FINE.

19 THE COURT: AT THIS STAGE OF THE PROCEEDINGS, DOES
20 THAT SUIT EVERYBODY? IF IT DOESN'T, I WILL TAKE IT BACK.

21 MR. CROFT: I THINK THAT'S FINE.

22 (QUESTION OF JURY AT 2:35 P.M.)

23 THE COURT: THE JURY WANTS TO HEAR THE TESTIMONY OF
24 POWELL.

25 (WHEREUPON THERE WAS A PAUSE)

1 THE COURT: WE CAN DO THAT. WE CAN DO BOTH OF THEM.
2 NEED MR. WRIGHT.

3 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 3:07
4 P.M.)

5 THE COURT: OKAY. MR. FOREMAN, LADIES AND GENTLEMEN,
6 I GOT YOUR NOTE. YOU GOT MY NOTE AND WE GOT YOUR NEXT
7 NOTE SAYS THERE WERE TWO PEOPLE WHO TESTIFIED ABOUT
8 GUNSHOT RESIDUE.

9 THAT WAS -- EXCUSE ME -- AGENT JOHN BARRON AND
10 AGENT JOE POWELL, SO YOU ARE GOING TO DO BOTH OF THEM.
11 SHE'S GOING TO READ THEM TO YOU. READ THEM TO YOU. AND
12 PLEASE, PLEASE LISTEN CAREFULLY.

13 (REQUESTED TESTIMONY READ BACK).

14 THE COURT: THAT'S JOHN BARRON'S TESTIMONY. YA'LL
15 HEARD WHAT YOU NEED TO HEAR OR DO YOU NEED MR. POWELL'S
16 TESTIMONY? I BELIEVE HE TALKED MORE ABOUT DISTANCE THAN
17 ANYTHING ELSE, SO YOU WANT TO HEAR BOTH OR JUST ONE?

18 FOREMAN: THAT'S GOOD.

19 THE COURT: NEED TO HEAR IT? GO BACK TO YOU JURY
20 ROOM.

21 (WHEREUPON THE JURY LEFT THE COURTROOM AT 3:26 P.M.)

22 THE COURT: ALL RIGHT. WE WILL STAND DOWN OR
23 WHATEVER THE SOLICITOR WANTS TO DO TILL WE GET A VERDICT
24 TODAY.

25 MR. CROFT: MY ONLY CONCERN THE JURORS DIDN'T HEAR

1 THE TESTIMONY THE JURORS -- WE JUST ASKED IF THEY HEARD
2 EVERYTHING AND GUNSHOT RESIDUE WAS COVERED AGAIN BY JOE
3 POWELL AND I THINK MIGHT BE BENEFICIAL FOR THEM TO HEAR
4 BOTH.

5 THE COURT: MIGHT BE BENEFICIAL, BUT THEIR NOTE SAYS
6 WE WANT TO HEAR BARRON, THEN I ASKED THEM HAVE YOU HEARD
7 WHAT YOU WANTED TO HEAR. THEY USUALLY KNOW WHAT THEY WANT
8 TO HEAR, AND IT WOULD JUST BE SUPERFLUOUS TO MAKE THEM SIT
9 THROUGH MR. POWELL'S TESTIMONY WHEN THEY ASK FOR ONE
10 THING.

11 I INQUIRED OF THEM IF THAT'S WHAT THEY WANTED TO
12 HEAR. OKAY. WE CAN PLAY EVERYTHING AGAIN, BUT I DOUBT
13 IT. THAT'S WHY I TELL JURORS LISTEN THE FIRST TIME.

14 (WHEREUPON A BRIEF RECESS WAS TAKEN)

15 V E R D I C T.

16 THE COURT: ALL RIGHT. YA'LL READY TO BRING THE JURY
17 IN? BRING THE JURY IN, PLEASE SIR. REMEMBER WHAT I SAID,
18 WE WILL HAVE NO OUTBURSTS IN THE COURTROOM NO MATTER WHAT
19 THE VERDICT IS. ANY OUTBURSTS HAS TO BE HANDLED OUTSIDE
20 ON THE STREET.

21 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 4:22
22 P.M.)

23 THE COURT: MR. FOREMAN, HAVE YA'LL REACHED A
24 VERDICT?

25 FOREMAN: YES, SIR.

1 THE COURT: YA'LL HAND IT TO THE BAILIFF, PLEASE
2 SIR.

3 (BAILIFF APPROACHED FOREMAN THEN APPROACHED THE COURT).

4 THE COURT: ALL RIGHT. YOU MAY PUBLISH THE VERDICT.

5 BAILIFF: STATE OF SOUTH CAROLINA, COUNTY OF SUMTER
6 COURT OR GENERAL SESSIONS, CASE NUMBER 99-GS-43-756, WE
7 THE JURY BY UNANIMOUS -- WE THE JURY UNANIMOUSLY FIND THE
8 DEFENDANT, KEVIN CHOICE, GUILTY OF MURDER, GUILTY OF
9 POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT
10 CRIME, GUILTY OF CARRYING A PISTOL ONTO THE PREMISES WHICH
11 SELL ALCOHOLIC BEVERAGES, BEER AND ETC., SIGNED FOREPERSON
12 ASBURY SMITH, MARCH 7TH, 2001. THIS BE YOUR VERDICT, SO
13 SAY SO YE ALL BY RAISING YOUR RIGHT HAND.

14 (JURY COMPLIED).

15 THE COURT: ALL RIGHT. ANYTHING BEFORE I DISMISS THE
16 JURY?

17 MR. WRIGHT: YES, YOUR HONOR. ASK THE JURY BE
18 POLLED.

19 THE COURT: ALL RIGHT. LET'S POLL THE JURY. ALL
20 RIGHT.

21 BAILIFF: LADIES AND GENTLEMEN AS YOUR NAME IS
22 CALLED, WOULD YOU PLEASE STAND. ASBURY SMITH, IS THIS
23 YOUR VERDICT AND STILL YOUR VERDICT?

24 JUROR: YES IT IS, SIR.

25 BAILIFF: THANK YOU. GREGORY MCLEAN? YOU CAN BE

0343

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	
COUNTY OF SUMTER	)	MURDER, POSSESSION OF WEAPON DURING
	)	VIOLENT CRIME & CARRYING PISTOL ONTO
	)	PREMISES OF BUSINESS SELLING
	)	ALCOHOLIC LIQUORS, BEERS OR WINES
	)	FOR ON-PREMISES CONSUMPTION

At a Court of General Sessions, convened on September 7, 1999, the Grand Jurors of Sumter County present upon their oath:

COUNT ONE - MURDER

That one KEVIN CHOICE did in Sumter County on or about September 3, 1998, kill one Tony Rhodes with malice aforethought, either expressed or implied, by means of shooting the victim with a deadly weapon, to wit: Lorcin 9 mm. pistol, and the victim died as a proximate result thereof, in violation of S.C. Code Sections 16-3-10 and 16-3-20, as amended.

COUNT TWO - POSSESSION OF WEAPON DURING VIOLENT CRIME

That one KEVIN CHOICE did in Sumter County on or about September 3, 1998, possess or visibly display a firearm, to wit: Lorcin 9 mm. pistol, during the commission or attempted commission of a violent crime, in violation of S.C. Code Section 16-23-490, as amended.

0349

COUNT THREE - CARRYING PISTOL ONTO ABC PREMISES

That one KEVIN CHOICE did in Sumter County on or about September 3, 1998, carry a pistol or firearm onto the premises of a business which sells alcoholic liquor, beer or wine for consumption on the premises, to wit: carried Lorcin 9 mm. pistol onto the premises of the Diamond Club, in violation of S.C. Code Section 16-23-465, as amended.

Against the peace and dignity of the State and contrary to the statute in such case as made and provided.

C. Kelly Jackson

SOLICITOR C. KELLY JACKSON

RECORDED

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
FOR THE THIRD JUDICIAL CIRCUIT

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

State of South Carolina,

Indictment No. #99-GS-43-756

vs.

DEFENDANT'S MOTION FOR
NEW TRIAL BASED UPON
AFTER-DISCOVERED EVIDENCE

Kevin Lamont Choice #257223,
Defendant.

COMES NOW, Kevin Lamont Choice #257223, pro se
Defendant, who moves this Honorable Court for a new trial based
upon after-discovered evidence, and would show unto this Court:

(1). This Motion For New Trial Based Upon
After-Discovery Evidence is governed by S.C. Code Ann.
§17-23-110; and Rule 29(b), of the South Carolina Rules of
Criminal Procedure, SCRCrimP.

(2). Section §17-23-110, vests the trial court with original jurisdiction and, the power to grant new trials. See State v. Williams, 108 S.C. 295, 93 S.E. 1006, 1007 (1917).

(3). Section §17-23-110, does not limit the time for a motion for a new trial based upon after-discovered evidence.

(4). The Defendant was tried, and found guilty on the above indictments, on March 5, 2001.

(5). The South Carolina Court of Appeals, on October 1, 2002, in an Unpublished Opinion [#2002-UP-603], dismissed Defendants direct appeal. Upon petition to the Supreme Court, seeking review of the Court of Appeals denial, the Supreme Court denied certiorari, on May 14, 2003.

(6). The Affidavit In Support of this Motion, by Defendant, is enclosed pursuant to applicable law.

(7). The evidence to be presented would probably change the result if a new trial was had.

(8). The evidence has been discovered since trial.

(9). The evidence was not made available through the exercise of due diligence of Defendant before trial.

(10). The evidence is relevant to several issues within this case which relates directly to allegations of extrinsic fraud; suborned perjury; obstruction of justice; threatening a witness; an invidiously discriminatory act or practice, i.e. malicious prosecution; where the prosecutions lead witness, under duress and coercion, was made to [falsely] testify, causing this Defendant to not be in a position to present his entire case. Furthermore, depriving Defendant of a defense of innocence. This information has only recently become known to this Defendant, and is now brought before this Court for judicial determination.

(11). The evidence is not merely impeaching or cumulative. See State v. Tripp, 133 S.C. 294, 130 S.E. 888 (1925)(after-discovered evidence held not to be merely impeaching or cumulative where the evidence impeached the testimony of the State's apparent lead witness).

WHEREFORE, the Defendant prays that this Honorable Court considers this after-discovered evidence and grants Defendants Motion For New Trial Based Upon After-Discovered Evidence.

June 22, 2006

Respectfully Submitted,



Kevin Lamont Choice
#257223 Sumter North #2250
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

PRO SE DEFENDANT

RECORDED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SUMTER) FOR THE THIRD JUDICIAL CIRCUIT

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

State of South Carolina,

#1999-GS-43-00756

vs.

MOTION FOR NEW TRIAL
BASED UPON
AFTER-DISCOVERED EVIDENCE

Kevin Lamont Choice #257223,
Defendant.

INTRODUCTION:

The Defendant, Kevin Lamont Choice #257223, is before this Court upon a Motion For New Trial Based Upon After-Discovered Evidence, pursuant to applicable South Carolina statute, and Rules of Court. The Defendant is currently incarcerated at the Lee Correctional Institution, Sumter Unit North #2250, 990 Wisacky Highway, Bishopville, South Carolina, 29010; on an Order of Commitment from the Clerk of Court for Sumter County, on the above listed indictments. The Defendant believes that based on after-discovered evidence, he is entitled to a new trial to utilize such evidence in his defense.

STATEMENT OF THE CASE:

On or about September 7, 1999, Defendant was indicted for Murder (Count One); Possession of Weapon During Violent Crime (Count Two); and Carrying Firearm onto ABC Premises (Count Three) (#99-GS-43-756).

On March 5, 2001, Defendant was taken to trial, before the Honorable Henry L. McKellar, Presiding Judge, within the Sumter County Courthouse, Court of General Sessions.

On March 7, 2001, Judge McKellar, after being found guilty by a jury of his peers, sentenced Defendant to Life for Murder (Count One); five (5) years Possession of Weapon (Count Two); and three (3) years Carrying Firearm onto ABC Premises (Count Three).

Defendant filed a timely appeal to the South Carolina Court of Appeals. On October 1, 2002, the Court of Appeals, in an Unpublished Opinion (Opinion No. #2002-UP-603), dismissed Defendants appeal.

Defendant sought review of the denial on the grounds for direct appeal the South Carolina Supreme Court, by way of petition for writ of certiorari. On May 14, 2003, the Supreme Court denied the petition.

JURISDICTION AND AUTHORITY:

A motion for new trial based upon after-discovered evidence is governed by S.C. Code Ann. §17-23-110 (Cum Supp. 1992), and Rule 29(d), of the South Carolina Rules of Criminal Procedure, SCRCrimP.

Section 17-23-110, provides: "All the Circuit Courts of this State shall have power to grant new trials in cases in which there has been a trial by jury for reasons for which new trials have usually been granted in the Courts of law for the United States."

TIMELINESS:

Section 17-23-110, does not limit the time which a motion for new trial based upon after-discovered evidence must be made. See State v. Williams, 108 S.C. 295, 93 S.E. 1006 (1917); and Sams v. Hoover, 33 S.C. 401, 12 S.E. 8 (1890).

Rule 29(d), SCRCrimP, provides: "A motion for new trial based upon on after-discovered evidence must be made within a reasonable period of time after the discovery of the evidence."

There is no time limitation within which a motion for new trial based upon after-discovered evidence must be made. Catoe v. State, 241 S.C. 351, 128 S.E.2d 417 (1962); Rule 29(d), SCRCrimP.

AFFIDAVITS:

It is essential to the consideration of a motion for new trial based upon after-discovered evidence that such motion shall be supported by an Affidavit of the accused himself. Unless a valid and sufficient reason for the omission to file such an Affidavit is shown; the Affidavit of the accused must show that

he did not know of the existence of such evidence at the time of the trial and that he used due diligence to discern such evidence, or that he could not have discovered it by the exercise of due diligence. State v. DeAngelis, 256 S.C. 364, 182 S.E.2d 732, 735 (1971).

ELEMENT OF THIS MOTION:

I. Evidence would probably change the result if a new trial was had.

Defendant was tried upon an indictment for Murder, on or about March 5, 2001, in the Court of General Sessions, Sumter County.

During the course of this trial, the prosecution would present testimony from a purported "eye witness", i.e. Louis Charles Jenkins. It would be the testimony of this witness that [he] personally observed the Defendant as "He pulled a gun out of his front and had it happened fast, you know, oh, you think I'm a punk mother fucker and he just aim it beside him and he shot." (sic)(See Tr.p. 70, ll. 22-24).

The position taken by this Defendant is one of two prongs. The first prong is rested upon an allegation that has been subjected to trial and conviction by means of an extrinsic fraud, i.e. fraud upon the court. To understand this prong, as it relates to this motion requires more intense insight.

In Evans v. Gunter, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (Ct.App. 1988), the Court of Appeals noted one commentator described "fraud upon the court" as "that species of fraud which does, or attempts to, subvert the integrity of the Court itself,

or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." See H. Lightsey, J. Flanagan, South Carolina Civil Procedure, 408 (2nd ed. 1985).

Generally speaking, only the most egregious misconduct, such as bribery of a judge or member of a jury, or the fabrication of evidence by a party in which an attorney is implicated will constitute fraud on the court. See United States v. Int'l Telephone & Telegraph Corp., 349 F.Supp. 22, 29 (D.Conn. 1972). Fraud upon the court is "a serious allegation ... involving 'corruption of the judicial process itself.'" Cleveland Demolition Co. Inc. v. Azcon Scrap Corp., 827 F.2d 986 (quoting In re Witney-Forbes, 770 F.2d 692, 698 (7th Cir. 1985)).

'[F]raud upon the court,' whatever else it embodies, requires a showing that one has acted with an intent to deceive or defraud the court. A proper balance between the interests of finality on the one hand and allowing relief due to inequitable conduct on the other makes it essential that there be a conscious wrongdoing -- what can properly be characterized as a deliberate scheme to defraud -- before relief from a final judgment is appropriate. Thus, when there is not intent to deceive, the fact that misrepresentations were made to a court is not itself, sufficient basis for setting aside a judgment for 'fraud upon the court'. United States v. Buck, 281 F.3d 1136, 1142 (10th Cir. 2002)(quoting Robinson v. Audi Aktiengesellschaft, 56 F.3d 1259, 1267 (10th Cir. 1995)).

Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that the fraud prevented a party from fully exhibiting and trying his case. Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n, 294 S.C. 9, 11, 362 S.E.2d 176. 177 (1987).

Intrinsic fraud, on the other hand, is fraud which was presented and considered in the trial. Hagy v. Pruitt, 339 S.C. 425, 529 S.E.2d 714 (2000).

There is no statute of limitations when a party seeks to set a judgment aside due to fraud upon the court. See Rule 60(b), of the South Carolina Rules of Civil Procedure, SCRPC. In order to secure equitable relief on the basis of fraud, the fraud must be extrinsic. Bryan v. Bryan, 220 S.C. 164, 66 S.E.2d 609 (1951)(extrinsic fraud is necessary in order to secure equitable relief vacating a prior judgment). Relief is granted for extrinsic fraud but not intrinsic fraud on the theory that the latter deceptions should be discovered during the litigation itself, and to permit such relief would undermine the stability of all judgments. Mr. G. v. Mrs. G., 329 S.C. 305, 308, 465 S.E.2d 101, 103 (Ct.App. 1995).

The case, sub judice, is one that raises claims of an officer of the court, i.e. prosecution, has suborned perjury from its lead witness, utilizing this testimony in a trial for Murder. This type of fraud, by an officer of the court, calls into question the integrity of the judiciary and erodes public confidence in the fairness of the system of justice. And where an attorney would embark upon a scheme to suborn perjury, such fraud is extrinsic, constituting a fraud upon the court. See Chewning v. Ford Motor Corp., 354 S.C. 72, 579 S.E.2d 605 (2003).

On March 23, 2006, the prosecutions lead witness approached this Defendant, and voluntarily gave an Affidavit that was shocking and contrary to the testimony offered during trial. Although perjury alone does not provide a proper avenue to have this judgment set aside. If this Court would take the opportunity to examine and read the attached Affidavit of Loius Charles Jenkins #313523, it can be reasonably discerned that the integrity of the judiciary has been placed into serious jeopardy by an officer of the court. Such an allegation, that an officer

of the court, i.e. prosecutor, has suborned perjurious testimony to procure a conviction in a Murder trial is serious enough to give cause for an evidentiary hearing into these matters. Great Coastal Express, Inc. v. Int'l Brotherhood of Teamsters, 675 F.2d 1349, 1357 (4th Cir. 1982)("[i]nvolvement of an attorney, as an officer of the court, in a scheme to suborn perjury would certainly be considered fraud on the court"); Rozier v. Ford Motor Co., 573 F.2d 1332, 1338 (5th Cir. 1978)(fabrication of evidence where attorney is implicated is fraud upon the court); H.K. Porter Co. v. Goodyear Tire & Rubber, 536 F.2d 1115, 1119 (6th Cir. 1976)("Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud upon the court"); Dixon v. Comm'n of Internal Revenue, 2003 WL 1216290 (9th Cir. 2003)(fraud on the court occurred where attorneys entered into secret settlement agreements with taxpayers in exchange for false testimony); Synanon Found, Inc. v. Bernstein, 503 A.2d 1254 (D.C. 1986)(attorney subornation of perjury and false statements to trial court constitutes fraud upon the court); see also 12 James Wm. Moore et al., Moore's Federal Practice ¶ 60-21[4][b] (3rd ed. 2002).

The enclosed testimony, by Affidavit of Mr. Jenkins, identifies the prosecutor that coerced and caused the perjurious testimony that occurred. This testimony was from the prosecutions purported witness to the shooting in this Murder trial. Now, this "eye witness" (Mr. Jenkins) would come forward to inform this Court of the grave miscarriage of justice committed against this Defendant. Rule 60(b), SCRCP, provides a proper vehicle for this Court to grant the relief sought with a new trial. This extrinsic fraud, whatever it may encompass, was committed by the prosecution in this present case, and warrants reversal and remanding for proceedings consistent with a new trial.

The second portion of this argument arises under two separate positions, and claims, that would support the relief

sought by this motion for new trial based upon after-discovered evidence.

This portion of this second portion rests upon an allegation that there has been a severe violation to the standards set forth in the United States Supreme Courts ruling in Brady v. Maryland, 373 U.S. 83 (1963). An individual asserting a Brady violation must demonstrate that the evidence was: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) suppressed by the State; and (4) material to the accused's guilt or innocence. See Kyles v. Whitley, 514 U.S. 419 (1995). If a Brady violation has occurred, then this Court must grant the relief of a new trial. Gibson v. State, 344 S.C. 515, 514 S.E.2d 320 (1999).

As stated in the Affidavit deposed and attested to by Mr. Jenkins, there has been a violation that would undermine the guilt of the Defendant, and furthermore, the evidence utilized to obtain the conviction was tainted and totally fraudulent.

During the testimony of Mr. Jenkins it was disclosed that Mr. Jenkins had been interviewed concerning this Murder several times. (See Tr.p. 74, ll. 5-25; and Tr.p. 75, ll. 1-17). Yet, at no time did the prosecution disclose any statements, Affidavits, or notes that were relevant to each of these interviews that occurred, prior, to this Murder trial. In fact, the witness testified that, at the time, [he] came forward to give "eye witness" testimony to the prosecution, it would be a week before the trial. At no time was this Defendant made aware of this witness, nor given notice of any matters, i.e. Affidavits, notes, interview notes/statements, nor any other matters relevant to this witnesses testimony. See Rule 5(e)(2) and (3), of the South Carolina Rules of Criminal Procedure, SCRCrimP.

The failure to disclose this purported witness and testimony (Mr. Jenkins), not only shows a scheme to undermine the trust in the prosecutor's office, and to preserve the integrity

of that responsibility as the representative of truth and justice. But, it demonstrates, by Mr. Jenkin's Affidavit, that the prosecutions only concern was a conviction and, not the justice that was their duty and obligation to pursue. See Gibson, supra; Kyles v. Whitley, 514 U.S. at 438-40 (citing Berger v. United States, 295 U.S. 78, 88 (1935)). Our judicial system relies upon its participants to be fair. State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000). It is this Defendant's position that the prosecution withheld this testimony and witness so that [his] could not be impeached, and so that enough time could be assessed to "rehearse" the testimony that would be coerced from Mr. Jenkins.

The Defendant is of a belief that the prosecution had knowledge of the testimony in which would be given, and deliberately withheld this information for the sole purpose of procuring a conviction at any costs. And even if there existed an "open file" policy within the prosecutions office, the information was not produced; and this does not negate the prosecutions Brady obligations. Porter v. State, Opinion No. #26121 (Shearouse Adv. Sh. No. #10, 35-43)(S.C.Sup.Ct. filed March 6, 2006). This is especially so where the prosecution interviewed this witness several times prior to the last interview that coerced [him] into the suborned perjurous testimony used to convict this Defendant. (See Tr.p. 77, 11. 17-24).

Secondly, a "prosecutor's deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice." Giglio v. United States, 405 U.S. 150, 153 (1972). The failure to correct false evidence is as reprehensible as its presentation. Washington v. State, 324 S.C. 232, 478 S.E.2d 833 (1996). This Court would commit error by not establishing that the prosecution had a duty and obligation to correct the fraudulent and perjurous testimony of Mr. Jenkins, and failing to provide the Defendant's

due process rights required to be pursued in a criminal trial. See Riddle v. Ozmint, Dep't. of Corr., Opinion No. #26153 (Shearouse Adv. Sh. No. #19, 53-61)(S.C.Sup.Ct. filed May 22,2006). It has been now made known that the evidence obtained through threat, duress and coercion, (see S.C. Code Ann. §16-9-340), was fraudulent and would have most definitely altered the outcome of these proceedings. Such acts performed by the prosecution are shocking to the consciousness of justice.

The Constitutions require only that this Defendant receive a fair trial, not a perfect one. See Sixth Amendment, United States Constitution; and State v. Johnson, 334 S.C. 78, 512 S.E.2d 795 (1999). This Defendants trial was rendered fundamentally unfair by prosecutorial misconduct.

This argument is in light of the prosecutions witness, (Sharon Bailey), who Defendant had to call to the stand, testified during the trial of the occurrences of the shooting incident that Defendant was convicted upon. It was Ms. Bailey's testimony that [she] was speaking with the Victim at the time the shooting occurred. (See Tr.p. 241, ll. 14-25). This witness further attested that [she] did not see this Defendant near where the shooting occurred. (See Tr.p. 243, ll. 5-6). This testimony, along with the Affidavit that has been voluntarily submitted by Mr. Jenkins, would cause a juror to reasonably assess the circumstances and come to a conclusion contrary to that rendered on March 7,2001.

II. Evidence is not merely cumulative or impeaching.

Since the prosecution, nor Defendant offered such testimony within Mr. Jenkins Affidavit during the trial, this evidence is therefore not cumulative, demonstrates fraudulent and

perjured testimony coerced by the prosecution from [their] lead witness, and would support this Defendants defense in allegations which are raised and alleged within this Motion.

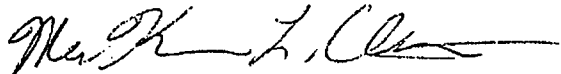
The Defendant herein believes that he has made a *prima facie* showing, and that this evidence meets each element for a motion for new trial based upon after-discovered evidence. Furthermore, although the standard appears relatively straight forward, for the granting of these types of motions, the contours and scope of the various elements are rather uncertain and vary widely on a case by case basis. See Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983); State v. Edens, 272 S.C. 130, 250 S.E.2d 116 (1978); and State v. Pierce, 263 S.C. 23, 207 S.E.2d 414 (1974).

CONCLUSION:

WHEREFORE, based on the foregoing arguments, the Defendant would pray that this Honorable Court grant an evidentiary hearing upon this Defendant's Motion For New Trial Based Upon After-Discovered Evidence; or in the alternative, a new trial upon these pleadings and Affidavits.

June 22, 2006

Respectfully Submitted,



Kevin Lamont Choice
#257223 Sumter North #2250
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

PRO SE DEFENDANT

RECORDED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SUMTER 2006 JUN 26 PM 3:51) FOR THE THIRD JUDICIAL CIRCUIT

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

State of South Carolina,

#1999-GS-43-00756

vs.

DEFENDANTS AFFIDAVIT IN
SUPPORT OF MOTION FOR NEW
TRIAL BASED UPON
AFTER-DISCOVERED EVIDENCE

Kevin Lamont Choice #257223,
Defendant.

Kevin Lamont Choice #257223, being duly sworn, under
penalty of perjury, deposes and says:

1). That I am the Defendant in the above-entitled
criminal matter.

2). That I was tried on the above indictment, March 5 -
7, 2001, in the Sumter County Court of General Sessions.

3). That the Defendant has found after-discovered evidence conforming to South Carolina statutes, South Carolina Rules of Court, and applicable case law, in that:

A). evidence is such that it would probably change the result if a new trial was held;

B). evidence has been discovered since the trial;

C). evidence could not have, by exercise of due diligence of Defendant been discovered before the trial;

D). evidence is material to the issue of guilt or innocence; and

E). evidence is not merely cumulative or impeaching.

4). That the after-discovered evidence is testimony that an extrinsic fraud was committed by an officer of the court; that there was evidence that would have established innocence; and that the prosecution failed to disclose and provide any matters relevant to the Brady standard.

5). That the evidence will directly show Defendant was fraudulently and maliciously prosecuted by the utilization of perjured and coerced testimony.

6). That the witness was unable to offer the testimony within the attached Affidavit due to external pressures and circumstances beyond his control, and during the trial.

7). That trial counsel failed to secure and obtain the matters, i.e. investigators notes, interview notes, records and other matters that would have established innocence, and permitted this Defendant the opportunity to pursue his innocence defense.

8). That due to the prosecution deliberately failing to disclose these matters, and causing the use of suborned testimony, the Defendant and trial counsel could not have known of this testimony and evidence prior and during trial.

9). That Defendant not having access to the records and testimony now offered from this witness, and the manner that the prosecution coerced this witness into presenting perjured testimony, rendered Defendant incapable of having knowledge of such evidence as established by the attached Affidavit of Louis Charles Jenkins.

10). The Defendant is informed and believes that the outcome of this trial would have been different had Defendant been aware of this after-discovered evidence.

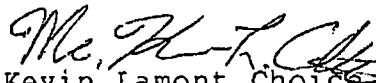
11). That this evidence relates directly and is material to the issue of innocence, and establishes an extrinsic fraud and malicious prosecution, i.e. invidiously indiscriminatory act or practice, performed by the prosecution.

12). That the Defendant did not learn of the evidence and perjured testimony until March 26, 2006.

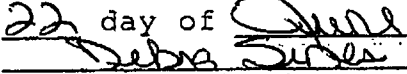
That the above is true and correct to the best of Affiant's knowledge and belief. Further Affiant sayeth not.

June 22, 2006

Respectfully Submitted,


Kevin Lamont Choice
#257223 Sumter North #2250
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

PRO SE DEFENDANT

Sworn and subscribed before me this
22 day of June, 2006.

Notary Public for South Carolina
My commission expires: 11-4-2015

State of South Carolina) Court of General Sessions
County of Sumter) Twelfth Judicial Circuit
Case No. 1999-GS-43-756

State of South Carolina,

Plaintiff,

-vs-

Transcript of Record

Kevin Lamont Choice,

Defendant.

November 21, 2013
Sumter, South Carolina

B E F O R E:

The Honorable George C. James, Judge

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

Ernest Finney, Esquire
Attorney for the Plaintiff

Jeremy Thompson, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Motion for New Trial.....	4
Louis Jenkins	
Questioning by the Court re: Perjury.....	9
Direct by Mr. Thompson.....	11
Direct by the Court.....	25
Redirect by Mr. Thompson.....	27
Ronald Skipper	
Direct by Mr. Thompson.....	29
Cross by Mr. Finney.....	36
Redirect by Mr. Thompson.....	43
Direct by the Court.....	45
Kevin Choice	
Direct by Mr. Thompson.....	47
Cross by Mr. Finney.....	52
Redirect by Mr. Thompson.....	57
Direct by the Court.....	59
Arguments by Counsel	
Mr. Thompson.....	60
Mr. Finney.....	70
Mr. Thompson.....	72
Court Reporter Certification.....	75

DEFENSE EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	Trial Transcript	5	
2	Affidavit		13
3	Affidavit		13
4	Affidavit of Ronald Skipper		30

1 NOVEMBER 21, 2013

2 (WHEREAS this matter was scheduled for a motion hearing,
3 the defendant appeared along with his counsel of record.
4 The hearing began at 10:29 a.m.)

5 THE COURT: While they're bringing the first witness up,
6 we'll just go ahead and get on the record. Are you ready?

7 THE COURT REPORTER: Yes, sir.

8 THE COURT: On the record in Kevin Lamont Choice,
9 petitioner, versus State of South Carolina. The docket number
10 is 1999-GS-43-756. This is a motion made by Mr. Choice for a
11 new trial. Is the basis newly discovered evidence, Mr.
12 Thompson?

13 MR. THOMPSON: That is correct, Your Honor.

14 THE COURT: All right. Jeremy Thompson represents Mr.
15 Choice, and Ernest A. Finney III, Solicitor, represents the
16 State. While we're waiting on the witness to come up to
17 appear, is there anything you'd like to put on the record
18 beforehand to give me an idea of what your motion is based on?

19 MR. THOMPSON: Yes, Your Honor, very briefly. For the
20 record, my name is Jeremy Thompson. I am the applicant -- I
21 say applicant's. I'm used to doing this in PCR hearings. I
22 am the defendant's current counsel of record in this matter.

23 (WHEREUPON, there was a pause in the proceedings for the
24 witness to be brought into the courtroom.)

25 THE COURT: All right. You can go ahead.

1 MR. THOMPSON: And we allege here today that Mr. Choice
2 should be granted a new trial based on after-discovered
3 evidence. I'll give you just a brief factual overview of the
4 case, Your Honor, and I'd like to go ahead and have the trial
5 transcript -- which I've given a copy to opposing counsel and
6 to Your Honor already.

7 THE COURT: The record on appeal? It's in the booklet as
8 record on appeal?

9 MR. THOMPSON: Yes. Yes.

10 THE COURT: Okay.

11 MR. THOMPSON: That's -- this is the -- kind of the case
12 caption at the top is from the federal habeas case --

13 THE COURT: Okay.

14 MR. THOMPSON: -- that Mr. Choice had. So that's where I
15 printed this document from. I'd like to have this marked as
16 Defendant's Number 1.

17 THE COURT: Okay.

18 MR. THOMPSON: I'd like this introduced as such. Your
19 Honor, this is actually a pretty simple case factually in my
20 -- in my opinion, especially for it being a murder case. The
21 facts are simple when you compare it to many others.

22 This incident arose out of a shooting at a nightclub here
23 in Sumter called the Diamond Club back on September 3rd, 1998.
24 My client was charged with the killing of Tony Rhodes. It's
25 spelled in the transcript Rose like the flower, but he

1 actually was Rhodes, I guess like the Colossus of Rhodes, R-h-
2 o-d-e-s.

3 And the allegation was that my client, Mr. Rhodes, Mr.
4 Jenkins, who is here today, and Mr. Harry Spann were in a back
5 part of the club near the bathroom and, while there, there was
6 a big argument that broke out and my client shot Mr. Rhodes.
7 My client was apprehended at the scene. He had the gun that
8 killed Mr. Rhodes on him. They matched the gun to the bullet
9 and the shell casing that were found in that room.

10 However, there was some testimony, including from my
11 client, that he was handed the gun by somebody else right
12 after the shooting. There was actually testimony by one of
13 the security officers, George McQuilla -- I think that's how
14 it's pronounced -- who testified that when he saw my client
15 exiting the club, he saw -- it looked like somebody was
16 putting a -- a gun in his waistband. He wasn't sure because
17 Mr. Choice had been with somebody else. But that was the
18 defense.

19 THE COURT: Somebody was putting a gun in their own
20 waistband?

21 MR. THOMPSON: That -- that they were putting it in Mr.
22 Choice's waistband.

23 THE COURT: So a third party was putting it into Mr.
24 Choice's or somebody's waistband?

25 MR. THOMPSON: Yes.

1 THE COURT: Okay.

2 MR. THOMPSON: It was being put into Mr. Choice's
3 waistband. He could not tell if it was Mr. Choice himself
4 doing it or if it was somebody else doing it, and Mr. Choice
5 testified that he was given the gun by somebody else at --
6 when he testified in his own defense at the trial. So that
7 was the defense was that he was not actually the shooter.

8 The only witness to the actual shooting was Mr. Jenkins.
9 He's the only individual who actually testified that he saw
10 Mr. Choice fire the shot that killed Mr. Rhodes.

11 The basis for this motion, Your Honor, is that Mr.
12 Jenkins, while incarcerated with Mr. Choice at Lee
13 Correctional in 2006, signed an affidavit stating or basically
14 recanting his trial testimony. It is my understanding -- and
15 I have handed a copy of that up, Your Honor. It is my
16 understanding that, approximately a year ago, Mr. Jenkins then
17 recanted the recantation and that is what Mr. Jenkins is here
18 to testify to today.

19 Essentially, Your Honor, it's -- it's our position that
20 if the -- even if he has subsequently recanted his affidavit
21 that the affidavit standing alone, given the lack of evidence
22 against Mr. Choice and the fact that Mr. Jenkins was the only
23 eyewitness to the shooting, that if you take his testimony out
24 or give it -- severely limit its impact, that Mr. Choice would
25 have -- would have been acquitted at the trial. So that's --

1 that's the basis for our motion here today.

2 THE COURT: Okay. Mr. Finney, anything before we begin?

3 MR. FINNEY: No, Your Honor, except that the affidavit --
4 I want to argue the motion that -- the point that the
5 defendant's lawyer is making is that the after-discovered
6 evidence may not exist at this point because the recantation
7 has been recanted. So now they are in essence making a motion
8 to ask the Court to substitute testimony that wasn't made at
9 the trial instead of reviewing the information that was made
10 at the trial.

11 Mr. Jenkins, who is present and who will take the stand
12 shortly, also testified in his affidavit of withdrawal of his
13 -- of his affidavit that he never signed the affidavit in
14 front of a notary. He signed it in a dorm. I think he signed
15 it just to get Mr. Choice off his back.

16 So we want the Court to be aware of the background in
17 which Mr. Jenkins says he signed what purportedly is an
18 affidavit changing his trial testimony.

19 THE COURT: Okay. All right. Mr. Thompson, you can call
20 your first witness.

21 MR. THOMPSON: We would call Mr. Louis Jenkins, Your
22 Honor.

23 THE CLERK: Place your left hand on the Bible. Raise
24 your right hand. State your name, please.

25 THE WITNESS: Louis Jenkins.

LOUIS JENKINS - QUESTIONS BY THE COURT REGARDING PERJURY

1 THE CLERK: Do you solemnly swear or affirm the testimony
2 you give to this Court will be the truth, the whole truth, and
3 nothing but the truth, so help you God?

4 THE WITNESS: Yes, sir.

5 THE CLERK: Thank you.

6 THE COURT: All right. How do you spell your first name,
7 sir?

8 THE WITNESS: L-o-u-i-s.

9 THE COURT: Thank you. All right. Mr. Thompson, do you
10 want me to talk to him now about his rights or you want to get
11 into any specifics before we do that?

12 MR. THOMPSON: Based on the conversation I've had with
13 the solicitor, if Mr. Jenkins is going to testify consistently
14 with his statement given August 31st, 2012, I don't know if
15 there is a danger of perjury in this matter, but, Your Honor
16 --

17 THE COURT: Well, he -- if he gave different testimony in
18 a trial, there may be. So -- all right. Mr. Jenkins, you are
19 Louis Charles Jenkins Jr.?

20 THE WITNESS: Yes, sir.

21 THE COURT: All right. You're here today in a matter
22 pertaining to a new trial motion made by Kevin Lamont Choice,
23 and it's my understanding that you testified during the trial
24 of that case back in 2001; is that correct?

25 THE WITNESS: Yes, sir.

7 2

LOUIS JENKINS - QUESTIONS BY THE COURT REGARDING PERJURY

1 THE COURT: And you were placed under oath and gave
2 testimony?

3 THE WITNESS: Yes, sir.

4 THE COURT: There is at least in paper form a document
5 that's styled Affidavit of Louis Charles Jenkins Jr., and I
6 believe you're at least familiar with that document; is that
7 correct?

8 THE WITNESS: Yes, sir.

9 THE COURT: Okay. Under the -- under the law, if someone
10 gives testimony in a trial or a proceeding like this that is
11 untruthful, there is a -- there is the possibility that the
12 person can be charged with the criminal offense of perjury.
13 Do you understand that?

14 THE WITNESS: Yes, sir.

15 THE COURT: And what I wanted to let you know is that you
16 do -- you know, I don't know what the lay of the land is going
17 to be, but if there is a finding that you have given testimony
18 in a criminal or any type of legal proceeding under oath that
19 is not truthful, there is the possibility that you would be
20 charged with the crime of perjury. Do you understand that?

21 THE WITNESS: Yes, sir.

22 THE COURT: Do you have an attorney in this matter at
23 all?

24 THE WITNESS: Well, no, sir. I was unaware I was coming
25 -- I was coming. I was here back in -- well, a couple months

LOUIS JENKINS - QUESTIONS BY THE COURT REGARDING PERJURY

1 ago and -- well, it wasn't even a couple months ago. Well, a
2 couple months ago, and I sat in the holding cell all day and
3 never got saw. No one even acknowledged me. I'm fully
4 unprepared. I don't have a copy of no -- no statements from
5 -- you know, I don't have nothing.

6 THE COURT: Okay. Well, that -- that's a different topic
7 than what I'm talking to you about. The lawyers will be
8 responsible for engaging in questions with you and answers
9 given by you. What I'm just telling you is that -- that
10 someone who does testify untruthfully in a legal proceeding
11 under oath could perhaps be subject to the crime of perjury.
12 Do you understand that?

13 THE WITNESS: I do understand that.

14 THE COURT: All right. Do you -- you can go forward, Mr.
15 Thompson.

16 MR. THOMPSON: All right. Thank you.

17 LOUIS JENKINS, being first duly
18 sworn, testifies as follows:

DIRECT EXAMINATION

20 BY MR. THOMPSON:

21 Q: Mr. Jenkins, how are you doing this morning?

22 A: I'm doing fine.

23 MR. THOMPSON: May I approach the witness, Your Honor?

24 THE COURT: Yes, sir.

25 BY MR. THOMPSON:

LOUIS JENKINS - DIRECT BY MR. THOMPSON

1 Q: I'm going to hand you a couple of documents and tell me
2 if you --

3 THE COURT: If you could, mark those first, please, at
4 least for ID.

5 MR. THOMPSON: Yes. Mark that as 2 and that's 3.

6 (Whereupon, Defendant's Exhibit Number 2, a typed
7 affidavit, and Defendant's Exhibit Number 3, a
8 handwritten affidavit, were marked for ID.)

9 BY MR. THOMPSON:

10 Q: All right. I'm going to mark you -- I'm going to show
11 you what's been marked as Defendant's Exhibit Number 2 and
12 Defendant's Exhibit Number 3. Can you tell me if you
13 recognize those documents?

14 THE COURT: And you can take the time to read them if
15 you'd like.

16 THE WITNESS: Yes, sir.

17 (WHEREUPON, there was a pause in the proceedings.)

18 BY MR. THOMPSON:

19 A: Yes, sir. I'm familiar with the documents.

20 THE COURT: Okay. Go ahead.

21 Q: And is document -- Exhibit Number 2, is that an affidavit
22 that you provided back in 2006? Let me ask you this. Is that
23 your signature?

24 A: Yes. That's my signature.

25 Q: A signature?

LOUIS JENKINS - DIRECT BY MR. THOMPSON

1 A: Yes.

2 Q: Okay. And with regard to Number 3, is this your
3 handwriting?

4 A: Yes, it is.

5 Q: You wrote that statement out voluntarily?

6 A: Yes.

7 Q: And that's your signature at the bottom there?

8 A: Yes, it is.

9 Q: All right.

10 MR. THOMPSON: I'd like to admit those as Defendant's
11 Number 2 and Number 3.

12 MR. FINNEY: No objection.

13 THE COURT: Okay. They're in.

14 (WHEREUPON, Defendant's Exhibit Number 2, a typed
15 affidavit, and Defendant's Exhibit Number 3, a
16 handwritten affidavit, were admitted into evidence.)

17 BY MR. THOMPSON:

18 Q: Mr. Jenkins, do you recall giving the affidavit? Do you
19 recall signing that document? Number 2?

20 A: Number 2, yes.

21 Q: You remember signing it? And do you remember signing
22 Number 3 and giving that statement about a year ago?

23 A: Yes.

24 Q: And is -- it's my understanding that after you -- or that
25 you do not believe that the affidavit, Defendant's Number 2,

LOUIS JENKINS - DIRECT BY MR. THOMPSON

1 is correct. Is that accurate?

2 A: Yes.

3 Q: Okay.

4 A: I'll just have questions on -- well, yes.

5 Q: And that the statement that you gave in August of 2012
6 last year, that is accurate?

7 A: Exhibit 3?

8 Q: Yes.

9 A: Yes. Only one -- one -- one thing with this that I don't
10 see in the statement.

11 THE COURT: In Number 3?

12 THE WITNESS: Yes.

13 A: About getting -- I signed it to get him off my back. I
14 didn't -- that part wasn't in here. Only -- I said I felt --
15 I thought that may -- I thought that he may have more on what
16 took place. He dropped some papers and I signed them. I
17 didn't -- I didn't never meant that I signed -- signed it to
18 get him off my back. I didn't make that statement. This is
19 what I signed to.

20 Q: Yes.

21 A: Yeah.

22 Q: Okay.

23 A: That's the only -- that's the only thing that I see in
24 Exhibit 3 that I didn't, you know, say.

25 Q: So let me -- I'm a little bit confused on that point.

LOUIS JENKINS - DIRECT BY MR. THOMPSON

1 You state -- it's about three lines down -- Mr. Kevin Choice
2 pleaded his case to me and I felt sorry for him.

3 A: Uh-huh.

4 Q: And I thought that he may have had more on what took
5 place.

6 A: Yeah.

7 Q: Are you saying that that statement is not accurate?

8 A: That statement -- that statement is accurate.

9 Q: Okay.

10 A: I said the statement that Mr. -- the -- Solicitor Finney,
11 he said that I signed the papers to get him off my back. I
12 didn't make that statement.

13 Q: Okay.

14 A: That ain't on the paper. Yeah.

15 Q: Okay.

16 A: Yeah.

17 Q: So let me ask you a couple of questions about that. Did
18 -- were you present when Exhibit Number 2 was prepared? Was
19 that typed in front of you?

20 A: This was back in 2006?

21 Q: '06.

22 THE COURT: Are you asking whether it was physically
23 typed in front of him?

24 A: No. It wasn't physically typed in front of me.

25 Q: How did -- how did you come to sign this document?

LOUIS JENKINS - DIRECT BY MR. THOMPSON

1 A: Some way or another I got it and I signed it. I mean I'm
2 -- this was 2006, you know. I mean I'm not sure exactly how I
3 got it. I know that I did get it and I -- I signed it
4 because, like I say, I wasn't there but a short period of
5 time, so.

6 Q: And in statement number -- in Exhibit Number 3, you also
7 state that I did not sign those papers in the presence of a
8 notary public, and that would be on the final page of Number 2
9 is where you've got the signature of a notary.

10 A: Uh-huh. Yeah.

11 Q: Did you -- you did not sign that document in front of the
12 notary?

13 A: Let's see. That's Exhibit 3.

14 Q: The back page.

15 A: No. Actually on -- on August 31st when I met with -- it
16 was something about the dates, and then that's how that
17 question came up with Mr. Finney and -- and I told him no, I
18 -- it wasn't -- it wasn't in the presence of a notary public.

19 Q: Okay. So you did not sign that in front of Ms. Deborah
20 Simes [phonetic], employee at Lee Correctional?

21 A: Ms. who?

22 Q: Ms. Deborah Simes at the mail room? Is it possible you
23 could have signed that in front of her?

24 A: It's -- it's -- it's possible. I don't -- I don't
25 recall. It was -- I forgot. We got on that subject, but when

LOUIS JENKINS - DIRECT BY MR. THOMPSON

1 Mr. Finney was -- when we was sitting at the table and he was
2 asking me about it and I -- something wasn't right and that's
3 how that situation came up. But I don't even -- I don't
4 remember. I don't remember signing them. You know, I --
5 you'd have to go to the mailroom -- unless I took them and I
6 got it done. I just don't remember getting it notarized. I
7 don't -- I don't -- I don't -- I mean it was --

8 Q: All right.

9 A: It could have, but I mean --

10 Q: It's been seven years.

11 A: I'm being honest. I mean I just -- you know, I don't
12 recall doing it with a notary public.

13 Q: Now, you're standing by your trial testimony; is that
14 correct? That's the one that you gave in 2001 at Mr. Choice's
15 trial. Is that testimony accurate?

16 A: Yes.

17 Q: Okay.

18 A: To the best of my abilities.

19 Q: To the best of your abilities?

20 A: Yeah. To the -- yeah. To the best of -- it was a long
21 time from what took place that happened and -- and keep in
22 mind with that case it was a very complex case whereas it was
23 a lot of things taking place and it was always -- it was -- it
24 was a good possibility that, what you said, he didn't do it,
25 but like I said, it was -- where I was at and I gave the

LOUIS JENKINS - DIRECT BY MR. THOMPSON

1 testimony to the best of my ability what I saw. So -- and
2 that's where you see what I said I thought that he had
3 something more to add to the case. So I was, you know, pretty
4 much --

5 Q: And I want to ask you about --

6 A: -- giving him the benefit of the doubt.

7 Q: -- about that statement you're referring to, your
8 sentence in Exhibit Number 3. And you just testified that you
9 thought there was a reasonable probability that he didn't do
10 it. Didn't you testify at the trial that you saw Mr. Choice
11 pull out a gun and shoot Mr. Rhodes?

12 A: Yes. But also, Mr. Spann was standing behind him and it
13 was -- you know, it was -- it was -- it was to a point where
14 -- the talk was that he could have reached -- somebody reached
15 over him, but the fire came -- like I said, the -- like I
16 said, to the best of my testimony at that particular time,
17 that's what I testified to, you know. That's what I -- you
18 know.

19 Q: So -- I'm just -- I guess I'm just trying to get this
20 straight. You and Mr. Rhodes and Mr. Spann and Mr. Choice are
21 all in this -- all in this back room?

22 A: Well, it was -- it was --

23 Q: Hallway?

24 A: It wasn't a back room. It was just an area of the club
25 where everybody was it. It was just a little section that we

1 was in.

2 Q: Okay.

3 A: You know, there's people all around us.

4 Q: And --

5 A: So it wasn't just we was in a room by ourself.

6 Q: You saw Mr. Choice pull out a firearm; is that correct?

7 Is that accurate?

8 A: What was my testimony? You got an exhibit of that?

9 MR. FINNEY: Page 70.

10 MR. THOMPSON: Page 70?

11 BY MR. THOMPSON:

12 A: Because, you know, I mean you're talking about 2006 and,

13 you know, you want me to go back verbatim what I said I mean.

14 Q: This is your testimony.

15 A: All right.

16 THE COURT: You're on page 70 of the record on appeal or
17 page 70 of the trial transcript?

18 MR. THOMPSON: Trial transcript is I think what we're
19 referring to.

20 THE COURT: The bottom number?

21 MR. THOMPSON: The bottom number, yes, sir.

22 THE COURT: Okay.

23 (WHEREUPON, there was a pause in the proceedings.)

24 BY MR. THOMPSON:

25 A: Uh-huh.

LOUIS JENKINS - DIRECT BY MR. THOMPSON

1 Q: And when you're done reading that, I'm going to ask you
2 to flip to page 72.

3 A: Uh-huh.

4 Q: And can you read lines -- just to yourself -- lines 1
5 through 13?

6 (WHEREUPON, there was a pause in the proceedings.)

7 A: Okay.

8 Q: Are you ready?

9 A: Okay. Uh-huh.

10 Q: Okay. So I'm going to start with page 72 and I'm just
11 going to go lines 1 through 3. All right?

12 A: Uh-huh.

13 Q: All right. You were asked: "Okay. Is there any point
14 that someone else fired the weapon?"

15 And you answered, "No."

16 A: Uh-huh.

17 Q: All right. Now, you just testified a minute ago that you
18 thought that Mr. Spann perhaps could have fired the weapon?

19 A: Well, I said that that was the talk of people. So if you
20 go back to Exhibit 3, I said I thought that he may have
21 something else to add -- to add to -- that took place -- more
22 than what took place. To the best of my ability, that's what
23 I said happened.

24 Now, if something else occurred other than that, I was
25 opening the door for him to -- you know. But I don't take

1 back what I said. I'm going on if something else -- because
2 it was a lot of talk that he didn't do it, this, that, and the
3 other. I didn't say that. That's what the -- that's the talk
4 of what the word was going around. And it still goes -- it's
5 still being said that he didn't do it, but as of what I saw, I
6 can only speak upon what I saw.

7 Now, I was giving him the benefit of the doubt. If -- if
8 it had to go different and his -- the chance to elaborate on
9 it, you know. If -- you know, that's basically what I was --
10 if you refer back to Exhibit 3, what I was saying.

11 Q: So you're not certain that Mr. Choice shot Mr. Rhodes?

12 A: Okay. I'm going to say it again. I said for the best of
13 my ability, that's what that -- that's what I testified to. I
14 said the talk of what everybody else was saying, it was so
15 close-knit that he didn't do it. That's what they was --
16 that's what they was telling me, but I told what I saw. You
17 understand what I'm saying?

18 Q: I understand what you're saying.

19 A: But I'm letting you know what the word is and what people
20 was saying. So like I said to Exhibit 3, if it was something
21 else to bring that took place, you know, that's what I -- you
22 know.

23 Q: But if what you saw was Mr. Choice shooting and killing
24 your brother-in-law --

25 A: Uh-huh.

LOUIS JENKINS - DIRECT BY MR. THOMPSON

1 Q: -- why would you believe there's -- there may be
2 something more that took place?

3 A: Why would I believe that?

4 Q: Yes.

5 A: Well, I didn't say that I believed it. I said I was
6 giving it the benefit of the doubt and this is what the people
7 were saying. That's what I -- that's what I said. And also,
8 you -- you're talking about a close-packed pool hall and I --
9 and I mean I -- and I mean I don't know how many times I
10 contemplated this situation. I contemplate it over and over
11 and down to the words. You think -- what line? I don't want
12 to say it loud. The -- a line --

13 THE COURT: Page 70?

14 A: Seventy. Page 70. I contemplated it and contemplated it
15 and -- and I mean back then that's all I could come up with.
16 But being totally honest with myself, that's all I had, but I
17 still wanted to give the benefit of the doubt. You know how
18 you can be sure, but still at the same time I'm not perfect,
19 you know. So I wanted to give the benefit of the doubt
20 because anything liable to happen, but to the best of my
21 ability, that's what I testified upon. But it could very well
22 be. You know, you're talking about a pool hall, people
23 drinking, it's crowded. You know, things just happened so
24 quickly. So, you know.

25 Q: I just have a couple of additional questions for you, Mr.

1 Jenkins. In your affidavit, which is Exhibit Number 2, on
2 page 3 you're asked about -- or you talk about other pressures
3 for testifying.

4 A: Three?

5 Q: Page 3, yes, sir.

6 A: Okay.

7 Q: And you specifically state prior to the trial you were
8 facing criminal charges for possession with intent to
9 distribute crack cocaine and trafficking in crack cocaine; is
10 that correct? Were you facing those charges?

11 A: Yes. I was facing those charges at the time. I don't
12 actually -- I'm not -- I was facing some charges. I don't
13 know exactly. It could have been these charges, but I don't
14 know exactly verbatim what exactly what it was. But yeah,
15 trafficking, yeah. Uh-huh.

16 Q: Did you discuss with the solicitor those charges being
17 pending? Did that come up at all in your conversations with
18 the solicitor?

19 A: Did --

20 Q: Did the fact that you had pending charges come up when
21 you talked with the solicitor?

22 A: Back in 2006?

23 Q: Yes.

24 A: I --

25 Q: In 2001.

LOUIS JENKINS - DIRECT BY MR. THOMPSON

1 A: 2001? I have no idea. It's 2013. I can't -- I mean I
2 can't remember exactly what come up.

3 Q: All right.

4 MR. THOMPSON: I beg the Court's indulgence.

5 BY MR. THOMPSON:

6 Q: I did want to ask you, Mr. Jenkins -- and I know it's
7 been about seven years. Do you recall -- do you recall
8 signing the affidavit?

9 A: Yes.

10 Q: Okay. You do recall signing it?

11 A: Yes. I did sign it.

12 Q: Okay. Who gave you the affidavit to sign?

13 A: I believe Mr. Choice might -- may have give it to me.
14 Either he gave it to me or it got sent to me. I can't
15 remember, but I -- I want to say Mr. Choice might have gave it
16 to me because I don't know if I still was in that same dorm or
17 I got transferred to the kitchen dorm. I'm not sure, but
18 either he gave it to me or it was -- it got to me some way or
19 another.

20 Q: And y'all were all housed together at Lee at the same
21 time; right?

22 A: Yes.

23 Q: And the information that's contained in the affidavit, is
24 that information that you personally provided to Mr. Choice or
25 is this information he just made up? Do you recall telling

LOUIS JENKINS - DIRECT BY MR. THOMPSON

1 Mr. Choice that you were actually in the bathroom and didn't
2 see the incident?

3 A: No, not that statement.

4 Q: You don't recall that?

5 A: No. Because I was -- I was -- you know, I was right
6 there when everything took place. So I wasn't -- I wasn't in
7 the bathroom.

8 MR. THOMPSON: I have no further questions of this
9 witness, Your Honor.

10 THE COURT: Mr. Finney?

11 MR. FINNEY: No questions, Your Honor.

12 THE COURT: Any objection to me asking him questions, Mr.
13 Thompson?

14 MR. THOMPSON: Absolutely not, Your Honor.

15 THE COURT: Mr. Finney?

16 MR. FINNEY: No, Your Honor.

17 THE COURT: Of course, if you have an evidentiary
18 objection, you can certainly voice it. I won't -- I won't
19 take offense of that.

20 DIRECT EXAMINATION BY THE COURT

21 THE COURT: All right. Mr. -- Mr. Jenkins, this Exhibit
22 Number 2 that has been referenced, which has been referenced
23 as your affidavit, you say in the document or -- excuse me --
24 the document says on page 3 that the prosecutor suborned
25 perjurious testimony to obtain a conviction against the

LOUIS JENKINS - DIRECT BY THE COURT

1 petitioner. Did the prosecutor tell you to lie?

2 THE WITNESS: No. The prosecutor didn't tell me to lie.

3 THE COURT: All right. Did he tell you that if you did
4 not get on the stand and testify to perjurious facts that Mr.
5 Choice murdered the victim that you would be a very old man
6 when you finally got out of prison?

7 THE WITNESS: No. I don't remember that statement.
8 Actually, at this particular time in -- what? -- 2001, this --
9 I guess it was shortly after the incident probably happened
10 and it was still yet kind of a tense situation. So --

11 THE COURT: Well, listen. My question to you is did the
12 prosecutor tell you to lie?

13 THE WITNESS: No. No.

14 THE COURT: Did the prosecutor tell you that if you
15 didn't get on the stand and give perjurious testimony that you
16 would be an old man when you got out of jail?

17 THE WITNESS: No. No.

18 THE COURT: Had you ever informed the prosecutor that you
19 did not witness the incident?

20 THE WITNESS: No. Not -- no. I was -- I was standing
21 right there, Your Honor --

22 THE COURT: All right.

23 THE WITNESS: -- the whole time.

24 THE COURT: Did you see the defendant pull the gun out of
25 his front waistband? That's what --

LOUIS JENKINS - DIRECT BY THE COURT

1 THE WITNESS: To the best of my ability, yes.

2 THE COURT: What are you in prison for now?

3 THE WITNESS: Violation of probation.

4 THE COURT: And you were on probation for?

5 THE WITNESS: It was common law robbery.

6 THE COURT: Okay.

7 THE WITNESS: Receiving money under false pretense and --

8 THE COURT: Out of what county?

9 THE WITNESS: Sumter County.

10 THE COURT: Did the prosecutor tell you -- this is on
11 page 4 of your affidavit or what's been referred to as your
12 affidavit. That you were informed by the prosecutor that if
13 you did not follow through with your testimony, then things
14 have a way of happening to people as they go through life. It
15 says here you took that as a threat to your personal safety.
16 Did the prosecutor tell you that? Page 4, paragraph 6, where
17 you took that as an implied threat that without your testimony
18 you'd be put in prison and arrangements would be made to
19 enforce your physical harm.

20 THE WITNESS: No.

21 THE COURT: All right. Mr. Thompson, any follow-up to
22 that?

23 MR. THOMPSON: Just, Your Honor --

24 REDIRECT EXAMINATION

25 BY MR. THOMPSON:

LOUIS JENKINS - REDIRECT BY MR. THOMPSON

1 Q: Do you recall telling anybody that information or do you
2 recall making the statements that were in paragraphs 5 and 6?

3 A: Paragraph 5 and 6 or --

4 Q: Yes, sir.

5 A: Or 4 and 6?

6 Q: Four and 6. Paragraphs 4 and 6.

7 A: No. I'm -- no.

8 MR. THOMPSON: I don't think I have anything further,
9 Your Honor.

10 THE COURT: Mr. Finney?

11 MR. FINNEY: Nothing, Your Honor.

12 THE COURT: All right. Thank you, Mr. Jenkins. You can
13 step down. And if you would, please leave those exhibits with
14 the court reporter right there on that rail. Thank you, sir.

15 All right. We'll take a break for about five minutes
16 while they bring the next witness up.

17 (WHEREUPON, there was a break in the proceedings from
18 11:05 a.m. until 11:14 a.m.)

19 THE COURT: Okay. Mr. Thompson, the next witness?

20 MR. THOMPSON: We would call Mr. Ronald Skipper, Your
21 Honor.

22 THE CLERK: Mr. Skipper, please stand and be sworn in.
23 Place your left hand and raise your right hand. State your
24 name, please.

25 THE WITNESS: Ronald De'Ray Skipper.

RONALD SKIPPER - DIRECT BY MR. THOMPSON

1 THE CLERK: Do you solemnly swear or affirm the testimony
2 you give to this Court will be the truth, the whole truth, and
3 nothing but the truth, so help you God?

4 THE WITNESS: Yes, sir.

5 THE CLERK: Thank you. Come around here, sir, and have a
6 seat. State your name and spell your last name for the
7 record.

8 THE WITNESS: Ronald De'Ray Skipper, S-k-i-p-p-e-r.

9 RONALD SKIPPER, being first duly
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. THOMPSON:

13 Q: Mr. Skipper, how are you doing this morning?

14 A: Pretty good.

15 Q: Can you hear me?

16 A: Yes, sir.

17 Q: Okay. Where are you -- where do you currently reside?

18 A: Lee Correctional Institution.

19 Q: And why are you at Lee Correctional Institution?

20 A: Serving life.

21 Q: For what charge?

22 A: Murder.

23 Q: And how long have you been incarcerated?

24 A: Started out in 1980. Then I got a death sentence in '82.

25 I got it overturned in '86 and I've been in population since

RONALD SKIPPER - DIRECT BY MR. THOMPSON

1 '87.

2 Q: So you're currently serving a life sentence for murder
3 from about 1980 or so?

4 A: Well, yes, sir.

5 Q: Okay. And how long have you been housed at Lee
6 Correctional?

7 A: September the 21st of 2001.

8 Q: Are you familiar -- do you know Mr. Choice?

9 A: Yes, sir.

10 Q: And are you familiar with Mr. Louis Jenkins?

11 A: I met him, yes, sir.

12 Q: Whenabouts -- well, let me -- this might help refresh
13 your recollection. I'm going to show you what's been marked
14 as Defendant's Exhibit Number 4. Could you identify that for
15 me, please?

16 A: That's an affidavit I issued for Mr. Choice.

17 MR. THOMPSON: Your Honor, I'd like to admit this as
18 Defendant's Number 4.

19 MR. FINNEY: No objection.

20 THE COURT: Okay. It's in.

21 (WHEREUPON, Defendant's Exhibit Number 4, an affidavit,
22 was admitted into evidence.)

23 MR. FINNEY: Is it Number 3 or 4?

24 THE WITNESS: Number 4.

25 MR. FINNEY: Thank you.

RONALD SKIPPER - DIRECT BY MR. THOMPSON

1 BY MR. THOMPSON:

2 Q: How did you come in contact with Mr. Jenkins?

3 A: I believe it was about 2006. Myself and Mr. Choice lived
4 on the north side in the Sumter unit. I saw Mr. Choice
5 speaking with somebody one day and, when he come up the stairs
6 to talk to me on the second tier, he told me -- he said -- he
7 said, "That's the guy who testified against me."

8 And he was the victim's brother-in-law or something. And
9 he wanted to help Kevin. And I told Kevin -- I said, "Oh, I
10 don't know about that. You got to be careful when you get
11 into things like that."

12 Q: Did -- did you eventually speak to Mr. Jenkins?

13 A: Yes, sir. I spent some time with Mr. Jenkins.

14 Q: What was the purpose of you speaking with Mr. Jenkins?

15 A: Because they wanted -- sorry. Mr. Choice wanted to file
16 something with the court in connection with his conviction as
17 pertained to the testimony that Mr. Jenkins give. And I told
18 him I needed to talk to him; so he brought him up and
19 introduced me to him. He wanted me to help him to do this.

20 Q: And by he, you -- you used a couple of pronouns in there.
21 Do you mean --

22 A: Mr. Choice.

23 Q: -- Mr. Choice brought Mr. Jenkins up to meet you?

24 A: Yes, sir.

25 Q: And did you talk to Mr. Jenkins about this case?

RONALD SKIPPER - DIRECT BY MR. THOMPSON

1 A: I spent some time with him, about three weeks.

2 Q: And how long over the course of those three weeks would
3 you say ballpark that you spoke to Mr. Jenkins?

4 A: Every day probably, sometimes for an hour, sometimes for
5 two hours.

6 Q: And I'm going to show you what's already been admitted as
7 Applicant's -- I mean Defendant's Number 2. Do you recognize
8 that?

9 A: Yes, sir. That's the affidavit that I typed up and Mr.
10 Jenkins signed.

11 Q: And -- so you typed that affidavit up?

12 A: Yes, sir.

13 Q: Where did you get the information contained in that
14 affidavit from?

15 A: If you'll look, on the back of Exhibit 4 is I believe Mr.
16 Jenkins' handwritten statement, and then I spent some time
17 with Mr. Jenkins and this is the information I got from him.

18 THE COURT: The back of Exhibit 4 has what?

19 MR. THOMPSON: There's apparently -- apparently, Your
20 Honor, there's another written statement that Mr. Jenkins
21 wrote out. I don't know that I've got a copy of that, but I
22 believe that's what Mr. Skipper is referring to.

23 THE WITNESS: It is, sir.

24 THE COURT: All right. Where is it?

25 THE WITNESS: It's supposed to --

RONALD SKIPPER - DIRECT BY MR. THOMPSON

1 THE COURT: You said it was on the back of Exhibit 4.

2 THE WITNESS: Well, I thought it was on the back of the
3 exhibit, but it's in the record because we filed it with the
4 court when I filed this affidavit.

5 THE COURT: Okay. If it's in the -- I don't have the
6 clerk's file at the moment, but if it's in the General
7 Sessions case file, I'll find it.

8 MR. THOMPSON: And, Your Honor, I'm just going to have to
9 rely on Mr. Skipper's assertion that it's there.

10 THE COURT: Okay.

11 MR. THOMPSON: I haven't -- as Your Honor knows, I was
12 given this case by Mr. Michael Jordan, the prior attorney on
13 this matter. He sent me a complete copy of his file.

14 THE COURT: Okay.

15 MR. THOMPSON: And I -- I didn't have a copy of it.

16 THE COURT: If it's in this courthouse, I'll find it.

17 MR. THOMPSON: All right.

18 THE COURT: All right.

19 BY MR. THOMPSON:

20 Q: But there -- you got the information that's contained in
21 Defendant's Number 2, which is the affidavit of Louis Jenkins,
22 directly from Mr. Jenkins?

23 A: He wrote it out and then he come and spoke to me about it
24 on several occasions.

25 Q: And then you typed up the affidavit?

RONALD SKIPPER - DIRECT BY MR. THOMPSON

1 A: Yes, sir.

2 Q: Did you witness him signing the affidavit?

3 A: After I typed it up, I had him read it to me two or three
4 times to insure that he understood what he was signing because
5 the affidavit come with a verification. And I -- and I told
6 him when I give it to him -- I said take this to the mailroom
7 and get it notarized.

8 The next morning -- you have to go through a gate to get
9 to the mailroom and operations because the institution is in
10 two sides. There's three dorms on each side. The next
11 morning, I was the level two inmate in horticulture; so I
12 could move about freely without restraint. When he went out
13 the door, I waited just a short period and went out behind
14 him, and I watched him walk to the mailroom, hand her
15 something that was stapled together, getting it signed, I
16 guess notarized it and give it back to him.

17 And when he come to the gate that -- when I went through
18 the gate to go to the east yard -- we lived on the west yard
19 -- he told me -- he had it rolled up in his hand.

20 He said, "I got that."

21 I said, "Well, then go give it to Kevin."

22 Q: So did he then give the -- to the best of your knowledge,
23 he's not -- let me rephrase that. He did not give the
24 affidavit personally to you?

25 A: No, sir.

RONALD SKIPPER - DIRECT BY MR. THOMPSON

1 Q: Okay. While you were having these conversations with Mr.
2 Jenkins, was Mr. Choice present?

3 A: No, sir. I asked him to stay away.

4 Q: And this is over the course of that three weeks? You
5 would speak to Mr. Jenkins and Mr. Choice was never there?

6 A: I would ask him to stay away because I didn't want him to
7 feel like he was threatened or being coerced into doing
8 something he didn't want to do.

9 Q: And the -- did Mr. Choice subsequently request that you
10 prepare the affidavit that you -- that's been admitted as
11 Defendant's Number 4?

12 A: Well, Mr. Choice did, yes, sir. Mr. Jenkins agreed with
13 it. He said he would sign it once he read it and it was --

14 Q: His affidavit?

15 A: Yes, sir.

16 Q: The affidavit that you signed --

17 A: Yes, sir.

18 Q: -- that you personally signed, Mr. Choice asked you to
19 prepare that?

20 A: He come to me and he -- we were having problems with
21 getting the case into court before the judge. So he come to
22 me and asked me would I help him; so I did an affidavit to the
23 best of my knowledge.

24 Q: And to the best of your knowledge, that affidavit is
25 accurate and correct?

RONALD SKIPPER - DIRECT BY MR. THOMPSON

1 A: To the best of my knowledge, yes, sir.

2 MR. THOMPSON: I beg the Court's indulgence. No further
3 questions of this witness, Your Honor.

4 THE COURT: Mr. Finney?

5 MR. FINNEY: May it please the Court.

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. FINNEY:

9 Q: Good morning, Mr. Skipper.

10 A: Good morning.

11 Q: My name is Ernest Finney. Does that name ring a bell to
12 you?

13 A: Your grandfather was a Supreme Court justice.

14 Q: That was my father.

15 A: That was your father?

16 Q: Yes.

17 A: I'm sorry. He was a good justice.

18 Q: I appreciate you saying that. You have been at Lee since
19 2001?

20 A: Yes, sir. September 21st.

21 Q: Do you remember when you got there in 2001 how long it
22 was before Mr. Choice got there?

23 A: No, sir.

24 Q: All right. When did you get to know Mr. Choice after you
25 arrived at Lee?

RONALD SKIPPER - CROSS BY MR. FINNEY

1 A: When I first got to Lee, I went to Chesterfield, and then
2 I went from Chesterfield to the Kershaw unit. I went to lock-
3 up, the Darlington. So when I moved to Sumter -- it was
4 either 2005 or 2006 -- I met Mr. Choice.

5 Q: All right. Were you aware that Mr. Choice -- did you do
6 other legal work for other inmates while you've been at Lee?

7 A: Yes, sir.

8 Q: All right. You do that almost every day?

9 A: That's what I'm educated in.

10 Q: All right. Have you -- did you do any other work to help
11 Mr. Choice before he filed his motion to come here for a new
12 trial?

13 A: Not that I'm aware of, no sir.

14 Q: For example, did you help him with his PCR application --

15 A: No, sir.

16 Q: -- in 2002?

17 A: No, sir.

18 Q: Did you help him with his writ of mandamus in 2003?

19 A: No, sir.

20 Q: Did you help him with a lawsuit against the prosecutor in
21 2004?

22 A: No, sir.

23 Q: Did you help him against the warden in 2005? Choice
24 versus Warden Eagleton?

25 A: No, sir.

RONALD SKIPPER - CROSS BY MR. FINNEY

- 1 Q: And you didn't do any paperwork that was filed in
2 conjunction with this motion? In other words, he had to file
3 a motion and a notice of motion, all of that. You didn't do
4 any of that?
- 5 A: Yes, sir. I helped him with that.
- 6 Q: You helped him with that?
- 7 A: Yes, sir.
- 8 Q: And then --
- 9 A: You're talking about as far as this; right?
- 10 Q: This.
- 11 A: Yes, sir.
- 12 Q: So you did the motion, the notice of motion, and you did
13 the affidavit for Mr. Jenkins to sign?
- 14 A: Well, I did the affidavit, but he -- I helped him do the
15 motions, yes, sir.
- 16 Q: All right. And it was as a result of your advice to Mr.
17 Choice as to how he should be able to file these papers to get
18 a hearing before the judge?
- 19 A: Actually, when he came to me, I told him this was kind of
20 one of those -- it's kind of hard to open a door that's
21 already closed. So we sat down and we went through the rules.
22 I'm pretty familiar with most of the rules they have. And
23 this seemed to be the most logical manner in which to approach
24 it.
- 25 Q: All right. So you advised him and counseled him on how

RONALD SKIPPER - CROSS BY MR. FINNEY

1 to get this paperwork set up so that it could be filed with
2 the court so a hearing could be held?

3 A: Actually, he's pretty proficient when it comes to that.

4 Q: All right. And did he tell you that he had filed four or
5 five different actions? He had an appeal after his
6 conviction. Did he talk about that?

7 A: No, sir. I discovered them while I was doing other
8 research. I would find *Choice v. State* or --

9 Q: Did you happen to have the trial transcript available to
10 you when you did this notice of motion? The trial transcript
11 from Sumter County, 2001? His murder case?

12 A: I can't honestly tell you that.

13 Q: You don't --

14 A: I don't remember.

15 Q: All right. So you don't know of your own accord -- from
16 reading the trial transcript, you don't know what Mr. Jenkins
17 said at his trial in Sumter in 2001?

18 A: To be honest with you, I might have, but I can't recall.

19 Q: All right. You say in your affidavit, which I believe is
20 Exhibit Number 4 --

21 A: Yes, sir.

22 Q: You don't say in your affidavit I don't believe that you
23 met with him three weeks. That's your testimony today, but
24 it's not in your affidavit?

25 A: Okay.

RONALD SKIPPER - CROSS BY MR. FINNEY

1 Q: All right.

2 A: I mean --

3 Q: Is that -- is that correct?

4 A: Yes, sir.

5 Q: All right.

6 A: I don't know if it's in the affidavit or not. I can't
7 remember.

8 Q: Do you know why on page 5 of your affidavit you say that
9 on March 23rd, 2006, Jenkins left the Sumter unit and entered
10 the plaza to go to the mailroom services? Why is March 23rd
11 important?

12 A: I think that was the day that it was notarized, if I'm
13 not mistaken.

14 Q: All right. What day did Mr. Jenkins sign the document?

15 THE COURT: Exhibit 3 or Exhibit 2?

16 MR. FINNEY: Exhibit 3, his affidavit.

17 BY MR. FINNEY:

18 Q: Were you there when he signed his affidavit?

19 A: I saw him at the mailroom window that morning. I saw him
20 go --

21 THE COURT: Exhibit 2.

22 MR. FINNEY: All right.

23 BY MR. FINNEY:

24 Q: But you didn't -- you didn't see him sign his affidavit?

25 A: I watched him at the mailroom --

RONALD SKIPPER - CROSS BY MR. FINNEY

- 1 Q: All right.
- 2 A: -- doing what he was doing. Then when he come back, he
- 3 had it rolled up and he said, "I got that."
- 4 Q: All right. Explain to the judge the procedure when he
- 5 has a document that he needs notarized. He has to take it to
- 6 a mailroom window?
- 7 A: Yes, sir. There is a notary there.
- 8 Q: All right. And he has to ask the notary to sign the
- 9 papers?
- 10 A: Well, he has to inform them he wants to get it notarized
- 11 and they take his badge, like this one here --
- 12 Q: Uh-huh.
- 13 A: -- and they verify who you are and then they watch you
- 14 sign it --
- 15 Q: All right.
- 16 A: -- and then they notarize it.
- 17 Q: So you believe that he signed it in front of the notary
- 18 and the -- and the paper was notarized on the 23rd of March?
- 19 A: I would guess so. Yes, sir.
- 20 Q: All right. And then you believed that he had a
- 21 conversation with you after leaving the mail gate saying, "I
- 22 got that done?"
- 23 A: He did have that conversation.
- 24 Q: All right.
- 25 A: I don't believe that he didn't.

RONALD SKIPPER - CROSS BY MR. FINNEY

1 Q: Did you see the affidavit after he left the mail gate?

2 A: No, sir. Like I said, he had it rolled -- a piece of --
3 the thing rolled up in his hand.

4 Q: All right. Did you assist Mr. Choice in having the
5 affidavit filed at the courthouse here in Sumter?

6 A: I might have typed the envelope for it to come up here,
7 yes, sir.

8 Q: All right. Do you know why the affidavit, which was
9 supposedly signed in March, has a clerk stamp of June --

10 A: No, sir.

11 Q: -- of 2006?

12 A: No, sir.

13 Q: Do you know why there was a two or three or four months
14 between --

15 A: No, I don't.

16 Q: -- March and June?

17 A: It might have been the preparation for the -- the motions
18 going in there and some research.

19 Q: You did that?

20 A: I helped him do that, yes, sir.

21 Q: Did it take you a couple of months after you saw Mr.
22 Jenkins at the mailroom to prepare papers for the filing of
23 this action?

24 A: Yeah. I mean it might do.

25 Q: You don't know?

RONALD SKIPPER - CROSS BY MR. FINNEY

1 A: Well, I mean I can't accurately answer. I wouldn't want
2 to lie.

3 Q: All right. After Mr. Jenkins left the mailroom in March,
4 did you talk to him again about this case?

5 A: I might have spoke to him. I don't know if we talked
6 about the case or not.

7 Q: All right. Do you know when Mr. Jenkins left Lee?

8 A: No, sir.

9 Q: Okay.

10 MR. FINNEY: Nothing further. Thank you, Your Honor.

11 THE COURT: Redirect?

12 MR. THOMPSON: Just briefly.

13 REDIRECT EXAMINATION

14 BY MR. THOMPSON:

15 Q: Solicitor Finney asked you a couple -- asked you a couple
16 questions on why your information about the amount of time
17 that you spent with Mr. Jenkins is or is not in your
18 affidavit. I would refer you to page 2 of your affidavit.
19 Down here at the bottom. You say during this research period
20 the affiant had an opportunity to interview and spend adequate
21 amounts of time with Jenkins?

22 A: Yes, sir.

23 Q: And then following on the next page at the very top, you
24 say Jenkins on more than one occasion assured this affiant
25 that he was truthful about wishing to do the right thing in

1 helping this petitioner. Did -- were you trying to convey the
2 amount of time that you had spent with Mr. Jenkins in that
3 portion of the affidavit?

4 A: Well, I didn't think that three weeks -- putting in the
5 affidavit I spent three weeks with him would have mattered
6 either way. Saying that if you sit down and speak to me for
7 two weeks on a subject, I would think that both of us would
8 have an understanding as to where we were going on it.

9 Q: And Solicitor Finney was also asking you about the amount
10 of time it took to get the Rule 29 motion filed. It is about
11 -- there is about a three-month delay there. Were you
12 assisting Mr. Choice in preparing the motion and paperwork?

13 A: Yes, sir. The problem you have with prison libraries is
14 -- well, the one at Lee, the last Southeastern edition is 579.
15 That's July 2003. The last case in there is *Chewning v. Ford*
16 *Motor Company*, 60(b). You don't -- I have to write lawyers
17 that I do some help with research and I have to get cases from
18 them, and sometimes that takes a minute. I can't always have
19 immediate access to stuff.

20 Q: And you don't have an unlimited amount of time to spend
21 at the law library?

22 A: No, sir. I was getting Shearouse advance sheets at that
23 time too, but back then they were paper. Now I think they're
24 electronic since 2009. I don't have -- I mean the library is
25 not open to you like that. Your dorm gets an hour and a half

RONALD SKIPPER - REDIRECT BY MR. THOMPSON

1 a week.

2 Q: An hour and a half a week is all?

3 A: Yeah. Unless you got a pending case. As you'll notice,
4 this wasn't pending at the time. It's hard to go up there and
5 get time in that law library.

6 Q: And did you have anything pending at the time?

7 A: When was this?

8 Q: 2006.

9 A: 2006? *Skipper v. South Carolina Department of*
10 *Corrections* in the Court of Appeals.

11 MR. THOMPSON: I beg the Court's indulgence.

12 THE COURT: Okay.

13 MR. THOMPSON: No further questions of the witness, Your
14 Honor.

15 MR. FINNEY: Nothing.

16 THE COURT: Recross? All right. Any objection to me
17 asking the witness some questions?

18 MR. THOMPSON: Absolutely not, Your Honor.

19 THE COURT: Mr. Finney?

20 MR. FINNEY: No objection.

21 DIRECT EXAMINATION BY THE COURT

22 THE COURT: All right. Mr. Skipper, have you ever filed
23 yourself a motion for a new trial on your case?

24 THE WITNESS: No, sir. Not yet I haven't.

25 THE COURT: All right. In your discussions with Mr.

RONALD SKIPPER - DIRECT BY THE COURT

1 Choice about his first encounter with Mr. Jenkins, was -- I
2 take it from what you said, you had just coincidentally seen
3 them speaking on the stairs? Or some -- in some location
4 there?

5 THE WITNESS: Well, I mean when you standing out on the
6 rock, it's open.

7 THE COURT: But you saw them talking?

8 THE WITNESS: I saw him talking to him, but then he come
9 up and said, "Did you see who I was talking to?"

10 And I said, "Yeah."

11 Because I had never seen him before and he told who he
12 was. And I said, "Okay."

13 THE COURT: All right. All right. That's all I have.
14 Anything else?

15 MR. THOMPSON: Nothing, Your Honor.

16 THE COURT: You can step down. Thank you, sir. Make
17 sure you leave that exhibit, please, sir.

18 THE WITNESS: Yes, sir.

19 THE COURT: Y'all can take him -- take him back. All
20 right. The next witness, Mr. Thompson?

21 MR. THOMPSON: We would call Mr. Choice, Your Honor.

22 THE COURT: All right. Come on up, Mr. Choice.

23 THE CLERK: Mr. Choice, place your left hand on the Bible
24 and raise your right hand. State your name, please.

25 THE DEFENDANT: Kevin L. Choice.

KEVIN CHOICE - DIRECT BY MR. THOMPSON

1 THE CLERK: Do you solemnly swear or affirm the testimony
2 you give to this Court will be the truth, the whole truth, and
3 nothing but the truth, so help you God?

4 THE DEFENDANT: Yes, sir.

5 THE CLERK: Thank you, sir. Come around this way,
6 please. State your name and spell your last for the record.

7 THE DEFENDANT: Kevin L. Choice, C-h-o-i-c-e.

8 KEVIN CHOICE, being first duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. THOMPSON:

12 Q: Mr. Choice, I've got just a couple of questions for you.
13 Okay?

14 A: Okay.

15 Q: And you are perhaps one of the most soft-spoken
16 individuals I've ever had the pleasure to represent. So I
17 would ask you to speak up and speak clearly. Okay?

18 A: Yes, sir.

19 Q: How did you -- let me ask you this. How long have you
20 been incarcerated in Lee Correctional Institution?

21 A: Since about April of 2005.

22 Q: Since April 2005?

23 A: Uh-huh.

24 Q: And did you come in contact with Mr. Jenkins at Lee
25 Correctional?

KEVIN CHOICE - DIRECT BY MR. THOMPSON

- 1 A: That's where I met up with him, yes, sir.
- 2 Q: And when was that? What timeframe was that?
- 3 A: This was around March of 2006.
- 4 Q: And when you saw him, did -- did he approach you or did
- 5 you approach him? How did that meeting occur?
- 6 A: Well, he recognized me first.
- 7 Q: He recognized you first?
- 8 A: Yes, sir.
- 9 Q: Did he come up and talk to you?
- 10 A: Yes, sir.
- 11 Q: Did he approach you?
- 12 A: Yes, sir.
- 13 Q: And did you have a discussion with him about your case?
- 14 A: Yes, sir.
- 15 Q: How did that discussion come about? What did he tell
- 16 you?
- 17 A: Well, he told me that -- that over the years that he
- 18 wanted to set the record straight because with the account
- 19 that he gave in reference to my case wasn't a true and
- 20 accurate account. The testimony that he gave that he said he
- 21 saw me shot and killed his brother-in-law at the time wasn't
- 22 true. And he said over the years it had bothered him a lot
- 23 that he sent an innocent person to prison. But he told me
- 24 that he had charges pending at the time, which were drug
- 25 charges and manufacturing and distribution, and he said that

KEVIN CHOICE - DIRECT BY MR. THOMPSON

1 he was called a week prior to my trial and he was given a deal
2 for probation in exchange for his testimony.

3 Q: And once you received this information, what did you --
4 what did you want to do with it?

5 A: Well, I wanted to try to come back to court and fight it.

6 Q: Did you arrange -- did you know Mr. Skipper?

7 A: Yes, sir.

8 Q: Did you arrange for Mr. Jenkins to talk to Mr. Skipper?

9 A: Yes, sir.

10 Q: And were you present when Mr. Jenkins talked to Mr.
11 Skipper about his case?

12 A: No, sir.

13 Q: About his case -- about your case, about your situation.
14 You weren't present for those conversations?

15 A: No, sir.

16 Q: The preparation of the affidavit, which is Defendant's
17 Number 2 if it's still up there, Mr. Jenkins' affidavit, did
18 you type that up?

19 A: No, sir.

20 Q: Did you have any involvement in the preparation of that
21 document?

22 A: No, sir, none at all.

23 Q: Did you witness Mr. Jenkins sign that document?

24 A: No, sir.

25 Q: How did you come to be in possession of that document?

KEVIN CHOICE - DIRECT BY MR. THOMPSON

1 A: He gave it to me once he took it to the mailroom and had
2 it signed and notarized.

3 Q: Mr. Jenkins personally gave it to you?

4 A: Yes, sir.

5 Q: And the affidavit is dated -- it's -- Mr. Jenkins has it
6 signed, as stated, as the 24th, the notary is on the 23rd; so
7 either the 23rd or the 24th of March of 2006. Did you
8 subsequently prepare and file a Rule 29(b) motion based on
9 that affidavit?

10 A: I didn't -- I didn't draft it, but I did some of the
11 research in reference to it.

12 Q: Did Mr. Skipper draft it?

13 A: Yes, sir.

14 Q: And the file date on there is June 26th, 2006?

15 A: Yes, sir.

16 Q: So it'd take y'all about three months to get that
17 document filed?

18 A: Yes, sir.

19 Q: Why did it take you three months to get that -- that
20 motion prepared and filed?

21 A: Well, just like Mr. Skipper stated, we don't -- our
22 access to the law library is not very -- not very good. Like,
23 to give you an example, if the unit go on lockdown for some
24 apparent reason, we won't have access to the law library at
25 all.

KEVIN CHOICE - DIRECT BY MR. THOMPSON

1 Q: And Lee, unfortunately, goes on lockdown a good bit?

2 A: Yes, sir.

3 Q: And individual units go on lockdown as well?

4 A: Yes, sir.

5 Q: So even if the whole prison isn't on lockdown, if your
6 dorm is on lockdown, you can't go to the law library?

7 A: Yes, sir.

8 Q: And are you asking Judge James to grant you a new trial
9 based on the grounds you presented in that motion and that
10 affidavit?

11 A: Yes, sir.

12 Q: And Mr. Skipper's testimony -- well, obviously you were
13 present in the courtroom for that testimony. Is his testimony
14 about how the documents were notarized at Lee -- is that -- is
15 that consistent with your experience as well?

16 A: Yes, sir.

17 Q: Have you had to have documents notarized at Lee?

18 A: Yes, sir.

19 Q: And how do you go about doing that?

20 A: Well, when you go through the plaza gate and go to the
21 mailroom, there's the notary lady, Ms. Simes. The first thing
22 she does -- she -- she checks to make sure you're clean-shaven
23 first. And then she have you present your ID to identify and
24 make sure that you're who you say you are. And then you have
25 to sign the documents in her presence and then she would

KEVIN CHOICE - DIRECT BY MR. THOMPSON

1 notarize them.

2 MR. THOMPSON: I have no further questions, Your Honor.

3 THE COURT: Mr. Finney?

4 MR. FINNEY: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. FINNEY:

7 Q: Good morning, Mr. Choice.

8 A: Good morning, Mr. Finney.

9 Q: Mr. Choice, I want to just do a little background. By
10 the time you met Mr. Jenkins in 2006, how long had he been on
11 the yard at Lee?

12 A: Not long at all.

13 Q: A month?

14 A: Yeah. I don't think he had been there that long.

15 Q: All right. And your testimony is that when you saw him
16 and he saw you, he came to you and y'all had some conversation
17 about him wanting to straighten up with you and tell the
18 truth?

19 A: Yes, sir.

20 Q: Now, the trial was in 2001?

21 A: Yes, sir.

22 Q: In Sumter County?

23 A: Yes, sir.

24 Q: And he testified that he was at the club with you and
25 some other fellows that night when the argument started; is

KEVIN CHOICE - CROSS BY MR. FINNEY

1 that right?

2 A: That was his testimony, yes, sir.

3 Q: And he testified that he saw you pull out a handgun and
4 shoot Tony?

5 A: Yes, sir.

6 Q: All right. Now, at that trial you testified?

7 A: Yes, sir.

8 Q: And you told the judge and the jury what happened that
9 night that caused you to be in the place. Did you testify you
10 had an argument?

11 A: No, sir.

12 Q: You didn't testify you had any beef with Tony?

13 A: No, sir, not at all.

14 Q: Was your testimony that you ended up with a handgun going
15 out the club after the shooting?

16 A: Yes, sir. I testified that a handgun was passed to me.

17 Q: All right. So other than Mr. Jenkins testifying that he
18 saw, were there other witnesses at the trial? I think there
19 was a Spann. There was a man named Howard?

20 A: Yes, sir.

21 Q: Other witnesses testified that you were there, that they
22 heard the argument, that they saw what happened?

23 A: But --

24 Q: Is that true?

25 A: Mr. Spann never -- wasn't present at court.

KEVIN CHOICE - CROSS BY MR. FINNEY

- 1 Q: Okay. Mr. Howard testified? Marion Howard, he
2 testified?
- 3 A: He testified.
- 4 Q: All right. There were other people that testified for
5 the solicitor besides law enforcement, people who were at the
6 club that night?
- 7 A: They didn't testify to an argument, sir.
- 8 Q: All right. But they testified --
- 9 A: Yes, sir.
- 10 Q: -- at your trial?
- 11 A: Yes, sir.
- 12 Q: All right. There were security guards who testified they
13 took a gun off you that night?
- 14 A: Yes, sir.
- 15 Q: And they detained you until the police arrived?
- 16 A: Yes, sir.
- 17 Q: All right. After that trial was over, you were
18 convicted. Did you file an appeal?
- 19 A: Yes, sir.
- 20 Q: Did you help with the research and whatever that had to
21 be done filing papers on the appeal?
- 22 A: Yes, sir. I did a lot of research, yes, sir.
- 23 Q: All right. So you have a pretty big file --
- 24 A: Yes, sir.
- 25 Q: -- in your dorm regarding *State v. Choice*?

KEVIN CHOICE - CROSS BY MR. FINNEY

1 A: Yes, sir.

2 Q: Okay. You got an appeal?

3 A: Yes, sir.

4 Q: You did a PCR?

5 A: Yes, sir.

6 Q: You did a writ of mandamus --

7 A: Yes, sir.

8 Q: -- in 2003?

9 A: Yes, sir.

10 Q: You sued the prosecutor, Mr. Croft?

11 A: Yes, sir.

12 Q: You sued the federal district judge?

13 A: I may have, yes, sir.

14 Q: And all of those documents you filed yourself or you had

15 help from people inside the jail?

16 A: I did those myself.

17 Q: You filed *Choice v. Warden Eagleton* in U.S. District

18 Court 2005?

19 A: That was a writ of habeas corpus, yes, sir.

20 Q: All right. And then in 2006, all of those cases -- all

21 those matters that we just discussed, they were turned down?

22 A: Yes, sir.

23 Q: So in 2006, you met up with Mr. Jenkins. He told you he

24 wanted to get straight with you and then you put him in touch

25 with Mr. Skipper?

KEVIN CHOICE - CROSS BY MR. FINNEY

- 1 A: Yes, sir.
- 2 Q: And in 2006, you filed a motion for a new trial?
- 3 A: Yes, sir.
- 4 Q: All right. At no time between 2001 and 2006 did you
- 5 reach out to Mr. Jenkins to ask him to help you with your PCR,
- 6 appeal, anything as far as him coming back and saying
- 7 something different than he said at trial?
- 8 A: No, sir. I hadn't seen him until 2006.
- 9 Q: But he was the main witness against you at trial?
- 10 A: Yes, sir.
- 11 Q: And either he was in the community or he was in prison.
- 12 You knew that, one or the other. You could have found that
- 13 out where he was. Between 2001 when you started your life
- 14 sentence and 2006 when he signed the affidavit you said he
- 15 signed, you had no contact with him whatsoever?
- 16 A: No, sir.
- 17 Q: Between 2001 and 2006, did you have any lawyers assisting
- 18 you with your PCR, appeal, writ of mandamus, habeas corpus?
- 19 A: Yes, sir. A PCR, I had Attorney John E. James.
- 20 Q: All right. Did any of those lawyers that were assisting
- 21 you on these other matters that you were filing -- did they
- 22 ever have a chance -- did you ever request that they go talk
- 23 to Mr. Jenkins?
- 24 A: Yes, sir.
- 25 Q: And?

KEVIN CHOICE - CROSS BY MR. FINNEY

1 A: They couldn't find him.

2 Q: So it wasn't until he appeared on the yard at Lee in 2006
3 that you had an opportunity to get straight with him?

4 A: Yes, sir. That's the first time I seen him since 2001.

5 Q: Do you know how long -- after March of 2006 when he
6 signed this affidavit that you allege he signed, how long
7 after that was he at Lee?

8 A: He wasn't there long at all.

9 Q: So in the period of two or three months, there was this
10 opening for you to file because he was willing to sign this
11 paper?

12 A: Yes, sir.

13 MR. FINNEY: Nothing further.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. THOMPSON:

17 Q: Solicitor Finney was asking you some questions about who
18 testified at your trial and things of that nature. Did
19 anybody else -- you were present obviously for the whole
20 trial; is that right?

21 A: Yes, sir.

22 Q: Did anybody else other than Mr. Jenkins testify that they
23 saw you shoot Mr. Rhodes?

24 A: No, sir. No one else.

25 Q: And in his testimony and from what you saw and what you

KEVIN CHOICE - REDIRECT BY MR. THOMPSON

1 heard, was there any hesitancy from Mr. Jenkins in identifying
2 you as the shooter?

3 A: I saw him for the first time the day of my trial. My
4 discovery motion was ordered to me by Judge Marlins [phonetic]
5 a year prior to trial and there were never no statements or
6 anything in my discovery that indicated that he was going to
7 be at my trial testifying.

8 Q: But when he testified at your trial, did he give any
9 hesitation or any indication that there was another possible
10 scenario where you weren't the shooter?

11 A: Yes, sir. I believe so.

12 Q: He testified that there was a possibility that you
13 weren't the shooter?

14 A: Well, he -- he gave an account of other people who was in
15 the vicinity when it happened.

16 Q: But he testified that he saw you fire --

17 A: Yes, sir, he did.

18 Q: -- the gun?

19 A: Yes, sir, he did.

20 MR. THOMPSON: No further questions, Your Honor.

21 THE COURT: Mr. Finney?

22 MR. FINNEY: Nothing, Your Honor.

23 THE COURT: Any objection to me asking a few questions?

24 MR. THOMPSON: None, Your Honor.

25 MR. FINNEY: No, Your Honor.

KEVIN CHOICE - DIRECT BY THE COURT

DIRECT EXAMINATION BY THE COURT

THE COURT: All right. You said there was a Mr. James who was your PCR lawyer?

THE DEFENDANT: Yes, sir.

THE COURT: So he represented you in your post-conviction relief?

THE DEFENDANT: Yes, sir.

THE COURT: And that was not successful?

THE DEFENDANT: No, sir.

THE COURT: All right. That's all I have. You can step down.

MR. THOMPSON: Nothing further.

THE COURT: We'll just put it on the record that the Mr. James he's talking about is my brother. He was my law partner at the time that he handled the PCR. I was in private practice until July 1, 2006. I don't have any clue -- any idea about any of the specifics of the case. I don't have any -- I can assume that the PCR was denied because we're where we are, but I have just got to put that on the record.

You can talk to your client and ask him whether or not he thinks there's any reason I shouldn't go forward. Mr. Finney, you can consult with yourself and -- and let me know what you think.

(WHEREUPON, there was a pause in the proceedings.)

MR. THOMPSON: We don't have any issue, Your Honor.

1 THE COURT: All right. Mr. Finney?

2 MR. FINNEY: I don't have any issue, Your Honor.

3 THE COURT: Okay. All right. Any additional witnesses,

4 Mr. Thompson?

5 MR. THOMPSON: No further witnesses. Just brief

6 argument, Your Honor.

7 THE COURT: Mr. Finney, will you have any witnesses?

8 MR. FINNEY: No, Your Honor.

9 THE COURT: Okay. Mr. Thompson?

10 ARGUMENTS OF COUNSEL

11 MR. THOMPSON: Your Honor, I'm going to try and be -- I'm

12 trying to be brief. I know I went over -- a little bit over

13 my counter than I was hoping to stick to. I'm just going to

14 hand up a few cases, Your Honor. This first is State v.

15 Needs.

16 THE COURT: Yes, sir.

17 MR. THOMPSON: Your Honor, I try and make it my practice

18 to give a copy to the court reporter so they have all the

19 information for the case down, but it's State v. Needs. It's

20 a 1999 decision from the Supreme Court.

21 Basically, the only purpose I'm citing this case for is

22 that it recites the five factors toward -- for what to do or

23 when a new trial based on after-discovered evidence can be

24 granted. It's found the final -- I guess beginning on page 17

25 of this document at the very back, continuing on to page 18 of

1 this printout from -- from Westlaw, but it says to prevail on
2 a motion for a new trial based on after-discovered evidence, a
3 defendant must show:

- 4 1) that the evidence is such as will probably change the
5 result if a new trial is granted;
- 6 2) the evidence has been discovered since the trial;
- 7 3) the evidence could not have been discovered prior to
8 trial by the exercise of due diligence;
- 9 4) the evidence is material; and
- 10 5) the evidence is not merely cumulative or impeaching.

11 Those are obviously the five factors I'm going to discuss
12 here today, and I guess it's kind of foundational background
13 as I was thinking about how to address this, Your Honor.

14 In terms of -- I'm kind of starting out of order, but the
15 fifth factor. Outside of what I would contend would be
16 potentially -- it's very minor, Your Honor, but at least some
17 direct testimony from Mr. Jenkins that it could have happened
18 differently. That these -- that I guess you could consider
19 that to be uncertainty as to whether or not he actually saw
20 what he testified to at trial. That's what he testified to
21 here today.

22 Aside from that, at this point, Your Honor, what we have
23 is an affidavit that Mr. Jenkins is not currently I guess
24 upholding or vouching for the veracity of, and so he is
25 sticking by his trial testimony.

1 And our argument, Your Honor, is that -- and I've handed
2 up *State v. Caskey*. It's a 1979 decision from the Supreme
3 Court where it discusses whether or not something is really
4 impeaching or cumulative. At the very end -- it's the next to
5 the last paragraph. It's the final sentence. It says,
6 moreover, the alleged after-discovered evidence was at most
7 merely impeaching of Kilgore -- that's the -- that's the
8 witness in that case -- credibility and not material to
9 appellant's guilt or innocence.

10 I think in that case impeaching just -- when you're
11 talking about whether or not something is impeaching, it goes
12 just to the -- just to the credibility.

13 And the second case -- or I guess that's my third case I
14 handed up was *State v. Copeland*. It's not an after-discovered
15 evidence case, Your Honor. It's a 1982 decision by the
16 Supreme Court. And on page 11 of the copy I handed up, the
17 Supreme Court -- and it's a pretty standard charge I think
18 that's given now, but it does say that:

19 "Henceforth from today, we will allow testimony of prior
20 inconsistent statements to be used as substantive
21 evidence when a declarant testifies at trial and is
22 subject to cross-examination."

23 I know it's a pretty long intro to the point I'm trying
24 to make, but our argument is that it's not merely impeaching
25 evidence. The affidavit can be treated as true after-

1 discovered evidence because if it were given at a new trial
2 today and say Mr. Jenkins were to testify at a new trial
3 today, the affidavit could be used as an -- as impeachment on
4 a prior inconsistent statement, which pursuant to *Copeland* the
5 jury could consider as the truth and not merely as impeaching
6 his credibility.

7 And so we would argue that Your Honor can consider the
8 affidavit and the substantive allegations alleged in the
9 affidavit as after-discovered evidence on that basis.

10 THE COURT: So you're saying that here the prior
11 inconsistent statement would be the March affidavit and that
12 that's boot-strapped as an inconsistent statement that would
13 satisfy one of the requirements of *Needs*?

14 MR. THOMPSON: Yes.

15 THE COURT: *State v. Needs*.

16 MR. THOMPSON: Yes. And just briefly, Your Honor, going
17 through the other various factors, I think I've hit on the
18 fifth one, which is whether or not it's merely cumulative or
19 impeaching.

20 The -- I guess the big one is whether or not it would
21 change the result if the trial were had today. That is the
22 first factor.

23 Our argument, Your Honor, is that Mr. Jenkins was the
24 only individual to testify that Mr. Choice was the shooter.
25 He was the only individual to testify that he witnessed the

1 shot being fired and that he's kind of the glue that holds the
2 State's case together. Beyond that, there's just
3 circumstantial evidence that Mr. Choice fired the shot.

4 THE COURT: Didn't Mr. Howard say that -- he was asked,
5 "Did you see Mr. Choice with a gun?"

6 And he said, "Yes."

7 And he said, "Did you see anybody else with a gun?"

8 He said, "No. That's when everybody was running."

9 MR. THOMPSON: Right. Yes. He -- he does testify to
10 that, Your Honor, but he does not testify to the actual
11 shooting taking place. But he -- when he testifies, is that
12 he is alerted to this discussion that's going on in the bar.
13 He walks back there. He sees the four individuals, Mr. Spann,
14 Mr. Choice, Mr. Jenkins, and Mr. Rhodes. That he turns back
15 around, hears a shot fired, and sees Mr. Choice running away
16 with a gun. He did not see anybody else with a gun.

17 I certainly acknowledge that that is circumstantial
18 evidence that Mr. Choice was the individual to fire the gun
19 immediately prior when the shot was fired, but it does not
20 rule out the possibility that Mr. Choice was given the gun in
21 the split second after the shooting occurred. And it is not
22 direct evidence that, similar to Mr. Jenkins' testimony, that
23 he actually saw this shooting occur.

24 THE COURT: Who was the person who gave him the gun
25 according to y'all's scenario?

1 MR. THOMPSON: I don't think he testified as to who gave
2 him the gun, Your Honor.

3 THE COURT: Okay. All right.

4 MR. THOMPSON: And it's on page 280, Your Honor, line 17
5 through 21.

6 He's asked, "Do you have any idea who put the gun there
7 or who gave it to you?"

8 His response is, "I couldn't say because all the power
9 went off inside the place. It was dark."

10 So he doesn't know who gave him the gun.

11 THE COURT: Okay.

12 MR. THOMPSON: But there is -- there is also evidence and
13 testimony that supports Mr. Choice's testimony at the trial
14 that he was given the gun, specifically George McQuilla, who
15 was the security officer standing outside who saw Mr. Choice
16 coming out. And, Your Honor, I'm just going to cite instead
17 of reading it aloud. It's quite lengthy. It's page 98, line
18 17 to 23.

19 THE COURT: Page 98 of the --

20 MR. THOMPSON: Trial transcript. Yes, sir. At the
21 bottom page numbers.

22 THE COURT: Not line 17. If you read it, read it slowly
23 for the court reporter.

24 MR. THOMPSON: All right. This is on his direct
25 testimony, Your Honor.

1 THE COURT: Mr. McQuilla?

2 MR. THOMPSON: Yes, sir. And he testifies that once he
3 heard the shot, he immediately turned towards the door because
4 it was inside.

5 "And when I turned towards the door, I saw a gentleman in
6 the crack of the door about this -- this distance and they
7 were putting what I saw was a weapon down the back of his back
8 and pulled his shirt over the top."

9 And he specifically says "they", indicating more than one
10 person. And then furthermore, on cross-examination --

11 THE COURT: Page?

12 MR. THOMPSON: Page -- it starts on 106 and goes through
13 107, and starting at line 22.

14 He's asked: "The only reason you stopped Mr. Choice was
15 because you saw a gun on him?"

16 His response was: "I saw -- I saw either him or someone
17 else's hands because you had only -- only had a portion of the
18 door that was open, but they were putting the weapon in the
19 bottom of the shirt and then pulling the shirt over the weapon
20 I guess to get it out of the club."

21 Question: "So you saw somebody put a gun?"

22 The response is: "I wouldn't say -- I didn't know who
23 handed one. Like I said, you could only see a portion of the
24 door and I saw a portion of his body. I couldn't see the
25 whole body so I don't know who put it there. I will be honest

1 with you. I don't know."

2 So it is possible through Mr. McQuilla's testimony that
3 Mr. Choice was given a gun by somebody else. It's also
4 consistent -- you can view it the other way around that it was
5 Mr. Choice. He says he doesn't know, but he does use the
6 phrase "they put the gun there" on a couple of occasions,
7 which again indicates to me that there were -- there was
8 somebody else there who was putting the gun and giving it to
9 Mr. Choice. We believe that's consistent with Mr. Choice's
10 account that he was given the gun after the shooting occurred.

11 So we certainly don't believe there's -- there's
12 overwhelming evidence of guilt, and the fact that Mr. Choice
13 was given the gun explains why he would, one, have gunshot
14 residue on his hands, because there is that evidence as well.
15 He did have gunshot residue on the back of his right hand,
16 which he could have gotten from picking up the gun that had
17 just been fired. And why the gun would match the bullet and
18 shell casing that were used to kill Mr. Rhodes. Because he
19 was given the gun that was used doesn't mean that he
20 necessarily was the one to fire the shot.

21 So again, Jenkins was the focal point of the State's
22 case. He's the only witness who actually testifies to the
23 shooting. If the jury had heard instead either the
24 affidavit's account, which is I was in the bathroom and didn't
25 see anything essentially, or even his account today, which is

1 that he gave the affidavit because he wasn't sure -- because
2 he's not sure. Something else could have happened.

3 That's not consistent with his testimony. He
4 specifically testified that he saw Mr. Choice fire a gun.
5 There's no doubt in his mind about it, and we believe that's
6 inconsistent as well. And if the jury heard either of those
7 accounts, given the importance and the centrality of Mr.
8 Jenkins to the State's case, that it's reasonably likely that
9 Mr. Choice would have been acquitted at the trial.

10 The other elements, Your Honor, I think are much quicker.
11 It was -- the evidence has been discovered since the trial.
12 It was obviously discovered in 2006. The trial occurred in
13 2001.

14 It could not have been discovered prior to the trial as
15 Mr. Jenkins testified at trial against Mr. Choice. So I don't
16 see -- and by all accounts, no one could find Mr. Jenkins
17 prior to the trial. There's -- there's a lot of discussion in
18 the transcript about how he only showed up a week before the
19 trial to give his statement in the first place to the -- to
20 the prosecutor.

21 The testimony is material. Again, that goes towards the
22 first factor. It's obviously a -- this is one of the most
23 important issues in the trial is who the identity of the
24 shooter is. So whether or not he actually saw it is
25 definitely material evidence in this case.

1 And again, it's not impeachment or cumulative. We don't
2 believe that -- it's certainly not cumulative. Nothing -- no
3 testimony was presented that Mr. Jenkins was, for example, in
4 the bathroom. So it's not cumulative to that. We've been --
5 I've discussed earlier why it was impeaching. One -- why it
6 was not just merely impeaching.

7 One final factor, Your Honor -- and I don't -- at this
8 point, I don't really know how relevant it is, but I did have
9 a chance to speak to Deborah Simes, who is the -- who is the
10 lady who works in the mailroom at Lee Correctional. I spoke
11 to her on Tuesday. I showed her the affidavit. She did say
12 that was her signature and that she would not have signed that
13 without Mr. Jenkins being right in front of her. And she
14 reported to me that it was -- it would be illegal for her to
15 do so.

16 She is employee at Lee Correctional. I did not subpoena
17 her to be here today because I thought it was such a minor
18 point that it wouldn't be worth troubling her to come all the
19 way out here for that minor bit of testimony, but that is what
20 she reported to me.

21 So based on all of that evidence, Your Honor, we would
22 argue that Mr. Choice should be given a new trial in this
23 matter based obviously on everything we've stated so far.
24 Thank you.

25 THE COURT: Thank you. Mr. Finney?

1 MR. FINNEY: May it please the Court, Your Honor. I will
2 take counsel as word being the officer of the court that there
3 is a Ms. Simes and that she discovered the document or that
4 she signed the document, although I would object to it being
5 put into the record as a fact otherwise.

6 Your Honor, this case seems to be based on the fact that
7 they've created a door by which Mr. Choice could go through
8 and get a new trial, but the problem is that the door only
9 exists if Mr. Jenkins is supporting the fact that he lied at
10 trial, and Mr. Jenkins has said today that he is not
11 supporting that fact. So, in fact, there is no door for Mr.
12 Choice to go back through.

13 It would appear that the jury in 2001 had adequate
14 information and opportunity to not only test Mr. Jenkins, who
15 was cross-examined vigorously by trial defense counsel, but
16 also to test the veracity of Mr. Choice, who tells us that he
17 testified at that trial and that he told the jury, "I didn't
18 have a gun, I didn't kill anybody."

19 It would appear to me that -- that all of the arguments
20 and all of the case law that's been presented rest on whether
21 or not there's a door created by Mr. Jenkins' affidavit. Mr.
22 Jenkins doesn't support the affidavit. There are some
23 technical violations in terms of the fact he didn't prepare
24 the affidavit. It's not in his handwriting. He didn't assist
25 Mr. Skipper in preparing the affidavit.

1 Apparently, Mr. Skipper, after some amount of
2 conversation according to Mr. Skipper, prepared the affidavit.
3 Mr. Skipper is what I would consider a professional paralegal
4 in the prison system. He does this not only for himself --
5 he's been doing it for 25 years -- but does it for other
6 inmates.

7 Mr. Choice testified he has a number of actions that have
8 been filed in various courts and that he has a large amount of
9 information that's been amassed about this situation, which
10 Mr. Skipper may have used or at least Mr. Choice was available
11 to give it to him. Whereas, Mr. Jenkins basically says I
12 found myself on the yard with the man who had been imprisoned
13 in part due to my testimony and I thought that if he had some
14 other information that he could present to a court and get a
15 new trial, I wouldn't stop him. And so I signed the paper not
16 fully understanding what was going on and certainly I was not
17 attempting to change my testimony.

18 And that's where we are. I would ask the Court not to
19 grant the motion for a new trial, feeling that there's not
20 enough evidence in a light most favorable to the State, which
21 I believe is the correct test here to -- to grant him a new
22 trial in Sumter County.

23 THE COURT: All right.

24 MR. FINNEY: Thank you.

25 THE COURT: Mr. Thompson, let me ask you this. Do you

1 have a copy of Mr. Choice's actual motion for a new trial?

2 MR. THOMPSON: I do, Your Honor.

3 THE COURT: I just want to look at it real quickly. And
4 also, do you have any response to Mr. Finney's arguments? Can
5 I see that, Mr. Finney?

6 MR. FINNEY: Yes, sir.

7 THE COURT: I'll hand it back to you. Is this in the
8 clerk's file?

9 MR. FINNEY: I'm going to give you that. It's been filed
10 in the clerk's file. That's actually part of the case file in
11 my office.

12 THE COURT: All right. Hang on just a second. Let me
13 look at this while you're gathering your thoughts.

14 (WHEREUPON, there was a pause in the proceedings.)

15 THE COURT: Okay. I was just looking for a couple of
16 things and I see those in there. All right. Mr. Thompson, do
17 you have any response?

18 MR. THOMPSON: Just -- just briefly, Your Honor. I think
19 the -- I think the affidavit -- I won't go rehash the merits
20 of the case, but I do believe the affidavit was properly
21 obtained. Both -- Mr. Skipper in particular testified that he
22 did have several conversations with Mr. Jenkins before typing
23 up the affidavit and presenting it to him, and we would just
24 stand by that testimony, Your Honor --

25 THE COURT: Do you know --

1 MR. THOMPSON: -- and request a new trial for Mr. Choice.

2 THE COURT: Do you know of any case law that talks about
3 the recantation of a recantation in the context of a new
4 trial?

5 MR. THOMPSON: I know of cases that look upon recantation
6 of testimony at a trial unfavorably. I have not -- and I've
7 done a few of these hearings at this point, as Your Honor
8 knows. I have not come across a case dealing with a
9 recantation of a recantation.

10 THE COURT: Okay.

11 MR. THOMPSON: Not in this state anyway. I haven't
12 looked in other jurisdictions, but at least in this state I
13 haven't.

14 THE COURT: All right. Okay. Anything else?

15 MR. THOMPSON: Nothing further, Your Honor.

16 THE COURT: Mr. Finney?

17 MR. FINNEY: No, Your Honor.

18 THE COURT: All right. Mr. Choice, what I'm going to do
19 is I'm going to review all of this and I'll go through this
20 piece by piece. And I'll reach a decision and notify the
21 attorneys what that is, and an order will be prepared that
22 will do one of two things. It will either grant you a new
23 trial or it will deny your motion for a new trial.

24 That will be delivered to your counsel and then to Mr.
25 Finney, and then you can discuss with your counsel whether or

1 not you choose to appeal it depending upon what it says. Of
2 course, Mr. Finney, if he does not like the result, he can
3 appeal it as well.

4 But that's the approach that I'll use. And I appreciate
5 your presentation today and I'll be in touch with you further.
6 All right. Thank you.

7 MR. THOMPSON: Thank you very much, Your Honor.

8 MR. FINNEY: Thank you.

9 (WHEREUPON, the proceedings ended at 12:12 p.m.)

10

11 --- END REQUESTED TRANSCRIPT ---

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 State of South Carolina)
2) Certificate
3 County of Florence)
4

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 74 constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 General Sessions for Sumter County, South Carolina, on the 21st
13 day of November, 2013.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.
16

17 Krystal J. Smith

18 Court Reporter
19

20 Florence, South Carolina

21 August 10, 2015
22
23
24
25

RECORDED
STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SUMTER 2003 JUN 06 PM 2:51 FOR THE THIRD JUDICIAL CIRCUIT

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

State of South Carolina,

#1999-GS-43-00756

vs.

AFFIDAVIT OF LOUIS
CHARLES JENKINS, JR.
#313523

Kevin Lamont Choice #257223,
Defendant.

Personally appeared before me, Louis Charles Jenkins, Jr. #313523, the Affiant, who being duly sworn, under penalty of perjury, deposes and says:

(1). I am Louis Charles Jenkins, Jr., #313523 (hereafter, "Affiant"), the Affiant to this Affidavit.

Affiant is a resident of Sumter County, residing at: 3200 Deer Track Circle, Dalzell, South Carolina; Tel: (803)-499-2977.

(2). From March 5 - 7, 2001, Affiant testified in a murder trial, against the above-captioned Defendant. The purpose and subject matter of this Affidavit relates to the testimony and

the manner that Affiant was coerced into presenting fraudulent and perjured testimony.

Please further note that this subject matter is relevant to Indictment No. #99-GS-43-756. And until the time hereafter subscribed to, Affiant has had neither knowledge nor opportunity in which to come forward and clarify the record, by stating the truths of the matters.

(3). On September 3, 1998, an incident occurred at the Diamond's Night Club, to wit Affiant testified to personally observing the entire incident.

Affiant would testify to the Court that, at the time of this occurrence, he had neither opportunity nor advantage in which to witness the events that were sworn and testified to, on March 5 - 7, 2001.

At the time that the actual events led up to a gunshot being fired that caused the death of the Victim, Tony Rhodes, (and Affiant's ex brother-in-law), Affiant was in the restroom area of this Night Club. This restroom area is not a well lit part of the Club, and it is not convenient to the actual observing or witnessing of the incident that led to the demise of the Victim.

(4). Affiant was married to the Victim's sister, (Teresa Rhodes Jenkins), and was coerced into testifying to purported facts and events that Affiant had no personal knowledge of, or, did not observe.

Affiant was at this Club with the Victim, and had went to the restroom when the incident occurred. The family members placed duressive and coercive pressures upon Affiant to give false testimony, so that there could be closure to the

crime. Since that time, Affiant has carried a great weight and burden which he now wishes to shed, so that the truth may be brought forth.

(5). Other pressures arose that gave cause for Affiant to testify in the trial proceedings, where the prosecutor suborned perjurous testimony to obtain a conviction against the Petitioner.

Prior to the trial, Affiant was facing criminal charges for "possession with intent to distribute crack cocaine", and "trafficking in crack cocaine". Affiant was informed, and threatened by the Prosecutor, that if Affiant did not get on the stand and testify to perjurous facts that Petitioner murdered the Victim, then Affiant would be a "very old man when he finally got out of prison", (quote). The Prosecutor that threatened Affiant was, William Croft.

Affiant had informed this Prosecutor , on several occasions, that he did not witness the actual events, or incidents that led to the demise of the Victim. Yet, the Prosecutor was adamant in his pursuit of prosecuting the Petitioner. It was understood by Affiant, that he either testify to facts that he had no actual or personal knowledge of, or, go to jail.

Please allow the record to further reflect that, after offering the testimony that had been coerced from him, Affiant was given a probationary sentence in exchange for his false testimony. Furthermore, Affiant had never given any statement, written or verbal, to any Law Enforcement Agent, and such is demonstrative by the time period, prior to trial, testified to by Affiant. Affiant was at the Night Club, and had not witnessed or observed any part of the events that caused the demise of the Victim. If Affiant, he would have willingly and freely given a written or verbal statement, at that time.

(6). At the trial and, during the testimonial portion of the proceeding, Affiant testified that he feared for his safety and life, yet, allow this record to demonstrate that, the threat was not from the Petitioner. At no time has Petitioner ever threatened Affiant, or made Affiant believe that his personal safety and well-being were in jeopardy. The only threats that were made against Affiant, came from the prosecutor, and family members of his ex wife and in-laws. Affiant was informed by the prosecutor that, if, Affiant did not follow through with the testimony, then, things have a way of happening to people as they go through life. This was said in a way that caused Affiant to fear for his personal safety and well-being. The statement was intended as an implied threat where, without Affiants testimony, Affiant would be placed into prison, and arrangements could be made to enforce the physical harm of the implied threat. In other words, "things could happen and look like accidents," (quote).

(7). Affiant comes forward, at this time, to offer the facts and version of the circumstances so that he may see that justice is done, and Petitioner is given the opportunity to vindicate his rights to a fair and impartial trial, without the inclusion of false and misleading testimony and perjured statements.

This Affidavit is sworn and subscribed to by the Affiant, and he has the knowledge and belief that he can be held accountable for the past fraudulent performances within the trial record. Yet, Affiant has bore the weight of these false testimonials and his conscience can no longer permit those transgressions to go uncorrected.

Affiant has been aware that he should have stated the truth, during the trial, but feared the Prosecutor. Affiant was informed that he would not have to fear Petitioner because

RECORDED

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

2006 JUN 26 PM 2:51
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

VERIFICATION

Personally appeared before me, Louis Charles Jenkins #313523, the Affiant, who being duly sworn, deposes and says that he is the Affiant named above, that he has read the Affidavit, and the facts stated therein are true of his own knowledge, except those matters and things stated on information and belief, and as to those matters and things, he believes them to be true.

Dated this 24th day of March, 2006.

Respectfully Submitted,

Louis Charles Jenkins, Jr.

Louis Charles Jenkins, Jr.
#313523 Sumter North #2214
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

Sworn and subscribed before me this

23 day of March, 2006.

Debra S. Scales

Notary Public for South Carolina

My commission expires: 11-4-2015

Aug. 31 2012

I, Louis C Jenkins Jr, here by write this Statement Freely and Voluntarily.

I'm here with Attorney Jordan, and Solicitor Finney. I state that back in 2006 I spoke with Kevin Choice about the murder of my brother-in-law (Tony Rhodes). Mr. Kevin Choice pleaded his case to me and I felt Sorry for him & and I thought that he may have had more on what took place. He draw up some papers and I signed them. I did not sign those papers in the present of a notary ~~and~~ public, on 23 day of of march 2006, or any other time, I signed the papers in the dorm.

I'm writing this confirm that I'm standing by my trial testimony. I was not in the bathroom at the time of the shooting, on ~~Sept~~ Sept 98.

If I am ask to testify at a new hearing I would stand by my trial testimony.

Louis Jenkins #813523

Witnessed by:

Transportation Sgt. *Kathleen Perrell*

Aug. 31, 2012.

RECORDED

RECEIVED
12/11/13

2013 DEC -6 PM 12:53
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER) THIRD JUDICIAL CIRCUIT
CLERK OF COURT
SUMTER COUNTY, S.C. 1999-GS-43-756

State of South Carolina,)

Plaintiff,)

vs)

Kevin Choice,)

Defendant,)
_____)

ORDER

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Sharon H. Dussan
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter was before the court on motion of defendant Kevin Choice for a new trial. Jeremy A. Thompson, Esquire, represents the defendant. Third Circuit Solicitor Ernest A. Finney, III, represents the State.

The defendant was found guilty of murder by a Sumter County jury on March 7, 2001. He was convicted of shooting and killing one Tony Rhodes in a nightclub. Louis Charles Jenkins, Jr. gave eyewitness testimony that the defendant was the shooter, stating that he saw the defendant holding a gun and shooting the victim.

The defendant moves for a new trial on the basis of newly discovered evidence. Along with his motion and his own affidavit, the defendant presented the affidavit of Mr. Jenkins dated March 24, 2006 and filed June 26, 2006 in which Mr. Jenkins states that he was actually in the restroom at the time of the shooting and that he did not see the incident. Mr. Jenkins further stated in his affidavit that he was married to the victim's sister and that their family members pressured and coerced him into giving false trial testimony. He further stated in his affidavit that he was facing charges for trafficking in

crack cocaine and possession with intent to distribute crack cocaine at the time of the trial and that William Croft, the assistant solicitor prosecuting the defendant, pressured him into giving false testimony in exchange for more lenient treatment on those charges. He also claimed in the affidavit that Mr. Croft made comments that made him fear for his safety if he went to prison on those drug charges.

On August 31, 2012, Mr. Jenkins signed another affidavit in which he stated that the statements he made in the above-referenced 2006 affidavit were false and that his trial testimony was true. He said he made the statements in the 2006 affidavit because he felt sorry for the defendant and the defendant "may have more on what took place."

A hearing on the defendant's new trial motion was held on November 21, 2013. Mr. Jenkins testified and stated that his trial testimony was the truth. He stated that he was incarcerated at the same facility was the defendant in 2006 and that he encountered the defendant and the defendant convinced him that he had gathered evidence to prove he was not guilty of shooting the victim. Jenkins testified that he gave the defendant the benefit of the doubt when he signed the 2006 affidavit because he thought the defendant really had information that would prove the defendant was not the shooter.

It should be noted that at the 2001 trial, the defendant testified that he was present when the victim was shot but that he did not shoot the victim. The defendant testified at trial that someone handed him the gun after the shooting and that he ran out of the nightclub door with the gun.

To prevail on a motion for a new trial based upon after discovered evidence, the defendant must show (1) the evidence is such that it would probably change the result of the trial if a new trial is granted; (2) the evidence has been discovered since the trial; (3)

the evidence could not have been discovered prior to trial by the exercise of diligence; (4) the evidence is material; and (5) the evidence is not merely cumulative or impeaching. State v Needs, 333 S.C. 134, 508 S.E. 2d 857 (1999).

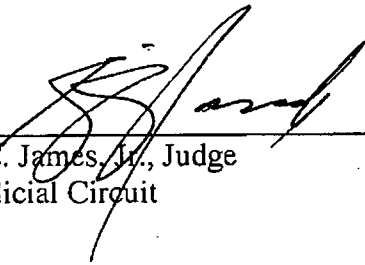
In my view, there is a substantial questions as to whether there is now any "evidence" that has been discovered since the defendant's trial. It is true that the sole eyewitness recanted his testimony in his 2006 affidavit. However, he has now recanted his recantation two times, once in his 2012 affidavit and again in his testimony at the hearing. Neither side presented any case law on the issue of whether a recantation that itself has been recanted rises to the level of after discovered evidence.

Even if the 2006 recantation is "after discovered evidence", this court concludes that the motion must be denied. While the information imparted in the 2006 affidavit is material and has been discovered since the trial, and while it is arguable the evidence could not have been discovered prior to trial by the exercise of due diligence, the motion must still be denied. The evidence imparted in the 2006 affidavit would likely not change the result of the trial, primarily because Mr. Jenkins' 2006 recantation has been drastically tainted by his own 2012 affidavit and by his hearing testimony, i.e., there have been two recantations of his recantation.

The court also heard testimony from self-professed "jail-house lawyer" Ronald D. Skipper, who was the author of Mr. Jenkins' 2006 affidavit. His testimony was, in my view, inconsequential, as Mr. Jenkins did not deny that he made the statements in his 2006 affidavit. Instead, Mr. Jenkins now says those 2006 statements were simply not true.

For the foregoing reasons, the defendant's motion for new trial is denied.

AND IT IS SO ORDERED.



George C. James, Jr., Judge
Third Judicial Circuit

Sumter, South Carolina

December 6, 2013

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of General Sessions

George C. James, Jr., Circuit Court Judge

Appellate Case No. 2013-002735
Circuit Court Case No. 1999-GS-43-00756

RECEIVED

JUL 07 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA,

RESPONDENT,

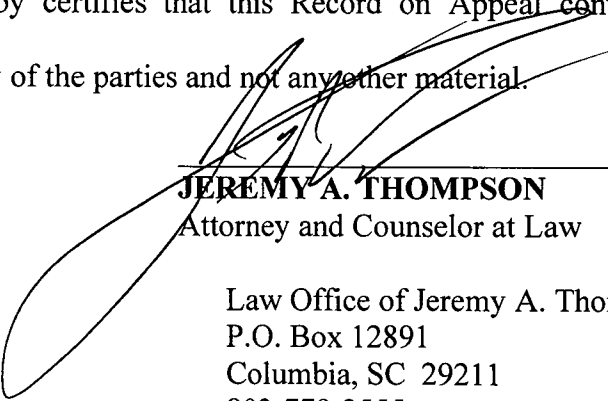
v.

KEVIN CHOICE,

APPELLANT.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.



JEREMY A. THOMPSON
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
P.O. Box 12891
Columbia, SC 29211
803-779-2555
803-779-2556 FAX
jeremyatlaw@yahoo.com

ATTORNEY FOR APPELLANT.

This 23rd day of June, 2016.