

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Dorchester County
Maite Murphy, Circuit Court Judge

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S.C. Supreme Court

DERVICK L. PARKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002083

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER) FIRST JUDICIAL CIRCUIT
2008-GS-18-0481

STATE OF SOUTH CAROLINA,

PLAINTIFF,

VS.

DERVICK LAMONT PARKER,

DEFENDANT.

TRANSCRIPT OF RECORD

APRIL 13 - 16, 2009
ST. GEORGE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN, JUDGE

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

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1 THE COURT: Ladies and gentlemen, let me tell you what
2 happens now. We are about to select our jury for our first
3 case for trial this week. And I am going to turn to Mr.
4 Harrison Bell, who's the senior assistant solicitor in
5 South Carolina.

6 The prosecuting attorney for the state is called a
7 "solicitor." I think in every other state in the country
8 they are called "district attorneys," or some other name.
9 I think we are the only state, maybe one other, where the
10 prosecuting lawyer's called the "solicitor."

11 But I will turn to the senior assistant solicitor, Mr.
12 Bell.

13 MR. BELL: Thank you, Your Honor. If it pleases the
14 Court, the State at this time will call Indictment No.
15 2008-GS-18-048 -- 481, the State of South Carolina vs.
16 Dervick Lamont Parker. He is charged in this indictment
17 with assault and battery with intent to kill, which has
18 been true billed by the Grand Jury. He's represented by
19 Mr. Mark Archer.

20 Mr. Archer, do you waive arraignment?

21 MR. ARCHER: I'd like to have him arraigned, Your
22 Honor.

23 THE COURT: Very well.

24 MR. BELL: As stated, Your Honor, this is Indictment
25 No. 2008-GS-18-0481, State of South Carolina vs. Dervick

1 Lamont Parker. He is charged with assault and battery with
2 intent to kill. Indictment states as (as read): "At a
3 court of general sessions, convened on April 21, 2008, the
4 grand jurors of Dorchester County presented, upon their
5 oath, assault and battery with intent to kill. The
6 defendant, Dervick Lamont Parker, did in Dorchester County
7 -- on or about February 28, 2008, with malice aforethought,
8 did commit an assault and battery upon the victim,
9 Detective Sergeant Shawn Gibbons, by shooting the victim --
10 victim; this offense being a violation of Section 16-3-620
11 of the South Carolina Common Code of Laws as amended,
12 against the peace and dignity of the State and contrary to
13 the statute, in such case made and provided."

14 Signed by B. Harrison Bell, Solicitor, and also signed
15 by Karen Martin, on April 15, 2008; true billed action of
16 the grand jury.

17 How does your client plead, Mr. Archer?

18 MR. ARCHER: He pleads not guilty.

19 MR. BELL: State's ready to proceed, Your Honor.

20 THE COURT: Very well. Thank you. Thank you very
21 much, Mr. Archer.

22 MR. ARCHER: Thank you.

23 THE COURT: Very well. Thank you. Thank you, Mr.
24 Bell.

25 Now, ladies and gentlemen, you have just heard Mr.

1 Bell arraign Mr. Parker. And you have heard Mr. Parker
2 plead not guilty. That means that the burden is on the
3 State to prove each and every allegation of the indictment
4 beyond a reasonable doubt. And we will talk much more
5 about that, those of you who serve on the jury.

6 Now, ladies and gentlemen, my first question to you is
7 going to be to ask whether or not any of you know or think
8 you may know, or have you heard or think you may have heard
9 anything about the allegations involving Mr. Parker. If
10 you heard or think you may have heard, or think you know
11 anything about these allegations, I'm going to ask you to
12 please stand and approach.

13 (Potential juror stands.)

14 THE COURT: If you'll just come forward for me,
15 please.

16 Counsel, you all come on forward, too.

17 Whereupon a private discussion
18 took place at the bar between the Court, the juror,
19 counsel, and the court reporter as follows:

20 THE COURT: You can come right round here.

21 POTENTIAL JUROR: (Complies.)

22 THE COURT: Hi. Come forward. Now, let me tell you -
23 - let me just move that. And if you'll come here. I need
24 our court reporter to hear -- loud enough for our court
25 reporter. And your name is?

1 POTENTIAL JUROR: Amy Warren.

2 THE COURT: Ms. Warren, do you know what your juror
3 number is?

4 POTENTIAL JUROR: 140.

5 THE COURT: Thank you.

6 POTENTIAL JUROR: I know him.

7 THE COURT: Okay.

8 POTENTIAL JUROR: I don't know anything about the
9 crime, but he is, like, one of my customers. I work at a
10 bank.

11 THE COURT: All right.

12 MR. ARCHER: "Him" being who?

13 POTENTIAL JUROR: Lamont.

14 THE COURT: All right. And how often do you see him?

15 POTENTIAL JUROR: A couple of times a month.

16 THE COURT: When he comes to the bank.

17 POTENTIAL JUROR: Yes.

18 THE COURT: And do you visit in each other's homes?

19 POTENTIAL JUROR: No.

20 THE COURT: Have you described the extent of your
21 relationship? He comes in the bank ---

22 POTENTIAL JUROR: My client.

23 THE COURT: He's your client. He's your banking
24 customer. All right. And does he have any loans, or you -
25 - just you help him ---

1 POTENTIAL JUROR: Checking.

2 THE COURT: Okay. Okay. Now, as a result of that
3 relationship, do you believe that that might or could in
4 any respect interfere with your ability to be completely
5 fair and impartial both to the State as well as to Mr.
6 Parker?

7 POTENTIAL JUROR: No.

8 THE COURT: Can you set that relationship completely
9 aside and make up your mind based upon what you hear in
10 court while court is in session?

11 POTENTIAL JUROR: Yes, ma'am.

12 THE COURT: Thank you so much.

13 MR. ARCHER: And this is my client?

14 POTENTIAL JUROR: Yeah.

15 THE COURT: Yeah. Mr. Parker.

16 You may go back and sit down.

17 POTENTIAL JUROR: Thank you.

18 THE COURT: Thank you so much.

19 (To Clerk of Court) She's staying.

20 THE COURT: Ladies and gentlemen, can you hear me if I
21 stay here?

22 JURORS: (No audible answer.)

23 THE COURT: Yeah? Great. If my voice should falter
24 or whatever, y'all let me know and I'll give you some more
25 volume as best I can.

1 Now, ladies and gentlemen, please allow me to
2 introduce you to Mr. Harrison Bell, who's talking in class.

3 (Sotto voce discussion between Mr. Bell and Mr. Hilton.)

4 This is Mr. Bell. And Mr. Bell, if you'll just
5 introduce -- I know you got Mr. Hilton -- but folks -- Mr.
6 Hilton's going to be assisting you in this case. Anyone --
7 any of the other solicitors?

8 MR. BELL: They're around. I could identify our whole
9 staff.

10 THE COURT: Well, I -- it's a challenge. And as your
11 name is called, I'm going to ask you to please stand, and
12 just so our jury can identify you. These would be the
13 lawyers who work in the -- work in the office. In the
14 Solicitor's Office, of course, our solicitor is Solicitor
15 David Pascoe. So now, and this, of course, is Mr. Bell.

16 My question is to each and every one of these folks is
17 going to be: "Are you related by blood or marriage, or
18 acquainted with these individuals?"

19 Yes, sir.

20 MR. BELL: Thank you, Your Honor. Again, my name's
21 Harrison Bell. I'm senior assistant solicitor here. I
22 work for you elected solicitor, Mr. David Pascoe. Also in
23 our office is our first assistant, Mr. Blair Jennings. We
24 have Mr. Russell Hilton, who will be assisting me. We have
25 Ms. Kendall Burch, who is in the courtroom. Ms. Jean

1 Popowski, who is assistant solicitor. Ms. Mandy used to be
2 Wilkerson, now Kimmons, works for us. We also have Virgil
3 Deas as our juvenile prosecutor.

4 (To Mr. Hilton) Is that everybody?

5 (Sotto voce discussion between Mr. Bell and Mr. Hilton)

6 We have Susan Williams who does our criminal domestic
7 violence prosecution, part-time. And Bill McIntosh --
8 William McIntosh --

9 THE COURT: Yeah.

10 MR. BELL: -- who does our driving under the influence
11 prosecutions.

12 THE COURT: There you go. I think that was everyone.
13 Thank you very much.

14 And again, the question as to each and every one of
15 those folks is: Are you related by blood or marriage, or
16 acquainted with any of those individuals?

17 And what do I mean when I use the definite -- or what
18 do I mean by the word "acquainted with"? Well, what I mean
19 by the word "acquainted with" is do you have any connection
20 with these folks at all. For example, you may have gone to
21 school -- I'm just trying to think if any of us are old
22 enough. I guess Pascoe's old enough to have been in school
23 20 years ago.

24 Whether or not you went to school with these folks 20
25 years ago, and you hadn't thought about them, you hadn't

1 seen them in 20 years. But you know you went to school
2 with them 20 years ago. Believe it or not, that
3 relationship, as old and moldy as it would be, would be
4 encompassed in my definition of "acquainted with."

5 It may be somebody that I'll ask you about that you
6 see each other because you happen to go to the grocery
7 store at the same time. You know who each other are, you
8 don't really visit, but you acknowledge each other; say
9 hello. Believe it or not, that relationship, as limited as
10 it is, would be encompassed within my definition of
11 "acquainted with."

12 I really am trying to find out if you have any
13 connection with any of these folks that I will ask you
14 about. So, I ask, are you related by blood or marriage or
15 acquainted with any of the lawyers that Mr. Bell's just
16 identified that are in the office?

17 (Potential juror stands.)

18 THE COURT: Tell me who you know.

19 POTENTIAL JUROR: Associate of Mr. Hilton.

20 THE COURT: All right. And --

21 POTENTIAL JUROR: We had a business transaction.

22 THE COURT: All right. Come here a minute. Let me
23 ask you that. And you are juror number ...

24 POTENTIAL JUROR: 122.

25 THE COURT: 122. Come on forward.

1 Whereupon a discussion was held at
2 the bar between the Court, all counsel, the Clerk of Court,
3 and the court reporter as follows:

4 THE COURT: All right. And I just need our court
5 reporter to be able to hear you.

6 POTENTIAL JUROR: Okay. A friend of ours, Tim
7 McCants, and I sold some products to Mr. Hilton through my
8 business.

9 THE COURT: Oh. Okay. Okay. And you do that
10 currently or in the past?

11 POTENTIAL JUROR: Currently.

12 THE COURT: Currently. All right. And as a result of
13 that business relationship, do you believe that that might
14 or could in any regard, interfere with your ability to be
15 completely fair and impartial?

16 POTENTIAL JUROR: None whatsoever.

17 THE COURT: Okay. Can you set that relationship
18 completely aside and make up your mind based upon what you
19 hear in court while court is in session?

20 POTENTIAL JUROR: Uh-huh.

21 THE COURT: You think you can?

22 POTENTIAL JUROR: Very good. Yes.

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

24 POTENTIAL JUROR: Thank you.

25 THE COURT: All right.

1 THE BAILIFF: Juror No. 101.

2 THE COURT: Hi. All right. Tell me who you know.

3 POTENTIAL JUROR: Harrison and Susan Williams.

4 THE COURT: All right. And is the nature of your
5 relationship personal, professional, acquaintance? What
6 would you -- how would you describe it?

7 POTENTIAL JUROR: All of the above.

8 THE COURT: All of the above.

9 POTENTIAL JUROR: Right.

10 THE COURT: And as a -- do you all visit in each
11 other's homes?

12 POTENTIAL JUROR: Uh-Uh.

13 THE COURT: That's a "no"?

14 POTENTIAL JUROR: No.

15 THE COURT: Okay. And how often do you all see each
16 other?

17 POTENTIAL JUROR: Probably once every couple of
18 months.

19 THE COURT: Every -- maybe couple of months?

20 POTENTIAL JUROR: Uh-huh.

21 THE COURT: Okay. As a result of that relationship,
22 might that, could that interfere in any regard in your
23 ability to be completely fair and impartial?

24 POTENTIAL JUROR: I think it could.

25 THE COURT: You think it could?

1 POTENTIAL JUROR: Yes.

2 THE COURT: Well, what I'm going to ask you to do is
3 just sit this one out.

4 POTENTIAL JUROR: Okay.

5 THE COURT: And if you would rather -- well, why don't
6 you just sit this one out. How bout that?

7 POTENTIAL JUROR: Okay.

8 THE COURT: Thank you. And if you'd be so kind as to
9 not discuss --

10 POTENTIAL JUROR: Okay.

11 THE COURT: -- anything with the other jurors. All
12 right.

13 POTENTIAL JUROR: Okay.

14 THE COURT: Thank you so much. All right.

15 (To Clerk of Court) She's out.

16 Anyone else?

17 JURORS: (No response.)

18 THE COURT: Very well. Now, ladies and gentlemen,
19 please allow me to introduce you to Mr. Mark Archer.

20 MR. ARCHER: (Stands.)

21 THE COURT: This is Mr. Archer. And my question to
22 you is: Are you related by blood or marriage, or
23 acquainted with Mr. Mark Archer? Or have you or any member
24 of your immediate family, to your knowledge, ever been
25 represented by Mr. Archer? If so, please stand at this

1 time.

2 JURORS: (No response.)

3 THE COURT: And I find no one standing.

4 (To Mr. Archer) Mark, you're still sole practitioner.

5 MR. ARCHER: Sole practitioner.

6 THE COURT: Very well. Thank you, Mr. Archer.

7 Now, ladies and gentlemen, please allow me to
8 introduce you to Mr. Parker.

9 MR. PARKER: (Stands.)

10 THE COURT: And this is Mr. Dervick -- (to Mr. Parker)
11 and your middle name is "Lamont." Is it "Lamond" or
12 "Lamont"?

13 MR. PARKER: Lamont.

14 THE COURT: With a "t"?

15 MR. PARKER: With a "t."

16 THE COURT: With a "t."

17 This is Mr. Dervick Lamont Parker. Thank you, Mr.
18 Parker, and you may be seated.

19 And I would ask: Are you related by blood or
20 marriage, or acquainted with Mr. Parker? If so, please
21 stand at this time.

22 JURORS: (No response.)

23 THE COURT: And I find -- other than we spoke with one
24 -- one person earlier -- very well. I find no one
25 standing.

1 Now, ladies and gentlemen, I am going to be reading to
2 you a list of potential witnesses. Potential witnesses.
3 And my question as to each and every one of these folks is:
4 Are you related by blood or marriage, or acquainted with
5 any of these individuals.

6 And if they happen to be in the courtroom, if you'd be
7 so kind as to stand, I would be very grateful. Sometimes
8 it's just easier to put a face with a name than just the
9 name alone.

10 All right. Detective Kenneth Vann; Detective Joe
11 Bistromowitz; Shawn -- Sergeant Shawn Gibbons; Sergeant Ray
12 Dixon; Lieutenant Earl Asbell; Corporal Frank Thompson;
13 Sergeant Sean Napoli; Detective Jason Mosher; John Parrott;
14 Major John Garrison.

15 MAJOR GARRISON: (Stands.)

16 THE COURT: This is Major Garrison. Thank you.

17 Lakeysa Duncan; Shelby Herr; Mia Anderson; Lilly
18 Gallman; Kathleen Amick; Dan Defreese; Donnell Campbell;
19 Quinntaeious Davis; Buster Edwards; Jamie Zensen; Chris
20 Limehouse; Eddie Porter; Harold Robinson.

21 (Sotto voce discussion between the Court and Mr. Archer.)

22 THE COURT: Christopher Smalls.

23 Very well. Are you related by blood or marriage, or
24 acquainted with any of those individuals? If so, please
25 stand at this time.

1 JURORS: (No response.)

2 THE COURT: And I find no one standing.

3 Now, ladies and gentlemen, I've got just a few
4 additional questions to ask of you. Does anyone -- does
5 any member of our jury panel have a member of your
6 immediate family or close personal friend -- now, these
7 close personal friends who are people who you are so close
8 with that you are -- they're like a member of your family.

9 Like, if it's a sibling that's like not your family
10 sibling, and you compare this close friend, they'd most of
11 the time be better, in terms of your feeling about them
12 than you do about that sibling you're not so crazy about.
13 That's what I'm talking about "close personal."

14 I'm not just talking about, you know, somebody that
15 you care a lot about that you just met two weeks ago, and
16 you think they're really cool. I'm talking about somebody
17 that really has been a long-standing, close personal
18 friend, that you really -- they're like a family member,
19 who is a law enforcement officer.

20 Now, a law enforcement officer that I'm thinking of,
21 someone with a law enforcement commission. But don't you
22 worry about that; I'll worry about that.

23 If anyone needs to respond, please stand.

24 (Several jurors stand.)

25 THE COURT: Wonderful. And here's what I need you to

1 do: State your name and your number if you know it, and
2 who that person is.

3 POTENTIAL JUROR: Donna Mayes, 83. My son is an
4 officer in Easley.

5 THE COURT: In Easley. Thank you so much, Ms. Mayes.
6 Yes?

7 POTENTIAL JUROR: Belinda Sanchez, No. 120. My father
8 is a deputy sheriff in Charleston County.

9 THE COURT: He is a sheriff in Charleston?

10 POTENTIAL JUROR: Yes.

11 THE COURT: He's a deputy sheriff?

12 POTENTIAL JUROR: Yes.

13 THE COURT: Thank you so much.

14 MR. ARCHER: What number was she?

15 THE COURT: Your number?

16 POTENTIAL JUROR: 120.

17 THE COURT: I'm sorry.. 120. Thank you so much.
18 Yes, sir.

19 POTENTIAL JUROR: Robert Shipman, 126. My
20 grandfather's a state constable for the State of South
21 Carolina. And my neighbor and close friend is a lieutenant
22 with the Summerville Police Department.

23 THE COURT: Oh. Is a lieutenant for Summerville
24 Police Department. Let me ask you a question.

25 ~~Whereupon a discussion took place~~

1 at the bar between the Court, counsel, Clerk of Court, and
2 the court reporter as follows:

3 THE COURT: Mark?

4 MR. ARCHER: Yes.

5 THE COURT: Come on up here.

6 (To the juror) Tell me who your neighbor is.

7 POTENTIAL JUROR: James Bateman.

8 THE COURT: They're not going to be a witness in this
9 case. I need to tell you that this case involves the
10 Dorchester County Sheriff's Department, and because of
11 that, do you believe because of your relationship with the
12 deputy, your neighbor, do you believe that you can set that
13 aside and not be affected by your relationship with your
14 neighbor and good friend?

15 POTENTIAL JUROR: Yes, Your Honor.

16 THE COURT: Okay. And can you set that relationship
17 aside and make up your mind based upon what you hear in
18 court, while court is in session?

19 POTENTIAL JUROR: Yes, Your Honor.

20 THE COURT: Very well. All right.

21 (To Clerk of Court) He's staying.

22 All right. I'm going to ask the next three questions
23 together, ladies and gentlemen. And I don't want you to
24 respond to any of them before I've asked all three. But
25 I'm going to ask -- well, I'm going to ask all four

1 together. And then, if you need to respond to any of
2 these, I want you to come forward.

3 The first question is this: Is there any member of
4 our jury who could not -- who feels as though you could not
5 or you are concerned that you could not give this defendant
6 a fair and impartial trial in a case where the alleged
7 victim is a police officer? That's the first question.

8 The second question is: Do you know of any reason
9 that you cannot -- that you cannot sit in judgement of
10 another person? Do you know of any reason why you cannot
11 sit in judgement of another person? That's the second --
12 don't answer -- respond yet.

13 The last -- and the next to the last is: Have you or
14 any member of your immediate family ever been accused,
15 convicted, or a victim of a violent crime?

16 And finally, this is the broad question and it's
17 supposed to be broad, and it's this: Do you know any
18 reason why you ought not, should not be a juror in this
19 case; being ready, willing, and able to be a juror in this
20 case; being completely fair and impartial both to the State
21 as well as to Mr. Parker; and being ready, willing, and
22 able to make up your mind based upon what you hear in
23 court, while court is in session; being completely
24 unaffected by extraneous, meaning, matters outside of
25 court?

1 And that really could be anything. It could be you
2 really wanted to tell me something earlier and you were
3 shy. But now you've like warmed up and you're more
4 comfortable telling me what you wanted me to -- to --
5 wanted to tell me earlier.

6 It may be that the tickets to Tahiti, they were really
7 above the visor in your car, and you completely forgot
8 about it until you went to your car during the break, and
9 you went, Oh, my gosh. I forgot about Tahiti. I'm
10 supposed to go to Tahiti Thursday afternoon.

11 It could be Ed McMahon. You got a cell phone call
12 during our break. Ed McMahon is at your house with that
13 big bunch of flowers and that big old check. And you just
14 can't think of a thing right now because you are
15 distracted.

16 It really could be anything. If -- if you know of any
17 reason why we should discuss your ability to be a juror in
18 this case in response to my last question, or if you need
19 to respond to the other questions that I asked, please come
20 forward at this time.

21 (Several jurors stand and come forward.)

22 THE COURT: (To Mr. Archer) And Mark, you come on,
23 too.

24 Whereupon discussions took place
25 at the bar between the Court, counsel, Clerk of Court, and

1 the court reporter as follows:

2 THE COURT: Hi. And you're jury number is ...

3 POTENTIAL JUROR: 84.

4 THE COURT: 84.

5 POTENTIAL JUROR: 84.

6 THE COURT: Yes, ma'am.

7 POTENTIAL JUROR: My son was shot and killed by a
8 black person.

9 THE COURT: All right. And when was that?

10 POTENTIAL JUROR: August, 2000.

11 THE COURT: August of 2000. Now, do you believe that
12 would have any affect on your ability to be completely fair
13 and impartial both to the State as well as to Mr. Parker.

14 POTENTIAL JUROR: I think it would.

15 THE COURT: I think I -- I understand that 100
16 percent.

17 POTENTIAL JUROR: That would be hard for me to be
18 objective.

19 THE COURT: Exactly. You would want to be, but you're
20 concerned about that and I completely understand. All
21 right. Tell you what I'm going to do. I'm going to ask
22 you to sit this one out, but stay with me. We'll give you
23 some further instructions. Thank you so much.

24 (To Clerk of Court) She's out.

25 THE BAILIFF: Juror No. 10.

1 THE COURT: Hi. And you are juror number...

2 POTENTIAL JUROR: 10.

3 THE COURT: Yes.

4 POTENTIAL JUROR: My grandfather was director of
5 Alcohol and Beverage Control for South Carolina and was
6 shot in the line of duty at least three times. So, that's
7 what this is related to, correct?

8 THE COURT: This is -- you're exactly correct. This
9 is what this is related to.

10 Do you believe that that might have an affect on your
11 ability to be completely fair and impartial?

12 POTENTIAL JUROR: Absolutely.

13 THE COURT: And I -- I understand that you wouldn't
14 want it to, but it would.

15 POTENTIAL JUROR: Yes, ma'am.

16 THE COURT: I'm going to ask you to sit this one out.
17 But stay tuned. We've got more work to do.

18 Thank you so much.

19 POTENTIAL JUROR: Yes, ma'am.

20 THE COURT: And don't -- if you'd be so kind as to not
21 to discuss ---

22 POTENTIAL JUROR: Yes, ma'am.

23 THE COURT: Thank you.

24 (To Clerk of Court) He's out.

25 THE BAILIFF: Juror No. 74.

1 THE COURT: Hello. Yes, ma'am.

2 POTENTIAL JUROR: I just don't feel in my heart I can
3 pass judgement. I mean, ultimately I just don't feel I can
4 -- I can do this.

5 THE COURT: I do understand, and thank you so much for
6 being so candid with me. Now, I'll ask you this question:
7 do you believe that that would hold true if it was a civil
8 matter rather than criminal?

9 POTENTIAL JUROR: Yes, ma'am.

10 THE COURT: You think it would?

11 POTENTIAL JUROR: I just feel like by me not seeing
12 the way this happened --

13 THE COURT: Sure. Sure. Sure. Sure. You would be
14 reluctant --

15 POTENTIAL JUROR: Right.

16 THE COURT: -- and you'd be fearful of doing it. I
17 want you to please sit this one out. But stay with me,
18 because I have some further instructions. Thank you so
19 much.

20 (To Clerk of Court) Out.

21 THE BAILIFF: Juror No. 114.

22 MR. ARCHER: 114?

23 THE COURT: Hi. I've been wanting to see this vest
24 all day long. Yes.

25 POTENTIAL JUROR: My wife was a victim of criminal

1 domestic violence the year before we met.

2 THE COURT: As a result of that experience, do you
3 believe that that might or could interfere with your
4 ability to be fair and impartial?

5 POTENTIAL JUROR: I seriously doubt it.

6 THE COURT: Okay. And do you believe that you could
7 as a juror listen to the evidence and make up your mind
8 based upon what you hear in court while court is in
9 session?

10 POTENTIAL JUROR: Yes, ma'am.

11 THE COURT: Thank you. Please stay with us. Thank
12 you for sharing that information.

13 THE BAILIFF: Juror No.4.

14 THE COURT: Thank you. Hello. Hi.

15 POTENTIAL JUROR: My sister-in-law was murdered and my
16 niece was shot in 1985.

17 THE COURT: As a result of those occurrences, do you
18 think that that might or could interfere with your ability
19 to be completely fair and impartial to both the State and
20 the Mr. Parker?

21 POTENTIAL JUROR: I suppose so.

22 THE COURT: You believe you can serve without a
23 problem?

24 POTENTIAL JUROR: Yeah.

25 THE COURT: And I'm noticing, just ever so slightly,

1 it's very emotional for you.

2 POTENTIAL JUROR: It's difficult.

3 THE COURT: I'm going to ask you to sit this one out.

4 (To Clerk of Court) She's out.

5 THE BAILIFF: Juror No. 19.

6 THE COURT: Hi. Yes.

7 POTENTIAL JUROR: You asked about the violent crime.

8 THE COURT: Yeah. The violent crime question.

9 POTENTIAL JUROR: Yeah.

10 THE COURT: Yes.

11 POTENTIAL JUROR: I'm not sure, but four years ago, my
12 nephew broke into a place in Manning.

13 THE COURT: Okay. Okay.

14 POTENTIAL JUROR: They got charged with juvenile.

15 THE COURT: He got charged. Uh-huh.

16 POTENTIAL JUROR: Also, he had a jail break in, too.

17 THE COURT: That's your nephew.

18 POTENTIAL JUROR: Yes, ma'am.

19 THE COURT: Is it -- currently? Is that on going?

20 POTENTIAL JUROR: No. He's out. He's out.

21 THE COURT: It's been resolved.

22 POTENTIAL JUROR: Yes, ma'am.

23 THE COURT: As a result of that, do you believe that

24 your nephew's interaction with law enforcement might or

25 ~~could interfere with your ability to be completely fair and~~

1 impartial to the State as well as to Mr. Parker?

2 POTENTIAL JUROR: It -- it wouldn't interfere. I
3 don't believe so.

4 THE COURT: Can you make up your mind based upon what
5 you hear in court while court is in session?

6 POTENTIAL JUROR: Yes, ma'am.

7 THE COURT: Thank you so much. Please stay with us.

8 POTENTIAL JUROR: Yes.

9 THE COURT: Thank you.

10 THE BAILIFF: Juror No. 39.

11 THE COURT: Hello.

12 POTENTIAL JUROR: I believe I know one of the
13 solicitors.

14 THE COURT: Okay. Which one.

15 POTENTIAL JUROR: Virgil Deas.

16 THE COURT: Yes. Yes. He's the juvenile prosecutor,
17 that's why he's not here and you weren't able to see him
18 here, because he stays in Family Court.

19 POTENTIAL JUROR: He owns a bowling alley and he used
20 bowl -- run a bowling league --

21 THE COURT: Yeah.

22 POTENTIAL JUROR: -- so I've known him for quite a --
23 quite a few times.

24 THE COURT: As a result of that relationship, do you
25 believe that that could interfere with your ability to be

1 fair and impartial, both to the State as well as to Mr.
2 Parker?

3 POTENTIAL JUROR: No.

4 THE COURT: All right. Can you set that relationship
5 aside and make up your mind based upon what you hear in
6 court, while court is in session?

7 POTENTIAL JUROR: Yes.

8 THE COURT: Thank you, sir. If you would, please stay
9 with us.

10 THE BAILIFF: Juror No. 96.

11 THE COURT: Hi.

12 POTENTIAL JUROR: I was a victim of high and
13 aggravated assault and battery.

14 THE COURT: All right. Oh. My goodness. I'm so
15 sorry. Do you believe that this might or could interfere?

16 POTENTIAL JUROR: Yes, ma'am.

17 THE COURT: Let me ask you this question: Do you
18 think you'd be able to serve in a civil jury?

19 POTENTIAL JUROR: Yes, ma'am.

20 THE COURT: Would you be kind enough to? You pick the
21 week that works for you. Okay. Thank you.

22 CLERK OF COURT: We're transferring her?

23 THE COURT: Yeah. We'll transfer her services. She
24 was very emotional in that she was a victim of assault and
25 ~~batter of a high and aggravated nature.~~

1 THE BAILIFF: Juror No. 117.

2 THE COURT: Hello. Yes.

3 POTENTIAL JUROR: My son was assaulted in Myrtle Beach
4 last year, and he's -- they caught the people, but we
5 haven't gone to court.

6 THE COURT: Okay.

7 POTENTIAL JUROR: And special victim has helped us.
8 So, I just wanted to let you know.

9 THE COURT: Thank you so much. And as result of his
10 experience, do you believe that that could interfere with
11 your ability to be completely fair and impartial both to
12 the State, as well as to Mr. Parker?

13 POTENTIAL JUROR: I don't think I -- have no problem
14 with that.

15 THE COURT: All right. And do you believe that ---

16 POTENTIAL JUROR: I think I'd be learning some things
17 --

18 THE COURT: Yes.

19 POTENTIAL JUROR: -- when we go to court or whatever,
20 you know.

21 THE COURT: Yes. And do you believe that you could
22 make up your mind based upon what you hear in court, while
23 court is in session?

24 POTENTIAL JUROR: Uh-huh.

25 THE COURT: That's a "yes"?

1 POTENTIAL JUROR: Yes.

2 THE COURT: Thank you so much. Please stay with us.

3 (Sotto voce discussion between the Court
4 and the Clerk of Court.)

5 THE COURT: (To the attorneys) All right. Strikes are
6 five and five.

7 Ladies and gentlemen, let me tell you what happens
8 next. And I would like to share with you that I myself --
9 what seems like seconds ago -- sat where you are now
10 sitting as a juror. And my name was called and I had to do
11 what you're about to do.

12 And one thing I can remember is that I didn't know
13 what to do with my hands. And I wanted to have been able
14 to leave my hands in my seat when I came up here. But if
15 your name is called, then I want you to walk up here, come
16 through the swinging gates, and then you'll stand here.
17 (Indicates.) And yes, it gives the lawyers one more
18 opportunity to look at you.

19 And you'll first hear from the State, and you'll hear
20 one of two things. You will either hear, "Excuse the
21 juror" -- and if you hear, "Excuse the juror," please just
22 take your seat. Please know that there are about a million
23 different considerations that go into this part of the
24 process. And I can promise you that no one here means you
25 any embarrassment whatsoever. I promise you that.

1 But you will either hear, "Excuse the juror," at which
2 point you'll take your seat, of "Present the juror." And
3 if you hear "Present the juror," then you'll hear from Mr.
4 Archer. And you will either hear, "Excuse the juror," or
5 "Seat the juror." And if you hear, "Seat the juror," then
6 you will take your seat in the jury box.

7 So, if you brought a book with you or an umbrella or a
8 jacket or a pocketbook, a newspaper; and you're not
9 supposed to have a cell phone or a beeper or a -- or a
10 computer device; but whatever you have with you, if you
11 have a beeper or a cell phone, that's okay. Just give it
12 to Ms. Graham on the way when you pass through with the
13 beeper or the cell phone. And she doesn't even have time
14 before we conclude today to make any international phone
15 calls. So, you're okay today. Yeah.

16 All right. And again, we are now going to proceed
17 with that now. So, if your name is called, just come
18 through and stand where I've been -- now standing. Very
19 well.

20 CLERK OF COURT: This is your list.

21 THE COURT: This is my list?

22 CLERK OF COURT: Yes, ma'am.

23 THE COURT: Turn it over to you, Ms. Graham.

24 CLERK OF COURT: Thank you very much.

25 As I call your name, please come forward and turn

1 around and face the clock.

2 Juror No. 29, Norma Delp. What saith the State?

3 MR. BELL: Present the juror.

4 CLERK OF COURT: The Defense?

5 MR. ARCHER: Present Ms. Delp, please.

6 CLERK OF COURT: Have a seat in our jury box to the
7 right.

8 Juror No. 90, Todd Miles. What saith the State?

9 MR. BELL: Present the juror.

10 The Defense?

11 MR. ARCHER: Please excuse this juror.

12 CLERK OF COURT: Have a seat in the audience.

13 Juror No. 140, Amy Warren. What saith the State?

14 MR. BELL: Please excuse the juror.

15 CLERK OF COURT: Have a seat in the audience.

16 Juror No. 114, Kenneth Rogers, II. What saith the
17 State?

18 MR. BELL: Present the juror.

19 CLERK OF COURT: The Defense?

20 MR. ARCHER: Present Mr. Rogers.

21 CLERK OF COURT: Thank you. Have a seat in the jury
22 box.

23 Juror No. 126, Robert Shipman. What saith the State?

24 MR. BELL: Present the juror.

25 CLERK OF COURT: The Defense?

1 MR. ARCHER: Please excuse this juror.

2 CLERK OF COURT: Have seat in the -- back in the
3 audience.

4 Juror No. 7, William Behie. What saith the State?

5 MR. BELL: Present the juror.

6 CLERK OF COURT: The Defense?

7 MR. ARCHER: Present Mr. Behie.

8 CLERK OF COURT: Have a seat in the jury box.

9 Juror No. 37, James Eatmon. What saith the State?

10 MR. BELL: Present the juror.

11 CLERK OF COURT: The Defense?

12 MR. ARCHER: Please seat Mr. Eatmon.

13 CLERK OF COURT: Have a seat in the jury box.

14 Juror No. 71, Robert Kline. What saith the State?

15 MR. BELL: Present the juror.

16 CLERK OF COURT: The Defense?

17 MR. ARCHER: Seat the juror.

18 CLERK OF COURT: Have a seat in the jury box.

19 Juror No. 47, Randall Funderburg. What saith the
20 State?

21 MR. BELL: Present the juror.

22 CLERK OF COURT: The Defense?

23 MR. ARCHER: Seat the juror.

24 CLERK OF COURT: Have a seat in the jury box.

25 Juror No. 73, Darla Koke. What saith the State?

1 MR. BELL: Present the juror.

2 CLERK OF COURT: The Defense?

3 MR. ARCHER: Seat the juror.

4 CLERK OF COURT: Juror No. 79, Catherine Mahon. What
5 saith the State?

6 MR. BELL: Present the juror.

7 CLERK OF COURT: The Defense?

8 MR. ARCHER: Please excuse Ms. Mahon.

9 CLERK OF COURT: Have a seat back in the audience.

10 Juror No. 103, Kathleen Pittel. What saith the State?

11 MR. BELL: Present the juror.

12 CLERK OF COURT: The Defense?

13 MR. ARCHER: Present the juror.

14 CLERK OF COURT: Have a seat in the jury box.

15 Juror No. 57, Kelli Henderson. What saith the State?

16 MR. BELL: Present the juror.

17 CLERK OF COURT: The Defense?

18 MR. ARCHER: Please seat the juror.

19 CLERK OF COURT: Have a seat in the jury box.

20 Juror No. 86, Kay McDonald.

21 MR. ARCHER: What was that?

22 CLERK OF COURT: Number 86.

23 What saith the State?

24 MR. BELL: Present the juror.

25 CLERK OF COURT: The Defense?

1 MR. ARCHER: Excuse the juror.
2 CLERK OF COURT: Have a seat in the audience.
3 Juror No. 78, Don Luttrell, Jr. What saith the State?
4 MR. BELL: Present the juror.
5 CLERK OF COURT: The Defense?
6 MR. ARCHER: Seat Mr. Luttrell, please.
7 CLERK OF COURT: Have a seat in the jury box.
8 Juror No. 19, Mark Carter. What saith the State?
9 MR. BELL: Please excuse the juror from this trial.
10 CLERK OF COURT: Have a seat back in the audience.
11 Juror No. 120, Belinda Sanchez. What saith the State?
12 MR. BELL: Present the juror.
13 CLERK OF COURT: The Defense?
14 MR. ARCHER: Please excuse this juror.
15 CLERK OF COURT: Have a seat in the audience.
16 Juror No. 39, Thomas Elliget. What saith the State?
17 MR. BELL: Present the juror.
18 CLERK OF COURT: The Defense?
19 MR. ARCHER: Present the juror, please.
20 CLERK OF COURT: Have a seat in the jury box.
21 Juror No. 63, Pamela Husser. What saith the State?
22 MR. BELL: Present the juror.
23 CLERK OF COURT: The Defense?
24 MR. ARCHER: Please seat Ms. Husser.
25 CLERK OF COURT: Have a seat in the jury box.

1 THE COURT: All right. It will be two.

2 CLERK OF COURT: Two alternates?

3 THE COURT: Two alternates. One and two.

4 CLERK OF COURT: One and two.

5 THE COURT: This will be Alternate 1.

6 CLERK OF COURT: Juror No. 102, Betty J. Perkins.

7 What saith the State?

8 MR. BELL: Present the juror.

9 CLERK OF COURT: The Defense?

10 MR. ARCHER: Please seat the juror.

11 CLERK OF COURT: Have a seat in the jury box.

12 THE COURT: And Alternate 2.

13 Strikes are one and two.

14 CLERK OF COURT: Juror 118, Thomas Roth. What saith
15 the State?

16 MR. BELL: Present the juror.

17 CLERK OF COURT: The Defense?

18 MR. ARCHER: Excuse the juror, please.

19 CLERK OF COURT: Have a seat back in the audience.

20 Juror No. 128, Pamela Smith. What saith the State?

21 MR. BELL: Present the juror.

22 CLERK OF COURT: The Defense?

23 MR. ARCHER: Please seat Ms. Smith.

24 CLERK OF COURT: Have a seat in our jury box.

25 Thank you, Judge.

1 THE COURT: Thank you. Counsel, are there any matters
2 regarding the qualification or the selection of the jury
3 from the State?

4 MR. BELL: None from the State, Your Honor.

5 THE COURT: From the Defense?

6 MR. ARCHER: None, Your Honor.

7 THE COURT: Very well. All right.

8 Ladies and gentlemen, those of you who are now in our
9 audience are known as our "remaining jurors." I have to
10 give you some instruction about how we will stay in contact
11 with each other. So, what I'm going to ask you to do is
12 to, first of all, notice that in your packet you have these
13 little cards called "juror information." Now, if you are
14 like me, you don't know where this is. So, Mr. Taylor --
15 oh, Ms. Simmons. Ms. Simmons in the back has a big stack
16 of these, and I want you to feel free to take one or two.

17 If you're really worried about losing it, take three
18 or four, because they really do want you to have a card,
19 because that has the juror information number on it. And
20 I'm going to ask you to please call the juror information
21 number after six o'clock tomorrow evening, tomorrow
22 evening. And you will either be asked to call back at a
23 particular time, or to return to the courthouse for the
24 selection of our next jury.

25 Now, whichever is the instruction, please follow it.

1 Now, remember, not six o'clock this evening, but six
2 o'clock tomorrow evening. Please call after six o'clock
3 tomorrow evening. That means you can call at 6:01, 6:30,
4 7:05. If you are up walking the floor Wednesday morning,
5 call at 3 a.m. Just give us until six o'clock tomorrow,
6 Tuesday evening, to put the recording on the machine for
7 you. So, by that time, we'll know what our schedule is.

8 Now, I want to thank you for each and every tick of
9 the clock. Y'all have been wonderful. Thank you so kindly
10 for your time, and if you'll do so quietly, you are free to
11 go. And thank you so much. I think they'll retrieve your
12 badges at the back. Thank you.

13 (Remaining jurors exit the courtroom.)

14 THE COURT: Now, ladies and gentlemen, we are not
15 going to start this evening. We're going to start in the
16 morning at 9:30; at 9:30. Now, before you leave this
17 evening though, Ms. Saulsberry -- and this is Ms.
18 Saulsberry. I talked about Ms. Saulsberry, but this is Ms.
19 Saulsberry.

20 She's going to take you to your jury room, and she'll
21 show you how to come and go from your jury room to the
22 outside world. And I'm going to ask you to please be in
23 your jury room at 9:30 in the morning, ready to begin this
24 matter.

25 Now, let me give you a hint: Don't have a big

1 breakfast. Put your bowl of Wheaties down in the morning,
2 because Ms. Saulsberry's famous about breakfast. She will
3 give you breakfast and coffee and candy and pop; and
4 cookies and crackers and -- she's remarkable. She spoils
5 us all absolutely rotten, and I gain five pounds every
6 single time. It's awful.

7 She's -- she's so wonderful. You're not going to want
8 to -- you're going to say, Can I serve next week, too?
9 Just because she's just that wonderful.

10 We had a long -- we had a trial that went on for a
11 long time. And just for your informational purposes, this
12 is a one-week term.. This is a one-week term.

13 But this particular case was a lengthy trial. And at
14 one point, Ms. Saulsberry brought in her griddle, and she
15 fixed them pancakes and bacon and eggs. It was remarkable,
16 because they teased her, and she said, "Sure I'll do that."

17 And she did. So she's remarkable.

18 But ladies and gentlemen -- so, be mindful of that.

19 Now, I do not know whether or not there will be any
20 publicity about this matter whatsoever. I really don't
21 know. But in an abundance of caution, I'm going to
22 admonish and warn you, do not read anything, do not listen
23 to anything about this matter. And that means the
24 television, the radio; the internet, because you can listen
25 to and read the internet. Don't read the internet, don't

1 read the newspaper, don't listen to the television or the
2 radio.

3 You must receive all of the information from which you
4 will make up your mind here in court, while court is in
5 session.

6 Now, those of you that brought a cell phone or beeper
7 in, please remember to leave your beeper or your cell phone
8 somewhere other than the courthouse. And there's a reason
9 for it, and I don't mind telling you what the reason is.

10 I'll give you an example. Several years ago in
11 Charleston, a jury had spent all week trying a case. And
12 they go into the jury room, and it happened to be a civil
13 matter. And they were trying to figure something out, and
14 somebody said, "Oh. Wait. Wait. I have a buddy who's a
15 doctor. I'll just call and ask him."

16 Click, click, click on the cell phone.

17 Well, when that came to light, the entire trial had to
18 be thrown out and they had to start all over again. So,
19 that's the reason you must receive all the information from
20 which you will make up your mind here in court, while court
21 is in session.

22 If you forget and you bring your beeper or your cell
23 phone with you, not to worry. Let us know, let Ms.
24 Saulsberry know. And we will take good and careful
25 possession of it. And Ms. Graham will make -- how many?

1 She promises she will not make more than three
2 international phone calls. Doesn't know more than three
3 people right now in Europe. So, you're fairly safe.

4 So -- but do let us know if you happen to forget. But
5 the best course of action, of course, is to leave it away
6 from the courthouse.

7 Now, ladies and gentlemen, those -- you're going to be
8 going home. You won't be going to work. Anybody work at
9 night? Anybody an evening worker?

10 (One juror indicates affirmatively.)

11 THE COURT: Not tonight. You need to call them. It's
12 exactly as though -- your jury service -- all these other
13 folks who work during the day, it's exactly the same. You
14 cannot possibly work at night and be a juror all day.
15 You'll be exhausted. You'll come down with some horrible
16 cold or tummy flu. It'll be terrible.

17 But most importantly, we want you alert; we want you
18 here.

19 Now, oft times employers will say something like,
20 "Well, you know, you're jury service is in the day. You
21 can come at night and do your jury service in the day. You
22 are to meet that inquiry with this: Judge Goodstein has
23 told me not to go to work. I must be rested to serve on
24 jury duty.

25 If I need to talk to or send a note or email, I am

1 delighted to that, because I don't want you to have --
2 don't want anybody upset, but I don't want you to -- I
3 don't want you going to work at night. You must rest,
4 because you must be -- you must give this your crisp
5 attention, rested attention.

6 Okay. Now, y'all are going to be going home, and
7 there's going to be somebody curious about what you have
8 been up to. No -- no doubt some -- our spouses happen to
9 know what you've been up to, because he witnessed it.

10 But you must not discuss this matter or allow anyone
11 to discuss it with you. And you can say, "Well, doggone,
12 Judge, we don't know anything. We just got here. You just
13 qualified -- you didn't really tell us much."

14 Well, I know, but I told you a little bit. So, you do
15 have a little bit of information, and because you have a
16 little bit of information -- I introduced you to some
17 folks. That's a little bit of information. Because you
18 have that small amount of information, I will give you this
19 instruction: Do not discuss this matter, and do not allow
20 anyone to discuss it with you, because you must receive all
21 of the information from which you will make up your mind
22 here in court, while court is in session.

23 Let me explain the reason for that instruction,
24 because you're going to get tired of it. I'm going to give
25 it to you every single time we leave each other. The

1 reason for the instruction is that we have learned from
2 200-plus years from trying cases in the United States that
3 apparently the way that we are put together -- what the
4 kids say, "The way we are wired" -- the way we are put
5 together, if we begin to talk about something, we begin to
6 form opinions about it. Apparently, it is the way we are
7 made.

8 It is so important, it is absolutely critical, that as
9 you sit as a juror, that you are able to listen open
10 mindedly to all of the evidence as it comes, and that you
11 not make up your mind until you've heard all the evidence,
12 my instruction on the law, and then you have your time to
13 deliberate. You must keep an open mind. And that's the
14 reason for the instruction. It's to support your ability
15 to listen open mindedly to all the evidence.

16 Now -- so, I'll give you that instruction.

17 There must be one of your number who is your presiding
18 juror. And I'm going to ask you 12 to select your own
19 presiding juror.

20 And a presiding juror has three additional tasks:
21 Number one, presiding juror will actually take physical
22 possession of the verdict form, and once the deliberations
23 of the jury are finished, will write the verdict of the
24 jury on the verdict form.

25 The presiding juror will preside in the jury room just

1 to be sure that everybody has a chance to participate in
2 the deliberations. And then finally, the presiding juror
3 is the jury's spokesperson here in court. And what that
4 means is in the event that the jury needs to communicate
5 with me for whatever reason: Tell Ms. Saulsberry too much
6 food; or it's too hot, it's too cold, I can't hear.
7 Whatever, whatever. You'll -- they'll take that down in
8 writing, give it to, I'm sure, Ms. Saulsberry, who will in
9 turn give that to me.

10 And those are the additional tasks of the presiding
11 juror.

12 When you have selected your presiding juror, they're
13 going to take this seat right here, front and center,
14 closest to the door. Sometimes the number one
15 characteristic of the presiding juror is you had the seat.
16 I know that campaign season is sort of over, so y'all keep
17 your slogans and your campaigns to a minimum.

18 But when you have selected your presiding juror, if
19 you would -- you can give me a note and let me know that
20 you have been selected as the presiding juror; you can just
21 tell me when you walk in; or you can just take and keep the
22 seat, the front row seat closest to the door and just see
23 if I'm smart enough to figure it out. Anyone of those
24 methods will work just fine.

25 And as our alternates, I'm going to ask the two of you

1 to please keep those seats throughout the trial. Now,
2 y'all can flip flop. You can check out the other seat and
3 see how that one suits you, but I do need you all to -- to
4 be there, so I can keep up with you as our alternates. And
5 I promise it's not so we know where to put the whoopie
6 cushion. I promise. Really so I can keep up with you as
7 our alternates.

8 Now, ladies and gentlemen, in the morning when you
9 come into court, some people at 9:30 in the morning aren't
10 as bright eyed and bushy tailed as they might be at eleven,
11 and you want to bring your coffee with you or water with
12 you or what -- you know, whatever. She also has Coke and
13 Diet Coke and Pepsi and Mountain -- she's amazing.

14 If you want to bring something in your cup just to --
15 to drink, to sip on, that's perfectly fine. Please feel
16 free to do that. She's going to have -- she has candy back
17 there. She's truly -- you -- you are in for a treat.

18 If you want to bring candy with you in the courtroom,
19 I have no problem with that. The only thing that I would
20 ask you to do is, you know, like when you're someplace
21 you're supposed to be quiet, and you have candy and you
22 want the candy. And you unwrap it and it's like a sound
23 that's huge. Just kind of half-way unwrap it so it's not
24 like this huge crackly sound. But please feel free to do
25 that too. That's fine. We're not all going to be like

1 having a picnic out here, but if you want to have a little
2 piece of chocolate or a little, you know, hard candy so
3 you're not coughing, I -- when I have to be quiet, I cough
4 a lot, too. I don't know what that's about, but in any
5 event, please feel free to do that. We want you to be
6 attentive, but we certainly want you to be comfortable,
7 too.

8 Now, I believe that really does finish my
9 instructions. My very final one is going to be: Do not
10 discuss this matter or allow anyone to discuss it with you.

11 Have a lovely evening, and I so look forward to seeing
12 you in the morning at 9:30. You can go with Ms.
13 Saulsberry.

14 (Jury exits at 4:31 p.m.)

15 THE COURT: All right. Now, I understand that there
16 are some motions. Mr. Archer.

17 MR. ARCHER: Well, there was one we discussed back
18 about avoiding reference to drug activity.

19 THE COURT: I think -- I think we have resolved that.
20 I'm satisfied that we -- that -- that what -- hopefully,
21 what I'm contemplating would be testified is what we were --
22 -- you know, we were investigating this activity at this
23 apartment complex. We identified folks that were coming
24 and going. And -- and I had identified him; I knew him to
25 be someone that lived at the apartment. I knew his name; I

1 knew his face.

2 MR. ARCHER: And I -- I mean, I know you informed --

3 THE COURT: Yeah.

4 MR. ARCHER: -- the victim. But I'd ask you to also,
5 at least with respect to the other police officers,
6 indicate that ---

7 THE COURT: Oh.

8 MR. ARCHER: -- that that's not something --

9 THE COURT: Mr. Bell is very reliable on that.

10 MR. ARCHER: Yes.

11 THE COURT: Wonderful. Of course, he would -- course,
12 we also discussed, in an abundance of putting anything on
13 the record, if the door gets opened --

14 MR. ARCHER: I ---

15 THE COURT: -- more than that, as you know --

16 MR. ARCHER: I ---

17 THE COURT: -- then the ---

18 MR. ARCHER: I understand.

19 THE COURT: --- then that's a horse of a different
20 color, so to speak.

21 MR. ARCHER: Right. Right. Now, I had -- there's a
22 motion to suppress a statement that my client gave.

23 THE COURT: Uh-huh. Uh-huh.

24 MR. ARCHER: And I don't know what the position is of
25 the Solicitor. I think he had said something that that may

1 or may not be necessary.

2 MR. BELL: I think my -- my position at this point is
3 I'm not going to introduce any statements given by the
4 defendant in the State's case in chief.

5 THE COURT: Okay.

6 MR. ARCHER: All right. That takes care of that.

7 And I had a -- had a motion in order to disclose
8 criminal records. And I'm not talking about police
9 officers. I don't even run them. But of lay witnesses
10 that he -- that the Solicitor was going to call. And --

11 THE COURT: Okay.

12 MR. ARCHER: -- to be quite honest, even on the
13 defendant's, the copies of criminal records that I have are

14 --

15 THE COURT: You can't read them.

16 MR. ARCHER: -- unread -- can't read them. I -- I got
17 them second or third hand when I picked up the case.

18 THE COURT: Yeah. Yeah. Yeah.

19 MR. BELL: I have no objection to that, Your Honor. I
20 thought they'd been provided, but I'll make sure they're
21 clear copies of --

22 MR. ARCHER: Right.

23 THE COURT: Okay. Very well.

24 MR. ARCHER: And I had a motion to make to determine -

25

1 THE COURT: And can I just be clear who they are so
2 I'm -- I'm -- there's no question about that.

3 MR. ARCHER: Your Honor, I'm not exactly sure. He's
4 mentioned, I think, calling some ---

5 THE COURT: Would it be on the witness list? I'm
6 looking at 11, maybe, through 13; and 17 and 18.

7 MR. BELL: That's the ones I would have believed --
8 Lakeysha Duncan, Mia Anderson, Donnell Campbell,
9 Quinntaeious ---

10 THE COURT REPORTER: I'm sorry. That name again? The
11 last one.

12 THE COURT: Quinntieious?

13 MR. BELL: "Quinntieious" is how I have it.

14 THE COURT: Davis?

15 MR. BELL: Q-u-i-n-n-t-i-e-i-o-u-s.

16 THE COURT: Okay. And -- all right. Very well.
17 Those are the folks. Okay.

18 MR. ARCHER: All right. So, he'll give me those in
19 the morning, I guess.

20 THE COURT: Yeah.

21 MR. BELL: Or this afternoon, whenever.

22 MR. ARCHER: Sure.

23 THE COURT: Great.

24 MR. ARCHER: And I didn't know if he attended to -- I
25 -- I anticipate my client will take the stand.

1 THE COURT: Okay.

2 MR. ARCHER: Of course, preserving the right there.

3 THE COURT: Of course.

4 MR. ARCHER: And I wanted to determine what, if any,
5 prior convictions he may have.

6 THE COURT: Yes. Exactly. He needs that to consult
7 with you. Not a problem with him getting that, I'm sure.

8 MR. ARCHER: And we've got time to deal with that one.

9 THE COURT: I think so. Because we have a list, what,
10 23 witnesses. Yes.

11 MR. ARCHER: The statement's fairly important.

12 THE COURT: Okay. Got it.

13 (Sotto voce discussion between the Court and another
14 attorney on an unrelated issue to this trial.)

15 THE COURT: I'm so sorry. Are y'all -- what else did
16 you have?

17 MR. ARCHER: That was -- I had a motion on chain of
18 custody. But I'm not -- he -- he says he's going to
19 establish it going through SLED. And I'm not going to ---

20 MR. BELL: He's agreed that all I need to do was get
21 whatever evidence to SLED and then I don't have to worry
22 about the internal ---

23 THE COURT: Once it gets to SLED?

24 MR. BELL: Once it gets to SLED.

25 MR. ARCHER: Yeah. And I mean --

1 THE COURT: Okay. And let me see the two of you on
2 that issue just a second.

3 MR. ARCHER: Uh-huh.

4 (Bench conference.)

5 THE COURT: Okay. Anything else we can tend to in
6 terms of motions this evening?

7 MR. ARCHER: Nine-thirty in the morning, Your Honor.

8 THE COURT: Nine-thirty in the morning. Nine-thirty
9 in the morning. Okay. Great. Very well.

10 All right. I will see you then.

11 MR. ARCHER: Thank you.

12 THE COURT: You said -- maybe if you get here a few
13 minutes early that might be good, so we can do that, that
14 little matter that I talked about.

15 MR. ARCHER: Yes. Yes, Your Honor. I'll do my best.
16 Like I said, I had computer crashes.

17 THE COURT: I know.

18 MR. ARCHER: I haven't gotten a lot of sleep for the
19 last couple of nights.

20 THE COURT: Well, I hope tonight is different. It's
21 awful to try to try a case and you're not rested. All
22 right.

23 (Off the record at 4:38 p.m.)

24 DAY TWO

25 (On the record at 9:56 a.m.)

1 THE COURT: Thank you all, so much, and everyone please
2 be seated. And good morning.

3 THE COURT: (To court reporter) You ready?

4 COURT REPORTER: Yes, ma'am.

5 THE COURT: All right. And I am looking for Mr.
6 Parker.

7 Good morning, Mr. Archer.

8 MR. ARCHER: How are you, Judge?

9 THE COURT: I'm fine and you?

10 MR. ARCHER: (No audible response.)

11 THE COURT: All right. Good morning, Mr. Parker.

12 DEFENDANT: Good morning.

13 THE COURT: How are you?

14 DEFENDANT: I'm fine.

15 THE COURT: Good. Good. All right.

16 Now, Mr. Archer, I wanted to place on the record that
17 -- what we discussed last evening --

18 MR. ARCHER: Yes.

19 THE COURT: -- about the chain of custody. And I'm --

20 MR. ARCHER: I'm not objecting to the chain of custody
21 after it leaves the police department and heads to SLED.

22 THE COURT: All right.

23 MR. ARCHER: And I may not object to it otherwise, but
24 I'm not concerned with it after it leaves SLED.

25 THE COURT: I -- exactly. In other words, once it's

1 at SLED, if you will --

2 MR. ARCHER: Right.

3 THE COURT: -- that will be the end of the concern.
4 And you've discussed that with Mr. Parker?

5 MR. ARCHER: Yes, I have.

6 THE COURT: All right. And you understand that, Mr.
7 Parker?

8 DEFENDANT: Yes, ma'am.

9 THE COURT: And you're okay with that?

10 DEFENDANT: Yes, ma'am.

11 THE COURT: Very well. Okay. Very well. All right.

12 Anything further before we bring the jury out from the
13 State?

14 MR. BELL: Nothing from the State, Your Honor.

15 THE COURT: All right. And from the Defense?

16 MR. ARCHER: Nothing from the Defense. I'd like to
17 place this over by the TV set just ---

18 THE COURT: Certainly. Certainly.

19 (Sotto voce discussion between the Court and the bailiff.)

20 THE COURT: Very well.

21 MR. ARCHER: I assume that TV works.

22 THE COURT: It -- it did the last time we used it.
23 I'll put it that way.

24 MR. ARCHER: That's all you can do.

25 THE COURT: So we'll have a test. Very well. And all

1 right.

2 I think we're ready to proceed. If you'd give us our
3 jury.

4 THE BAILIFF: Yes, ma'am.

5 THE COURT: Ms. Teal, you ready to swear this jury in?

6 CLERK OF COURT: Yes, ma'am.

7 THE COURT: You want to do it for me?

8 CLERK OF COURT: Yes, ma'am.

9 THE COURT: Great.

10 (The jury enters the courtroom at 9:58 a.m.)

11 THE COURT: Good morning, ladies and gentlemen. At
12 this time, I'm going to call on Ms. Etheridge and ask her
13 to swear you in as the jury in this case.

14 CLERK OF COURT: Please stand and raise your right
15 hand to be sworn.

16 (Whereupon the jury is sworn at 9:59 a.m.)

17 (All say "I do" and are seated.)

18 THE COURT: All right. Now, ladies and gentlemen, I
19 have a few preliminary remarks that -- that I want to make
20 to you, and then we're going to get right into the trial of
21 this case.

22 Now, ladies and gentlemen, the case that we are about
23 to try is the case of the State vs. Mr. Parker, who is the
24 defendant in this matter. What I will say to you now is
25 intended to serve as an introduction to the trial of this

1 case. These remarks are not a charge on the law in this
2 case. I will instruct you on the law applicable to this
3 case at the end of the trial, before you retire to consider
4 your verdict. This is merely an explanation of the
5 procedure that we will follow in the trial of this case, so
6 that you may better understand what may be happening.

7 Now, ladies and gentlemen, most -- in most cases,
8 jurors wonder about the taking of notes, the taking of
9 notes. And there is a debate that is ongoing about the
10 taking of notes, and I wanted to talk to you about that.

11 The concern about the taking of notes is that as a
12 juror makes a note, they may miss something as it's coming
13 from the witness stand. The other concern is that during
14 the deliberations, if one juror has a note and another
15 juror doesn't have a note, that there can be an undue
16 amount of influence placed upon the note.

17 Obviously, there's an advantage to taking notes, and
18 it is that it allows a juror to refresh his or her
19 recollection prior to deliberations. So, there is an
20 ongoing debate about note-taking.

21 Here is where I have resolved over time, as a policy.
22 When cases are expected to be of relatively short duration
23 -- and this trial is expected to be of relatively short
24 duration -- then I ask jurors to just pay attention and
25 listen carefully and not take notes.

1 Now, I have commented on the anticipated -- the
2 expected duration of this case, and I want you to know that
3 I in no way -- I in no way demean the importance of this
4 case, because it is of the utmost importance to the State
5 and to Mr. Parker. I simply commented on the expected
6 duration, because I didn't want you to be concerned --
7 those of you who are note-takers -- about my instruction
8 not to take notes.

9 Now, ladies and gentlemen --

10 (To the Clerk of Court) -- and you know what? Let me
11 hold the indictment. I handed it back to -- thank you.
12 I'm going to give it right back to you. Thank you so much.

13 CLERK OF COURT: Yes, ma'am.

14 THE COURT: Ladies and gentlemen, Mr. Parker is
15 charged by an indictment -- and this is an indictment
16 (indicates) -- filed in this court. He is charged with the
17 crime of assault and battery with intent to kill. The
18 elements will be explained to you later.

19 Ladies and gentlemen, an indictment is simply a piece
20 of paper, and it contains the charge by which the case is
21 brought into court. It is a notice document. It certainly
22 isn't, in any respect, any evidence of any of the
23 allegations that it contains. It is simply a notice
24 document.

25 Mr. Parker has pled not guilty to the indictment, and

1 the State, therefore, has the burden of proving each of the
2 elements of the indictment beyond a reasonable doubt. And
3 it will be your duty, ladies and gentlemen, to decide
4 whether the State has met that burden.

5 Your purpose as jurors is to find and to determine the
6 facts. You are the sole judges of the facts. If at any
7 time, ladies and gentlemen, I make any comment, intimation,
8 or in any way make any indication regarding the facts, I
9 ask you now to please disregard that. Because, you see,
10 under our law, I am not permitted to indicate to you, in
11 any respect, a comment or an opinion regarding the facts.
12 Because, you see, that is a matter solely and totally for
13 you.

14 And you are to determine the facts from the testimony
15 that you hear, and other evidence which is introduced into
16 court, introduced into evidence. It is up to you to
17 determine the inferences that you feel may properly be
18 drawn from the evidence.

19 It is especially important, ladies and gentlemen, that
20 you perform your duty of determining the facts diligently
21 and conscientiously. Because, you see, ordinarily there is
22 no way to correct a -- or an erroneous finding of the facts
23 -- an erroneous determination of the facts by a jury. If
24 the Court -- if I make a mistake regarding the law, there
25 is another time and place for that to be corrected. But

1 when a jury makes the wrong finding of fact, an erroneous
2 finding of fact, there's no way for that ordinarily, under
3 our system, for that to be corrected. Hence, that is why
4 it is so important, it is so critical that you listen
5 carefully to the evidence that is presented.

6 Now, ladies and gentlemen, as I mentioned to you just
7 a moment ago, on -- on the other hand, and with equal
8 emphasis, that same law that makes you the judges of the
9 facts, makes me the judge of the law. The law, as given to
10 you by the Court, is the only law that you may follow. You
11 must accept and you must follow that law, even though you
12 may disagree with it.

13 I cannot tell you what the facts are, and you cannot
14 disagree with me about what the law is or should be. Your
15 job is to take the law as I give it to you, and you apply
16 it to the facts as you find them to be; and that is how you
17 will render your verdict, which will then be a true and
18 just verdict under the oath that you just took as jurors.

19 Now, until I advise you to begin your deliberations,
20 you must not discuss this case with anyone, including your
21 fellow jurors, your family, friends, and anyone involved in
22 this case. Lawyers always want me to just tell jurors --
23 because lawyers are basically gregarious folks, and they
24 want me to tell jurors that if they happen to see you
25 coming and going from the courthouse and they do not even

1 say "hello," they do not even acknowledge your presence,
2 they are not being rude. They are just following my
3 instruction, and they don't want to come to me and say,
4 "Judge Goodstein, I had a conversation with one of the
5 jurors," because the rest of the day would not be very fun.

6 So, please understand, if they happen to see you and
7 they do not even say "hello," they are just really taking
8 it to the -- you know, to the nth degree. They're not
9 going -- and if you've seen anybody and they've
10 acknowledged you and just nodded or whatever, that's --
11 that's certainly fine. But in the event that they do not
12 even say "hello" to you, please understand they are not
13 being rude.

14 Now, during the trial, do not read, listen to, or
15 watch any news reports about this case. This includes
16 anything that may be in the newspapers or the internet,
17 radio or television. You must not consider anything you
18 may have read or heard about the case outside of the
19 courtroom, whether before or during the trial.

20 It is important that you keep an open mind and that
21 you not decide any issue in the case until all of the
22 evidence has been presented, the parties have made their
23 closing arguments, and I have instructed you on the law
24 applicable to this case.

25 It is your solemn responsibility to determine whether

1 Mr. Parker is guilty or not guilty. And your verdict must
2 be based solely on the evidence as it is presented to you
3 in this trial, and on the law as I instruct you during and
4 at the close of the trial.

5 Now, in just a moment, the Solicitor will make what is
6 called an "opening statement," in which he will talk to you
7 about what he believes the issues are in this case.

8 Now, Mr. Archer, the attorney for Mr. Parker, may make
9 an opening statement, although he is not required to do so.

10 What the attorneys tell you during their opening
11 statements is not evidence in this case. It is only their
12 contention as to what the issues are.

13 I urge you throughout this case to please give these
14 attorneys your undivided attention, because what they will
15 tell you is important. But you must keep in mind that what
16 they say is not evidence. Evidence comes from the sworn
17 witnesses in the case, and of course, from any exhibits
18 which are admitted into evidence.

19 Now, no doubt, from time to time, you're going to hear
20 the lawyers say something like, "Your Honor, I object," or
21 "Objection," or "Your Honor, I believe we have a matter of
22 law or question of law to discuss with you." And you may
23 hear them say something like, "May we approach?"

24 And I want you to understand what's going on. As in
25 sports or business or any other structured activity -- and

1 you are learning that a trial is a structured activity --
2 there are certain rules that both sides must obey when
3 presenting evidence. They have these -- called the "rules
4 of evidence," the rules of evidence. And our procedure
5 allows for the attorneys to call a possible violation of
6 the rules of evidence to my attention, and that's what's
7 going on.

8 Now, when they approach or when I ask you to step to
9 your jury room -- and I will have you step to your jury
10 room just as limitedly as possible -- but what is happening
11 is, is that I may need to hear a word or two from the
12 attorneys about what I am hearing, because I must rule on
13 these matters of evidence.

14 When I ask them to approach or when you step to your
15 jury room, what is happening is, is it just allows me the
16 opportunity to disclose a little more freely what I'm
17 hearing as I determine a matter of evidence, which is a
18 matter of law; and I would not want anything that I am
19 saying to be considered by you as a comment on the facts.

20 So, when I ask them to approach or I ask you to step
21 to your jury room, that's all that's going on, is that I
22 need to be able to have a word or two with them to -- to
23 allow me to properly rule on the matter of evidence. And
24 again, I need to have the space to do that outside your
25 earshot, if you will. So that's -- that's what's actually

1 going on.

2 Now, ladies and gentlemen, in determining what the
3 true facts are in this case, you must decide whether or not
4 the testimony of the witness is credible. Another word for
5 "credible" is "believable," believable. It will be my
6 responsibility to rule as a matter of law on whether
7 certain evidence, certain testimony is admissible at all or
8 not.

9 But once the testimony is admitted or the exhibit is
10 admitted, what weight you give to that evidence, whether or
11 not you believe the testimony, is solely for you to
12 determine. And in deciding whether to believe a witness,
13 you have the right to consider the interest of any witness,
14 the bias of any witness, the prejudice of any witness, the
15 opportunity for the witness to have seen the matters and
16 things about which the witness may testify, and the way the
17 witness acts on the witness stand.

18 You have the right to consider anything that is in the
19 record that will help you evaluate the testimony of the
20 witnesses. That means that it is your duty to pay close
21 attention to these witnesses: Observe them; listen to
22 them. And pay close attention to the attorneys, and to the
23 Court.

24 Please do not let your thoughts wander, but give the
25 strictest attention to the testimony in this case, so that

1 at the end of all the testimony, after the arguments of
2 counsel, and the charge or the instruction on the law by
3 the Court, you will then be in a position to determine what
4 the true facts are, and to apply the law to those facts,
5 and thus render a true and just verdict.

6 Now, do we have a presiding juror?

7 (Presiding juror raises her hand.)

8 THE COURT: You just keep keeping that chair. You --
9 have you been selected?

10 PRESIDING JUROR: Yes, ma'am.

11 THE COURT: They're nodding at you. Well, you just --
12 you better beware of keeping that chair. I'm telling you
13 that's the No. 1 priority for the presiding juror. If you
14 keep it again, I'm going to appoint you as the presiding
15 juror.

16 It is your -- it will be the added duty of the
17 presiding juror to preside in the jury room and be the jury
18 spokesperson here in court, as we talked yesterday, as well
19 as, it will be the presiding juror's duty to write the
20 verdict after the deliberations of the jury.

21 Now, ladies and gentlemen, in order to preserve
22 everyone's right, I need to and will give these parties an
23 opportunity to object to anything that I have stated.

24 Any exception on the behalf of the State?

25 MR. BELL: None from the State, Your Honor.

1 THE COURT: And on behalf of Mr. Parker?

2 MR. ARCHER: None, Your Honor.

3 THE COURT: Very well.

4 Ladies and gentlemen, at this time, I ask that you
5 please draw close as we listen to the opening statements of
6 our attorneys. All right.

7 MR. BELL: Thank you, Your Honor. If it please the
8 Court.

9 THE COURT: Yes, sir, Mr. Bell.

10 MR. BELL: Mr. Archer.

11 OPENING STATEMENT BY MR. BELL:

12 MR. BELL: Ladies and gentlemen of the jury, police
13 work is dangerous business. It becomes even more so when
14 you go behind the lines, and that is where Sergeant Shawn
15 Gibbons found himself on February 28th, 2008, during the
16 nighttime. He was in Haven Oaks apartment complex off Old
17 Orangeburg Road, just outside the town of Summerville, near
18 the corner of 17A and Old Orangeburg Road.

19 He was in a vacant apartment that had provided the
20 Metro Narcotics Squad to use as surveillance, and he was
21 conducting surveillance by himself, seeing what was going
22 on out in the -- it was kind of a courtyard there, as
23 you'll see later on in this trial.

24 At some point, he hears some people talking, and he
25 found -- or thought that he may have been compromised, that

1 -- that somebody may have figured out that he was there and
2 why he was there. So, he decided that discretion is the
3 better part of valor, and he decided to leave.

4 As he came out of the G Building at Haven Oaks, and he
5 was moving on to try to get out of there, he was confronted
6 by two individuals, one of which was the defendant, Dervick
7 Parker. They started asking why he was there, what he was
8 doing, and they -- he saw that they had -- each had
9 handguns. He put up -- he pulled his service revolver out
10 -- or his service automatic out, and he kept it by his
11 side. And he kept trying to tell them, "I'm just here to
12 see friends."

13 He was trying to get out, and he was trying not to
14 disclose who he was. And he was -- he was trying to get
15 out of there, and trying to diffuse the situation and get
16 out of there safely.

17 Well, at some point, he decided he needed to get out
18 of there more quickly, so he took off. And one of the
19 individuals took off behind him, and the other one went the
20 other way. At some point, he heard gunshots, and he
21 decided he needed to go more quickly. So, he went to the
22 fence line, and he tried to make it to the fence line
23 beside -- or that separates Haven Oaks apartments and the
24 Bi-Lo shopping center, there right on 17A.

25 And just as he got to the fence line, he saw one of

1 the other individuals come around the corner and fired some
2 shots, one of which hit him in his leg. And he identified
3 -- he noticed -- he knew that guy, the defendant, Dervick
4 Parker. And that's why we're here today, ladies and
5 gentlemen.

6 Dervick Parker has been charged with the crime of
7 assault and battery with intent to kill, a crime in South
8 Carolina. And that's why we're here, for shooting Sergeant
9 Shawn Gibbons.

10 Now, ladies and gentlemen, earlier you were
11 introduced. My name's Harrison Bell. I'm Senior Assistant
12 Solicitor in the First Judicial Circuit. I'm a prosecutor;
13 I represent the State of South Carolina. It's my job to
14 prove the case beyond the defendant, Dervick Parker --
15 beyond all reasonable doubt.

16 In this case, he doesn't have to say anything. He
17 doesn't have to prove his innocence. He doesn't have to
18 present testimony. He doesn't have to do anything. He can
19 sit there. It's -- the burden is on the State to prove him
20 guilty; not for him to prove himself innocent. And that's
21 why we're here, ladies and gentlemen.

22 During the course of this trial, the State will
23 present a number of witnesses. We'll present some officers
24 that were doing surveillance as well, that were the backup
25 to Mr. -- Sergeant Gibbons, that saw some things. You will

1 hear some audio from that night, because Sergeant Gibbons
2 had a -- a radio, and you'll hear a little snippet of audio
3 of the confrontation.

4 You'll hear other evidence; you'll see gun evidence --
5 ballistic evidence. There'll be some DNA evidence in this.

6 In the end, ladies and gentlemen, this case should
7 last about two days or so, which is not a long trial, it's
8 not a short trial; but it's an important trial, because the
9 State's here to prove -- to enforce its laws. Especially
10 in this case, where we have a police officer involved.

11 But I'll admit, and I think everybody would admit from
12 the "get-go," that the defendant didn't know that Sergeant
13 Gibbons was an officer, because he was trying to keep his
14 identity secret. He didn't want to let them know he was a
15 police officer.

16 And that even -- on the State's behalf -- makes it
17 worse, because that shows that -- the total disregard for
18 human life that the defendant had. He was just shooting at
19 somebody he didn't like being there. And that's the main
20 purpose in this case, ladies and gentlemen.

21 Now, as Judge Goodstein alluded to you a little
22 earlier; you're the jury. You're the judge of the facts.
23 You're the other judge in the courtroom.

24 She's the judge of the law. What she says about the
25 law goes. You just took an oath that you will follow the

1 law that she has charged. What that means, ladies and
2 gentlemen, is that you must do that. If you have a problem
3 with what the law says, if you think the law ought to be
4 different, or if you just totally disagree with the law,
5 that cannot enter into your deliberations, because you have
6 taken an oath to follow the law.

7 Just as nobody can tell the judge about the law,
8 nobody can tell you, the judges of the facts, how to find
9 the facts in this case. I can't do that; Mr. Archer can't
10 do that; even Judge Goodstein cannot tell you how to find
11 those facts. It is up to you.

12 You listen to testimony that comes from this witness
13 stand. You see any exhibits that may be put into evidence,
14 you use those, and you come together and find the facts of
15 this case.

16 And as Judge Goodstein told you, you take those facts
17 that you find during the course of the trial. At the end
18 of this trial, she will charge you the law on the case, and
19 you go back to your jury room, and you take the facts and
20 apply them to the law and you reach a verdict. That is
21 your job, ladies and gentlemen.

22 Part of your job, as she alluded to as well, is when
23 you listening to testimony on the stand, you have to
24 determine the credibility of witnesses or the believability
25 of witnesses. Do you believe them or not? And you're

1 probably going, "Well, how do I do that? How do I figure
2 if somebody is lying or not?"

3 Well, unfortunately, nobody in this courtroom can tell
4 you a tried and true way of doing that. I could suggest
5 merely that you do like you do every day of your life.
6 When you're talking to people, you're talking to friends,
7 family, strangers. You know that when somebody's telling
8 you something and you -- "Nah. That's not right. You're
9 not -- nah. You're kidding me." That kind of thing.

10 Or "Wow, that's right."

11 You do it like you do every day in life. You judge
12 what they tell you, how they tell you, where they're coming
13 from. That's the only suggestion I can make in -- make in
14 telling you how to find the -- the believability of the
15 witnesses.

16 Now, ladies and gentlemen, as I said, the burden is on
17 the State to prove the defendant, Dervick Parker, guilty of
18 assault and battery with intent to kill. We must prove
19 every element of that crime.

20 Assault and battery with attempt kill has got several
21 elements to it. Assault and battery -- and assault is an
22 offer to do bodily injury upon a person. For instance, if
23 I come up to you and I raise my hand back to you, that's an
24 offer. I can do it; I have the present ability to do it
25 because I can come forward and strike you. The assault is

1 pulling my fist back.

2 When I hit you, that's the battery. That's the
3 unlawful or illegal touching, or doing the -- the bodily
4 injury to a person. That's assault and battery; it's
5 called "simple" assault and battery.

6 Well, this is much more. This is assault and battery
7 with intent to kill. When -- what -- what that means is
8 that we must have the assault and battery with malice
9 aforethought.

10 Malice aforethought is two terms. "Malice," which
11 means ill will or hatred or a malignant part, or a -- or a
12 reckless disregard for human life. It's a kind of a term
13 of art, one of those legal terms of art that you can't
14 really define, but you can -- you can kind of talk around
15 it. And that must exist "aforethought," at any time before
16 the battery occurs -- the assault and battery occurs.

17 Now, there are two ways to find malice. There's --
18 there's "actual malice" or "direct malice," which is
19 somebody coming up saying, "I'm going to kill you," or
20 somebody lying in wait to -- to do harm to you.

21 Or there's -- there's -- there's "implied malice."
22 You implied from the circumstances, the facts that surround
23 you. You take those facts and you imply the malice. And
24 one of the ways you can imply malice is use of a deadly
25 weapon, which certainly a gun is a deadly weapon in the

1 State of South Carolina.

2 It's kind of like assault and batter with attempt to
3 kill is really, in South Carolina, murder without the
4 killing of a person. That's kind of the distinction;
5 that's the way it is in South Carolina.

6 So, ladies and gentlemen, I remind you the State has
7 the burden of proof. We'll -- we're presenting numerous
8 witnesses to prove our case. Sometimes it may get boring,
9 but we have to do it. We have to prove our case.

10 But in the end, ladies and gentlemen, I feel confident
11 that we will present enough evidence, enough witnesses,
12 where you will find the defendant, Dervick Parker, guilty
13 of assault and batter with attempt to kill. Thank you.

14 THE COURT: Thank you, Mr. Bell.

15 Mr. Archer?

16 MR. ARCHER: Yes, ma'am.

17 OPENING STATEMENT BY MR. ARCHER:

18 MR. ARCHER: Harrison over here has told you that he's
19 the Senior Solicitor here. Well, I'm the senior guy here,
20 period. I'm an old-timer -- been in this business for over
21 37 years. And God's been good to me, because after 37
22 years, I still love what I do.

23 I find it most satisfying, like Mr. Bell over here, to
24 be a part of the system that seeks the truth. I find it
25 most gratifying to be able to come to court and fight as

1 hard as I can for an innocent man, and for those clients
2 who are not innocent, to see that they get what they
3 deserve; no more, no less.

4 Now, this case -- the one thing -- Mr. -- Mr. Bell
5 touched on this. But I want to emphasize this, because
6 it's very important. This is not the shooting of a police
7 officer. That's not what this case is about.

8 Yes, the officer was a member of the Dorchester County
9 Sheriff's Department. Yes, he was on duty that night. But
10 this is not a case of two individuals knowingly shooting a
11 police officer. Because as far as they were concerned, the
12 whole world was concerned, and you would have been
13 concerned if you were there that night, he was not a police
14 officer.

15 The evidence is going to show he had on no uniform; he
16 had no badge; he never identified himself as a police
17 officer to anyone. And in point of fact, he was
18 undercover. He didn't want anybody to know that he was a
19 police officer.

20 All right. So, as far as the world looking at it, my
21 client looking at it, and the other individual who was
22 involved in the shooting -- a gentleman by the name of
23 Quinntavious Davis -- they were not being approached by a
24 police officer that evening. They were being approached by
25 a fellow, a stranger, who had -- as far as they could see --

1 - no business being where he was. And he was approaching
2 them in a dangerous place at a dangerous time of night.

3 I believe the evidence is going to show that this is a
4 high -- this -- this apartment complex is a high-crime
5 complex. There have been shootings there. There'd been --
6 within about a year, there was a fellow murdered out there.
7 It's a dangerous place.

8 All right. And the facts from their eyes is a man,
9 who's in a place they're not supposed to be, approaches
10 them. And as he approaches them, he pulls out a weapon.

11 Now, Officer Gibbons is going to tell you that he
12 pulled out his weapon because he saw that these two
13 individuals had weapons. All right. But he still pulled
14 out a weapon, and he didn't pull out a weapon and say, "I'm
15 a police officer."

16 What he was, was a man approaching them who draws a
17 weapon. And -- and as far as their conception of what was
18 going on, if they were armed, that made it even twice as
19 dangerous.

20 All right. So, the first part of our defense is
21 self-defense, self-defense against a police officer. Okay.

22 Well, self-defense -- I mean, the truth of the matter
23 was, in actual fact, that they were not in danger of death
24 or serious bodily harm that night. Why? Because Shawn
25 Gibbons was a police officer. Unfortunately, they didn't

1 know that. He wasn't dressed like a police officer; he was
2 dressed to look like a street man, just like everybody
3 else. Okay? They didn't know that.

4 And the defense of self-defense is based on what --
5 not on whether he was a police officer or not, whether they
6 -- it's not based on whether they were actually in danger
7 or not, but whether they reasonably believed that they were
8 in danger of death or serious bodily harm.

9 And every circumstance that they could see, they were.
10 A fellow pulled a gun in the middle of the night. All
11 right? So, it's really whether their belief is reasonable,
12 based on the facts. All right? And so, we get to the
13 unusual situation where you can have self-defense against a
14 police officer.

15 There is going to be testimony that Quintavious Davis
16 -- who I believe to be -- I believe the evidence will show
17 is the person -- the person who started the shooting.
18 Okay? When he went back to the apartment from which he had
19 come, it -- he was, "What happened?"

20 And his response was -- he was excited -- his response
21 was, "He had a tone. He had a tone. I had to shoot. It
22 was him or me."

23 Now, a "tone" is what -- a "tone" is a gun in street
24 language. So it's, "He had a gun. He had a gun. I had to
25 shoot him. It was him or me."

1 And that's basically what I believe the case will come
2 down to. All right?

3 The -- there is going to be some question, I believe,
4 in your mind as to whether my client, Mr. Parker, ever
5 fired at all that night. There's going to be forensic
6 evidence, and probably some testimony, which will give a
7 high probability of question in your mind that he did not
8 fire a gun that night. All right.

9 Now, the three main witnesses -- there's going to be a
10 lot of witnesses, but the three main witnesses are probably
11 going to be Officer Gibbons; Quinntavious Davis, the fellow
12 who was out there that night with my client; and a fellow
13 by the name of Donnell Campbell.

14 There's going to be some differences in testimony, but
15 not -- I don't think huge differences. Because I think
16 basically, there's a fair amount of agreement as to what
17 went on out there, and you know, there's agreement on that.
18 The disagreement is on what is the consequence of that. Is
19 it assault and battery with intent to kill? Which, you
20 know, is a super-serious offense. Or was it self-defense?
21 All right.

22 Now, Mr. Bell explained malice to you, wickedness of
23 heart. That the shooting was done with a wickedness of
24 heart. All right. So -- and I would submit that under
25 these circumstances, that's going to prove -- you know,

1 prove wickedness of heart, we're going to prove that they'd
2 be guilty of assault and battery with intent to kill.

3 Well, these fellows believed they were in danger.
4 That's no wickedness of heart involved in the shooting.
5 And, therefore, there's no assault and battery with intent
6 to kill. All right.

7 Now, as to the differences in testimony, you know, you
8 can take a dozen people and sit them down and have them
9 watch an event, and you're going to get a dozen different
10 versions of what happened. Okay? Put them under stress
11 and you're going to get lots of differences of what
12 happened, and everybody that night was under stress.
13 Quinttavius Davis was under stress; Dervick was under
14 stress; and certainly, Officer Gibbons. All right?

15 And so, I think that are going to be some differences
16 as to, you know, who shot and a few other things. All
17 right. But I don't think that those differences are going
18 to come from -- so much from one person lying or another
19 person lying. It's from the differences in perception.
20 And -- and also, it was very -- that's a dark complex, and
21 I think we're going to be able to show you there wasn't a
22 whole lot of light to see by out there. All right.

23 Now, I would warn you as to something. I have a
24 general idea as to what Quinttavius Davis and Donnell
25 Campbell are going to testify to, but not totally. All

1 right. But I would ask you to regard their testimony with
2 great caution. All right. Because the evidence is going
3 to show that, like Judas, their testimony has been bought
4 for the proverbial "bag of gold coins." All right.

5 And by that I mean both of those individuals, the
6 evidence will show, began this charged with assault and
7 battery with intent to kill, a super-serious offense that
8 carries up to 20 years in jail. Not only does it carry 20
9 -- up to 20 years in jail, you can't get parole for it, and
10 you've got to do 85 percent of your time.

11 So for example, if someone got sentenced to the 20
12 years, they're going to have to do 17 of them before they
13 come up for being released. All right.

14 Well, they made deals with the prosecutor, sweet deals
15 with the prosecutor. Mr. Donnell Campbell is going to be
16 allowed to plead to accessory after the fact.

17 Quinntavious Davis, who began the shooting, is going
18 to be allowed to plead to not assault and battery with
19 intent to kill, but assault with intent to kill. Remember
20 Mr. Bell explained the difference between the threat versus
21 the doing. Okay?

22 And that is great motive. In other words, the deal is
23 if they'll come and testify in a manner that pleases the
24 prosecution, that they'll get these deals. All right?

25 And the sum effect of it is -- and this is how sweet

1 the deal is -- it reduces -- first of all, it reduces their
2 time of a possible 20-year maximum to a 10-year maximum.
3 Furthermore, they become eligible for parole; -you don't
4 have to, you know, do all this time. And -- and there's no
5 mandatory sentence time. All right.

6 So, instead of looking at 20 years, of which you would
7 have to do 85 percent or 17, they could receive -- they're
8 sentenced to jail. They're going to come up for parole
9 after doing a third of your sentence and -- and can't be
10 more than 10.

11 So please, listen to those folks carefully and
12 cautiously, because they certainly have a great motivation
13 to make themselves sound as good as possible, and to make
14 the other fellow sound as bad as possible. All right.

15 And so in summary, as Mr. Bell said that you're --
16 he's certain you're going to find these folks guilty of
17 assault and battery with intent to kill. Well, I -- I
18 disagree with him, and I would be very much surprised if
19 you did. Because if you decide that these folks -- and
20 what started this was the pulling of the gun, which was
21 unfortunate. All right. If you decide that this is self-
22 defense, then you must bring back a verdict of not guilty.
23 All right.

24 If you decide that these individuals thought they were
25 in danger, but because of whatever reason the evidence is

1 not enough to say that they were -- it's -- you can't find
2 it was a reasonable -- you've got to honestly believe they
3 were in danger, but it's not high enough to become self-
4 defense, then it still is no malice, which is required for
5 assault and battery with intent to kill. And you will have
6 to find them not guilty of assault and battery with intent
7 to kill, because the shooting was not with a wicked heart.

8 I thank you very much for your attention.

9 THE COURT: Thank you, Mr. Archer.

10 Mr. Bell?

11 MR. BELL: The State will call Shawn Gibbons to the
12 stand.

13 THE COURT: Very well. Yes, sir. If you'd come along
14 and be sworn.

15 SHAWN GIBBONS, having been duly
16 sworn, testifies as follows:

17 THE COURT: If you'd please be seated.

18 THE WITNESS: Thank you.

19 THE COURT: Mr. Taylor will help you with the
20 microphone, and when it is in place, I want you to state
21 your full name for the record. And we might want to get
22 you to spell your first name and your last name.

23 THE WITNESS: Yes, ma'am. My name is Shawn Gibbons;
24 S-h-a-w-n, G-i-b-b-o-n-s.

25 THE COURT: Now, you know, let me just tell you that -

1 - ladies and gentlemen, we're building a new courthouse
2 that we're going to move into this summer, and the
3 acoustics are going to be wonderful. It's -- might be the
4 most perfect courthouse ever built. But I will keep
5 reminding these folks, and I need your help, too.

6 If you have trouble hearing at any point, please help
7 me by raising your hand and letting me know. It is
8 critical that you hear these witnesses. Our acoustics are
9 not wonderful, and hence, counsel helps me. See where Mr.
10 Bell is standing? He's standing all the way to the back of
11 the -- of the jury box. You'll see Mr. Archer do some of
12 that, too.

13 The reason is is so that the witnesses will project
14 their voices to where counsel is that we do that, people do
15 that. It just -- that's what we do.

16 And so, it's real important that you are able to hear,
17 so help me in that regards. Raise your hand. I -- while I
18 might -- might not be trained on you, somebody will let me
19 know.

20 And Mr. Gibbons, of course, if you will project your
21 voice, because you know the microphone is not a big help to
22 you.

23 THE WITNESS: Yes, ma'am.

24 THE COURT: Thank you so much.

25 Thank you, Mr. Bell. You may proceed.

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1 MR. BELL: Thank you, Your Honor.

2 DIRECT EXAMINATION BY MR. BELL:

3 Q Would you please again state your name for the record?

4 A Shawn Gibbons.

5 Q Where are you employed?

6 A Dorchester County Sheriff's Office.

7 Q And how long have you been with the Dorchester County
8 Sheriff's Office?

9 A Eight and a half years.

10 Q And what training have you had, in general, during the
11 course of your eight and a half year service with the
12 Dorchester County Sheriff's Office?

13 A I've had multiple training courses and basic law
14 enforcement, utilization and training of K-9 dogs. Also,
15 multiple courses in -- in drug enforcement, such as drug
16 interdiction, undercover narcotics training, and the --
17 conducting drug investigations.

18 Q And right now, what's your rank?

19 A Sergeant.

20 Q And where are you assigned?

21 A I'm with the Dorchester County Summerville Metro
22 Narcotics Unit.

23 Q How long have you been with that assignment?

24 A Since the beginning of 2005.

25 Q And generally, what is your duties with that -- that

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1 assignment?

2 A As of right now, I'm the sergeant over the unit, and I
3 am currently the supervisor. I supervise the cases that
4 are worked in -- in that unit, and occasionally take part
5 in the investigation of some of the cases.

6 Q Okay. Now, back last year -- last February, more
7 specifically -- you were shot; is that correct?

8 A Yes, sir.

9 Q When did that occur? Do you recall the date?

10 A On February 28, 2008.

11 Q Okay. Here were you at that time?

12 A I was in the Haven Oaks apartment complex, located at
13 Old Orangeburg Road and 17A.

14 Q Okay. Why were you at the Havens Oak -- Haven Oaks
15 apartment complex on that occasion?

16 A We -- the Metro Narcotics Unit was conducting an
17 ongoing investigation in that area, and we were conducting
18 surveillance on several individuals.

19 Q Okay. And where were you specifically at Haven Oaks?

20 A I was in apartment -- in the [REDACTED], I
21 believe.

22 COURT REPORTER: I'm sorry. [REDACTED]?

23 THE WITNESS: [REDACTED] Yes, ma'am.

24 (Mr. Bell shows a document to Mr. Archer.)

25 MR. ARCHER: No objection.

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1 MR. BELL: Okay. (To the court reporter) And then
2 mark this as State's 1, please.

3 (Marked State's Exhibit No. 1, aerial photograph
4 map, for identification.)

5 Q Sergeant Gibbons, let me show you this map. And just
6 ask if you can identify it.

7 A Yes, sir. That's Haven Oaks apartment complex.

8 Q Aerial photograph?

9 A Yes, sir.

10 Q Okay.

11 MR. BELL: And we offer and it's no objection, Your
12 Honor. It's offered as State's 1.

13 THE COURT: All right. It's -- that's correct, is it?

14 MR. ARCHER: That's ---

15 THE COURT: Very well.

16 MR. ARCHER: --- correct. I plan on using it myself,
17 Judge.

18 THE COURT: All right. State's Exhibit 1 in evidence
19 without objection. You may proceed.

20 (State's Exhibit No. 1, aerial photograph map,
21 admitted into evidence.)

22 MR. BELL: Thank you, Your Honor. I'd ask if Sergeant
23 Gibbons come down in front of the jury so he can point out
24 the layout of ---

25 THE COURT: That -- that will be fine. You got to

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1 remember to ---

2 WITNESS: Yes, ma'am.

3 THE COURT: --- doubly keep your voice up.

4 WITNESS: Yes, ma'am.

5 THE COURT: And you -- you position yourself where you
6 can see, Mr. Archer.

7 MR. ARCHER: Yes, ma'am.

8 THE COURT: Oh. And interestingly enough, you also
9 have to be very careful that when you point to the diagram,
10 that you don't block some of the members of the jury. If
11 you can maybe hang from the ceiling, that would be ---

12 WITNESS: I'll do my best, Your Honor.

13 THE COURT: --- that would be a help.

14 MR. BELL: What we can do is we have a laser pointer.
15 If you push that little button, you kind of -- you kind of
16 show, and I've got some markers here, too.

17 Q All right. Sergeant Gibbons, if you can kind of show
18 -- show us the Haven Oaks apartment complex on this.

19 A It's these groups of buildings right here.

20 (Indicates.)

21 Q And there's a label on there?

22 A Yeah. (As read) "Haven Oaks Apartments."

23 Q Okay. And what is this road that's up in the upper
24 right-hand corner of the -- of the map on State's 1?

25 A Old Orangeburg Road.

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1 Q Okay. And this one that's down at the bottom right
2 corner?

3 A 17A.

4 Q Okay. And what is this group of buildings that's to
5 the right -- lower right part of State's 1?

6 A That is the -- I'm sorry -- a Bi-Lo shopping center.

7 Q Okay. Can you point out where the Bi-Lo is on that?

8 A This is the Bi-Lo, the larger building.

9 Q Okay. And are you familiar with the Haven Oaks
10 apartment complex?

11 A Yes, sir. Very much.

12 Q Are you aware of how the buildings are labeled?

13 A Yes, sir.

14 Q Could you show the jury how they are labeled?

15 A This -- this is the apartment office building where
16 all the -- the maintenance crew and the office is located.
17 This is building A, B -- A, B, C, D, E, F, G and H.
18 (Indicates.)

19 Q Okay. Now, on the evening of February 28, 2008, which
20 building were you in?

21 A I was in the G building. This -- located in this
22 building right here. (Indicates.)

23 Q If you'd take a red marker and just -- okay.

24 A (Complies.)

25 Q You've marked it G.

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1 A Yes.

2 Q Okay. All right. And specifically, which -- what
3 apartment were you in?

4 A [REDACTED].

5 Q All right. And how did you come to -- to get to be in
6 an apartment? Was it somebody's apartment, or --

7 A No, sir. The management for Haven Oaks apartments had
8 given us a key, due to the problems that had been occurring
9 in that area, for us to do surveillance. The apartment for
10 [REDACTED] which was used, I believe, as a homework room, for
11 kids to go in after school and have activities in there.

12 Q Okay. And about what time were you there that
13 evening, as best you can recall?

14 A As best I can recall, we went into the room around --
15 it was fairly early. Around -- possibly around 7, I
16 believe.

17 Q And how long did you stay there?

18 A Several hours, until around the time that the incident
19 occurred, which was around 11.

20 Q Okay. And what were you doing? Just --

21 A I was in the room; the blinds were shut. I'd kicked
22 open one of the blinds where they kind of propped themself
23 open, so I wouldn't have to keep opening it; so I could
24 have a way to look out onto the courtyard area.

25 Q Okay. And where is the courtyard area?

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1 A This is the courtyard area that I was observing, that
2 I could -- I could see from here. This -- this location.
3 (Indicates.)

4 Q Okay. Were there any other officers with you in that
5 apartment?

6 A No. I was by myself.

7 Q Okay. Were there other officers in the area?

8 A Yes, there was.

9 Q How many other officers were --

10 A In the immediate area, there were two more officers
11 that were on the rooftop of this shopping center. I'm not
12 exactly sure exactly -- where exactly they were and what
13 top of which store. But they were there, and there also
14 were also units on Old Orangeburg and around the outside
15 fringes of the -- the apartment complex.

16 Q Okay. And at some point did you leave that apartment
17 [REDACTED]?

18 A Yes, I did.

19 Q Why did you leave?

20 A While I was sitting -- observing in that apartment,
21 there were several people coming and going. And two in
22 particular were two females that came outside. I overheard
23 a conversation saying that they believed somebody was in
24 the apartment that I was in, because of the blinds kicked
25 up.

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1 At that point, I knew I was compromised. And just
2 looking -- seeing the activity in the area, I felt that I
3 probably needed to get out of there instead of being
4 trapped inside.

5 Q Okay. So what did -- with you, what -- what items did
6 you have with you?

7 A I was wearing a -- a bullet-proof vest, which was
8 under my clothing; a weapon -- my Glock 40 millimeter. I
9 had a radio, which communicated with the other surveillance
10 units and dispatch; and my badge, which was under my shirt.

11 Q Okay. And so how did you leave the apartment?

12 A I came out this -- this is the breezeway.

13 (Indicates.) There's four breezeways to this apartment
14 building. There's 1, 2, 3, 4. I was in this breezeway
15 (indicates), the bottom floor to the -- apartment to the
16 left, which is [REDACTED]. When I came out -- well, before I
17 came out, I alerted everybody else that I was coming out
18 and I needed to be picked up.

19 When I came out of this building and started walking
20 on this sidewalk right here -- the sidewalk right there
21 (indicates) -- I heard someone from the C building -- which
22 is this building here. (Indicates.)

23 Q If you will mark the C building.

24 A (Complies.)

25 Q Okay.

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1 A I -- I heard someone yelling from the direction of the
2 C building. I was walking down the sidewalk, trying to get
3 out of the area. I was walking in this direction.

4 (Indicates.)

5 I looked back when I heard the yelling, and I saw two
6 people -- and this -- this building as well has four --
7 four breezeways, 1, 2 3, and 4. I saw two individuals at
8 this breezeway (indicates) on the stairs towards the top,
9 yelling, "Hey," or -- or something to that effect, towards
10 my direction when I looked back. I saw that they were
11 yelling at me.

12 I picked up the pace; I didn't run. I picked up the
13 pace as I was walking down the sidewalk in this direction.
14 (Indicates.)

15 Q And what was your sole purpose?

16 A To exit the area. I was trying -- I called for a
17 backup unit. And at that point, once I saw that they were
18 yelling and coming down the stairs toward my direction, I
19 told the -- the backup units to step it up, because this is
20 not going to be good.

21 You want me to continue?

22 Q Yeah. Go ahead. Well, let me ask you this. You said
23 you had your weapon. Where was your weapon at this point?

24 A My -- my weapon was in its holster, under my clothing.
25 I had a sweatshirt -- a hoodie sweatshirt on, which it

DIRECT EXAMINATION BY MR. BELL - SERGEANT GIBBONS

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1 covered my weapon.

2 Q Okay. And what did you do then?

3 A I walked down the sidewalk all the way around this
4 building. (Indicates.) At about this point, when I came
5 around this side of the building, I lost sight of the two
6 individuals.

7 I believe I -- I observed -- as I was coming back, I
8 continued to look behind me and I saw them running. And I
9 got around to this point (indicates), right around to where
10 I could get view of this courtyard area between these two
11 buildings, when I saw them come running in between the two
12 --

13 Q Okay.

14 A -- between the F and the E buildings.

15 Q All right. Let me ask you if you can use that red
16 marker and kind of show your -- the path of your travel
17 from the G building.

18 A Came out of this building. (Indicates.)

19 Q And you're going around which building is that?

20 A That would be the F building.

21 Q Okay. All right. Okay. And then you came back
22 around the F building; is that correct?

23 A Yes. I came around to the F building, and I was
24 actually walking on this sidewalk in front of these
25 vehicles.

DIRECT EXAMINATION BY MR. BELL - SERGEANT GIBBONS

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1 Q Okay. And where were the other -- these two
2 individuals, when did you first catch sight of them?

3 A After I lost sight of them going behind the building,
4 I first saw them again here. (Indicates.)

5 Q Okay. And what were they doing when you saw them?

6 A They came running up. They didn't run all the way up
7 to me. They came running, and they stopped approximately
8 here (indicates) and started walking. That's when I
9 observed the first individual -- in -- in the front, which
10 I was unable to identify on the scene. But then the
11 individual right behind him was the defendant, Dervick
12 Parker.

13 Q Okay. What were they wearing? Do you recall?

14 A The one in the front was wearing a red sweatshirt, and
15 the one in the rear was wearing what I believed to be --
16 was a camouflage hoodie sweatshirt.

17 Q Okay. And the one -- the one that you didn't identify
18 was wearing the red shirt; is that correct?

19 A Correct.

20 Q Okay. And what happened next?

21 A From this point, I continued to walk. I saw that they
22 both had guns in their hands. The individual in the front
23 wearing the red sweatshirt had a small automatic weapon in
24 his hand, and the individual in the back -- which I
25 identified as Mr. Parker -- also had a weapon in his hand.

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1 He was slightly behind the -- the person in the -- in the
2 red shirt -- red -- red --

3 Q All right. And what happened next?

4 A As I continued to walk, they approached me, asking me
5 what I was doing there. I was equipped with a radio, which
6 I had in my back, and it had what we call a "bone mike,"
7 which comes up the side of your ear and goes into your ear.
8 And it's triggered with a little finger switch.

9 Once I saw them approach me, other than just blatantly
10 coming out and telling the units that I needed -- I was
11 being approached by people with guns, I keyed up my radio
12 so they could hear the conversation that was going on.

13 As they were asking me who I was, what was I doing
14 there, they were approaching me with their guns in their
15 hands. I told them I was ---

16 Q Go ahead.

17 A I told them I was there visiting a friend. They asked
18 who the friend was. I said it's just a friend of mine.
19 Continued with the -- the dialogue until I was trying to
20 get out of the situation without having to result to
21 gunfire.

22 Q Okay. And where were you? Were you standing or were
23 you ---

24 A I was continuing to walk the whole time.

25 Q Which way were you walking?

DIRECT EXAMINATION BY MR. BELL - SERGEANT GIBBONS

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1 A This -- in this direction. (Indicates.)

2 Q Okay.

3 A I was trying to make it -- I figured -- this is all
4 wood-line here. (Indicates.) I figured if I could make it
5 around here to this -- (indicates) this is the privacy
6 fence in between the apartment complex and the -- the Bi-Lo
7 shopping center.

8 Q Well, why did you want to make it there?

9 A I figured that I could at least get to this fence and
10 -- and get to a better situation. It -- it's very hard to
11 get to this wood-line here. (Indicates.)

12 Q Okay. So when they started asking you about who you
13 were or whatever, where were they and where were you? If
14 you can show on the -- on that map.

15 A I'm labeling person No. 1 would be the person in the
16 red shirt, and person No. 2 would be Mr. Parker.

17 Q Okay. And you're still --

18 A I'm still making my way this way. (Indicates.) I
19 haven't stopped walking.

20 Q Okay. What happened after they started asking you
21 that and you keyed your mike and you said -- what -- what
22 are you telling them?

23 A I was just telling them that I -- I'm just visiting a
24 friend. I was over at my friend's house, you know. And
25 they asked who I was and I evaded the question, continuing

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1 to try to just get out of the area, hoping that my backup
2 unit was arriving and would be able to get out of that type
3 of situation.

4 Q And how were you, I mean, were you face-to-face with
5 them, or how were you talking as you were going?

6 A If I -- if I was walking on the sidewalk this way, I
7 was talking with my side towards -- towards them. Whereas
8 when they came around and I saw that they had guns, my gun
9 was drawn down to my side, just -- just like this right
10 here. (Indicates.)

11 Q When did you -- when did you do that?

12 A Once -- once I saw them come around and I saw the guns
13 in their hands, I discretely pulled the weapon down to my
14 side.

15 Q And you had it --

16 A Just -- just like this.

17 Q And they were where? About where I am or --

18 A A little bit further forward.

19 Q Right here? (Indicates.)

20 A Yes, sir. Walking just like that.

21 Q Okay.

22 A And I was walking towards the building.

23 Q And you had the gun on the other side of you.

24 A Yes, sir.

25 Q You weren't -- you didn't present it?

DIRECT EXAMINATION BY MR. BELL - SERGEANT GIBBONS 100

1 A No, sir.

2 Q Okay. What happened after that, after you had that
3 conversation?

4 A I got to approximately this point here (indicates),
5 and there's a dumpster right beside the E building. I'm a
6 little fuzzy on the conversation right at this point, but I
7 do remember my back was more turned towards them at this
8 point, so they were behind me. And some -- one of them
9 said something, and then the fire -- the -- the gunfire
10 started and I ran.

11 Q Okay.

12 A I ran around the dumpster to get behind one of these
13 vehicles that was parked -- this is not exactly the
14 vehicles that were there, but there was a vehicle parked
15 right over here. (Indicates.) That's where I hid behind
16 for cover.

17 Q And when you got to the dumpster, were you aware of
18 where they were?

19 A I knew that one -- well, either one or both of them
20 were -- were still behind me. They had moved probably to
21 this point. (Indicates.)

22 Q Okay. Do you know which one?

23 A I -- I looked back, and all I could see was the red
24 shirt one at that point.

25 Q Okay.

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1 A Once I got to a position of cover, looked back, I did
2 not see him again.

3 Q Okay. Did you -- were you aware of who fired?

4 A No. Not 100 percent sure as who fired right at that
5 point.

6 Q Okay. Were you hit at that point?

7 A No, sir.

8 Q Okay. What happened next?

9 A I did not see anybody else, so I ran from this vehicle
10 straight across the parking lot, across these parking
11 spaces, and into this grass area. (Indicates.)

12 Q Okay.

13 A Once I got approximately at this point, I heard more
14 gunfire coming from the -- from the building. And there
15 was this guy, who I identified as Mr. Parker, standing
16 right on the corner of the D building right here, firing in
17 my direction as I was running across this area, trying to
18 make it.

19 If you can see, there is a break in the -- in the --
20 in the privacy fence right there (indicates), where I was
21 trying to get to, to get out of the area.

22 Q Okay. And when he fired, what happened?

23 A When he fired approximately in this area (indicates),
24 I felt numbness go through my leg, and I stopped and
25 actually went to a knee, and returned fire on Mr. Parker.

DIRECT EXAMINATION BY MR. BELL - SERGEANT GIBBONS 102

1 Q Did you see where the other individual -- the red-
2 shirt individual was?

3 A I did not see him again after this exchange.

4 Q Okay. And what did you do when you went to your knee?
5 You returned fire?

6 A I returned fire towards this direction, towards Mr.
7 Parker. And he went behind the building, and I did not see
8 him after that.

9 Q Which building did he go behind?

10 A He went in -- in this way (indicates) to where my
11 angle of view was obstructed. I did not see him anymore.

12 Q Okay. And where did you get to eventually?

13 A I got back up -- I was able to walk on my foot -- and
14 went through the fence.

15 Q Okay. And -- and did any -- any other officers arrive
16 at that point or --

17 A Right at that moment, Sergeant Driggers arrived. He
18 came in through here -- came down this way to park right in
19 front of the D building.

20 Q Okay. And where did you -- did you find the wound at
21 that point?

22 A I had not looked down. I -- I did see a little bit of
23 blood on my shoe, but I had not looked down yet. It was
24 literally seconds after that exchange of gunfire that he
25 pulled in. And he called -- when he got out of the

DIRECT EXAMINATION BY MR. BELL - SERGEANT GIBBONS

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1 vehicle, he called my name.

2 I said, "I'm right over here." And I came out of the
3 fence-line, and went to his truck.

4 Q Okay. And did you find where you'd been shot?

5 A Yes, I did.

6 Q Where was that?

7 A I was shot in the -- in the right leg, just below the
8 calf, but above the ankle. In this location. (Indicates.)

9 Do you want me to --

10 Q No.

11 A Okay.

12 Q And so, from there on, you went to the hospital?

13 A Yes. We -- we addressed the wound at that point, with
14 first aid, trying to stop the bleeding until more units and
15 EMS arrived.

16 Q Okay. And now, you never went towards these two
17 individuals; is that correct?

18 A No, sir.

19 Q Okay. They were coming towards you.

20 A Yes, sir.

21 Q Your sole purpose was what?

22 A To leave the area.

23 Q Okay. All right. Thank you, Sergeant Gibbons. If
24 you'll take the stand.

25 A (Complies.)

DIRECT EXAMINATION BY MR. BELL - SERGEANT GIBBONS 104

1 (Mr. Bell shows a picture to Mr. Archer.)

2 MR. ARCHER: No objections.

3 THE COURT: Very well. Mark it as State's 2.

4 (State's Exhibit No. 2, photograph,
5 marked for identification.)

6 Q Okay. Let me show you this, what's been marked as
7 State's 2, and ask you if you can identify.

8 A Yes, sir. It's my leg.

9 Q That's your leg, and that's the wound in your leg?

10 A Yes, sir.

11 Q Okay.

12 MR. BELL: Offered as State's 2, Your Honor.

13 THE COURT: Without objection, it is admitted as
14 State's Exhibit 2.

15 (States Exhibit No. 2, photograph, admitted into evidence.)

16 MR. BELL: And just -- if I may publish this --

17 THE COURT: You may.

18 Q And which leg is that?

19 A That is my right leg.

20 Q Okay. Okay. Now, Sergeant Gibbons, you had said that
21 you had audio connection with your other officers; is that
22 correct?

23 A Yes, sir.

24 Q Were you aware of -- that there was any audio
25 recording of conversations that were going on?

DIRECT EXAMINATION BY MR. BELL - SERGEANT GIBBONS

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1 A Yes. I'm aware of a recording.

2 Q Have you heard any audio? Have you heard that audio
3 of the confrontation?

4 A Yes, sir.

5 Q Okay. Is it accurately portraying what went on that
6 evening?

7 A Yes, sir.

8 MR. BELL: Your Honor, we would like to play that at
9 this point. We'd offer that into evidence. There's a --
10 many conversations on this particular CD. We're just going
11 to offer the snippet into evidence of what went on.

12 We offer -- we would offer the -- the disc. We've got
13 it in the computer, but we're just going to offer the
14 portion that was recorded that night.

15 THE COURT: Very well. Any objection, Mr. Archer?

16 MR. ARCHER: No.

17 THE COURT: Very well.

18 (State's Exhibit No. 3, audio CD,
19 marked for identification.)

20 Whereupon the audio CD is played
21 for the jury.

22 Q That first and last voice, do you -- do you recognize
23 that voice?

24 A That's Detective Harold Robinson.

25 Q Okay. And then there was something about "friends."

DIRECT EXAMINATION BY MR. BELL - SERGEANT GIBBONS 106

1 Is that the confrontation you had with the two individuals?

2 A Yes, sir.

3 Q And I heard numbers in there -- you -- "59." Is that
4 -- was that you saying that?

5 A Yes, sir. That's our -- our 10 code for -- a subject
6 with a gun is 59. I was saying that quietly so they
7 couldn't hear, but they could hear me on the radio. Let
8 the backup units know that I was being approached by
9 subjects with guns.

10 Q Okay. So you were alerting your -- the people that
11 were in the area -- that these subjects had guns.

12 A Yes, sir.

13 Q And then you continued talking with the individuals;
14 is that correct?

15 A Yes, sir.

16 Q Okay.

17 (Sotto voce discussion between Mr. Bell and Mr. Hilton.)

18 MR. BELL: We would offer that disc as State's 3.

19 THE COURT: Very well. It was -- no objection to it;
20 therefore, it will be entered without objection.

21 (State's Exhibit No. 3, audio CD, admitted into evidence.)

22 Q Now, Sergeant Gibson -- Gibbons -- Gibbons, when you
23 were down here showing the events that night, you said that
24 you recognized one of the individuals; is that correct?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. BELL - SERGEANT GIBBONS

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1 Q And who do you recognize him as?

2 A Dervick Parker.

3 Q Okay. Do you see him in the courtroom today?

4 A Yes, sir.

5 Q And could you please point him out to the jury?

6 A He's the individual sitting at the Defense table
7 there.

8 Q Now, number one, I'd ask you: Does he look the same
9 today as he did back on February 28, 2008?

10 A No, sir. His hair's been cut shorter. At the time,
11 he had dread locks, approximately shoulder length.

12 Q Okay. And let me ask you this question: How did --
13 how did you know him?

14 A From an ongoing investigation that was -- we were
15 conducting in that area.

16 Q Okay. And you knew him by name?

17 A Yes, sir.

18 Q Okay. Is there any doubt that this was the individual
19 that shot you?

20 A No, sir. No doubt at all.

21 Q Okay. And the first shots, do you know who fired
22 those?

23 A I believe that it was the other individual.

24 Q Okay. But are you 100 percent sure that that was what
25 occurred?

DIRECT EXAMINATION BY MR. BELL - SERGEANT GIBBONS 108

1 A No, sir.

2 Q Okay. Now, Sergeant Gibbons, you've pointed out that
3 Haven Oaks apartment is just off of Old Orangeburg Road; is
4 that correct?

5 A Correct. Yes, sir.

6 Q And what county is that located in?

7 A That's located in Dorchester County.

8 (Sotto voce discussion between Mr. Bell and Mr. Hilton.)

9 MR. BELL: Thank you, Sergeant Gibbons. Please answer
10 any questions Mr. Archer may have for you.

11 THE COURT: We -- we're going to take our morning
12 break.

13 MR. ARCHER: That sounds great.

14 THE COURT: Yes. Ladies and gentlemen, we are going
15 to take our morning break. We're going to take probably --
16 I'm going to presume that we have smokers on the jury, and
17 I want to -- I don't -- you know, I don't want to point
18 anyone out. And so we're going to take about a 20-minute
19 break, because that will give our smokers -- gosh, George --
20 -- seven minutes, three out, three in -- it's like a math
21 problem -- about 7 free minutes to get a cup of coffee or
22 whatever. So, we'll take about 20 minutes.

23 Ladies and gentlemen, in -- in a moment, I'm going to
24 ask you to please step to your jury room. Remember, of
25 course, do not discuss this matter or allow anyone to

1 discuss it with you.

2 Now, if anybody brought a beeper or a cell phone, I'm
3 confident that you gave them to security or to our bailiff.
4 If you have it within your possession, give it up.

5 Wonderful, ladies and gentlemen. Have a good break.

6 (The jury exits at 11:07 a.m.)

7 THE COURT: (To Court Security George Taylor) Thank
8 you, Mr. Taylor.

9 Sergeant Gibbons --

10 SERGEANT GIBBONS: Yes, ma'am.

11 THE COURT: -- I just need to remind you not to
12 discuss your testimony with anyone during the break.
13 Obviously, you can take your break. And if you -- you
14 don't want to talk about the Yankees, because it was a
15 rough night --

16 SERGEANT GIBBONS: Yes, ma'am.

17 THE COURT: -- for the Yanks last night. But you
18 certainly can talk about anything else, just don't talk
19 about your testimony.

20 SERGEANT GIBBONS: Thank you.

21 THE COURT: See you in 20 minutes.

22 MR. BELL: Your Honor, if I may ---

23 THE COURT: Yeah.

24 MR. BELL: --- and I just -- it just came to me. When
25 we come back, I may -- forgot a couple questions. If I

1 could ask him a couple more questions before Mr. Archer?

2 THE COURT: Before you pass? Sure.

3 MR. BELL: I just ---

4 THE COURT: You hadn't passed him yet.

5 MR. BELL: They came to me.

6 THE COURT: That's fine. No problem.

7 MR. BELL: Thank you.

8 THE COURT: No problem. Very well.

9 (Off the record at 11:08 a.m.)

10 (On the record at 11:46 a.m.)

11 THE COURT: All right. Anything before I bring the
12 jury out from the State?

13 MR. BELL: Just that I had a couple more questions
14 before I --

15 THE COURT: I know. And from the Defense?

16 MR. ARCHER: No. I've got a few possible exhibits ---

17 THE COURT: Sure.

18 MR. ARCHER: --- I'd like to be marked before I start.

19 THE COURT: Wonderful. All right. Very well. Let's
20 have the jury.

21 I tell you what, maybe during lunch, if y'all could
22 just go through your exhibits and just pre-mark what you
23 can. That would be wonderful.

24 MR. ARCHER: Okay.

25 THE COURT: And if you can ---

1 MR. BELL: Are we going to break when you finish this
2 -- for dinner?

3 THE COURT: Probably. We're going to break about one.

4 (The jury enters at 11:46 a.m.)

5 (Pre-marked Defendant's Exhibits 1 through 8,
6 photographs, for identification.)

7 THE COURT: (To the jury) Look at y'all establish --
8 did they do it to you? I thought they were. I was
9 noticing a lot of nodding going on while you were trying to
10 hide. I'm really not sitting in this seat. I'm really not
11 here. Y'all just think I am. Thank you so much for
12 serving as our presiding juror. And I can research my
13 notes. Wait a minute now; wait a minute now. Wait a
14 minute. Ms. Husser?

15 MS. HUSSER: Yes, ma'am.

16 THE COURT: Did I get that right?

17 MS. HUSSER: Yes, ma'am.

18 THE COURT: I want to do a little victory dance.
19 Wonderful. Thank you so much for serving as our presiding
20 juror. I really appreciate that. We'll talk more about it
21 in the final instructions.

22 MS. HUSSER: Yeah. We'll need to.

23 THE COURT: All right. Very well. And you did so
24 well. Not only did you get all your 12 jurors, you got 14

25 ---

DIRECT EXAMINATION BY MR. BELL - SERGEANT GIBBONS 112

1 PRESIDING JUROR: Yes.

2 THE COURT: --- to keep in line and get here. And you
3 did a good job.

4 All right. Now, ladies and gentlemen, the State had
5 just a couple more questions, and you're going to hear
6 those questions before cross-examination.

7 Mr. Bell?

8 MR. BELL: Thank you, Your Honor.

9 THE COURT: Uh-huh.

10 (Sotto voce discussion between Mr. Bell and Mr. Archer.)

11 MR. ARCHER: No objections.

12 THE COURT: All right.

13 (State's Exhibit No. 4, gun, marked for identification.)

14 DIRECT EXAMINATION BY MR. BELL CONTINUES:

15 Q Sergeant Gibbons, I'd just like to show you what's now
16 been marked as State's 4 for identification, and ask if you
17 can identify that?

18 A It was my service weapon.

19 Q The service weapon that you used on the night of
20 February 28th?

21 A Yes, sir.

22 Q And at the end of -- once the other officers came and
23 -- there, what did you do with this weapon?

24 A It was taken from me -- secured by another officer.

25 Q Do you recall which officer?

DIRECT EXAMINATION BY MR. BELL - SERGEANT GIBBONS 113

1 A I -- I don't. At the time, I was attending to the
2 wound in my leg. I don't remember.

3 Q All right. Thank you.

4 A Yes, sir.

5 MR. BELL: That would be all the State has.

6 THE COURT: Cross-examination, Mr. Archer.

7 MR. BELL: Your Honor, we can move it into evidence if
8 he has no objection.

9 MR. ARCHER: No objection.

10 MR. BELL: Okay.

11 THE COURT: Very well. And we'll have to mark it, so
12 if you'll give Ms. Kelly just a moment to mark the --

13 (State's Exhibit No. 4, gun, admitted into evidence.)

14 CROSS-EXAMINATION BY MR. ARCHER:

15 Q Now, is it Detective Gibbons?

16 A Detective Sergeant, yes, sir.

17 Q Detective Sergeant. Detective Sergeant Gibbons.

18 Okay. This was a stakeout that y'all were running; is that
19 correct?

20 A Surveillance operation.

21 Q Surveillance operation. How long had that
22 surveillance operation been going on?

23 A Several hours that night.

24 Q But it -- was it going before that night?

25 A Yes, sir.

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS 114

1 Q All right. Any idea, basically, how long it'd been --

2 A We did the same type of operation the night before.

3 Q The night before? So, two nights.

4 A Yes, sir.

5 Q And as I understand it, you're back in [REDACTED]?

6 A Yes, sir.

7 Q All right. And you get a feeling that your cover's
8 been blown?

9 A Yes, sir.

10 Q Why was that?

11 A Like I said before, there was two females that came
12 out -- out of that breezeway, and --

13 Q Out of -- well, why don't you come down here?

14 A Yes, sir. (Complies.)

15 Q Okay.

16 THE COURT: And the same thing ---

17 Q Two females came out of what breezeway?

18 THE COURT: --- and Mr. Archer, just the same. Your
19 voice is fine. Just reminding Sergeant Gibbons to keep his
20 voice up.

21 And -- and if you need the -- do y'all need that laser
22 pointer, so the jury can see what you all are talking
23 about?

24 MR. ARCHER: (No audible answer.)

25 THE COURT: Very well. And -- and I'll tell you what.

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS 115

1 I'll tell you -- I -- if I can put my hands on it, I'll
2 have one also, because you -- do you think you might both
3 need one, Mr. Archer?

4 MR. ARCHER: Excuse me. I was -- I was playing with
5 the laser pointer, Judge. Oh.

6 THE COURT: I've got to watch my lawyers with the ADD.

7 MR. ARCHER: I -- I got one of these. It's a pen?

8 THE COURT: Yeah, this is a little -- this is a laser
9 pointer.

10 MR. ARCHER: Oh, a laser pointer. Yeah.

11 THE COURT: Both of you have one.

12 MR. ARCHER: Yeah, that's great.

13 THE COURT: Both of you have one.

14 MR. ARCHER: This high tech stuff ---

15 THE COURT: You don't have to share and you can not
16 block the board. But that you'll block -- the jury will
17 let me know.

18 MR. ARCHER: Okay. All right. Well, let me play with
19 this a little bit.

20 CROSS-EXAMINATION BY MR. ARCHER:

21 Q You're here in G, right?

22 A Yes, sir.

23 Q And which -- is apartment -- where is 13? Is it
24 downstairs? Which end?

25 A Downstairs at that breezeway entrance right there.

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS 116

1 (Indicates.)

2 Q Okay. So you say you saw two women.

3 A Yes, sir.

4 Q In a breezeway?

5 A Right outside the breezeway, probably walking on the
6 sidewalk right there. Right -- right outside.

7 Q Are they right along right in here?

8 THE COURT: And Sergeant, you're going to have to back
9 up, because you're actually ---

10 A Right there -- right -- right outside.

11 Q Right outside the door, right?

12 A Yes, sir.

13 Q All right. And this is C, correct?

14 A Correct. Yes, sir.

15 Q And you -- you say one of the gunmen fired at you from
16 somewhere right outside of C?

17 A No, sir.

18 Q Oh.

19 A One of them fired ---

20 THE COURT: Back up. I'm so sorry, Sergeant to do
21 that to you.

22 A One -- one fired from right there. (Indicates.)

23 Q Uh-huh.

24 A And there was also gunfire from this area right here.

25 (Indicates.)

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1 Q Okay. Okay. Now, what is -- show us what you call
2 the "courtyard" there.

3 A The courtyard would be -- well, it could be considered
4 this whole area right here. (Indicates.) It's just an
5 open area, and there's also a small playground right there.

6 Q Okay. So you're saying this whole area, including
7 down into here. (Indicates.)

8 A Yes, sir.

9 Q Okay. Now, where were you when you saw Mr. Parker, as
10 you say, and another individual when you first saw them
11 approach?

12 A Where was I?

13 Q Yes.

14 A Right in this area right here. (Indicates.)

15 Q Oh, okay. Now, could you mark that with a -- an "X" I
16 guess; black "X."

17 A (Complies.)

18 Q Okay.

19 THE COURT: Is that -- what -- are there any other
20 marks that you use?

21 Sergeant GIBBONS: Yes, ma'am.

22 MR. ARCHER: Red marks.

23 THE COURT: Well, hold on. I can't ---

24 MR. BELL: Your Honor, we've got a blue Sharpie.

25 THE COURT: I've got a blue one here, too, and a green

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS 118

1 one, just because the jury's got be able to delineate, and
2 I'm afraid they can't with the black.

3 There you go. See if that will work.

4 MR. ARCHER: Okay.

5 THE COURT: It's frightening when the judge brings
6 crayons and colored pens and pencils.

7 MR. ARCHER: You -- you great, Judge. You got all the
8 equipment I need here.

9 THE COURT: All right.

10 MR. ARCHER: The next time, I'll know to leave it all
11 home.

12 THE COURT: Exactly, Mr. Archer.

13 MR. ARCHER: Okay.

14 Q So, that's where they first approached. And they're
15 approaching you from where?

16 A They were coming from the apex of these two buildings
17 right here; in between them, right there. (Indicates.)

18 Q Okay. And where is the dumpster?

19 A The dumpster is at the edge of the E building, right
20 there.

21 Q Okay. And their -- now, at what point -- you indicate
22 at some point in time, they started shouting at you?

23 Yelling at you?

24 A Yes, sir. When I was -- when I had first exited the
25 building --

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS

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1 Q Uh-huh.

2 A -- here, and I was walking along the sidewalk, they
3 were up on the top breezeway on the C building.

4 Q Uh-huh.

5 A There's -- to explain the breezeways a little bit
6 better, they're kind of recessed. The doors are recessed
7 into the building. You have two doors on the bottom, and
8 you have a staircase with two doors on the top.

9 Q Okay.

10 A And that's what each one of them look like.

11 Q Okay.

12 A They were on the staircase, three-quarters to almost
13 all the way up to the top of the -- the staircase, yelling
14 down at me.

15 Q Are those -- breeze -- where are you when they start
16 yelling at you?

17 A Right -- right around in here. (Indicates.)

18 THE COURT: All right. Now, you've got to move back.
19 There you go.

20 Q Okay. Well, let's put a -- let's put a -- a zero
21 there.

22 A Okay. (Complies.)

23 Q Now, those -- what you call "breezeways" --

24 A Yes, sir.

25 Q -- they are -- they are recessed into the building; is

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS

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1 that correct?

2 A Correct.

3 Q And they don't have a porch that sticks out from the
4 building.

5 A No. No, sir.

6 Q Okay. Now -- and you indicate you were about here
7 about here. (Indicates.)

8 A Yes, sir.

9 Q And they were -- which -- which one of -- there's
10 about what -- how many? Two or three of these breezeways?

11 A There's two. If you look at the lines on the top of
12 the building ---

13 Q Uh-huh.

14 A --- they're in line with those -- those lines there.

15 Q Uh-huh.

16 A There's one on each side of the building, right in
17 line with those -- those lines on the roof.

18 Q Okay. Were you able to tell what they were saying at
19 that time?

20 A I -- I thought I heard, "Hey," but I just heard a loud
21 yell towards me. I was the only one in the -- in the
22 courtyard at the time.

23 Q Could you actually see the people yelling at you?

24 A No, sir.

25 Q Okay. So you know -- I guess just the general

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS

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1 direction that the voices you heard came from somewhere in
2 this vicinity?

3 A I saw two individuals on the steps of the breezeway.
4 Now, if I could identify them by face from that distance,
5 no, I could not.

6 Q Uh-huh.

7 A But I did see two individuals on the breezeway.

8 Q Okay. You saw two -- and that would have been
9 probably -- that would have been right when you came out,
10 right?

11 A Yes, sir. On the -- when I was standing on the
12 sidewalk right here.

13 Q Where? Standing where?

14 A Right where the zero is.

15 Q Well, the -- the wall comes through here, correct?
16 When you jump the outside wall?

17 A No, sir. The front of the building is completely
18 open. If you're referring to this (indicates) being a wall
19 -- that's a sidewalk. All these are sidewalks that go
20 throughout the complex, and the stairs come down right out
21 into the front of the -- the building.

22 Q Oh, okay. Well, let me see. Maybe we can do this.
23 Let's say that's Building C. (Indicates.)

24 A Okay.

25 Q Now, put the breezeway as you're talking.

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1 THE COURT: All right. Now, you do realize that the
2 jury back here cannot see. There you go.

3 A Okay. If there was two -- there's two breezeways ---

4 THE COURT: There you go.

5 A --- on the building, such as this. (Indicates.)

6 These breezeways are recessed into the building several
7 feet. There are two doors on the bottom. And then in
8 front of this door on the bottom left, there are stairs
9 that go up to the top little loft there, where there are
10 two more doors -- go to the two other apartments.

11 Q And similarly on the front there are breezeways, but
12 they do not connect; is that correct?

13 A No, sir. They -- they -- they -- these do not
14 connect. These -- basically, this is a breezeway for four
15 apartments.

16 Q Uh-huh.

17 A And this is the same -- it looks exactly the same for
18 four apartments, and then it reversed on the other side.

19 Q Right. And -- and the ones on the reverse side don't
20 connect through to those.

21 A No, sir.

22 Q Okay.

23 MR. ARCHER: Let me get this. If we could, just mark
24 that as for --

25 You have any --

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS

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1 MR. BELL: No objection.

2 MR. ARCHER: Got my glasses off; I can't see. There
3 he is.

4 MR. BELL: No objection.

5 MR. ARCHER: No objections? Okay.

6 THE COURT: Now, gentlemen, are you marking it for
7 identification purposes only, or are you putting it in
8 evidence?

9 MR. ARCHER: Okay.

10 THE COURT: Which are you doing? Which -- Mr. -- Mr.
11 Archer?

12 MR. ARCHER: Huh?

13 THE COURT: Are you offering it for ID purposes only,
14 or in evidence?

15 MR. ARCHER: I'll offer it in evidence.

16 MR. BELL: No objection.

17 THE COURT: Very well.

18 MR. ARCHER: Okay.

19 THE COURT: So that will be Defendant's Exhibit 1.

20 COURT REPORTER: It's actually going to be 9; we've
21 pre-marked eight.

22 THE COURT: Nine. Wonderful.

23 MR. ARCHER: Yeah. Not eight -- we've pre-marked
24 eight. Yes.

25 THE COURT: Thank you.

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS

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1 MR. ARCHER: Okay.

2 THE COURT: Hold on a second, because we got to --
3 now, you ready?

4 (Marked Defendant's Exhibit No. 9, Diagram,
5 in evidence without objection.)

6 (Sotto voce discussion between Mr. Archer
7 and the court reporter.)

8 THE COURT: Okay. You may proceed.

9 MR. ARCHER: Okay.

10 Q Now, you're here -- you're right in here when they --
11 when you first see them approaching from here (indicates);
12 is that correct?

13 A Yes, sir.

14 Q All right. Did you say something -- they started
15 running towards you?

16 A They were running until they got through the building
17 right here (indicates), and then they started walking up on
18 me.

19 Q Well now, how -- if you're -- how do you -- where do
20 you see them running?

21 A As they're coming to --

22 THE COURT: Now, you got to back up.

23 Sergeant GIBBONS: Sorry -- sorry.

24 THE COURT: That's okay. I'm going to put a little
25 piece of tape on the floor for y'all.

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS

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1 A As they're coming -- as they're coming up through here
2 (indicates) --

3 Q Uh-huh.

4 A -- you could see them as they're coming to a stop from
5 running. You know, if -- if you're walking and you walk
6 through the -- the two buildings, it looks quite a bit
7 different than running and coming to a stop and approaching
8 them walking.

9 Q Okay. So they -- according to -- from here on,
10 they're walking; is that right?

11 A Yes, sir.

12 Q Okay. And how close did they ever get to you? What's
13 the closest they ever get to you?

14 A I'd estimate about 10/15 yards. Maybe 10 yards,
15 maybe.

16 Q Okay. Thirty feet?

17 A Roughly. Yes, sir.

18 Q Okay. And where are you when the shooting begins?

19 A I am standing --

20 THE COURT: Got to back up just a little bit.

21 Q Uh-huh.

22 THE COURT: There you go.

23 A -- standing on the sidewalk right here, roughly in the
24 corner of the E Building right there.

25 Q Okay. In the back corner of the E building.

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS

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1 A Yes, sir.

2 Q And right here is where the dumpster is?

3 A Right there directly behind the building.

4 Q Okay. Okay. Would you put a -- put an "S" over here
5 wherever they started -- I guess use -- is that that red
6 "X"?

7 A Yes, sir.

8 Q Just put an "S" under that. Yeah.

9 A (Complies.)

10 Q Now, the person who started shooting at you was not
11 Dervick; is that right?

12 A I cannot 100 percent say for sure, but I -- I'm -- I'm
13 -- I'm not 100 percent sure of who exactly started shooting
14 at me at that point.

15 Q Okay. Well, at that point, you start to run, right?

16 A Yes, sir.

17 Q All right. And how many shots does that person fire
18 at you?

19 A Approximately four.

20 Q Okay. At -- from -- at this point right here, he
21 fires about four shots?

22 A Yes, sir. From what I remember, yes, sir.

23 Q Okay. Now -- and this is where you are when you're
24 hit, or is this just ---

25 A That's where my -- that's the break in the fence ---

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS

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1 Q Okay.

2 A --- where I went through.

3 Q Okay. I gotcha. That's the big one that sticks out.

4 A Yes, sir.

5 Q Not the little one -- there's a little one a little
6 bit further down, isn't there?

7 A Yes, sir. There's -- that's the one right there.

8 (Indicates.)

9 Q Okay. So this is where you are, right here

10 (indicates) where this "X" is ---

11 A Yes, sir.

12 Q --- when -- when you get shot. Okay.

13 Now -- now, let me ask you this -- right leg. Could
14 you pull up your leg and let's see the --

15 A (Complies.)

16 Q Okay. And where -- it goes through and through,
17 right?

18 A Entered there --

19 Q Uh-huh.

20 A -- exited there. (Indicates.)

21 Q Okay. So that -- it enters here. (Indicates.) You
22 can put your foot down.

23 A (Complies.)

24 Q Let's see. Raise -- let's turn it towards the jury,
25 if we can.

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS 128

1 A (Complies.)

2 Q And exits here (indicates); is that correct?

3 A Yes, sir.

4 Q Okay. Thank you.

5 A Uh-huh.

6 Q Okay. And -- and where do you start running now?

7 THE COURT: There you go. You got to back up. There
8 you go.

9 A Right -- right behind the building here. (Indicates.)

10 Q Okay. Right up ---

11 A That's where the gunshots started.

12 Q All right. I'm going to show you a picture. This --
13 this is the dumpster, right?

14 A Yes, sir.

15 Q Can you see on there where you start running?

16 A Right -- well, not exactly, because it's on the other
17 side of the building.

18 THE COURT: Gentlemen, let me ask you this question.
19 First of all, can you identify the exhibit, even if it's by
20 identification number. Mr. Archer?

21 MR. ARCHER: Yes. This is Exhibit No. 3 for
22 identification.

23 THE COURT: All right. Now, it's for identification
24 purposes?

25 MR. ARCHER: Uh-huh.

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS

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1 THE COURT: All right. Now, are you -- because
2 obviously the jury can't participate in what you all are
3 doing. Is that intended?

4 MR. ARCHER: Probably, yes. Let me see here.

5 THE COURT: All right. I didn't know if you were
6 having him ---

7 MR. ARCHER: Here we go. Let me do this.

8 THE COURT: I didn't know if you were having him
9 identify since you moved the photograph in.

10 MR. ARCHER: Now, you can't see it too good.

11 THE COURT: Well, now, it's not -- it's not in
12 evidence.

13 Mr. Bell?

14 MR. BELL: Your Honor, we have no objection.

15 THE COURT: All right. Very well. So this -- this
16 will be Defense Exhibit ---

17 COURT REPORTER: Three, Your Honor.

18 (Defense Exhibit No. 3, photograph,
19 admitted into evidence.)

20 MR. ARCHER: Now, when we were talking -- I'm going to
21 come back up, because you can't see real good on this.

22 Q The dumpster is approximately right there (indicates).

23 A Yes, sir.

24 Q And what are you saying? You're a little bit behind
25 this building?

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS

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1 A You can't see the back corner of that building.

2 Q Uh-huh.

3 A That's where I started running, on that opposite
4 corner. That is the E Building; that is the corner closest
5 to Bi-Lo ---

6 Q Okay.

7 A --- the opposite.

8 Q Okay. And -- and you run out, and I guess you cut
9 across here? (Indicates.)

10 A Yes, sir. Right in this area right here.
11 (Indicates.)

12 Q You got that car -- they certainly didn't come at you
13 running. You cut across this lawn here. (Indicates.)

14 Okay. And -- and they you search you -- the back of
15 that building or the front of it?

16 A The opposite side.

17 Q All the way on the -- on the back -- on the -- the
18 corner behind this -- back there ---

19 A Yes, sir.

20 Q --- instead of towards this corner. (Indicates.)

21 A Yes, sir.

22 Q Okay. Thank you.

23 MR. ARCHER: No -- no objection, I --

24 THE COURT: There's no objection.

25 MR. ARCHER: --- offer it.

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS 131

1 THE COURT: It's in evidence. Defendant's Exhibit 3.

2 Now, ladies and gentlemen, Mr. Archer has just handed
3 you a photograph to publish to you. Please do not allow
4 the viewing of the photograph at this time to keep you from
5 being able to listen ---

6 MR. ARCHER: Yeah. I'll give them a moment.

7 THE COURT: --- to the witness, only because you'll
8 have it with you in your jury room during your
9 deliberations.

10 So, if you want them to look at it, Mr. Archer, you
11 might want to just wait just a moment, and let them have a
12 look.

13 Is anybody warm? At my age, my temperature gauge is
14 very unreliable. Is anybody else warm?

15 MR. ARCHER: I am, Judge, but at my age -- but at my
16 age, it's -- could be the same thing.

17 THE COURT: Maybe.

18 (To the bailiff) We got a little air? Bless your
19 heart. Thank you, Ms. Simmons.

20 Oh. And are you all finished with the ...?

21 PRESIDING JUROR: Yes.

22 THE COURT: Everybody's ...

23 Okay. You may proceed, Mr. Archer. They are
24 finished.

25 MR. ARCHER: Okay. Good enough.

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS 132

1 Q Now, I am showing you what's been marked as
2 Defendant's Exhibit 4 for identification.

3 A Yes, sir.

4 Q Do you recognize that location?

5 A Yes, sir. That is the privacy fence located between
6 Haven Oaks and Bi-Lo shopping center.

7 Q Okay. Good enough.

8 THE COURT: Whoa. Any objection?

9 MR. BELL: No objection, Your Honor.

10 THE COURT: Very well. Defendant's Exhibit 4 into
11 evidence without objection ---

12 MR. ARCHER: Okay.

13 THE COURT: --- and you know what you can do -- no. I
14 don't know that you can see it so clearly back from the
15 witness stand. So maybe you'll just stay there. Just
16 remember, of course, Mr. Gibbons, keep your voice up.

17 SERGEANT GIBBONS: Yes, ma'am.

18 (Defendant's Exhibit No. 4, photograph,
19 admitted into evidence.)

20 Q Yes, ma'am. Yeah. All right.

21 Now, I take it that's where you were actually back in
22 the Bi-Lo parking lot?

23 A I ---

24 Q You want to come up and look at the picture closer?
25 It's a lot clearer if you do.

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS 133

1 THE COURT: Okay. Y'all can't block the jury, though.

2 MR. ARCHER: I -- I won't.

3 A All right. I -- there were several of these entrances
4 along the fence.

5 THE COURT: Hold on guys. Stop just a second.

6 Mr. Hilton? Would you come assist and just hold the
7 photo for these gentlemen, if you'd be so kind. I would
8 appreciate that. Because they can't ---

9 MR. ARCHER: Yes. I understand that.

10 THE COURT: Yeah. All right. Now, can everybody see
11 the photo?

12 JURORS: (No audible answer.)

13 THE COURT: All right. Now, y'all got to do -- and if
14 you need to use your laser pointer, just don't point it at
15 Mr. Hilton's eyes, please.

16 A There are several of these openings. If that is the
17 one that is closest to the back of the complex, then yes,
18 that would be the one that I went to.

19 Q It's the one that sticks out. The others -- are not
20 the others flush with the fence?

21 A I -- I believe so. Some of them have -- the fence
22 comes with a gap, and then there's another piece of fence
23 right behind it.

24 Q Uh-huh.

25 A I guess that's to -- for privacy.

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS

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1 Q But -- but that piece of fence would be back -- the
2 fence behind it is back on the Bi-Lo side, not out on the -
3 --

4 A Yes.

5 Q So, that along here, the only one that sticks out --
6 there's only one that sticks out; is ---

7 A I -- I believe so. Yes, sir.

8 Q Okay. And that would have been what you ran -- you
9 ran through the one that stuck out?

10 A Yes, sir.

11 Q Okay. Good enough. Now, just while we're on this
12 picture, there is a -- there's a light right there on that
13 pole (indicates); is there not?

14 A It looks like it does.

15 Q Okay. And would you mark on there with a pencil -- if
16 that's the exit that you went out of where -- pen -- where
17 you were when you were hit.

18 A With the -- with the perspective of this picture --

19 Q Uh-huh.

20 A -- if this is -- if this is definitely where the --
21 the curve comes around --

22 Q Uh-huh.

23 A -- that would be approximately in this -- in this area
24 right here. (Indicates.)

25 Q Okay. Just make an "X" there.

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS 135

1 A (Complies.) That -- that is the area where the bullet
2 struck me.

3 Q Struck you.

4 Did you proceed any farther after that, or did you
5 fall to the ground?

6 A No, sir. I went to a knee.

7 Q Uh-huh.

8 A Returned fire.

9 Q Okay. All right. And Defendant's Exhibit No. 4, no
10 objection?

11 MR. BELL: Right.

12 THE COURT: That's right. It's in evidence.

13 Q All right. Now, where -- let me ask you this, holding
14 that up again: Where is the corner of D in relation to
15 that?

16 A It would be off the picture.

17 Q Over here somewhere. (Indicates.)

18 A Yes, sir.

19 Q Okay. So, let's do this, if we can. Put an arrow and
20 "D" showing it's off the picture.

21 A (Complies.)

22 MR. ARCHER: Okay. I'm going to give them a moment to
23 look at that.

24 THE COURT: Okay. And I would just remind everyone to
25 be mindful of the volume without benefit of the

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS 136

1 microphones.

2 While the jury is reviewing the photo, could you show
3 these photographs that you have marked to Mr. Bell?

4 MR. ARCHER: (Complies.)

5 (Sotto voce discussion between Mr. Bell and Mr. Archer.)

6 THE COURT: All right. They -- the jury's --

7 MR. ARCHER: No objections?

8 MR. BELL: No objection.

9 MR. ARCHER: Okay.

10 THE COURT: Very well. Let's put the numbers, Mr.
11 Archer. Those are Defense Exhibits No. ...?

12 MR. ARCHER: This one ---

13 THE COURT: No. I got these. Give me the ones in
14 your hand.

15 MR. ARCHER: The ones in my hand ---

16 THE COURT: Yes, sir.

17 MR. ARCHER: --- are 6, 7; not marked.

18 THE COURT: Okay.

19 MR. ARCHER: I'm not going to introduce it. And 5.
20 And I'll identify each one as I ---

21 THE COURT: Very well. And for the record, they've
22 been shown to Mr. Bell and he has no objection to those
23 exhibits, so they will be in evidence.

24 MR. ARCHER: That is correct.

25 THE COURT: Okay.

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS

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1 (Defense Exhibits Nos. 6 and 7, photographs,
2 admitted into evidence.

3 MR. ARCHER: Okay. Now, further down ---

4 THE COURT: Here comes --

5 MR. ARCHER: Yeah.

6 THE COURT: --- here comes Mr. Hilton. Thank you.

7 MR. ARCHER: I was running out of paper, Judge, so I
8 had -- I printed -- I started off and made a mistake and
9 printed it on the back. But I was running out, so I -- I
10 reprinted it on the front. That's -- that's ---

11 THE COURT: I think it's marvelous you were able to do
12 that. How about that?

13 MR. ARCHER: Oh, yeah. Yeah.

14 THE COURT: All right.

15 Q Okay. Now, as you go down the line, a lot further --
16 a fair amount further down, there's some more poles; is
17 that correct?

18 A Yes, sir.

19 Q And here we have another light; is that correct?

20 A Yes, sir.

21 Q And that light is what you'd call "directional light,"
22 in that it specifically shines back at the Bi-Lo.

23 A I'm not -- I'm not sure about that particular light
24 which way it shines ---

25 Q Right.

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS 138

1 A --- but there are lights on those poles, yes.

2 Q Okay. But only on the two poles -- this pole and the
3 other pole that I showed you before -- before; is that
4 correct?

5 A I ---

6 Q You don't know?

7 A I really don't know which way the lights were
8 pointing.

9 Q And then --

10 MR. ARCHER: I'm going to pass these at one time,
11 Judge.

12 THE COURT: Okay. Sure.

13 Q I have what's been marked -- that was -- the one I
14 just showed you was marked as Defendant's Exhibit 6. And I
15 now have Defendant's Exhibit 7. There's a light post here
16 (indicates); is that correct?

17 A Yes, sir.

18 Q And do you know where that is in relation to C, D, E?

19 A Not from looking at that picture.

20 Q Okay.

21 A And I know it's on that side because of the privacy
22 fence, but I don't know exactly --

23 Q Uh-huh. Okay.

24 A -- where that picture was taken.

25 Q Okay. I think -- let me see.

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS

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1 MR. ARCHER: I don't want to put two of the same
2 pictures in, Judge.

3 THE COURT: Okay.

4 Q A little different. This -- what I'm showing you is
5 Defendant's 5. And that's basically the same as
6 Defendant's 4, I believe; is it not? Just a little bit
7 closer picture of the pole with the light on it.

8 THE COURT: Thank you, Mr. Hilton.

9 Mr. Hilton is going to assist you all.

10 MR. ARCHER: Uh-huh.

11 THE COURT: There you go. He's got two hands. There
12 you go. All right.

13 A What was your question again?

14 Q I say this is just a closer picture of -- of this
15 (indicates); is it not?

16 THE COURT: Now, Mr. Archer, you got to step back just
17 a little bit.

18 MR. ARCHER: Uh-huh.

19 A Again, looking at the -- the landscapes in the -- in
20 the picture, it looks like, yes, it's a little bit closer,
21 yeah.

22 Q And it shows a little better the opposite side.

23 A Yes, sir.

24 Q Okay. That's all. Now, all right. Let me pass these
25 and we'll go on.

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS 140

1 THE COURT: Very well. Very well.

2 MR. ARCHER: Your Honor, because of the nature of the
3 testimony, I've had -- and for the court reporter's
4 benefit, I've -- documents marked 2 for identification, 7 -
5 - or I better check on 7 -- 2 for identification I will not
6 offer, Your Honor.

7 THE COURT: All right.

8 MR. ARCHER: Nor will I be offering 1.

9 THE COURT: Okay.

10 MR. ARCHER: Okay.

11 THE COURT: Very well. Have you shown Exhibit 1 to
12 Mr. Bell?

13 MR. ARCHER: Yes. I've showed -- shown them all to
14 Mr. Bell.

15 THE COURT: Very well.

16 MR. ARCHER: This is 7 -- and I believe it's what you
17 identified as the pole, and you could not say exactly ---

18 THE COURT: All right. Seven.

19 (Sotto voce discussion between Mr. Archer and Mr. Hilton.)

20 (Sotto voce discussion between Mr. Archer
21 and the court reporter.)

22 MR. ARCHER: Now, I probably ought to say to -- to the
23 court reporter -- say that when we been referring to the
24 photograph of the whole complex, you've been -- I've been
25 referring to Defendant's Exhibit 1, as opposed to the

CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS

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1 photographs.

2 THE COURT: The State's Exhibit 1.

3 MR. ARCHER: Huh? State's Exhibit 1.

4 THE COURT: State's Exhibit 1.

5 MR. ARCHER: Excuse me. Yes. State's Exhibit 1.

6 THE COURT: Thank you.

7 MR. ARCHER: All right.

8 THE COURT: All right. They have reviewed the
9 photographs. You may proceed, Mr. Archer.

10 Q And one more thing while you're standing up. This
11 over here is a police substation (indicates); is it not?

12 A It was at one time. I'm not 100 percent sure if it
13 was at that point in time. But yes, it was at one time.
14 We closed it recently --

15 Q Uh-huh.

16 A -- and I'm not 100 percent sure if it was at that
17 time.

18 Q Okay. You can go back and take your seat.

19 A (Complies.)

20 Q Now, you may -- what was the date of this incident?

21 A February 28, 2008.

22 Q February 28, 2008. And on March the 4th, four days
23 later, you made a statement about what had happened; did
24 you not?

25 A I believe that was the date. Yes, sir.

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1 Q Okay. Well, I -- have you reviewed that statement
2 before you came here today?

3 A No, sir.

4 Q Okay. Well, let me give it to you and let you read
5 through it then. Let me know when you finish.

6 A (Complies.) Okay, sir.

7 Q All right. Now, if I could have it.

8 A (Complies.)

9 Q Now, this would have been the statement you gave to
10 your own department about what happened, correct?

11 A I gave that -- that statement went to -- to SLED.

12 Q To SLED?

13 A Yes, sir.

14 Q Okay. Did you give any other written statements?

15 A No, sir.

16 Q So this is the only written statement you've given on
17 this whole thing?

18 A Yes, sir.

19 Q All right. And do you know who took the statement?
20 Was it somebody from your department, or somebody from
21 SLED?

22 A No. It was Attorney Donnie Gamont.

23 Q An attorney?

24 A Yes, sir.

25 Q Okay. Now, in that statement, you make no mention, do

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1 you, of Dervick and Quinntavious Davis running towards you,
2 do you?

3 A I had in there that they came up in a brisk walk --
4 was whenever I saw them coming through ---

5 Q Okay.

6 A --- the ---

7 Q "Brisk walk" was what you put in the statement, right?

8 A Yes.

9 Q All right. Now -- and nor do you make any statement
10 in there about somebody yelling to you from Building C
11 prior to that, did you?

12 A Apparently I didn't put it in the statement. No.

13 Q Okay. All right. Now, you refer to the two
14 individuals as "gunman 1," correct?

15 A Yes, sir.

16 Q And "gunman 2, Dervick Parker."

17 A Correct.

18 Q Parker being "gunman 2," who you recognized.

19 A Correct.

20 Q All right. And I believe that you indicated that
21 "gunman 1" had an automatic pistol.

22 A Yes, sir.

23 Q Okay. And that "gunman 2" had a pistol, which you
24 believed to be a revolver ---

25 A Yes, sir.

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- 1 Q --- is that correct?
- 2 A Yes, sir.
- 3 Q All right. Now, in any event now, in the statement
4 you indicated that "gunman 1" shot at you at least four
5 times; did you not?
- 6 A Yes, sir.
- 7 Q Okay. You didn't seem to have any question at that
8 time that it was "gunman 1," who later turns out to be
9 Quinntavious, did you?
- 10 A I guess to further clarify to who started shooting,
11 not 100 percent sure. But as I look back, when I was
12 running, the guy in the red shirt was shooting at me. So I
13 guess for the purposes of that, I assumed that the guy with
14 the red shirt was shooting at me.
- 15 Q Okay. So the only -- at that point, the only person
16 you see shooting at you is the guy in the red shirt.
- 17 A Correct.
- 18 Q Which is not Dervick Parker.
- 19 A Correct. At that point, yes.
- 20 Q At that point. And that you're sure of.
- 21 A Yes, sir.
- 22 Q All right. And that person shot at you at least four
23 or five times; is that correct?
- 24 A Yes, sir.
- 25 Q All right. And you're certain it's at least four,

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1 maybe as many as five?

2 A Could be. Yes, sir.

3 Q Okay. Well, let me ask you something: You thought at
4 that point in time that your cover had been blown; did you
5 not?

6 A Yes, sir.

7 Q When you walked up on these fellows -- and you say
8 they're holding guns -- why didn't you just say, "Hey,
9 look, I'm a police officer. You put those away." Or "I am
10 a police officer and you're under arrest"?

11 A Well, first of all, sir, I did not approach them.
12 They approached me.

13 Q Uh-huh.

14 A And second of all, I thought that my cover was blown,
15 and that they thought the police were there. And if they
16 were brazen enough to approach me with guns in their hands,
17 it probably wouldn't be the best thing to identify myself
18 as the police.

19 Q Okay. Well, how about pulling out a gun and saying,
20 "You're under arrest"?

21 A I don't think there's much of a difference.

22 Q Okay. But at no time did you ever identify yourself
23 as being a police officer?

24 A No, sir. I did not.

25 Q And the gun that you were carrying -- at least until

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1 you pulled it out -- was underneath your sweatshirt, you
2 say?

3 A Before I pulled it out, it was in a holster under my
4 sweatshirt. Yes, sir.

5 Q A waist holster? Is that what ---

6 A A waist holster.

7 Q Okay. And how close were you to them when you pulled
8 it out?

9 A I was on the sidewalk and they were -- if I remember
10 correctly, they were coming through the -- the middle -- in
11 between the E -- the F Building and the E Building.

12 Q Uh-huh.

13 A So coming through there, I'd say approximately 20
14 yards or so, to be an estimate. I -- I really -- I'm not a
15 100 percent sure exact -- the exact distance.

16 Q Further away than the back of this courtroom?

17 A That -- that would be a fair estimate I guess.

18 Q Okay. Did they get -- what's the closest they ever
19 got to you?

20 A A little bit further than myself to you.

21 Q All right.

22 A A little bit further than that.

23 Q And they got that close to you before any shooting
24 started, right?

25 A Yes, sir.

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1 Q Okay. Now, if you'd step down here for a minute. I
2 do have another question.

3 THE COURT: And, of course, remember -- keep your
4 voice up. There you go.

5 (The witness steps down.)

6 Q Okay. We have shooting starting right here
7 (indicates), correct?

8 A Correct.

9 Q And the person is sort of chasing after you at that
10 time?

11 A From what I could see when I turned back, it kind of
12 looked something like he'd stepped out with a gun drawn,
13 like this. (Indicates.) Walking towards in my direction,
14 firing the weapon.

15 Q Okay. What's the farthest that person got along here,
16 shooting at you, that you know of?

17 A That I know of, maybe to this sidewalk here.
18 (Indicates.)

19 Q Okay. So you don't think he ever got further than the
20 person -- that person -- gunman number 1?

21 A He -- he may have gotten out to the street. My back
22 was turned at that point, trying to retreat to a position
23 of cover to -- trying to get to a place -- a covered
24 position.

25 Q A guy's shooting at you, and you got a gun out. How

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1 come you just didn't turn around and shoot back?

2 A Well, for one thing, I've already got my back turned.
3 He has an advantage over me with my back turned ---

4 Q Uh-huh.

5 A --- to be firing at me. For me to stop, turn around,
6 and try to aim in on him is -- is -- is a little more
7 difficult, because I don't want to just turn around and
8 fire. You know, I'm -- I'm responsible for where my rounds
9 go.

10 Q In fact, you say you're responsible for your rounds.
11 Let's talk about that. If he was here (indicates) firing
12 at you, the rounds would have gone off over here towards
13 the bushes; would they not?

14 A If he was firing at me, no. They would have gone off
15 in this direction. (Indicates.)

16 Q No. He was -- his shots would have gone off in this
17 direction, like you say, over here -- over here towards the
18 fence.

19 A That's where his would have went, in that direction.

20 Q But if you had turned and shot at him, you'd have been
21 shooting back down this way(indicates); is that correct?

22 A If he was where I saw him last on the sidewalk, it'd
23 have gone in this direction. (Indicates.)

24 Q Okay. But basically, there's no buildings in there.

25 A There's the F Building. And then also, this is --

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1 shows to be slightly undeveloped here, but there -- you
2 have this apartment complex and this neighborhood right
3 here. (Indicates.)

4 Q Well, you do eventually return the fire ---

5 A Yes, I do.

6 Q -- to somebody, right?

7 A Yes, I do.

8 Q And where are you when you return the fire?

9 A Right -- in this ---

10 Q Right there where you fell.

11 A --- in this area. (Indicates.) Yes.

12 Q Right there where you fell.

13 And you're returning fire, the person you say is --
14 that started firing is over here. Does that person move
15 after he starts firing?

16 A No, sir. He's on the corner.

17 Q You put a slug inside one of these apartments, didn't
18 you?

19 A Yes, sir.

20 Q Which apartment did you put a slug inside?

21 A In the C Building.

22 Q Into C.

23 A C -- C Building.

24 Q Which -- which apartment? You know which apartment?

25 A Bottom -- this end right here, bottom floor.

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1 Q Okay. And you weren't concerned about where your
2 shots may be going at that time, were you?

3 A I wasn't shot at the -- whenever I was being shot at
4 the first time.

5 Q Uh-huh. Okay.

6 A You know, there comes a point when I have to protect
7 my life as well.

8 Q I thoroughly agree with you on that. And -- and --
9 I'm just wondering, it seems like if somebody is shooting
10 at you, that point would come a lot earlier.

11 A I -- I -- and I could agree with you, but the pure
12 tactics of that ---

13 Q Uh-huh.

14 A --- wouldn't make any sense for me to stop, turn
15 around ---

16 Q Uh-huh.

17 A --- and give him a -- a target not moving to shoot at.

18 Q Right. Okay. Now -- okay. All right. So this
19 fellow back here -- the one you identified there -- fires
20 four to five shots at you. How many shots come from this
21 fellow at the corner?

22 A If I remember correctly, three or four.

23 Q Three or four. Okay. At least three, maybe as many
24 as four.

25 A Could be. Yes, sir.

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1 Q Okay. And you -- I think you put that down that (as
2 read): "Gunman 2 came around the other corner -- the
3 corner of another apartment building, and began firing at
4 me. I continued to run for my life. He continued to fire
5 his gun at me."

6 A Right.

7 Q And you say at least three, maybe as many as four
8 times.

9 A Right. I -- after the shot that hit my leg ---

10 Q Uh-huh.

11 A --- is roughly about the time I heard -- I stopped
12 hearing gunshots, and I returned fire.

13 Q Okay. And how many times did you fire back?

14 A I -- five times, maybe. I really don't remember.

15 Q Okay.

16 A I don't remember.

17 Q While you're firing back, what is -- what is this
18 fellow -- which you say is "gunman number 2 -- what's he
19 doing?

20 A He either retreated behind -- right into these shadows
21 behind the -- the building here -- where I -- if I was over
22 here (indicates), I no longer had the angle on him.

23 Q Uh-huh.

24 A He was behind the building. Once I lost sight of him,
25 I fired -- returned fire to suppress him. Once he went

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1 behind the building, I immediately went for the fence line.

2 Q Okay. But you never -- you never saw him again after
3 he left there; is that right?

4 A After I saw Mr. Parker right here, I never saw him
5 again after that. No.

6 Q Okay. And just one more thing -- just -- and I
7 believe I've got it right, but I want to make sure. You
8 say you were here (indicates) when you heard the people
9 shouting?

10 A Yes, sir.

11 Q But you never did actually see who those people were.

12 A I saw two males up on the thing. I never -- I
13 couldn't identify by name. No, sir.

14 Q Okay.

15 MR. ARCHER: All right. I have no other questions,
16 Your Honor.

17 THE COURT: Very well. Redirect?

18 MR. BELL: Thank you, Your Honor.

19 THE COURT: Yes.

20 MR. BELL: Sergeant Gibbons, I want to show you the
21 same statement I believe Mr. Archer asked you.

22 MR. ARCHER: Let -- let -- let me. I hate to do this,
23 but he asked -- he asked him another question. I do have
24 one or two more questions, if I could.

25 You got no objections?

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1 MR. BELL: Go ahead.

2 MR. ARCHER: Good enough. Thanks.

3 THE COURT: Very well.

4 CROSS-EXAMINATION BY MR. ARCHER CONTINUES:

5 Q In your period of time as a detective -- you don't
6 have to read.

7 A Okay.

8 Q You've been called -- have you ever been called to
9 Haven Oaks before?

10 A Yes, sir. Numerous times.

11 Q Numerous times. And what kind of things were you
12 called there for?

13 A Anywhere from regular domestic assault cases to drug
14 cases to homicides.

15 Q Right. There was -- in fact, in December, right
16 before this happened, there was a fellow shot in the back
17 there; was he not?

18 A Yes, sir.

19 Q And then a year beforehand -- about a year beforehand,
20 there was a man killed there; was there not?

21 A Yes, sir.

22 Q Okay. So it's a -- it's a fairly dangerous
23 neighborhood, right?

24 A Yes, sir.

25 Q Okay.

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1 MR. ARCHER: No other questions.

2 THE COURT: Very well. Re-direct?

3 RE-DIRECT EXAMINATION BY MR. BELL:

4 Q Sergeant Gibbons, I'm going to show these pieces of
5 paper and just ask if those are the -- is that the same
6 statement Mr. Archer showed you a few minutes ago?

7 A Yes, sir. It is.

8 Q That you gave to SLED?

9 A Yes, sir.

10 Q On March 4th of 2008; is that correct?

11 A Yes, sir.

12 Q Did you identify one of the shooters in this
13 statement?

14 A Yes, sir, I did.

15 Q And who was that?

16 A Dervick Parker.

17 Q Did you identify him as the person that shot you?

18 A Yes, sir, I did.

19 Q Okay. I'm going to ask you this question, and it
20 might sound silly, but it -- there's a serious tone to it:
21 Do the words "you're under arrest" have any magic in them?

22 A No, sir. Not usually.

23 Q Do people just automatically stop what they're doing,
24 drop their weapons when you say, "You're under arrest"?

25 A Sometimes they do; sometimes they don't.

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1 Q If you said that you were an officer, has that got
2 magic words to it?

3 A Not anymore.

4 Q So, by doing either of those, would that have stopped
5 the situation?

6 A No, sir. I don't believe so. If -- like I said
7 before, if -- you know, in this building, I believe I'd be
8 compromised as the police. If they're brazen enough to
9 approach me with guns in their hands, telling them I'm the
10 police is not going to diffuse the situation.

11 Q And just to refresh, when was the first time that you
12 put your weapon out in a -- in a threatening manner in this
13 whole situation?

14 A When I was retreating towards the fence line and I was
15 being shot at by Mr. Parker, I then returned fire at that
16 point.

17 Q Okay. And why were you returning fire at that point?

18 A I was taking fire, and I'd also been hit in the leg.

19 Q For protection?

20 A Yes, sir.

21 (Sotto voce discussion between Mr. Bell,

22 Mr. Archer and Detective Garrison.)

23 Q And let's go back -- and we're talking -- when the
24 first shots were fired --

25 A Yes, sir.

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1 Q -- and you were running towards the fence --

2 A Yes, sir.

3 Q -- you didn't try to return fire then.

4 A I looked back to -- to try to -- when I got to the
5 covered position and looked back, there was nobody there.
6 So there was no one to return fire to.

7 Q Okay.

8 A He'd already gone behind that building as well, the D
9 Building.

10 Q Okay.

11 A I'm sorry. I'm sorry. E Building.

12 Q Does that -- you mean when you got to a position to
13 return fire?

14 A Yes, sir.

15 Q Then you ---

16 A When -- when I got to -- behind one of the vehicles
17 where I had a position of cover. Yes, sir.

18 Q Okay. Why didn't you return fire before that?

19 A Before I got to that vehicle?

20 Q Yes.

21 A Because if I were to stop, turn around, and give him -
22 - it would give him a -- a target to shoot at that was
23 sitting still, rather than moving. I felt I had a better
24 chance.

25 Q Because you're running away from him with your back to

RE-CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS 157

1 him, correct?

2 A Yes, sir.

3 Q So you would have to stop --

4 A Stop.

5 Q -- and turn around. Okay.

6 A And then, again -- and get my sites on him.

7 Q Okay. And that would take some time.

8 A Yes, sir. Not a lot of time, but definitely enough
9 time for somebody to get their sites on me.

10 Q Okay. Thank you, Sergeant Gibbons. I have nothing
11 further.

12 THE COURT: Re-cross?

13 RE-CROSS EXAMINATION BY MR. ARCHER:

14 Q Mr. Bell asked you something about when did you first
15 pull your gun in a threatening manner.

16 COURT REPORTER: I'm sorry. I couldn't hear you. Say
17 that -- repeat that one more time.

18 Q Yes. He said -- he asked you When did you first pull
19 your gun in a threatening manner. And you indicated you
20 were over by the fence shooting, right?

21 A Yes, sir.

22 Q But you had your gun out a lot longer than that,
23 didn't you?

24 A Yes, sir.

25 Q And if you'll come here just for one second, I want

RE-CROSS-EXAMINATION BY MR. ARCHER - SERGEANT GIBBONS 158

1 you to point out again where you were when you first pulled
2 out your gun.

3 (The witness complies.)

4 A Where the "X" is there. (Indicates.)

5 Q Okay. You pulled your gun at the "X." Okay. All
6 right.

7 And you say you have it -- had it down by your side,
8 but you have no idea whether -- when these people saw that
9 gun or whether they saw that gun. All you know is you had
10 it down by your side; is that right?

11 A Yes, sir. I cannot testify to what they saw, but I
12 did have it close down to my leg, by my side.

13 Q Okay. And that was your --

14 A Right leg.

15 Q Your right leg? Okay. And you can go back.

16 (The witness complies.)

17 MR. ARCHER: I have no other questions.

18 THE COURT: Very well. You may come down.

19 All right. Call your next witness, please, sir.

20 MR. BELL: The State would call Sean Napoli to the
21 stand.

22 SEAN NAPOLI, having been first
23 duly sworn, testifies as follows:

24 THE COURT: If you'd please be seated. And when the
25 microphone is in place, would you state your full name for

DIRECT EXAMINATION BY MR. BELL - DETECTIVE SEAN NAPOLI 159

1 the record, and spell your last name.

2 WITNESS: Yes, ma'am. My name is Sean Joseph Napoli.

3 S-e-a-n, J-o-s-e-p-h. Napoli is N-a-p-o-l-i.

4 THE COURT: Your witness.

5 DIRECT EXAMINATION BY MR. BELL:

6 Q Where are you employed, sir?

7 A Dorchester County Sheriff's Office.

8 Q Okay. And how long have you been with the Dorchester
9 County Sheriff's Office?

10 A A little over 10 years now.

11 Q And what -- generally, what kind of training have you
12 had in your career with the sheriff's office?

13 A Everything from basic law enforcement to patrol
14 techniques to undercover drug investigations; the SWAT
15 classes, K-9 handler class.

16 Q And what is your current position with the sheriff's
17 office?

18 A I'm a corporal -- detective corporal in the Metro
19 Narcotics Unit.

20 Q How long have you been in the Metro Narcotics Unit?

21 A Since March 30th of '05.

22 Q And you work with Sergeant Gibbons?

23 A I do.

24 Q You work under him, I guess, since he's a sergeant and
25 you're a corporal?

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1 A Yes, sir.

2 Q Okay. Were you out at Haven Oaks on the night of
3 February 28, 2008?

4 A I was.

5 Q Why were you out there?

6 A We were conducting an ongoing investigation,
7 conducting surveillance.

8 Q And where exactly were you physically located?

9 WITNESS: May I get up, Your Honor?

10 THE COURT: If you need to, if that would ---

11 WITNESS: It would probably be better if I --

12 THE COURT: --- be of assistance.

13 MR. BELL: That's fine.

14 THE COURT: All right.

15 Q Refer to State's Exhibit 1. Here's the -- you've got
16 that?

17 A Yes, sir. Myself and Detective Mosher were atop the
18 rooftop over -- I believe right above Warren Hardware, but
19 we gained access through the -- the Bi-Lo -- the Bi-Lo
20 unit. Came up to the roof, walked across, and we were
21 positioned at the top on the rooftops.

22 Q Okay. And you -- and what was your purpose for being
23 there?

24 A To conduct surveillance for this ongoing investigation
25 we were conducting.

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1 Q Okay. And were you aware where Sergeant Gibbons was?

2 A Yes, I was.

3 Q And where was he?

4 A He was in -- I believe it was [REDACTED], down at the
5 bottom.

6 Q Okay. And did you -- were y'all in contact with one
7 another?

8 A [REDACTED] would be over here. I apologize. (Indicates.)
9 I think I pointed towards that apartment building.

10 Q You pointed to the -- what's been -- had -- has the G
11 on top of it?

12 A That is correct.

13 Q Okay. Were y'all in communications?

14 A We had radios. Yes, sir.

15 Q All right. And how long had Sergeant Gibbons been in
16 that apartment?

17 A For several hours.

18 Q Okay. And did you observe him leave at some point?

19 A Yes, I did.

20 Q Can you tell us what -- what you observed, please.

21 A The -- the cover on the roof was not very well, so
22 both Detective Mosher and I could not really get up close
23 on the edge. There was a small -- like a retaining wall
24 that we were actually able to hide behind, but we didn't
25 want to breach ourselves due to light conditions with the --

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1 - being on top. So we were kind of set up side-by-side.

2 More or less, I was behind him.

3 And we -- roughly around, I guess, 10:45 or so,
4 observed Sergeant Gibbons exit the apartment building and
5 start walking out. And lost sight of him right about right
6 here. (Indicates.)

7 Q Now, did -- did he alert you that he was leaving?

8 A If he did, I did not hear it over the radio.

9 Detective Mosher and I -- actually, we were watching over
10 the entire complex right here (indicates) and observed him
11 walk out. And we -- we knew what he was dressed like, so
12 we just -- we knew it was him based on his clothing, and
13 that he was leaving. Like I said, we lost sight of him
14 right about right here. (Indicates).

15 Q Okay. Did you see anything else?

16 A At that point, no. I heard Sergeant Gibbons come over
17 the radio, advising he needed "78."

18 Q What's a "78"?

19 A Need assistance.

20 Q Okay. And what -- what did you see then? Did you see
21 anything else after that?

22 A No, sir.

23 Q Okay. What did you do as -- recall what was the next
24 thing you did?

25 A We -- we stayed there because we didn't know exactly

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1 why he needed a "78." You could hear in his voice -- I've
2 known Shawn ever since I was 15 years old, and I know when
3 he gets upset. And you could tell he was under extreme
4 duress, that he needed help.

5 Like I said, he called over the radio. I believe
6 Sergeant Driggers came over the radio; said that he was
7 kind of "10/6," busy at the moment.

8 At that point, Sergeant -- I mean Detective Robinson
9 advised him to go ahead and assist Sergeant Gibbons, at
10 which point the radio came back on, and you could hear the
11 conversation -- which you all heard -- over the radio
12 between Sergeant Gibbons and the individuals who apparently
13 were approaching.

14 Q Okay. At that point, did you know where Sergeant
15 Gibbons was?

16 A No, I did not.

17 Q Okay. What happened next?

18 A Well, my heart sank. And like I said, I heard the
19 conversation and I knew he was in extreme duress. Not
20 knowing where he was, and you know, when I heard him call
21 out "59," meaning "gun," I knew he was in a bad
22 predicament.

23 Shortly thereafter, you know, we were on the roof.
24 I'm not light on my feet, so I knew it would take me a
25 while to get down back to the bottom. There's no way I

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1 could jump from the top -- myself or Detective Mosher --
2 that we would have to gain it -- exit the rooftop the same
3 way we came on, and that would -- that would take some
4 time.

5 After hearing the radio traffic, the radio traffic
6 went dead; and all of a sudden, heard a series of three or
7 four gunshots. And couple of seconds later, heard another
8 series of gunshots, and kind of like return fire. Could
9 not tell where they were coming from.

10 By this point, I'm standing up, trying to survey the
11 entire area and I couldn't see any -- I couldn't see any
12 flash from the muzzle. Couldn't see anybody running;
13 couldn't see anything. Because I didn't know exactly where
14 Sergeant Gibbons was at and where the incident was taking
15 place.

16 Q Okay. What happened after that?

17 A At that point, Detective Mosher took off running back
18 down the -- oh. It worked that time. -- came running down
19 the rooftop. And for some unknown reason -- and still to
20 this day, I don't know -- I started to gather everything
21 that we had there, thinking, "I can't leave this stuff.

22 At that point, Detective Mosher looked at me like,
23 "Drop it. Let's go."

24 At that point, I did. And when I looked up, that's
25 when I saw two -- two individuals. Well, I saw one

DIRECT EXAMINATION BY MR. BELL - DETECTIVE SEAN NAPOLI 165

1 individual -- I'm sorry -- come running around the C
2 Building.

3 Can I borrow yours, or whoever's working?

4 MR. ARCHER: He -- he's got mine. I had his, so you -

5 -

6 (Sotto voce discussion between the witness and Mr. Bell
7 regarding operation of the laser pointer.)

8 A Like I said, we were positioned right about here
9 (indicates) and saw an individual in a red shirt come
10 running -- come around the corner of this building and stop
11 almost in that front breezeway.

12 At that point, he stopped and he kind of like looked
13 over himself. Two/three seconds later, I saw another
14 individual come running around the corner, at which point
15 they met up. They took off to the breezeway right here
16 (indicates) and at that point, that's when I lost sight of
17 them.

18 I -- I took off down the rooftops. Began yelling over
19 the radio that -- which -- that they were in the C
20 Building, which breezeway they were in. At that point, a
21 Summerville Patrol K-9 unit showed up.

22 By this time, I had made it all the way down to here.
23 (Indicates). I was yelling over the radio, but they
24 weren't working off our channel, and I realized that.

25 Q Who was "they"?

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1 A Officer Hardee.

2 Q Okay.

3 A The K-9 unit from Summerville.

4 At that point, I started yelling at the top of my --
5 top of my voice so he could hear me, telling him that they
6 had actually overshot the C Building; that they had
7 actually stopped right here (indicates); that they needed
8 to go back and cover the front of that apartment building.
9 Because that's the last time I saw the individuals, right
10 there. (Indicates). And I wanted them to secure that
11 location so if they were there, they could not get away.

12 At that point, he looked up at me, started walking
13 towards me with his K-9, and then I guess he realized who I
14 was. And him, along with several other units, went around
15 to the front of the C Building and -- and covered that --
16 that breezeway, which contained the four apartments.

17 Q Okay. And did -- where did you go from the top of the
18 building?

19 A Well, it took me a little while. Like I said, I'm not
20 light on my feet, but I was out of breath at this time.
21 But had to go down through the stair access, run through
22 the Bi-Lo building, jump in my vehicle, and then drive
23 around and parked right around over here somewhere.
24 (Indicates.)

25 Q Okay. And you said Detective Mosher, who was up there

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1 with you, he was -- he'd been gone?

2 A Yes, sir. He had -- he had made it out before I did
3 and he was already down. And I don't know if he made it
4 through the fence, or if he actually ran around the side of
5 the building. I couldn't tell you.

6 Q Okay. And from there on, y'all were -- started
7 investigating; is that ---

8 A That is correct.

9 Q Okay. You can have a seat back.

10 (Witness returns to the stand.)

11 Q So, you were able to see -- after the shooting and all
12 -- two individuals meet back up in front of the C Building;
13 is that correct?

14 A That's correct.

15 Q And how did you describe them?

16 A The first individual that came around the corner was
17 wearing a red top. And like I said, he -- once he came
18 around the corner, he stopped almost like in the -- in the
19 middle of the first breezeway. Stopped, looked over
20 himself. You could tell he was looking down; held his arms
21 out.

22 And then that's when the second individual rounded the
23 corner of the building, met up with him, and they took off
24 to the other breezeway, which is a little bit further on
25 down.

CROSS-EXAMINATION BY MR. ARCHER - DETECTIVE SEAN NAPOLI 168

1 Q Thank you Detective Napoli. Please answer any
2 questions Mr. Archer has for you.

3 THE COURT: Cross-examination?

4 MR. ARCHER: Yes, ma'am.

5 CROSS-EXAMINATION BY MR. ARCHER:

6 Q Detective Napoli, you got that other pointer?

7 A Here's the ---

8 Q Yeah. I -- I'll let you use the good one.

9 A Okay.

10 Q I'll try using this one, if I can figure out -- okay.
11 Now, you're up here on top of what I call the "Bi-Lo
12 shopping center," right?

13 A That is correct. Yes, sir.

14 Q Do you have to step up to get under -- this is this
15 Bi-Lo right here, correct? (Indicates.)

16 A That is correct.

17 Q Do you have to step up ---

18 (Sotto voce discussion between Mr. Archer and Mr. Bell.)

19 THE COURT: Wait. Just stop.

20 MR. ARCHER: Okay.

21 THE COURT: All right.

22 Q That's the Bi-Lo. Is it higher than the rest of this
23 roof?

24 A Yes, it is. But the part where we gained access
25 through the -- in the back of the store --

CROSS-EXAMINATION BY MR. ARCHER - DETECTIVE SEAN NAPOLI 169

1 Q Uh-huh.

2 A --- you have to go up through a series of stairwell --
3 ways. Once you get up to the top, you come out onto a
4 platform, and which you have to go up another flight of
5 steps -- a ladder of some sort. Once you get up there, you
6 are actually above -- at this point you would now be above
7 right over here. (Indicates.)

8 Q Uh-huh.

9 A And all this is lower. There's a small wall that you
10 have to climb down right here (indicates) --

11 Q Yeah.

12 A -- and access. But pretty much, all these are even.

13 Q Okay. Back -- I mean -- about -- I mean, how -- how
14 steep is that from this part to that part? (Indicates.)

15 A From this building right here to that building?

16 (Indicates.)

17 Q Uh-huh.

18 A Not far -- far enough to where I could get up and get
19 down.

20 Q I gotcha. Okay.

21 Now, you're where? You're somewhere down here doing
22 the observation; is that right? (Indicates.)

23 A That is correct. Right -- right around this -- right
24 around here. (Indicates.) Yes, sir.

25 Q Okay. Right around there. (Indicates.)

CROSS-EXAMINATION BY MR. ARCHER - DETECTIVE SEAN NAPOLI 170

1 And when you see the individuals after the shooting
2 starts, where are you on the building?

3 A When I see the individuals?

4 Q Uh-huh.

5 A I believe I had already stepped up. We -- I actually
6 thought about jumping down onto that, but I realized I
7 would not make that jump; that it would not be conducive to
8 -- for me to do that. So, I would say right about right
9 here. (Indicates.)

10 Q Okay. And individual No. 1, the first -- you saw one
11 individual start coming towards you initially, right? I
12 mean coming -- you saw one individual ---

13 A I saw one individual in a red shirt come right around
14 this building right here, and kind of stop almost right
15 there. (Indicates.)

16 Q He's behind this building?

17 A No. You got to remember, this is casting a shadow.

18 Q Uh-huh.

19 A Okay. If I'm standing here, this is a straight line.
20 So, he came running around the building and stopped right
21 here. (Indicates.)

22 Q Okay. That's the first individual stops there.
23 (Indicates.)

24 A Right around -- right around that spot. Yes, sir.

25 Q Well, since we got three people --

CROSS-EXAMINATION BY MR. ARCHER - DETECTIVE SEAN NAPOLI 171

1 MR. ARCHER: We got a different color pen, Your Honor?

2 THE COURT: We do.

3 MR. ARCHER: Good enough.

4 THE COURT: See if that will work.

5 MR. ARCHER: Okay.

6 THE COURT: It might not be bold enough.

7 Q There's a green one. Why don't you put a -- a -- an
8 "X" where you say you see him. That's C.

9 A Right. (Complies.)

10 Q Okay. So you see him stop right there at the back of
11 C, one individual.

12 A Well, yeah. Yeah. That's the C Building. Like I
13 said, there's a -- here's breezeway 1 ---

14 Q Uh-huh.

15 A --- there's breezeway 2.

16 Q Sure. And -- and do you see where he comes from?

17 A I -- I didn't see where he came from.

18 THE COURT: You are blocking them. Now, be careful
19 blocking.

20 A I'm sorry.

21 THE COURT: You gotta ---

22 A I didn't see where he came from. All I know is I saw
23 an individual come around the corner; come around this back
24 side corner and stop right there. (Indicates.)

25 Q Around -- okay. Around this corner.

CROSS-EXAMINATION BY MR. ARCHER - DETECTIVE SEAN NAPOLI 172

1 A Yes, sir.

2 Q Okay. And you couldn't have seen that from where you
3 were. Where -- can you see back in here?

4 A No. No. No.

5 Q Okay. Okay.

6 A I wish I was that good, but I'm not.

7 Q Yeah. Now, that individual was the first individual
8 you see come around this corner, what's he wearing?

9 A A red top and I don't remember the bottom.

10 Q Okay. And then how much later do you see a second
11 individual coming?

12 A Several seconds. I would say no more than -- no more
13 than between 5 to 7/8 seconds.

14 Q And where do you see him coming from?

15 A From the same location. He came from the same spot
16 the first individual came around -- came from, and which is
17 around this corner. (Indicates.)

18 Where he came from before that, I do not know.

19 Q Uh-huh.

20 A All I know is I saw him come from around the side of
21 the building and stop right there. (Indicates.)

22 Q Okay. They both stopped right where you made the
23 green "X".

24 A That is correct.

25 Q Okay. So they both come from somewhere out in here or

CROSS-EXAMINATION BY MR. ARCHER - DETECTIVE SEAN NAPOLI 173

1 around here. (Indicates.)

2 A I can't assume where they came from.

3
4 Q Uh-huh.

5 A All I can tell you is where I saw them come from.

6 Q Okay.

7 A Which is ---

8 Q Yeah.

9 A --- somewhere around there. Right there.

10 (Indicates.)

11 Q Yeah. You don't know. You're just saying you don't
12 see them out here. (Indicates.)

13 A No. No.

14 Q The first time you see them is when -- when they're
15 right past the end of that building. Okay.

16 So, one -- the first one you see has a red shirt on;
17 the second one has a lighter shirt.

18 A Right.

19 Q Okey dokey. Okay. Now, how long after the gunfire is
20 this?

21 A After the last series of shots, I would say anywhere
22 from -- like I said, 10 seconds; 10 to 15 seconds.

23 Q Okay. Okay. Now, did you hear -- you heard what
24 appears to be Detective Shawn Gibbons returning fire.

25 A I heard gunshots.

CROSS-EXAMINATION BY MR. ARCHER - DETECTIVE SEAN NAPOLI 174

1 Q You heard gunshots.

2 A Yes, sir.

3 Q You couldn't tell what was ---

4 A I don't know. That is correct.

5 Q And you heard six or seven?

6 A At first, I heard like three or four.

7 Q Uh-huh.

8 A Then after that, a couple seconds went by, and that's
9 when I heard a series of more shots. I was like "bam, bam,
10 bam, bam," then "pow, pow, pow, pow, pow." I mean, it was
11 the -- the last set of shots I heard were in quick
12 succession. You could tell they were coming from a larger
13 caliber, because the -- it was a lot louder when the guns
14 went off.

15 Q Now, what caliber police gun do y'all carry?

16 A Forty caliber.

17 Q That's -- that's a large caliber.

18 A Yeah, it's -- that is true.

19 Q Okay. Did you hear -- prior to -- now, how close
20 together -- you say you heard "pow, pow, pow," and then
21 "pow, pow, pow, pow." Were they closer together?

22 A The first sets -- the first set of shots was by
23 itself. The second set of shots -- there were, like I
24 said, six or seven that I heard late -- on the second
25 series of shots.

CROSS-EXAMINATION BY MR. ARCHER - DETECTIVE SEAN NAPOLI 175

1 Q Uh-huh. And do you know where -- I mean, could you
2 tell where the second series of shots were coming from?

3 A No. No.

4 Q Okay. Nor could you tell where the first series ---

5 A No.

6 Q --- of shots were coming from.

7 A Could not.

8 Q And do you remember how many you heard in the first
9 series of shots?

10 A I'm sorry. Do what?

11 Q How -- how many the first series of shots were?

12 A Three or four.

13 Q Okay.

14 A I -- I wasn't sitting there taking count.

15 Q I understand.

16 A I knew gunshots were being fired. I knew my friend
17 was -- and my sergeant was in trouble --

18 Q Sure.

19 A -- and I wasn't -- I wasn't taking count.

20 Q Okay. So the first series was three or four; the next
21 series is six to seven total?

22 A I would say right around that. Yes, sir.

23 Q Okay. Were you able to distinguish between the sounds
24 of the six and seven?

25 A On the -- like I said, on the last -- there were two.

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1 sets of shots.

2 Q Uh-huh.

3 A On the second series, the last shots I heard were a
4 lot louder.

5 Q Okay. Okay. And the first series was about how many
6 shots?

7 A Three or four.

8 Q I mean, there's a first series that takes place
9 earlier. But this -- this -- there's -- the shots that
10 take place basically when Detective Napoli is somewhere
11 over in here.

12 A No. I'm Napoli. You mean Gibbons, Sergeant Gibbons.

13 Q I'm -- I'm -- Napoli. I just -- I get old and my
14 brain gets a little ...

15 You -- you -- you were talking about -- and I want to
16 make sure I understand.

17 A Yes, sir.

18 Q Okay. Two series of shots, with one taking place
19 earlier that's three or four shots. Are you able to tell
20 whether those are loud shots or --

21 A I heard gunshots. All I can tell you is the last
22 shots I heard were --

23 Q Okay.

24 A -- were a lot louder than the previous two I had
25 heard.

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1 Q Okay. Then somewhere after the first set of shots --

2 A Okay.

3 Q -- you hear what appears to be two different guns
4 fire; is that right?

5 A That is correct.

6 Q Okay. And the total in the second round of shooting,
7 basically ---

8 A Uh-huh.

9 Q --- the total is six or seven shots.

10 A I would say -- like I say, I wasn't keeping count. I
11 had a lot of things going through my mind and I wasn't
12 keeping count. I -- all I can do is estimate.

13 Q I understand.

14 A That's the best I can do, sir.

15 Q Now, the -- the -- could you tell -- could you make an
16 estimate of -- in that last series of six or seven shots,
17 how many of them were smaller caliber? How many of them
18 were louder?

19 A I -- I couldn't tell you. Like I said, I heard -- you
20 could hear like -- almost like a small caliber shots being
21 fired, then you heard a louder bang, as I -- as most people
22 would put it.

23 Q Uh-huh. Okay.

24 A A series of those.

25 Q Right. And -- and -- but you couldn't tell how many

1 of either one?

2 A No.

3 Q Okay. I got it. You can go on back.

4 (The witness returns to the stand.)

5 (Sotto voce discussion between Mr. Archer and the Court.)

6 MR. ARCHER: Okay. Let me take a second. I think
7 that's all I've got for this witness, Your Honor.

8 THE COURT: All right.

9 MR. ARCHER: I have no other questions.

10 THE COURT: Re-direct?

11 MR. BELL: No, Your Honor.

12 THE COURT: You may come down.

13 (The witness exits the stand.)

14 THE COURT: All right. Ladies and gentlemen, we are
15 going to take our lunch break at this time, and we are
16 going to return at 2:30, at 2:30. Please be in your jury
17 room, ready to continue with this matter then.

18 Also, please be mindful not to discuss this matter or
19 allow anyone to discuss it with you. Don't read anything,
20 don't listen to anything about this matter -- the radio,
21 television, newspaper, any of that.

22 And have a marvelous lunch. See you at 2:30. Thank
23 you so much.

24 (The jury exits at 12:59 p.m.)

25 THE COURT: All right. Anything before we break for -

1 - for lunch from the State?

2 MR. BELL: None from the State, Your Honor.

3 THE COURT: All right. And from the Defense?

4 MR. ARCHER: No, Your Honor.

5 THE COURT: All right. You all have a -- you all have
6 a good lunch. I'm going to try to be back in about -- five
7 minutes early, so if there are any issues, we can address
8 them so we can start promptly at 2:30.

9 MR. ARCHER: At 2:30 then.

10 THE COURT: Thank you. All right.

11 (Off the record at 1:00 p.m.)

12 (On the record at 2:33 p.m.)

13 THE COURT: Anything before we bring the jury out?

14 MR. BELL: Nothing from the State.

15 MR. ARCHER: No, ma'am.

16 (Sotto voce discussion between the Court
17 and court security.)

18 THE COURT: You could stand right there, Mr. -- Mr.
19 Campbell.

20 MR. CAMPBELL: How you doing?

21 THE COURT: I'm okay. How are you doing?

22 MR. CAMPBELL: (No audible response.)

23 THE COURT: All right. Now, you want to let us have
24 the jury?

25 (The jury enters the courtroom at 2:39 p.m.)-

1 THE COURT: All right. Ladies and gentlemen, I surely
2 hope you all enjoyed your lunch. You did a great job; you
3 got 14 jurors back.

4 At this time, we're going to continue with the State's
5 case.

6 If you'd call your next witness, please, Mr. Bell.

7 MR. BELL: The State would call Donnell Campbell to
8 the stand.

9 THE COURT: All right. And Mr. Campbell, if you'd
10 raise your right hand.

11 DONNELL CAMPBELL, having been
12 first duly sworn, testifies as follows:

13 THE COURT: All right. Sir, if you'd please be
14 seated. And when you are seated, if you would state your
15 full name for the record and spell your last name.

16 THE WITNESS: Donnell Terrell Campbell, C-a-m-p-b-e-l-
17 l.

18 THE COURT: All right. And Ms. Kelly, do you need Mr.
19 Campbell to spell his first name, too? Have you got that?

20 THE COURT REPORTER: (Nods head up and down.)

21 THE WITNESS: D-o-n-n-e-l-l.

22 THE COURT: Your witness. And you're going -- you're
23 going to have to probably sit just a little closer to that
24 microphone. The acoustics in the courtroom are not
25 wonderful.

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1 THE WITNESS: Yes, ma'am.

2 THE COURT: Thank you. Mr. Bell, your witness.

3 MR. BELL: Thank you, Your Honor.

4 DIRECT EXAMINATION BY MR. BELL:

5 Q Would you state your name again, please?

6 A Donnell Terrell Campbell.

7 Q All right. I just need you to speak up a little more
8 so all these jurors can hear you. Okay?

9 A Yes, sir.

10 Q All right. Mr. Campbell, you're charged with assault
11 and battery with intent to kill in this case; is that
12 correct?

13 A Yes, sir.

14 Q The case where Sergeant Shawn Gibbons was shot at
15 Haven Oaks?

16 A Yes, sir.

17 Q Okay. You've agreed to testify truthfully for the
18 State in exchange that you be allowed to plead guilty to
19 accessory after the fact. Is that your understanding?

20 A Yes, sir.

21 Q Okay. Is that the deal that we've -- you've entered
22 into?

23 A Yes, sir.

24 Q For your testimony here today?

25 A Yes, sir.

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1 Q Okay. And you were charged with two other
2 individuals; is that correct?

3 A Yes, sir.

4 Q Mr. Donnell -- I'm sorry -- Mr. Quinttavius Davis.
5 Is that one of them?

6 A Yes, sir.

7 Q And the defendant Dervick Parker?

8 A Yes, sir.

9 Q Okay. Do you recall that day, the day that Sergeant
10 Gibbons got shot at Haven Oaks?

11 A 2/28/08.

12 Q Okay. And how did you come to be at Haven Oaks that
13 night or that day?

14 A Because I went to my girlfriend house.

15 Q And who is your girlfriend?

16 A Lakeysa Duncan.

17 Q Okay. And where did she live in Haven Oaks?

18 A [REDACTED].

19 Q Okay. And about what time did you go there?

20 A At ten o'clock.

21 Q In the evening or morning?

22 A Night.

23 Q Okay. How did you get there?

24 A My cousin dropped me off.

25 Q All right. When you went up to her apartment, who all

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1 was there?

2 A Me, Ashley, Shelby, Keysha, and her daughter.

3 Q Okay. Who's Ashley? Do you know her name, her full
4 name?

5 A No.

6 Q Okay. Who's Shelby?

7 A One of her friends.

8 Q One of whose friends?

9 A Keysha friends.

10 Q Okay. And that was -- you say it was key --
11 Lakeysa's apartment?

12 A Yes, sir.

13 Q Her name was Lakeysa Duncan. You call her "Keysha";
14 is that right?

15 A Yes, sir.

16 Q Okay. And her daughter?

17 A Yes, sir.

18 Q How old was her daughter?

19 A Four.

20 Q Okay. And what -- what happened once you got there?

21 A I got there and started drinking a little bit.

22 Q What were you drinking?

23 A Crown Royal.

24 Q Okay. What happened once you started drinking?

25 A To -- Mr. Parker and Mr. Davis entered the house.

1 Q Okay. Do you know how long they came after you got
2 there?

3 A No, sir.

4 Q Okay. Did you know either one of them before then?

5 A No, sir.

6 Q Okay. What did they do when they came there?

7 A They -- they started sitting around chilling.

8 Q Okay. And what do you mean by "chilling"?

9 A Just sitting -- sitting on the couch just talking.

10 Q Okay. And what happened after they came there?

11 A A female came upstairs and was like, "I think it's a
12 undercover cop downstairs."

13 Q Did you know the female?

14 A (No audible response.)

15 MR. ARCHER: Wait, wait, wait, wait. Object on
16 hearsay grounds, Your Honor.

17 THE COURT: I'm sorry. Clearly, the response was
18 answered before the objection was made.

19 MR. ARCHER: I move to strike then.

20 THE COURT: Very well. All right. Do you wish to be
21 heard?

22 MR. BELL: In front of the jury, or out of the --

23 THE COURT: Well, let me see. Y'all -- let me see
24 you. Come here.

25 (Bench conference.)

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1 THE COURT: Ladies and gentlemen, there has been a
2 motion to strike the last answer. I am sustaining that
3 motion.

4 I'm going to ask you to please strike the last answer
5 and disavow it from your minds. It was a sustainable
6 objection on the basis of hearsay. There was a motion to
7 strike, and I'm going to ask you to please and instruct you
8 to please strike the answer, and disavow it from your
9 minds.

10 All right. You may proceed, Mr. Bell.

11 Q All right. Mr. Campbell, after some girl came up
12 there and said something, what happened after that?

13 A They -- they left ---

14 Q Who was --

15 A --- left the apartment.

16 Q Excuse me?

17 A Mr. Davis and Mr. Parker left the apartment.

18 Q Okay. How did they leave?

19 A Just got up and left; didn't say nothing.

20 Q Okay. Did they have anything with them that you saw?

21 A No, sir.

22 Q Okay. What happened after they left?

23 A I heard two gunshots.

24 Q About how long after they left did you hear these
25 gunshots?

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- 1 A Like five minutes.
- 2 Q Okay. Do you know where they came from?
- 3 A No, sir.
- 4 Q Where were you?
- 5 A In the kitchen.
- 6 Q Of the apartment?
- 7 A Yes, sir.
- 8 Q Who -- who else was there at that time?
- 9 A The three girls.
- 10 Q Okay. Lakeysa and --
- 11 A Shelby, Ashley.
- 12 Q Okay. What happened after you heard the two gunshots?
- 13 A Then Davis and Parker came back upstairs, knocking on
- 14 the door.
- 15 Q Okay. How long after those gunshots did they come
- 16 back?
- 17 A Pretty fast.
- 18 Q Can you estimate about how long?
- 19 A Like two minutes, three minutes.
- 20 Q Okay. How were they acting when they came back?
- 21 A Kind of -- kind of antsy, scared a little bit.
- 22 Q And did they say anything?
- 23 A (No audible response.)
- 24 Q How -- how were they being antsy or --
- 25 A Like jittery and nervous.

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- 1 Q Okay. Did they have anything with them when they came
2 back?
- 3 A Yes, sir.
- 4 Q What did they have?
- 5 A Two handguns.
- 6 Q Okay. Do you know what kind of handguns they had?
- 7 A .380 and a .38; chrome .38.
- 8 Q Okay.
- 9 A A black .380 automatic.
- 10 Q And what was the other one?
- 11 A A chrome .38.
- 12 Q Was it an automatic or a revolver?
- 13 A Revolver.
- 14 Q Okay. What did they do with those?
- 15 A They then forced me at gunpoint to take the guns.
- 16 Q Who did that?
- 17 A Davis.
- 18 Q Okay. Did you?
- 19 A Yes, sir.
- 20 Q Okay. Did you get both the guns?
- 21 A Yes, sir.
- 22 Q And what did you do with them?
- 23 A I hid them in a white basket in the bedroom.
- 24 Q Okay. Would that be -- what kind of basket?
- 25 A Laundry basket.

DIRECT EXAMINATION BY MR. BELL - DONNELL CAMPBELL

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1 Q Okay.

2 (Mr. Bell shows photograph to Mr. Archer.)

3 MR. ARCHER: No objections.

4 MR. BELL: Have this marked as State's 5, I believe.

5 (Marked State's Exhibit No. 5, photograph,
6 for identification.)

7 Q Mr. Campbell, I'm going to show you a picture and ask
8 -- what's been marked as State's 5, and ask if you can
9 recognize it.

10 A That's the automatic, black automatic.

11 Q And that's the basket that you put it in?

12 A Yes, sir.

13 Q In the apartment -- Lakeysa's apartment?

14 A Yes, sir.

15 MR. BELL: We'd offer this as State's 5, Your Honor.

16 THE COURT: All right. And there's no objection, so
17 State's Exhibit No. 5, in evidence, without objection.

18 (State's Exhibit No. 5, photograph,
19 entered into evidence without objection.)

20 MR. BELL: Okay.

21 Q Let me come back up here and ask you where -- where --
22 where you see the automatic.

23 A (Indicates.)

24 Q Okay. And you're the one that put it there?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. BELL - DONNELL CAMPBELL

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1 (Sotto voce discussion between Mr. Bell and Mr. Hilton.)

2 Q After you hid the -- put the guns in the basket, what
3 did the other two individuals do?

4 A One -- one took off his red shirt and put it in the
5 freezer.

6 Q And who was that?

7 A Well, a female put it in there. Shelby -- Shelby put
8 it in the freezer.

9 Q Okay. Who took off his red shirt?

10 A Quinntavious Davis.

11 Q Okay. And the other one, Mr. Parker, that you said is
12 Mr. Parker?

13 A Uh-huh.

14 Q What was he wearing?

15 A A green -- a green-striped shirt.

16 Q Okay. And he came back in?

17 A I don't remember what he was wearing.

18 Q When he came back in ---

19 A Unh-unh.

20 Q --- from outside?

21 A Matter of fact, it was -- it was a camouflage jacket,
22 matter of fact.

23 Q Okay. Okay. Now, Donnell, this is what State's 5 --
24 you see that up on the screen?

25 A Uh-huh.

DIRECT EXAMINATION BY MR. BELL - DONNELL CAMPBELL 190

1 Q This is a laser pointer. If you push this button,
2 it'll point.

3 Can you point to the jury where the -- where the
4 automatic is you said?

5 A What? Hit this?

6 Q Hit the little -- like that right up there.

7 A (Complies.) (Indicates.)

8 Q Right there?

9 A Uh-huh.

10 THE COURT: That's a "yes"?

11 A Yes, sir.

12 Q Okay.

13 (Mr. Bell shows packages to Mr. Archer.)

14 MR. ARCHER: No objections.

15 MR. BELL: (To the Court Reporter) Mark these, please.

16 (Marked State's Exhibit No. 6, .380 gun,
17 for identification.)

18 (Marked State's Exhibit No. 7, .38 revolver,
19 for identification.)

20 MR. BELL: These two pistols have gun locks on them,
21 Your Honor.

22 THE COURT: Thank you.

23 MR. BELL: And we've got a third one for the other
24 pistol we'll put at the end of the day.

25 THE COURT: Thank you.

DIRECT EXAMINATION BY MR. BELL - DONNELL CAMPBELL 191

1 Q Okay. Mr. Campbell, I'm going to show you what's been
2 marked as State's 6, and ask if you could identify that.

3 A .380 automatic.

4 Q Is that the one that you were handed on that night?

5 A Yes, sir.

6 Q And that you put in the clothes basket?

7 A Yes, sir.

8 Q And I want to show you what's been marked as State's
9 7, and ask you if you can identify that.

10 A .38 revolver.

11 Q And that's the one that you were handed that night?

12 A Yes, sir.

13 Q And that's the one you put in the clothes basket?

14 A Yes, sir.

15 Q Who had -- who had these guns that night? That you --

16 A Parker -- Parker had the .380 automatic, and Davis had
17 the .38.

18 Q Okay.

19 MR. BELL: We move in -- these into evidence, Your
20 Honor.

21 THE COURT: Any objection?

22 MR. ARCHER: No objection.

23 THE COURT: So admitted.

24 (State's Exhibit No. 6, .380 gun, moved into evidence.)

25 (State's Exhibit No. 7, .38 revolver, moved into evidence.)

DIRECT EXAMINATION BY MR. BELL - DONNELL CAMPBELL

192

1 Q Okay. You said that after that, after you put the
2 guns in, that who left?

3 A Mr. Davis.

4 Q Okay. And where was the other individual, Mr. Parker?

5 A In the house.

6 Q Okay. Anything happen after that?

7 A Mr. Davis then went downstairs, and he was approached
8 by a detective. I don't know which one, but he was
9 approached by a detective.

10 Q Where were you?

11 A In the house.

12 Q Okay. How do you know he was approached by a
13 detective?

14 A Because I heard him.

15 Q Okay. What did you do?

16 A Just continue to drink. I was nervous.

17 Q Okay. Did the police ever come to the apartment?

18 A Later on that night.

19 Q About how long after that?

20 A I fell asleep and -- I fell asleep. No telling.
21 Probably a couple hours.

22 Q Okay. And did the police talk to you that night?

23 A Yes, sir.

24 Q Did you tell them anything that night?

25 A No, sir.

DIRECT EXAMINATION BY MR. BELL - DONNELL CAMPBELL

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1 Q Okay. Why not?

2 A Because I was scared; I didn't have no lawyer present.

3 Q Okay. Did you ever go talk to the police?

4 A No, sir.

5 Q The police ever talk to you?

6 A No, sir.

7 Q That night or any time?

8 A That night, no, sir. But on 6/13/08, I did talk to
9 the police.

10 Q Okay. At whose request was that?

11 A Mine.

12 Q Why did you want to talk to the police then?

13 A Because I feel like I'm innocent and I shouldn't be
14 here.

15 Q Okay. And you told them what you told us here today?

16 A Yes, sir.

17 Q Donnell, you've been convicted of possession of
18 cocaine or crack cocaine?

19 A No, sir.

20 Q What have you been convicted of?

21 A Possession of marijuana with intent to distribute.

22 Q Oh, I'm sorry. Marijuana with intent to distribute?

23 And what kind of sentence did you get?

24 A Three years suspended to 18 months probation.

25 Q Okay. Are you still on probation?

DIRECT EXAMINATION BY MR. BELL - DONNELL CAMPBELL

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1 A No, sir.

2 Q When the two fellows came back, did they say anything?

3 A No, sir.

4 Q They didn't say anything to you or anybody else?

5 A No, sir.

6 Q Now, did you know by -- Davis and Parker on the night
7 of February 28th, 2008?

8 A No, sir.

9 Q How did you know them?

10 A Face; by face.

11 Q I mean, did you know them by any other names?

12 A No, sir. I didn't know them -- I didn't know them at
13 all.

14 Q Okay. And you see Mr. Parker in the courtroom today?

15 A Yes, sir.

16 Q Could you point him out, please?

17 A (Indicates.)

18 Q Seating at the table with counsel?

19 A Yes, sir.

20 MR. BELL: Your Honor, we ask the record reflect that
21 the witness has identified the defendant.

22 THE COURT: All right.

23 (Sotto voce discussion between Mr. Bell, Mr. Hilton,
24 and Detective Garrison.)

25 Q Thank you, Mr. Campbell. Please answer any questions

CROSS-EXAMINATION BY MR. ARCHER - DONNELL CAMPBELL

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1 that Mr. Archer has for you.

2 THE COURT: All right. Cross-examination.

3 (Sotto voce discussion between Mr. Bell and Mr. Archer.)

4 CROSS-EXAMINATION BY MR. ARCHER:

5 Q All right. Mr. Campbell, you've made an agreement
6 with the prosecutor to testify here today; is that correct?

7 A No, sir.

8 Q You've not made any agreement whatsoever?

9 A Yes, sir. I did. I'm sorry.

10 Q And that agreement was that the charge would be
11 dropped down to -- from assault and battery with intent to
12 kill to accessory after the fact; is that correct?

13 A Yes, sir.

14 Q All right. Was that a "yes, sir"? You need to speak
15 up a little bit.

16 A Yes, sir.

17 Q Okay. And it's your understanding, is it not, that
18 the charge of assault and battery with intent to kill will
19 carry up to 20 years; is that right?

20 A Yes, sir.

21 Q And also, it's your understanding, is it not, that
22 that's a -- what they call a "no -- no parole offense"?

23 A Yes, sir.

24 Q Okay. So that -- and it's your understanding, is it
25 not, that because it's a no parole offense, that there's

1 also a provision that says you'd have to serve 85 percent
2 of that?

3 A Yes, sir.

4 Q Almost all of it. Huh?

5 A Yes, sir.

6 Q Okay. So -- and it's your understanding that by
7 pleading to accessory after the fact, you are eligible for
8 parole, right?

9 A Yes, sir.

10 Q Okay. And that you'll receive less time?

11 A Yes, sir.

12 Q Okay. Now, I assume you've entered your plea of
13 guilty? Have you pled guilty yet to the --

14 A No, sir.

15 Q --- accessory after the fact?

16 A No, sir.

17 Q Oh, you haven't. Okay. When's that scheduled for, or
18 do you know?

19 A No, sir.

20 Q Okay. Well, what's your agreement? Is it that -- is
21 it your understanding that if the prosecutor doesn't like
22 your testimony, that you still get the accessory after the
23 fact?

24 A Yes, sir.

25 Q Okay. But you do expect a -- suppose that when you do

CROSS-EXAMINATION BY MR. ARCHER - DONNELL CAMPBELL

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1 plead guilty, that if you please the prosecutor, he'll put
2 in a good word for you, for helping; is it -- isn't that
3 correct?

4 A I didn't understand what you said.

5 Q Well, you have not pled guilty yet, right?

6 A No, sir.

7 Q And you won't do so until after this trial's over
8 with, right?

9 A Yes, sir.

10 Q And you're hoping, aren't you, that if you help the
11 prosecutor out, he'll put in a good word for you with the
12 Judge when it comes time to sentencing, aren't you?

13 A No, sir. I don't think that.

14 Q You don't think that? Okay. Now, let me ask you
15 this: You say that Davis forced you to take these guns and
16 hide them?

17 A Yes, sir.

18 Q And how did you do that? What did he do?

19 A At gunpoint.

20 Q Huh?

21 A At gunpoint.

22 Q He pointed his gun at you and said, "Take these guns
23 and hide them," or what?

24 A He pointed his gun at me and said, "Take these guns."

25 Q Okay. So you wouldn't -- you would never have done

CROSS-EXAMINATION BY MR. ARCHER - DONNELL CAMPBELL

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1 anything had he not pointed a gun at you; is that right?

2 A No, sir. I wouldn't.

3 Q Okay. Well -- and you never left the apartment,
4 correct?

5 A No, sir.

6 Q So you weren't outside shooting at anybody, were you?

7 A No, sir.

8 Q And you only hid those guns under threat of being
9 shot, right?

10 A Yes, sir.

11 Q Okay. Well, what else did you do to be an accessory
12 after the fact?

13 A That's all I did.

14 Q That's all you did. Well, it seems as though, if you
15 didn't shoot anybody and you only acted in threat of being
16 shot, what is it you're guilty of?

17 A Your guess as good as mine.

18 Q Huh?

19 A I say your guess as good as mine.

20 Q Okay. But you've agreed to plead guilty anyway,
21 right?

22 A Yes, sir.

23 Q Okay. Now, is this a one-story apartment?

24 A Two stories.

25 Q Or two stories? Is it two? Is it an

CROSS-EXAMINATION BY MR. ARCHER - DONNELL CAMPBELL

199.

1 upstairs/downstairs, or is it one story?

2 A Upstairs/downstairs.

3 Q Okay. So there's a downstairs part.

4 Now, you say you came there and you started doing a
5 little drinking of Crown Royal; is that right?

6 A Yeah.

7 Q And then after this happened, you continued to drink
8 Crown Royal because you were nervous, right?

9 A Yes, sir.

10 Q And when Mr. Parker -- who I believe you referred to --
11 -- you gave a statement on the -- the 13th of May, right?

12 A Yes, sir.

13 Q A number of months after you were arrested.

14 A Yes, sir.

15 Q And you referred to them as -- as "Dro" and -- and
16 "Block," I believe.

17 A Yes, sir.

18 Q And "Dro" is Quinttavius Davis, correct?

19 A Yes, sir.

20 Q And "Block" was Dervick Parker.

21 A Yes, sir.

22 Q All right. And when you gave the statement, it was
23 tape-recorded, was it not? Video-taped?

24 A Yes, sir.

25 Q Didn't you say in there that you did know them before

CROSS-EXAMINATION BY MR. ARCHER - DONNELL CAMPBELL

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1 that night; you just didn't know them well and you didn't
2 like them?

3 A No, sir.

4 Q You didn't say that on the video tape?

5 A No, sir.

6 Q Huh?

7 A No, sir.

8 Q All right. So you deny saying that?

9 A No, sir. I didn't.

10 Q Okay. Now, you said -- you testified that nobody said
11 anything after they came back to the apartment, basically.

12 But did you not, in your statement that you gave on June
13 the 13th, indicate that Quinntavious Davis did make a
14 statement about you? Didn't you say he came -- well, let

15 me put it this way. Did you tell the officers in your
16 statement that "Dro" -- and that's Davis, right?

17 A (No audible answer.)

18 Q Dro said, "Man. He had a tone in his hand. It was
19 him or me."

20 A Yes, sir. He did say that.

21 Q He did say that. And a "tone" is a gun, right?

22 A Yes, sir.

23 Q Okay. And at the time he said that, he was nervous
24 and excited?

25 A Yes, sir.

CROSS-EXAMINATION BY MR. ARCHER - DONNELL CAMPBELL

201

1 Q Okay. He say that before or after he pointed the
2 pistol at you and had you hide the guns?

3 A Before.

4 Q Before? Okay. And when they came back in the
5 apartment, were you upstairs or downstairs?

6 A I was upstairs; never left ---

7 Q You were upstairs.

8 A --- the apartment.

9 Q Huh?

10 A Never left the apartment.

11 Q Okay. How long -- and were you upstairs before they -
12 - before they left the apartment?

13 A Yes, sir.

14 Q Okay. Who all was downstairs during the period before
15 the shooting?

16 A I don't know. I was upstairs.

17 Q Huh?

18 A I don't know. I was upstairs.

19 Q Okay. Well, how many bedrooms are there upstairs?

20 A One.

21 Q One? Who was in the bedroom with you upstairs before
22 they left you, before the shooting occurred?

23 A After the shooting, Mr. Parker was in the bedroom.

24 Q Okay. After the shooting, Mr. Parker came in the
25 bedroom.

CROSS-EXAMINATION BY MR. ARCHER - DONNELL CAMPBELL

202

1 And I guess -- where were you threatened? In the
2 bedroom?

3 A In the kitchen.

4 Q So at some point in time, you left the bedroom and
5 went down to the kitchen.

6 A No, sir.

7 Q Well, let me ask you this. Let me try again. Before
8 Mr. Parker and Mr. Davis left the apartment, and before the
9 shooting took place, were you upstairs in the bedroom or
10 downstairs in the kitchen area?

11 A It's all one level.

12 Q Oh, I thought you said it was two levels. Sorry. I
13 misunderstood. I thought you said it was a two-story
14 apartment.

15 A No. It's a one story.

16 Q Okay. Well, it's all -- then it's all on one floor.

17 A Yeah.

18 Q Okay. Well, when they first came in then -- let me
19 change the question. When they first came in, were you in
20 the bedroom or out in the other portion of the house?

21 A I was in the kitchen.

22 Q You were in the kitchen. Okay.

23 And who did that -- who did -- you didn't -- you say
24 you didn't know them, but who -- who in that apartment did
25 know them?

RE-DIRECT EXAMINATION BY MR. BELL - DONNELL CAMPBELL

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1 A Keysha Duncan.

2 Q Keysha Duncan? And whose apartment was it?

3 A Lakeysha Duncan.

4 Q Okay. All right. Now, when Davis, Quinntavious

5 Davis, said, "He had the -- he had a tone. It was him or
6 me," who was present when he said that?

7 A Everybody in the house I named.

8 Q Everybody in the house was there? Okay. The girls
9 were there? Mr. Parker was there?

10 A Yes, sir.

11 Q Okay. And Mr. Parker didn't say anything, did he?

12 A No, sir.

13 Q Okay.

14 MR. ARCHER: No other questions.

15 THE COURT: All right. Re-direct?

16 RE-DIRECT EXAMINATION BY MR. BELL:

17 Q Mr. Campbell, just kind of straighten everything out
18 about the apartments. Where was Keysha's apartment?

19 A Upstairs.

20 Q And this is a two-story building?

21 A Yes, sir.

22 Q But it's one level of the apartment; is that correct?

23 A Yes, sir.

24 Q So the bedroom and kitchen and everything is on the
25 same upstairs level.

RE-DIRECT EXAMINATION BY MR. BELL - DONNELL CAMPBELL

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1 A Yes, sir.

2 Q So you were out in the kitchen, drinking a Crown
3 Royal; is that correct?

4 A Yes, sir.

5 Q And then the bedroom's on the same level.

6 A Yes, sir.

7 Q Okay. But there are apartments below, on the first
8 floor, correct?

9 A Yes, sir.

10 Q And there's an apartment across from her apartment
11 upstairs, right?

12 A On the side.

13 Q On the side. Thank you.

14 MR. BELL: Nothing further.

15 THE COURT: Okay. Re-cross?

16 MR. ARCHER: None, Your Honor.

17 THE COURT: Very well. Is this witness free to leave,
18 Counsel?

19 MR. BELL: Yes.

20 THE COURT: Very well. All right. Thank you, sir.

21 If you'd call your next witness.

22 MR. BELL: The State would call Mia Anderson.

23 THE COURT: If you would raise your right hand for me,
24 please.

25 MIA ANDERSON, having been first

DIRECT EXAMINATION BY MR. BELL - MIA ANDERSON

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1 duly sworn, testifies as follows:

2 THE COURT: And when you are seated, you're going to
3 have to help me a little bit with that microphone, because
4 you're a long way away from that microphone. If you could
5 state your -- can you pull your chair up just a little bit?
6 I know it's a little bit heavy. Thank you.

7 State your full name for the record and spell your
8 last name.

9 WITNESS: Mia Chelsea Anderson, A-n-d-e-r-s-o-n.

10 THE COURT: And how do you spell Mia?

11 WITNESS: M-i-a.

12 THE COURT: Your witness.

13 DIRECT EXAMINATION BY MR. BELL:

14 Q Ms. Anderson, back last February, 2008, where were you
15 living?

16 A In Haven Oaks.

17 Q And what apartment were you living in?

18 A [REDACTED].

19 Q [REDACTED]?

20 A (No audible response.)

21 Q Who was living with you?

22 A Ashley Tiffany.

23 Q And anybody else?

24 A Naomi.

25 Q Excuse me?

DIRECT EXAMINATION BY MR. BELL -- MIA ANDERSON

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- 1 A Naomi.
- 2 Q Who's -- and Naomi?
- 3 A Uh-huh.
- 4 Q Okay. Anybody else?
- 5 A (No audible response.)
- 6 Q Do you remember the night that the officer got shot at
- 7 Haven Oaks?
- 8 A Yes, sir.
- 9 Q Where were you that night?
- 10 A At Haven Oaks.
- 11 Q Okay. Did -- were you at your apartment?
- 12 A No. I was in Keysha's.
- 13 Q Okay. And is that -- what's her full name? Do you
- 14 know?
- 15 A Lakeysa Duncan.
- 16 Q Okay. And what apartment is she at?
- 17 A I can't recall the apartment number.
- 18 Q Okay. What -- do you remember what building she was
- 19 in?
- 20 A No, sir.
- 21 Q Was she in your building?
- 22 A No, sir.
- 23 Q Okay. Who was there with you?
- 24 A Keysha, Shelby, Donnell, Mr. Parker, and Mr. Davis.
- 25 Q Okay. Was -- was everybody there at the same time, or

DIRECT EXAMINATION BY MR. BELL - MIA ANDERSON

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1 did different people come at different times?

2 A They came at different times.

3 Q Okay. Who was there first? When you went over to --
4 first went over to -- to Keysha's apartment, who was there?

5 A Me, Keysha, Shelby, and Ashley.

6 Q Okay. What were y'all going to do?

7 A We were going out.

8 Q Okay. And were y'all going to do anything in
9 preparation to going out?

10 A No. We were going to meet some boys.

11 Q Okay. And who showed up at that apartment next?

12 A Donnell.

13 Q Okay. Why was he there? Do you know?

14 A Because she's -- he's Keysha's boyfriend.

15 Q Okay. What time was it about that he showed up?

16 A About ten o'clock.

17 Q In the morning or evening?

18 A Night.

19 Q Okay. What happened when he got there?

20 A He sat at the table. He was talking to us, and he
21 started drinking.

22 Q Okay. Do you recall what he was drinking?

23 A Crown Royal.

24 Q Okay. Did anybody else come in after that?

25 A Right then and there, no.

DIRECT EXAMINATION BY MR. BELL - MIA ANDERSON

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- 1 Q Excuse me?
- 2 A Right then and there, no.
- 3 Q Okay. Did anybody leave after that?
- 4 A Shelby.
- 5 Q Do you know where she went?
- 6 A Home.
- 7 Q Okay. Where did she live?
- 8 A To the top building. I don't know her building
- 9 number.
- 10 Q Excuse me?
- 11 A I don't know the building.
- 12 Q And what do you mean by "the top building"?
- 13 A In the front.
- 14 Q In the front?
- 15 A Uh-huh.
- 16 Q The furthest building in the front?
- 17 A (No audible response.)
- 18 Q Okay.
- 19 COURT REPORTER: Is that a "yes"?
- 20 A Yes.
- 21 Q Okay. Did she come back at any time?
- 22 A Yes, sir.
- 23 Q How long did -- was she gone?
- 24 A Not even 10 minutes.
- 25 Q Did anybody come back with her?

DIRECT EXAMINATION BY MR. BELL - MIA ANDERSON

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1 A No, sir.

2 Q Okay. You said that at some point, Mr. Davis and Mr.
3 Parker were there. When did they come?

4 A They came about -- almost a hour after Shelby.

5 Q Came back?

6 A Came back. Uh-huh.

7 Q Okay. Did they come together or separately?

8 A They came together.

9 Q Okay. And what did they do when they came up there?

10 A Sitting down, talking.

11 Q How long did they stay?

12 A They were there the whole time.

13 Q They were there the whole time?

14 A Uh-huh. They never left.

15 Q Okay. Did you leave at any time?

16 A Yeah, I left.

17 Q Where did you go?

18 A To -- to G Building.

19 Q Back to your apartment?

20 A Uh-huh.

21 Q Okay. Did you see anything when you went over there?

22 A No, sir.

23 Q Okay. And how long did you stay in G Building?

24 A Not even 20 minutes.

25 Q And where did -- did you come back to Keysha's house?

DIRECT EXAMINATION BY MR. BELL - MIA ANDERSON

210

1 A Uh-huh.

2 Q Okay. Who was there when you got back?

3 THE COURT: Instead of with an "uh-huh" or an "unh-
4 unh" -- I think we know what you mean, but our record needs
5 to be very clear. If you could, answer with a "yes" or
6 "no."

7 WITNESS: Yes, ma'am.

8 THE COURT: Thank you. And that -- that was a "yes,"
9 the prior answer, that "uh-huh"?

10 WITNESS: Yes, ma'am.

11 THE COURT: Okay.

12 Q Okay. When you came back, you went back to Keysha's
13 apartment?

14 A Yes, sir.

15 Q Who was there when you got back?

16 A Keysha, Donnell, Shelby, Mr. Parker, and Mr. Davis.

17 Q Okay. And did anybody leave after that?

18 A No, sir.

19 Q Everybody stayed?

20 A I don't remember.

21 Q You don't remember? Everybody stayed there? Did you
22 stay there?

23 A Yes, sir.

24 Q We was about to leave.

25 A Okay. And what happened when you were about to leave?

DIRECT EXAMINATION BY MR. BELL - MIA ANDERSON

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1 Q Mr. Parker and Mr. Davis left before us.

2 A Okay. Do you know why they left?

3 MR. ARCHER: Objection. And I don't want conjecture
4 here, Your Honor. I mean, she -- I don't know how she can
5 get in their minds, unless they specifically told her why
6 they were leaving.

7 THE COURT: I sustain the objection, unless you can
8 lay a proper foundation for that.

9 MR. BELL: Okay, Your Honor.

10 Q So Mr. Davis and Mr. Parker left; is that correct?

11 A Uh-huh.

12 Q Okay.

13 A Yes, sir.

14 Q Do you recall what they were wearing?

15 A Mr. Davis was wearing a red thermal. I think Mr.
16 Parker had on a money coat.

17 Q A money coat?

18 A Yes, sir.

19 Q What -- what do you mean by "money coat"?

20 A It's a coat that got dollar signs all over it.

21 Q Okay. Do you know where they were going?

22 A No, sir.

23 Q Okay. What happened after they left?

24 A We were coming downstairs about three minutes after
25 them.

DIRECT EXAMINATION BY MR. BELL - MIA ANDERSON

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- 1 Q Who is "we"?
- 2 A Me, Shelby, and Keysha.
- 3 Q Okay. And you were going downstairs of Keysha's
- 4 building?
- 5 A Yes, sir.
- 6 Q Okay. Did anything happen?
- 7 A We heard gunshots.
- 8 Q Do you recall -- do you know where they were coming
- 9 from?
- 10 A No, sir.
- 11 Q Okay. What did y'all do when you heard gunshots?
- 12 A We ran back upstairs.
- 13 Q Okay. Why did you run back upstairs.
- 14 A We heard gunshots.
- 15 Q You go back into her apartment, into Keysha's
- 16 apartment?
- 17 A Yes, sir.
- 18 Q Okay. Did anything happen after that?
- 19 A Two or three minutes, Mr. Parker came to the door.
- 20 Q Okay. Did he have anything with him?
- 21 A No, sir.
- 22 Q Okay. What did he do when he came to the door?
- 23 A He walked in and he standing in the living room.
- 24 Q Okay. Did he say anything?
- 25 A No, sir.

DIRECT EXAMINATION BY MR. BELL - MIA ANDERSON

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1 Q What did he do then?

2 A He just sat down.

3 Q Okay. Was he still wearing the -- what he was wearing
4 when he left?

5 A I don't remember.

6 Q You don't remember? Okay.

7 Did anybody else come in?

8 A Mr. Davis.

9 Q When did he come in?

10 A Like two minutes, right after Mr. Parker.

11 Q Okay. Was he still wearing what he was wearing?

12 A Yes, sir.

13 Q The red top or whatever it was?

14 A Yes, sir.

15 Q What happened then?

16 A He was walking up and down the hallway.

17 Q Up and down the hallway?

18 A Uh-huh.

19 COURT REPORTER: Is that a "yes"?

20 A Yes, sir.

21 Q How was he acting?

22 A Nervous.

23 Q What about Mr. Parker?

24 A Nervous.

25 Q Okay. Did they both stay there?

DIRECT EXAMINATION BY MR. BELL - MIA ANDERSON

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- 1 A For a moment. Yes, sir.
- 2 Q Okay. You say, "for a moment."
- 3 A Uh-huh.
- 4 Q Did somebody leave at some point?
- 5 A Mr. Davis.
- 6 Q Where'd he -- do you know where he went?
- 7 A Keysha told him to get out.
- 8 Q Okay. And he -- he left?
- 9 A Yes, sir.
- 10 Q When he came, did he have anything with him?
- 11 A No, sir.
- 12 Q What about Mr. Parker? Did he stay or leave?
- 13 A He stayed.
- 14 Q And after that, did anything happen?
- 15 A The officer snatched Mr. Davis.
- 16 Q Did you see that?
- 17 A He was standing to the door.
- 18 Q Was the door open or closed?
- 19 A It was open.
- 20 Q Okay. Did the officers come up to where you were?
- 21 A When they snatched Mr. Davis?
- 22 Q At any time after that.
- 23 A Yes, sir.
- 24 Q How long after they -- you said they snatched Mr.
- 25 Davis, did they come?

DIRECT EXAMINATION BY MR. BELL - MIA ANDERSON

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- 1 A I don't remember. I mean --
- 2 Q Was it a long time, short time?
- 3 A It was a long time.
- 4 Q Was Mr. Parker still wearing the same thing that he
- 5 had on when he left?
- 6 A I don't remember.
- 7 Q You don't remember?
- 8 A No, sir.
- 9 Q Do you see Mr. Parker in the courtroom today?
- 10 A Yes, sir.
- 11 Q Would you point him out please?
- 12 A (Complies.)
- 13 Q He's seated at the table with his attorney?
- 14 A Yes, sir.
- 15 Q Mr. Campbell, did he leave anytime?
- 16 A No, sir.
- 17 Q Where was he?
- 18 A At first, he was at the kitchen table drinking, then
- 19 he was on the chair and he fell asleep.
- 20 Q Okay. But he never left the apartment when you were
- 21 there?
- 22 A No, sir.
- 23 Q Okay. He was there when you -- he was there -- let me
- 24 go back. He came there at some point, right?
- 25 A Yes, sir.

DIRECT EXAMINATION BY MR. BELL - MIA ANDERSON

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1 Q And then when you left, was he there when you left?

2 A Was he still there when I left?

3 Q Yeah. When you went back to -- back to your
4 apartment?

5 A Yes, sir.

6 Q Was he there when you came back?

7 A Yes, sir.

8 Q Did he stay there when Mr. Davis and Mr. Parker left?

9 A Yes, sir.

10 Q He never left the apartment until the police came?

11 A No, sir.

12 (Sotto voce discussion between Mr. Bell, Mr. Hilton,
13 and Detective Garrison.)

14 (Sotto voce discussion between Mr. Bell and Mr. Archer.)

15 MR. BELL: (To the court reporter) Mark this.

16 THE COURT REPORTER: State's 8.

17 MR. BELL: State's 8.

18 THE COURT REPORTER: Yes, sir.

19 (Marked State's Exhibit No. 8, coat, for identification.)

20 Q Ms. Anderson, I want to show you this piece of
21 clothing what's in -- what's been marked as State's 8 and
22 ask if you've seen that?

23 A Yes, sir.

24 Q Where have you seen that?

25 A Mr. Parker. That's Mr. Parker's.

CROSS-EXAMINATION BY MR. ARCHER - MIA ANDERSON

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1 Q That's what he was wearing that night?

2 A Yes, sir.

3 Q That's the money shirt you said?

4 A Money coat. Yes, sir.

5 Q Okay.

6 MR. BELL: The State would offer this into evidence,

7 Your Honor. I think --

8 THE COURT: All right. Any objection?

9 MR. ARCHER: No objections, Your Honor.

10 THE COURT: State's Exhibit --

11 THE COURT REPORTER: Eight.

12 MR. BELL: Eight.

13 THE COURT: -- 8, in evidence without objection. It

14 is a coat.

15 (State's Exhibit No. 8, coat, entered into evidence,
16 without objection.)

17 Q Thank you, Ms. Anderson. Please answer any questions
18 Mr. Archer has for you.

19 CROSS-EXAMINATION BY MR. ARCHER:

20 Q Just a few. Shelby left earlier in the evening?

21 A Yes, sir.

22 Q And she got back. Did she get back before Mr. Parker
23 and Mr. Davis came?

24 A Yes, sir.

25 Q Okay. And then you left for a little while. Was that

CROSS-EXAMINATION BY MR. ARCHER - MIA ANDERSON

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1 before they came?

2 A Yes, sir.

3 Q Okay. How long were you gone?

4 A Twenty minutes.

5 Q Okay. And as I understand it, after the shooting took
6 place, Mr. Parker was the first one to come back into the
7 apartment?

8 A Yes, sir.

9 Q And how much later was it that Mr. Davis came back
10 into the apartment?

11 A About two minutes; two/three minutes.

12 Q Okay. And Mr. Campbell, you said he was at some point
13 asleep in the chair in the living room?

14 A Yes, sir.

15 Q Was he asleep in the chair when the shooting took
16 place?

17 A Yes, sir.

18 Q Okay. So it's not likely he would have -- if he was
19 asleep, he would have heard the shots; is that correct?

20 A Yes, sir.

21 Q Okay. Now, when Mr. Davis came back in, did you hear
22 any conversation between him and Donnell Campbell?

23 A No, sir.

24 Q Okay. Did you ever -- when he came back in -- Mr.
25 Davis came back in, Mr. Campbell, I assume, was awake then;

CROSS-EXAMINATION BY MR. ARCHER - MIA ANDERSON

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1 is that correct?

2 A When they came back in, sir?

3 Q Yeah. Or did he --

4 A Yeah. He got back up.

5 Q Huh?

6 A He got up.

7 Q He got up?

8 A Uh-huh.

9 Q Okay. Did he ever -- did he -- did he -- did he
10 leave? Did he stay there in the living room area when they
11 came back in?

12 A He walked to the kitchen.

13 Q He walked to the kitchen? Okay.

14 A Yes, sir.

15 Q Could you see the kitchen from there, where you were?

16 A Yes, sir.

17 Q And did you ever at any time see Mr. Quinttavius
18 Davis pull a gun and point it at Mr. Campbell?

19 A No, sir.

20 Q You did?

21 A No, sir.

22 Q No, sir? Okay. Did you ever at any time hear Mr.
23 Quinttavius Davis threaten Mr. Campbell?

24 A No, sir.

25 Q All right. And did you ever, at any time, hear Mr.

CROSS-EXAMINATION BY MR. ARCHER - MIA ANDERSON

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1 Parker -- did he ever say anything about what happened at
2 the shooting?

3 A No, sir.

4 Q Okay.

5 MR. ARCHER: I've got no other questions, Your Honor.

6 THE COURT: Very well. Re-direct?

7 MR. BELL: Nothing from the State, Your Honor.

8 THE COURT: Very well. Is this witness free to leave?

9 MR. BELL: She is free to leave.

10 THE COURT: All right. You are free to go.

11 MR. ARCHER: I want to maybe ask one or two other
12 questions.

13 THE COURT: Now is the time. She's about to leave.

14 MR. ARCHER: Now's the time. I hate to do this.

15 THE COURT: Come on. I'm sorry. Ms. Anderson, if you
16 would just re-take your seat. Thank you.

17 CROSS-EXAMINATION BY MR. ARCHER CONTINUES:

18 Q Did you -- did you hang out at that apartment fairly
19 often?

20 A Lakeysa's apartment?

21 Q Yeah.

22 A Yes, sir.

23 Q She was a friend of yours?

24 A Yes, sir.

25 Q Had you ever seen -- I assume -- and -- and Donnell

CROSS-EXAMINATION BY MR. ARCHER - MIA ANDERSON

221

1 Campbell was her -- her boyfriend?

2 A Yes, sir.

3 Q Was he over there a lot?

4 A Sometimes.

5 Q Did you ever see him over -- prior to this night,
6 Before this night --

7 A Uh-huh.

8 Q -- did you ever see him over there when Mr. Parker
9 came over?

10 A Yes, sir.

11 Q You did.

12 A You mean, do he come over there when Mr. Parker's
13 there?

14 Q Yeah.

15 A Yes, sir.

16 Q All right. And how -- do you know how many times he
17 may have been over there before that night when Mr. Parker
18 was there?

19 A No, sir.

20 Q You don't know. But you know he was there before when
21 Parker was there?

22 A Yes, sir.

23 Q Would ever see Mr. Campbell there at the same time
24 that Quinntavious Davis was there, before the night of the
25 shooting?

RE-DIRECT EXAMINATION BY MR. BELL - MIA ANDERSON

222

1 A Yes, sir.

2 Q Okay. Do you remember how many times you had seen
3 him?

4 A No, sir.

5 Q Okay.

6 MR. ARCHER: No other questions.

7 THE COURT: All right. And does that prompt any
8 questions?

9 MR. BELL: Yes, it does.

10 THE COURT: All right. Re-direct.

11 I'm sorry, Ms. Anderson. Come back.

12 WITNESS: Oh.

13 THE COURT: Well, what happened is that that prompted
14 some redirect.

15 WITNESS: Okay.

16 THE COURT: So there you go. Thank you.

17 RE-DIRECT EXAMINATION BY MR. BELL:

18 Q Before that night, did Mr. Campbell hang out with Mr.
19 Parker and Mr. Davis?

20 A No, sir.

21 Q He came there to see who?

22 A Keysha Duncan.

23 Q Okay. That was his -- he -- to see Keysha.

24 A Yes, sir.

25 Q Okay.

DIRECT EXAMINATION BY MR. BELL - SHELBY HERR

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1 MR. BELL: Nothing further.

2 THE COURT: And does that prompt re-cross?

3 MR. ARCHER: Nope.

4 THE COURT: Very well. And now is this witness free
5 to leave?

6 MR. BELL: (No audible response.)

7 THE COURT: You are free to go.

8 MR. BELL: Yes.

9 THE COURT: Thank you. All right. Call your next
10 witness, please.

11 MR. BELL: The State would call Shelby Herr to the
12 stand.

13 THE COURT: All right. Come along, please, and be
14 sworn.

15 SHELBY HERR, having been first
16 duly sworn, testifies as follows:

17 THE COURT: And when you are seated, if you would,
18 state your full name for the record and spell your last
19 name.

20 WITNESS: Shelby Mae Herr, H-e-r-r.

21 THE COURT: Your witness.

22 MR. BELL: Thank you.

23 DIRECT EXAMINATION BY MR. BELL:

24 Q Would you state your name one more time, please?

25 A Shelby Mae Herr.

DIRECT EXAMINATION BY MR. BELL - SHELBY HERR

224

1 Q I just wanted to make sure that everybody could hear
2 you, Ms. Herr.

3 Ms. Herr, last February, 2008, where were you living?

4 A In Haven Oaks.

5 Q Do you recall what apartment you were living in?

6 A [REDACTED].

7 Q [REDACTED]? And do you recall the night that the police
8 officer was shot at Haven Oaks?

9 A Yes.

10 Q Where were you that night?

11 A The beginning of the night?

12 Q Yes.

13 A At the laundromat.

14 Q Okay. And did you -- where is the laundromat?

15 A Behind the fence.

16 Q Behind the fence. Over next to the Bi-Lo?

17 A Yes.

18 Q Okay. And after that, where did you go when you
19 finished at the laundromat?

20 A I went to my apartment first, and then I went to
21 Keysha's apartment.

22 Q Okay. Is that Lakeysa Duncan?

23 A Yes.

24 Q Do you recall what apartment she lived in?

25 A [REDACTED].

DIRECT EXAMINATION BY MR. BELL - SHELBY HERR

225

1 Q Okay. And why did you go over there?

2 A Because my daughter was over there.

3 Q And what did you do when you went over there? You
4 just going to get your daughter, or --

5 A No. We was just going to chill.

6 Q Okay.

7 A I was going over there because she was over there, but
8 we was just chilling, too.

9 Q Okay. What time was this about, that you went over to
10 Keysha's?

11 A About nine something.

12 Q Okay. When you got there, who was there?

13 A Ashley, Chelsea, and Keysha.

14 Q Okay. Who's Chelsea?

15 A Mia. We call her "Chelsea."

16 Q Okay. Mia that was just on the stand?

17 A Yes, sir.

18 Q Okay. Did anybody come there while -- after you got
19 there?

20 A Donnell came.

21 Q And what time did he come?

22 A Probably like 10 o'clock, because I got there a little
23 after nine.

24 Q Okay. Did -- you know why he came?

25 A To see Keysha.

DIRECT EXAMINATION BY MR. BELL - SHELBY HERR

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- 1 Q Were they seeing one another?
- 2 A Yes.
- 3 Q Okay. And did you stay there after he got there?
- 4 A Well, no. I left and went to my apartment.
- 5 Q Okay. Did you go by yourself?
- 6 A Yes.
- 7 Q Okay. Did you stay at your apartment?
- 8 A For -- for like 15 minutes.
- 9 Q Okay. Where did you go then?
- 10 A Back to Keysha's apartment.
- 11 Q And when you got there, who was there?
- 12 A Donnell, Ashley, Chelsea, and Keysha.
- 13 Q Okay. What were they all doing?
- 14 A Keysha was doing Chelsea's hair.
- 15 Q What was Donnell doing?
- 16 A Drinking.
- 17 Q Did anybody else come to that apartment after you got
- 18 back?
- 19 A Mr. Parker and Mr. Davis.
- 20 Q Okay. When did they come?
- 21 A A little while after I came.
- 22 Q Okay. Did you know them as "Mr. Parker" and "Mr.
- 23 Davis"?
- 24 A No.
- 25 Q How did you know them?

DIRECT EXAMINATION BY MR. BELL - SHELBY HERR

227

- 1 A How did I know them?
- 2 Q Yeah. By what names did you know them by?
- 3 A "D" and "Little D."
- 4 Q All right. Who was "D"?
- 5 A Mr. Parker.
- 6 Q Okay. Who was "Little D"?
- 7 A Mr. Davis.
- 8 Q Okay. What did they do when they came?
- 9 A Just sat down and was talking, chilling.
- 10 Q Okay. Do you recall how they were dressed?
- 11 A No.
- 12 Q How long -- did they stay a long time?
- 13 A For a while.
- 14 Q Did they leave at some point?
- 15 A When I went with Ms. Anderson to her apartment, they
- 16 were still there.
- 17 Q Okay. So you left again?
- 18 A Uh-huh.
- 19 Q Okay.
- 20 A Yes.
- 21 Q And you went over to Ms. Anderson's apartment.
- 22 A Yes.
- 23 Q Where does she live?
- 24 A In the G Building.
- 25 Q You recall which apartment?

DIRECT EXAMINATION BY MR. BELL - SHELBY HERR

228

- 1 A No, sir.
- 2 Q Okay. What did y'all do when you went there?
- 3 A We went to go get a jacket.
- 4 Q Okay. How long did you stay there?
- 5 A Like 15 minutes.
- 6 Q Okay. And did you go somewhere else or --
- 7 A No. We went back to Ms. Duncan's apartment.
- 8 Q Did you see anything when you were over at Mia's?
- 9 A Anything like how?
- 10 Q You see anybody? Anything out of the ordinary?
- 11 A Not at her apartment. No.
- 12 Q Okay. When you went back to Keysha's apartment, after
- 13 the 15 minutes at Mia Anderson's apartment --
- 14 A Yes.
- 15 Q -- who was there when you got back?
- 16 A Keysha, me and Chelsea, Donnell, D, and Dro.
- 17 Q Okay. And did anybody leave after you got back?
- 18 A No. We was all in there for a while.
- 19 Q Okay. But did anybody leave after that?
- 20 A Mr. Parker and Mr. Davis.
- 21 Q Okay. When did they leave? How long after you got
- 22 back, about?
- 23 A Forty-five minutes/an hour.
- 24 Q Okay. Did anything happen after they left?
- 25 A I don't understand.

DIRECT EXAMINATION BY MR. BELL - SHELBY HERR

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1 Q Anything out of the ordinary happen after they left?

2 A No. We left, like, a couple minutes after them. We
3 was going down the stairs.

4 Q Okay. Who's "we"?

5 A Me, Chelsea, and Keysha.

6 Q Okay. And did you get downstairs?

7 A No. We was -- got to the middle of the stairs. We
8 heard gunshots and went back upstairs.

9 Q Okay. Because you were scared?

10 A Well, I don't want to get shot by any gun, so I'm
11 going to run if I hear gunshots.

12 Q Okay. Do you recall how many gunshots you heard?

13 A Just a couple.

14 Q Do you know where they came from?

15 A No.

16 Q Were they close or -- or far?

17 A Close enough for me to hear.

18 Q Okay. Close enough to scare you?

19 A Close enough for me to hear.

20 Q Okay. When you went back up, did anybody come back up
21 to the apartment after y'all had gone back up?

22 A Mr. Parker and then Mr. Davis.

23 Q Okay. How long after y'all went back did they come?

24 A Like a minute or two.

25 Q Okay. What happened when they came back?

DIRECT EXAMINATION BY MR. BELL - SHELBY HERR

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- 1 A Mr. Parker went in the room, and Mr. Davis went in the
2 kitchen.
- 3 Q Did they have anything with them that you saw?
- 4 A No, sir.
- 5 Q Okay. How were they acting when they came back?
- 6 A Well, Mr. Parker, I really didn't see him. He went
7 straight to the room, and Mr. Davis went in the kitchen.
8 And I was looking out the window.
- 9 Q And why were you looking out the window?
- 10 A Because the police were out there.
- 11 Q Excuse me?
- 12 A Because the police were out there.
- 13 Q Okay. Did Mr. Parker and Mr. Davis stay in the
14 apartment?
- 15 A Mr. Parker did, and Mr. Davis left.
- 16 Q Okay. Did you see what happened to him?
- 17 A Yeah. Me and Ms. Anderson was standing in the
18 doorway, and they snatched him off the stairs and threw him
19 to the ground.
- 20 Q Okay. And did y'all stay in the apartment after that?
- 21 A Yeah. They told us to get back in the apartment.
- 22 Q Who was "they"?
- 23 A The police.
- 24 Q Okay. Did the police eventually come to the
25 apartment?

DIRECT EXAMINATION BY MR. BELL - SHELBY HERR

231

1 A Yeah. A couple hours later.

2 Q Okay. And they went and talked to you -- and took you
3 out and talked to you after that?

4 A Yes.

5 Q Okay. Now, Mr. Parker, you see him in the courtroom
6 today?

7 A Yes.

8 Q Could you point him out, please, for the jury?

9 A (Complies.)

10 Q Is he seated at the table with his attorney?

11 A Yes.

12 Q Okay.

13 MR. BELL: Your Honor, could the record reflect the
14 witness has pointed out the defendant?

15 THE COURT: So reflects.

16 Q Now, Mr. Campbell, where was he every time you came
17 back and forth?

18 A The first two times he was in the kitchen drinking.

19 Q Okay. Drinking. What was he drinking?

20 A Crown Royal.

21 Q And when you came back the last time, where was he?

22 A He was still in the kitchen, but he eventually went on
23 the couch and passed out.

24 Q Okay. Did you ever -- when you were at Keysha's
25 apartment, after Mr. Campbell come, did you ever see him

CROSS-EXAMINATION BY MR. ARCHER - SHELBY HERR

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1 leave the apartment?

2 A No. Not at any time I was there. No.

3 Q Okay. Thank you, Ms. Herr. Please answer any
4 questions Mr. Archer has for you.

5 THE COURT: Cross-examination?

6 MR. ARCHER: Yes.

7 CROSS-EXAMINATION BY MR. ARCHER:

8 Q Shelby, you were there about 9:30?

9 A Yeah.

10 Q Okay.

11 A Yes.

12 Q And you left twice?

13 A Yes, sir.

14 Q Once you went to your apartment, which is in D, right?

15 A B.

16 Q B?

17 A Uh-huh.

18 Q "B" as in "boy"?

19 A Yes, sir.

20 Q Oh, okay. And the other time -- let me ask you this.

21 I'm going to stand. No. Would you step down here for a
22 second?

23 A (Complies.)

24 Q Would you point out B? This is a picture of Haven
25 Oaks. All right. Bi-Lo's here. Where is B?

CROSS-EXAMINATION BY MR. ARCHER - SHELBY HERR

233

1 A Where's the entrance?

2 Q Here.

3 A Okay. That's my apartment. (Indicates.)

4 Q That's yours right here? (Indicates.)

5 A Yes. The first one right here. (Indicates.)

6 Q Okay. Now, so you went out once and went there to B?

7 A Uh-huh.

8 Q Okay. And you went out again with Mia or Chelsea.

9 She goes by both names?

10 A Chelsea.

11 Q Chelsea. And you went to G?

12 A Yes, sir.

13 Q Anything unusual happen when you were over at G?

14 A No, sir.

15 Q Okay. Meet anybody on the way there or back?

16 A No, sir.

17 Q Okay. All right. You can return to --

18 A (Complies.)

19 Q Okay. And when you came back from G, that was the
20 second time you left or the first time?

21 A The second time.

22 Q Any conversation about G when -- back -- your trip
23 over there, or y'all just came back?

24 A Coming out of her apartment?

25 Q Yeah. I mean, did y'all talk -- when you got back.

- 1 over to C, did you talk about people or anything about what
2 happened when you went over to your apartment?
- 3 A When I went to my apartment? No. I was by myself.
- 4 Q I mean, not yours. Mia's -- Chelsea's.
- 5 A No.
- 6 Q Okay. Good enough.
- 7 Now, I take it that -- let's see. The C apartment was
8 who -- that's whose apartment?
- 9 A Ms. Duncan.
- 10 Q What -- which one of the girls had this Apartment C?
- 11 A Ms. Duncan.
- 12 Q Huh?
- 13 A Ms. Duncan.
- 14 Q Ms. Duncan. Okay. So you -- your child was with Ms.
15 Duncan; is that right?
- 16 A Yes.
- 17 Q Okay. You must be pretty good friends.
- 18 A Yes.
- 19 Q You visit her -- with her a lot?
- 20 A She's my sister-in-law.
- 21 Q Oh, okay. All right. She married to your brother?
- 22 A No. Her baby daddy and my baby daddy are brothers.
- 23 Q Okay. I gotcha. That -- that baby's daddy is not
24 Donnell Campbell or is it?
- 25 A No, sir.

CROSS-EXAMINATION BY MR. ARCHER - SHELBY HERR

235

1 Q Okay. All right. Good enough.

2 Now, had you seen Donnell Campbell over there before
3 that night?

4 A Yes, sir.

5 Q About how -- how -- how long had you lived in the
6 apartments before then?

7 A I've only stayed there like five or six months.

8 Q You've been there five or six months?

9 A Uh-huh.

10 Q Okay. And in that five or six months, about how many
11 times had you seen Donnell Campbell there?

12 A He would come over maybe like twice a week.

13 Q Twice a week? Okay.

14 Did you ever see him over there before the night of
15 the shooting -- not the night of the shooting -- did you
16 ever see him over there before the night of the shooting
17 when Mr. Parker was there?

18 A Yes.

19 Q You did?

20 A Yes.

21 Q How many times, if you can remember?

22 A Well, they were all -- always around each other. Not
23 like friends or anything, but they knew who each other
24 were.

25 Q Okay. So Campbell knew Mr. Parker fairly well from --

- 1 -
- 2 A He -- he knew who he was, but they didn't speak. They
- 3 weren't friends.
- 4 Q I gotcha. He knew who he was. He knew who Mr. Parker
- 5 was before the night of the shooting.
- 6 A Yes.
- 7 Q How about Mr. Davis? Did he know who Mr. Davis was
- 8 before the night of the shooting?
- 9 A Yes.
- 10 Q Same sort of situation?
- 11 A Yes.
- 12 Q Okay. Now, at any time after -- y'all were on the way
- 13 down the steps when you hear "bang-bang"; is that right?
- 14 A Yes, sir.
- 15 Q Now, had you ever heard shooting in that complex
- 16 before that night?
- 17 A Yes, sir.
- 18 Q Have you heard it after that night?
- 19 A Yes, sir.
- 20 Q Okay. Is it -- it's not a real uncommon thing to hear
- 21 gunshots around that place, is it?
- 22 A No, sir.
- 23 Q Yeah. How often do you hear gunshots around that
- 24 place?
- 25 A A couple of times since I lived there.

CROSS-EXAMINATION BY MR. ARCHER - SHELBY HERR

237

1 Q Now, okay. So you knew what a gunshot sounded like
2 from having heard it before over there.

3 A Yes, sir.

4 Q Gotcha. Now, when Mr. Davis came back, did you ever
5 hear him say to Mr. Campbell that -- something to the --
6 words to the effect of, "He had a tone. It was him or me,"
7 or "He had a gun. I had to shoot"? You ever hear Mr.
8 Davis say anything like that to Mr. ---

9 A No, sir.

10 Q Never did? Okay.

11 Did you ever hear or see, at any time, Mr. Davis
12 threaten Mr. Campbell with a gun?

13 A No, sir.

14 Q Did you ever -- you never heard him say, "You either
15 hide these guns or I'm going to shoot you"?

16 A No, sir.

17 Q Would -- when -- when Mr. Davis and Mr. Parker came
18 back after the shooting, would Mr. Campbell have been --
19 when they got back in, would he have been somewhere where,
20 if that had happened, you would have seen it or heard it?

21 A Yes, sir. It's only a one-bedroom apartment.

22 Q Huh?

23 A It's only a one-bedroom apartment.

24 Q And it's a small apartment, too, isn't it?

25 A Yes, sir.

CROSS-EXAMINATION BY MR. ARCHER - SHELBY HERR

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1 Q Okay.

2 MR. ARCHER: I got no other questions, Your Honor.

3 THE COURT: All right. Re-direct?

4 MR. BELL: No other questions.

5 THE COURT: Very well. Is this witness free to leave?

6 MR. BELL: Free to leave.

7 THE COURT: Very well. You are free to go.

8 Call your next witness, please.

9 MR. BELL: Your Honor, can we take a couple of
10 minutes? We've got another one that ---

11 THE COURT: Sure. It'll be a good time for us to take
12 our afternoon break.

13 Ladies and gentlemen, please step to your jury room.
14 Do not discuss this matter, or allow anyone to discuss it
15 with you. And we will take our afternoon break. Again,
16 about 20 minutes. Any folks that need to smoke, let them
17 smoke.

18 (The jury exits the courtroom at 3:38 p.m.)

19 THE COURT: All right. Anything before we take our
20 break?

21 MR. BELL: Nothing from the State.

22 MR. ARCHER: Nothing.

23 (Off the record at 3:39 p.m.)

24 (On the record at 4:04 p.m.)

25 THE COURT: Anything? From the State?

1 MR. BELL: Nothing from the State.

2 THE COURT: From the Defense?

3 MR. ARCHER: After about one more break, and I'm going
4 to start taking my coat off. It is hot in here.

5 THE COURT: Oh. I'm cold. Now I'm cold. Are you
6 warm. Again, I am totally unreliable.

7 All right. All right, Ms. K. Ms. Kelly, you got your
8 stuff going?

9 COURT REPORTER: I am.

10 THE COURT: Let's bring the jury in.

11 (The jury enters at 4:05 p.m.)

12 THE COURT: All right. Ladies and gentlemen, at this
13 time, we will continue with the State's case.

14 Call your next witness, please.

15 MR. BELL: The State would call Jason Mosher to the
16 stand.

17 JASON MOSHER, having been first
18 duly sworn, testifies as follows:

19 THE COURT: And when you are seated and the microphone
20 is in place, if you would state your full name for the
21 record and spell your last name.

22 WITNESS: It's Jason Richard Mosher. Last name is M-
23 o-s-h-e-r.

24 THE COURT: Your witness.

25 DIRECT EXAMINATION BY MR. BELL:

DIRECT EXAMINATION BY MR. BELL - JASON MOSHER

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- 1 Q Detective Mosher, would you state your name one more
2 time, so we can get a -- kind of a sound check back here?
- 3 A Jason Mosher.
- 4 Q Okay. Where are you employed?
- 5 A Summerville Police Department.
- 6 Q And how long have you been with Summerville Police
7 Department?
- 8 A A little over four years.
- 9 Q How long have you been in law enforcement?
- 10 A A little over four years.
- 11 Q And generally, what training have you had?
- 12 A Basic academy, to include DEA -- drug investigation
13 school, tactical training, numerous drug and narcotic
14 trainings.
- 15 Q And what's your -- with the Summerville Police
16 Department, what's your current assignment?
- 17 A I'm a detective with the Dorchester County/Summerville
18 Metro Narcotics Unit.
- 19 Q And how long have you been doing that?
- 20 A A little over two years.
- 21 Q I want to direct your attention back to last February,
22 2008. Do you recall that?
- 23 A I do.
- 24 Q The night that Sergeant Gibbons was shot?
- 25 A Yes, sir.

DIRECT EXAMINATION BY MR. BELL - JASON MOSHER

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1 Q What were you doing that night?

2 A Myself and Detective Napoli were conducting
3 surveillance of the Haven Oaks apartment complex.

4 Q And where were you conducting surveillance?

5 A We were on the rooftop of the complex there where the
6 Bi-Lo shopping center is, down on the section that the
7 Warren Hardware Store is located.

8 Q Okay. I'm going to ask you to come down and look at
9 what's been marked as State's 1 for evidence. I ask you to
10 speak up so the court reporter can hear you.

11 (The witness steps down from the stand.)

12 Q And this is a laser pointer. That button is the
13 laser. Okay. If you can show the jury where you were
14 located.

15 A Myself and Detective Napoli were located in this
16 general vicinity right here. (Indicates.)

17 Q Okay.

18 THE COURT: Remember to keep your voice up. Oh, and
19 he's -- block.

20 A I'll just -- let me verify that.

21 THE COURT: Has everybody got their laser pointers?

22 (Sotto voce discussion between the Court and counsel.)

23 THE COURT: And you have to be very careful not to
24 block.

25 A Yes, ma'am. We were in this area, approximately right

1 here. (Indicates.) There was a little partition on the
2 outer wall that we were concealed behind.

3 Q Okay. And what were y'all doing there?

4 A We were conducting surveillance of the Haven Oaks
5 area, reference to getting the -- find out who's there and
6 what their activities were, and time frames; things of that
7 nature.

8 Q Okay. And where was Sergeant -- where was Sergeant
9 Gibbons?

10 A Sergeant Gibbons was positioned in the apartment right
11 here, in the G Building.

12 Q Okay. And were y'all trying to keep -- keeping a kind
13 of an eye on that, or were you just doing general
14 surveillance of that courtyard?

15 A We -- we did have binoculars and telescope. We were
16 watching individuals come and go from that general area.
17 Our view encompassed pretty much from down this side of the
18 C Building up to this section of the B Building, and of
19 course, across the courtyard.

20 Q And how long were y'all out there that evening?

21 A Several hours.

22 Q Okay. Were you aware that at some point Sergeant
23 Gibbons left G Building?

24 A I did. I observed him leaving the G Building
25 approximately a quarter to ten/eleven o'clock p.m.

DIRECT EXAMINATION BY MR. BELL - JASON MOSHER

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1 Q Okay. And which direction did he go as he came out of
2 the G Building?

3 A He -- when I saw him exit the -- that area, he was
4 walking out in this general area right here. (Indicates.)

5 Q Okay.

6 A By that point, I was not on binoculars to -- where I
7 maintained visual sight from where he was leaving.

8 Q You and Detective Napoli stayed on top of the Warren
9 Hardware?

10 A Yes.

11 Q Okay. What's the next thing that you remember
12 happening?

13 A The next thing we -- myself and Detective Napoli were
14 still conducting surveillance of that immediate area. The
15 next thing I heard across the radio was Sergeant Gibbons
16 requesting a "78," which is assistance.

17 Q You -- you heard the recording earlier this morning
18 that was played in the courtroom?

19 A I did.

20 Q And that was what you heard?

21 A Yes. After he requested assistance, then he had keyed
22 back up later on, and that's when I heard he was -- had
23 contact with individuals. He was under distress. He was
24 trying to diffuse the situation. By the sounds of -- from
25 what I heard over the radio, that he was trying to get out

1 of the area. And he did mention that the individuals had a
2 "59," which is a gun.

3 Q Okay. Did you know where he was at this point?

4 A I did not.

5 Q Okay. What do you recall happening next?

6 A Once I heard that there was a gun involved, I
7 immediately was trying to get on the radio; had
8 communication errors with that. I attempted to come back
9 across the building. Of course, it's eleven o'clock at
10 night. It's dark and I'm trying to work our way back
11 across the rooftops.

12 At that point, I heard gunshots. Obviously, trying to
13 get down as quickly as we could, offer assistance. I had
14 told Detective Napoli to leave what was there. Let's go.

15 I left the rooftop or left running across the rooftop
16 without a radio. I was just trying to make my way across,
17 trying to get down as quickly as possible.

18 As I was doing that, a short period of time later, I
19 heard several more gunshots.

20 Q And where were you -- where were you going at that
21 point?

22 A I was trying to make my way across the rooftop here.
23 There's a -- several air-conditioner units, along with
24 different elevations of -- of roof. So we had to literally
25 climb up onto the next roof until we get across -- until we

DIRECT EXAMINATION BY MR. BELL - JASON MOSHER

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1 make it across to this section right here (indicates) which
2 is the roof access above the Bi-Lo.

3 Q Did you have any occasion to observe anything
4 happening over in the apartment complex?

5 A I did not. It was dark; I was trying to get down as
6 quickly as possible. Obviously, my heart was sinking.
7 Hearing gunshot, I was thinking the worst. And I was just
8 concentrating in getting off the roof, so I could offer --
9 and offer assistance.

10 Q Did you get off the roof?

11 A I did. By that point, I was able to get down through
12 the roof. I got down in the shopping center. I attempted
13 to exit through several rear doors of the Bi-Lo, which they
14 are supposed to be fire doors, but I could not exit them.

15 So I ended up having to run out the front of the
16 store, around to the -- it would be the bottom side here.
17 (Indicates.) And I came back around and ended up coming
18 through a fence line in this general area. I can't recall
19 exactly where.

20 By that point, Sergeant Driggers was on-scene with his
21 vehicle, and had Sergeant Gibbons in the passenger side,
22 was rendering aid.

23 Q Okay. Did you see the wound on Sergeant Gibbons?

24 A I did. He was bleeding from the leg, and they had
25 actually put a tourniquet on it -- or a belt, Sergeant

1 Driggers' belt.

2 Q And what did you do at that point?

3 A I recovered a -- a vest -- bullet-proof vest from the
4 rear of Sergeant Driggers' vehicle, and went and assisted
5 with securing the front side of Apartment C with Tray
6 Hardee, Officer Tray Hardee.

7 Q All right. What do you mean by "securing"?

8 A From the -- the -- what I received from Detective
9 Napoli as far as who he had seen running to the apartment -
10 - possible suspects -- we just set a perimeter up around
11 the C Building, and we were staying out front in case
12 anybody was to come out, that we can --

13 Q Anybody come out at that point?

14 A Not -- not by the time that I was there. We were just
15 sitting there waiting for everybody else to arrive, and
16 wait for the emergency services unit.

17 Q Okay. Thank you. You can have a seat back --

18 (The witness returns to the stand.)

19 Q Let me just show you what's been marked as State's 2
20 and ask if that represents what you saw that night on
21 February 28th, 2008.

22 A Yes, it is.

23 Q That's the gunshot wound to ---

24 A Yes.

25 Q --- Sergeant Gibbons?

CROSS-EXAMINATION BY MR. ARCHER - JASON MOSHER

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1 A Yes, it is.

2 Q Okay. Thank you, Detective Mosher. Please answer any
3 questions that Mr. Archer has for you.

4 THE COURT: Cross-examination?

5 CROSS-EXAMINATION BY MR. ARCHER:

6 Q Are you related to Dickie and Penny Mosher over in the
7 City of Charleston?

8 A No, sir.

9 Q Okay. I guess that's good.

10 That apartment complex, it's not well lit, is it?

11 A That evening, I believe it was well lit.

12 Q Okay.

13 A From my vantage point, it was.

14 Q Well, let me ask you something, if you could come down
15 here.

16 (The witness steps down.)

17 Q And I think we can do this without the pointers. You
18 saw Detective Gibbons exit G over here; is that correct?

19 A That's correct.

20 Q All right. And how far were you able to follow him?
21 All the way down?

22 A No, sir. As I stated earlier, I observed him exit the
23 -- the breezeway.

24 Q Uh-huh.

25 A And at that point, I was addressing other issues up on

DIRECT EXAMINATION BY MR. BELL - QUINNTAVIOUS DAVIS 248

1 the rooftop: people walking by, radio. So, I did not
2 maintain continual sight of Sergeant Gibbons.

3 Q Okay. Did you ever at any time see any individuals
4 leave this building, heading down that way to -- or -- and
5 head across here?

6 A No, sir. I did not.

7 MR. ARCHER: No other questions.

8 THE COURT: Re-direct?

9 MR. BELL: No further questions.

10 THE COURT: All right. Is this witness free to leave?

11 MR. BELL: Yes. We ask that he be excused, Your
12 Honor.

13 THE WITNESS: Thank you.

14 THE COURT: Very well. You're free to go.

15 Call your next witness, please.

16 MR. BELL: The State would call QuinttVIOUS Davis.

17 QUINNTAVIOUS DAVIS, having been
18 first duly sworn, testifies as follows:

19 THE COURT: Please be seated and state your full name
20 for the record. And I think I want you to spell your first
21 name and your last name, please.

22 WITNESS: QuinttVIOUS Davis; Q-u-i-n-n-t-a-v-i-o-u-s,
23 D-a-v-i-s.

24 THE COURT: Your witness.

25 DIRECT EXAMINATION BY MR. BELL:

DIRECT EXAMINATION BY MR. BELL - QUINNTAVIOUS DAVIS 249

1 Q Mr. Davis, can you say your name again? I just want
2 to see how loud you're talking.

3 A Quinntavious Davis.

4 Q Okay. You're doing good. Make sure everybody can
5 hear you. Okay?

6 Mr. Davis, where do you live?

7 A In North Charleston.

8 Q Okay. Do you recall February of last year? Were you
9 at Haven Oaks apartments sometime then?

10 A Yes, sir.

11 Q Do you recall the night the police officer got shot
12 there?

13 A Yes, sir.

14 Q Where were you that evening?

15 A By the C Building.

16 Q Of Haven Oaks?

17 A Yes, sir.

18 Q Okay. Who were you there with?

19 A Me, Shelby, Keysha, Chelsea, Donnell, and Parker.

20 Q Okay. Is that Dervick Parker?

21 A Yes, sir.

22 Q Okay. Had you been in that apartment all night?

23 A Ain't been there too late. It'd been most of the day.

24 Yeah. Yes, sir.

25 Q Who were you with that day?

1 A Some people I just met.

2 Q Okay. Were you with them all day?

3 A Yes, sir.

4 Q Okay. That night, how long were y'all at -- whose
5 apartment were you at? Do you recall?

6 A Keysha.

7 Q Okay. Were y'all in another apartment before then?

8 A Granny.

9 Q Where's Granny apartment?

10 A Downstairs.

11 Q Okay. In the same building?

12 A Yes, sir.

13 Q And who was there?

14 A Me and Parker.

15 Q Okay. And then y'all went up to Keysha's apartment?

16 A Yes, sir.

17 Q Why did y'all go up there?

18 A Because we be chilling up there, too.

19 Q Okay. What do you mean by "chilling"?

20 A She like some of the family, and we going up there
21 hanging out.

22 Q Okay. And when you went up there, all those people
23 that you mentioned were there?

24 A Yes, sir.

25 Q Okay. Were people leaving and coming back while you

DIRECT EXAMINATION BY MR. BELL - QUINN TAVIOUS DAVIS 251

1 were up there?

2 A Not that I recall, really. We was still in the house.

3 Q Okay. Did you leave at some point?

4 A Yeah. I leave, but when we go outside.

5 Q Okay. Who'd you go with?

6 A Me and Parker went outside.

7 Q Why did you and Parker go outside?

8 A Because we going chilling.

9 Q Excuse me?

10 A We going to chill outside. We gonna have -- smoking a
11 cigarette.

12 Q All right. What happened when you and he went
13 outside?

14 A We going in front of the C Building. We be chilling
15 in front of the C Building. Then we see some dude walking
16 up -- walking up the G Building, looking like -- he be in
17 all black, little jump -- all-in-one jumper. He was acting
18 suspicious, because he ain't -- that's an abandoned
19 building right next to where Chelsea live at -- or Mia.
20 So, we don't know where he's been.

21 Q Okay. Who's Chelsea?

22 A Mia Anderson.

23 Q Okay. Who's she?

24 A She a girl that live around Haven Oaks.

25 Q Okay. So, what did you do when you saw -- when y'all

DIRECT EXAMINATION BY MR. BELL - QUINNTAVIOUS DAVIS 252

1 saw the fellow go out?

2 A We approach him. We been asking him -- first we start
3 questioning him when we approach him. And we ask him where
4 he been coming from.

5 Q Okay.

6 A And he start not answering, just trying to walk off,
7 looking suspicious.

8 Q Okay. Did you have anything when you went over to
9 him?

10 A I had a gun.

11 Q What kind of gun did you have?

12 A Three-eighty.

13 Q Did Mr. Parker have anything?

14 A At the time, I don't know.

15 Q Did you ever see him have anything?

16 A No.

17 Q Okay. What happened when you went over -- where'd you
18 -- where'd y'all meet up with him?

19 A We didn't really never actually meet up with him. He
20 keep walking.

21 Q Okay. When he came out of the G Building, which way
22 did he go?

23 A To the right. He come up, make a right, walked down
24 around the sidewalk.

25 Q Okay. Was he going towards y'all or away from y'all?

DIRECT EXAMINATION BY MR. BELL - QUINNTAVIOUS DAVIS 253

1 A Away.

2 Q Okay. Are you talking about he took a right out of
3 the building? When he came out of the building, he took
4 his right? Or ---

5 A Yeah. When he walk out, he take his right. Like
6 walking towards the woods.

7 Q Okay. Where did you go?

8 A I walk behind him.

9 Q Were you by yourself?

10 A No. Me and Parker went with him.

11 Q Okay. Did you follow him all the way around there?

12 A No. He -- he walk in front of us a little bit, and he
13 going around by the dumpster part. And I go and cut
14 through the other -- other side.

15 Q Okay. What were you cutting through?

16 A I can't remember the name of the building. I can't
17 remember the name of the building. It's two buildings on
18 the side.

19 Q Did you cut in between them?

20 A Yes, sir.

21 Q Okay. Where was Mr. Parker?

22 A A little bit behind me.

23 Q Okay. What happened when y'all cut through the
24 building?

25 A Well, the dude had cut through the outside. So, when

DIRECT EXAMINATION BY MR. BELL - QUINN TAVIOUS DAVIS 254

1 he get -- when he get around, I seen it looked like he be
2 pulling something out. So Parker been like, "Man, he got a
3 gun. I see it. Be careful." He tell me, "Be careful. He
4 got a gun."

5 So I rolled behind him and I see him fidgeting with
6 something. So, I shoot at him. I didn't shoot at him; I
7 shoot, though.

8 Q Okay. Did he shoot at y'all first?

9 A No. He didn't shoot first. He didn't shoot at me
10 first.

11 Q Was he coming -- was he coming at you?

12 A No. He didn't come -- he didn't come.

13 Q Did y'all say anything to him?

14 A Yeah. I been like, "What you doing around here? You
15 from around here?"

16 Q Was that before you shot?

17 A Yes, sir.

18 Q Was that before you thought you saw him fidgeting?

19 A No. I -- I -- I been asked him, "What you doing
20 around here?" I asked him, "Where you been coming from"
21 first thing. But then he started fidgeting, leaving,
22 walking off.

23 Q Okay. Did he ever come toward y'all?

24 A No. He didn't come toward us.

25 Q Was he going away from y'all?

DIRECT EXAMINATION BY MR. BELL - QUINN TAVIOUS DAVIS 255

1 A He been going away from us, but he pulled out a gun.

2 Q Where did he have a gun?

3 A He pulled it out, like, to the side. I couldn't tell
4 really what it been, to tell the truth now, but I know it
5 was something; he was fidgeting.

6 Q But you didn't see what it was.

7 A No, sir.

8 Q What did he say back to you?

9 A I couldn't hear what he was saying. He was whispering
10 something on his walkie-talkie or something.

11 Q Okay. What happened after you shot?

12 A I run.

13 Q And where were you when you fired your weapon?

14 A Over by the dumpster, behind it.

15 Q Okay. Is that over there where the parking lot is?

16 A Yeah. We were in the parking lot.

17 Q Okay. What happened to the fellow that -- that you
18 saw? Where did he go?

19 A He started running. And when I turned around and run,
20 that's when I hear him firing.

21 Q Okay. Where did you run?

22 A I run back to the C Building. I run, like, through
23 the playground park.

24 Q Okay. Where was Mr. Parker at this time?

25 A He had cut through the other side. He been, like, on

DIRECT EXAMINATION BY MR. BELL - QUINN TAVIOUS DAVIS 256

1 the other side. He ain't by me.

2 Q Okay. The other side of the building you were at?

3 A Yes, sir.

4 Q And he wasn't with you over here? (Indicates.)

5 A No.

6 Q Okay. What happened when you got back to the C
7 Building?

8 A I run upstairs in the C Building, and I came and I run
9 in. People be panicking. Donnell run to me. He been
10 like, "Give me the gun. Give me the gun. I'll hide them."

11 I give him the gun. I changed my shirt. Keysha been
12 panicking, like, "Leave."

13 I take off my shirt and I run downstairs.

14 Q What kind of shirt did you have on?

15 A A red one.

16 Q Do you recall what kind of -- what Mr. Parker had on?

17 A I can't really -- tell the truth, that's been so long
18 ago. It's been 13 months ago, and I don't know.

19 Q What kind of gun did you have?

20 A Three-eighty.

21 Q Did you ever see Mr. Parker with a gun?

22 A No, sir.

23 Q Do you know where the revolver came from in the
24 apartment?

25 A I ain't know a revolver in the apartment, tell the

DIRECT EXAMINATION BY MR. BELL - QUINN TAVIOUS DAVIS 257

1 truth.

2 Q Okay. When you came back around after firing at the
3 officer, you heard some other shots?

4 A When I -- when I -- when I shoot -- when I shoot, I
5 take off and run. He still been running. And when I get -
6 - like, cut through the building, I hear a big gun-busting
7 shooting. I mean, it been him shooting.

8 Q Who was shooting?

9 A The officer.

10 Q Did you hear any other gunshots?

11 A Yeah. That's when -- when I stopped and looked, then
12 Parker shoot at him.

13 Q When did Parker shoot at him?

14 A When I been running.

15 Q What was he shooting?

16 A I -- I don't know. I didn't see.

17 Q But he was shooting a gun?

18 A Yeah.

19 Q Okay.

20 A Yes, sir.

21 Q All right. Then y'all -- did -- did Mr. Parker come
22 back to -- to your building?

23 A Yeah. He run in there after me, but I didn't pay any
24 attention to him. I been trying to get out and get low,
25 right. I see him. Yeah. He run in there.

DIRECT EXAMINATION BY MR. BELL - QUINN TAVIOUS DAVIS 258

1 Q Okay. Did you see what he did?

2 A No. I give my gun to Donnell, and I take off my shirt
3 and leave.

4 Q Okay. Where did you go?

5 A I going downstairs.

6 Q What happened when you got downstairs?

7 A By the time I get downstairs, the police done had
8 basically surrounded.

9 Q If you can, Mr. Davis, can you come down here?

10 (The witness complies.)

11 Q This is State's 1. You'll have to kind of stand to
12 the side so the jury can see. Does this look like Haven
13 Oaks?

14 A Yes, sir.

15 THE COURT: You're going to have to move more to the
16 side, sir.

17 Q Let me show you this. This is a little laser pointer.
18 You push that button and you can point out things. Okay?
19 So the jury can see.

20 THE COURT: He's still -- you know what, if you could
21 -- you're going to have to move the board up just a little
22 bit.

23 MR. BELL: Okay.

24 THE COURT: There you go. And there you go. And
25 let's see if that'll work.

DIRECT EXAMINATION BY MR. BELL - QUINN TAVIOUS DAVIS

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1 Q All right. You know the layout of Haven Oaks?

2 A Let me look at this real quick.

3 Q All right. This has got a red "C" for C Building.
4 It's already been marked.

5 A That's a --

6 THE COURT: Now, keep your voice up. I'm sorry to
7 keep picking on you, Mr. Davis.

8 A This the entrance right here, right?

9 Q This is Old Orangeburg Road; this is 17A.

10 A You say Orangeburg Road is there?

11 Q Yes, sir.

12 A This is the entrance. Oh. I see. Yeah. I see them
13 now. Yeah. We were right here. (Indicates.)

14 Q All right. Y'all were right there?

15 A Yes, sir.

16 Q All right. That's where you and Mr. Parker were when
17 y'all went outside?

18 A Yes, sir.

19 Q All right. And where did you see the -- the fellow
20 come out of?

21 A Right here.

22 Q And that's G Building?

23 A Yes, sir.

24 Q And which way did he walk?

25 A He walked through there.

DIRECT EXAMINATION BY MR. BELL - QUINN TAVIOUS DAVIS 260

1 Q Okay. And which way did y'all go when y'all -- y'all
2 followed him over to G Building?

3 A Uh-huh. Yeah. He been walking up -- he been up -- he
4 been up probably right here by the time we get right here.
5 (Indicates.)

6 Q Okay. And what did y'all do then?

7 A Walk behind him, still talking. That's when him and I
8 been talking right then. He start fidgeting about right
9 here. (Indicates.) But he ain't -- we ain't -- we keep
10 walking. He walk around -- he walk around this building
11 right -- this the dumpster part right here, right?

12 (Indicates.)

13 Q Okay. I -- you got the --

14 A That's Bi-Lo. Yeah. He walk around -- he walk around
15 this way right here like this. And I cut through right
16 here. (Indicates.)

17 Q Where did you cut through? Point out where you cut
18 through.

19 A In here like this. (Indicates.)

20 Q Okay. And was that both of you or just you?

21 A Just me.

22 Q Okay.

23 A And I cut through right here, kind of like this.
24 (Indicates.) And he come around like this. He be in front
25 of me a little bit. And I cut through like that right

DIRECT EXAMINATION BY MR. BELL - QUINN TAVIOUS DAVIS 261

1 there. I get behind. I been behind him, walking to Bi-Lo.
2 That's Bi-Lo, right?

3 Q Yes, sir.

4 A And we be walking. About that -- I remember there
5 been a cut right -- like a gate right here. (Indicates.)
6 But I didn't see where he -- tell the truth, I didn't see
7 if he had turned or run, because I -- I fire, I turn around
8 this way right here and run back like that right here.
9 (Indicates.) Run through the C building and I stop right
10 here. (Indicates.)

11 Q Go ahead.

12 A I run right here; stop when I hear the shots.

13 THE COURT: A little more volume. I'm having a little
14 bit of trouble hearing you, Mr. Davis.

15 A All right. I -- I run right -- I run right here. I
16 see -- I stopped right here. I hear the shots. I been
17 looking at Parker and he ain't been firing. So, it had to
18 been the police. That's when I ran to here and Parker
19 stopped firing.

20 I don't know how much time. I fire. I turn around
21 and run. I didn't see nothing else after that. I turn
22 around and run to the apartment.

23 Q Where did you see Parker at?

24 A Right there. (Indicates.)

25 Q Okay. All right. All right. You can go back to the

DIRECT EXAMINATION BY MR. BELL - QUINN TAVIOUS DAVIS 262

1 stand.

2 (The witness returns to the stand.)

3 (Sotto voce discussion between Mr. Archer and Mr. Bell.)

4 Q The fellow that went outside with Mr. Parker, do you
5 see him in the courtroom?

6 A Say that again.

7 Q The fellow that went down, Mr. Parker -- that you said
8 Mr. Parker -- that you went outside and smoked a cigarette
9 with, when you saw the other fellow. You see Mr. Parker in
10 the courtroom?

11 A Mr. Parker?

12 Q Yes.

13 A Yeah, I see him.

14 Q Where is he?

15 A Right there.

16 Q Sitting beside his lawyer?

17 A Yes, sir.

18 MR. BELL: Your Honor, we'd ask the record reflect
19 that the witness has identified the defendant.

20 THE COURT: Very well.

21 Q Mr. Davis, you're charged in this crime, too, aren't
22 you?

23 A Yes, sir.

24 Q You're charged with assault and battery with intent to
25 kill; is that correct?

CROSS-EXAMINATION BY MR. ARCHER - QUINN TAVIOUS DAVIS 263

1 A Yes, sir.

2 Q And the State has agreed to allow you to plead to
3 assault with intent to kill?

4 A Yes, sir.

5 Q With a cap of seven years?

6 A Yes, sir.

7 Q For your truthful testimony?

8 A Yes, sir.

9 Q Thank you, Mr. Davis. Please answer any questions Mr.
10 Archer has for you.

11 CROSS-EXAMINATION BY MR. ARCHER:

12 Q Okay. Mr. Davis, you -- when you were charged with
13 assault and battery with intent to kill, is it your
14 understanding that -- that carried up to 20 years, does it
15 not?

16 A Yes, sir.

17 Q And it's also your understanding that that is
18 basically what you call a "no parole offense," too. You
19 understand that?

20 A Yes, sir.

21 Q And that if you got a sentence, you were going to have
22 to serve 85 percent of it before you have a chance of
23 getting out. You understood that, too, didn't you?

24 A Yes, sir.

25 Q Okay. So that, basically, if you drew 20 years, you

CROSS-EXAMINATION BY MR. ARCHER - QUINN TAVIOUS DAVIS 264

1 were going to have to do 17, or 85 percent of whatever you
2 got.

3 A Yes, sir.

4 Q Okay. And now, you're not going to be pleading to
5 assault and battery with intent to kill, but pleading to
6 assault with intent to kill, correct?

7 A Yes, sir.

8 Q And that -- the max on that is 10 years, not 20 years,
9 correct?

10 A Yes, sir.

11 Q And the State's agreed to -- to recommend that you get
12 even less than the 10 years, right?

13 A Yes, sir.

14 Q Seven years. And you also understand that you're
15 going to be up for parole -- that you can draw parole ---

16 MR. BELL: Your Honor, I'm going to object. Can't
17 comment on parole. None of us know what parole is.

18 MR. ARCHER: I can comment on the benefit of the deal,
19 that there's a motivation for him to testify to -- testify
20 against -- I think that's thoroughly proper.

21 THE COURT: That -- and -- and that -- I don't think
22 that's the nature of the objection. You've been doing that
23 without objection. I think the concern is your question
24 with regards to parole.

25 MR. ARCHER: Well, I know, Your Honor, it goes ---

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1 THE COURT: Before you answer the question, Mr. Davis,
2 let me get the question.

3 What is the question?

4 MR. ARCHER: Well, the question is basically does he
5 understand that he's going from an offense that he could --
6 is going to have to serve 85 percent, down to one that he
7 may be able to get out within two and a half years.

8 MR. BELL: Your Honor, I'm -- I'm going to object to
9 the characterization of the years. I don't have a problem
10 with the distinction between ---

11 THE COURT: Counsel, let me see you.

12 MR. ARCHER: Yeah.

13 (Bench conference.)

14 THE COURT: Very well. I sustain the objection,
15 because I believe that it -- the question as asked requests
16 information which would necessarily encompass speculation.

17 You may re-ask the question if you wish.

18 Q But you understand that you may be eligible for
19 parole, right?

20 A Yes, sir.

21 Q And that you will not -- we don't know what you may or
22 may not end up serving, but you may not even have to serve
23 the seven years; is that correct?

24 A Yes, sir.

25 Q Okay. And it's based on that deal that you agreed to

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1 come testify here today, correct?

2 A Yes, sir.

3 Q Now, am I to understand that you testified that you
4 did not, prior to leaving Building C, see Mr. Parker with a
5 gun?

6 A I didn't see him with no gun.

7 Q Huh?

8 A I didn't see him with no gun.

9 Q Okay. An did you, at any time after leaving Building
10 C, see him with a gun?

11 A Not until he fired it.

12 Q Okay. Did you -- why don't you come down here with
13 this -- I want to ask you some questions on this map.

14 (Witness steps down.)

15 MR. ARCHER: You got that pointer thing still?

16 (Sotto voce discussion between Mr. Archer and Mr. Bell.)

17 Q Okay. Now, I'm going to --

18 THE COURT: Mr. Davis, remember you're going to have
19 to --

20 Q Yeah. I'll hand you this in a second.

21 THE COURT: There you go.

22 Q Now, y'all are in Building C.

23 A Yes, sir.

24 Q Which end is -- is the apartment located on? This
25 end?

CROSS-EXAMINATION BY MR. ARCHER - QUINN TAVIOUS DAVIS

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1 A This one. (Indicates.)

2 Q This one back here.

3 COURT REPORTER: You need to speak up a little bit for
4 me, please.

5 WITNESS: Yes, ma'am.

6 Q All right. So you're on the one closest to the
7 parking lot, next to Bi-Lo.

8 A Yes, sir.

9 Q And on -- and on the back side of the building,
10 correct?

11 A I think that's the front side.

12 Q Well, okay. I just -- I was just thinking in terms --
13 so you're -- but the one -- the side farthest away from the
14 parking lot here.

15 A Yes, sir.

16 Q Okay. And when you're there, you see Detective
17 Gibbons leaving this building?

18 A We ain't know he been no police!

19 Q Yeah.

20 A He didn't have no -- no police clothes on. He looked
21 like a regular civilian.

22 Q Okay. Well, why -- why did you go over to check him
23 out? I mean, what -- what was the purpose there?

24 A Because -- all right. We been -- we just be chilling
25 over here to Ashley's house right here.

CROSS-EXAMINATION BY MR. ARCHER - QUINN TAVIOUS DAVIS 268

1 Q Uh-huh.

2 A And we be over there chilling, too. And it's an
3 abandoned apartment ---

4 Q Uh-huh.

5 A --- right next to it. So, we know nobody live right
6 there.

7 Q Uh-huh.

8 A And he been coming from out there, so we know he
9 couldn't of been coming out Mia house. And it's a lot of
10 crime, burglary, that type stuff be going on around in
11 there.

12 Q Right.

13 A . Not saying that we know protection ---

14 Q Uh-huh.

15 A That's a lot of crime. We be right there, so we was
16 basically questioning him. Like, "Why you -- were you
17 coming out this house?"

18 Q I -- I gotcha. I gotcha. And your grandmama lives
19 here in C, too?

20 A It ain't my grandmama, but Granny.

21 Q Granny. Well, is she some relation to you?

22 A No, sir.

23 Q Well, who -- is she an old lady?

24 A Yes, sir. She a old lady that just live around here.
25 She be like in the hospital and stuff, we be helping her

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1 out. But everybody call her "Granny," but she not my
2 grandmama.

3 Q I -- I gotcha. I gotcha. But y'all were concerned
4 that this fellow was where -- wasn't -- he wasn't supposed
5 to be here; is that right?

6 A No, sir. I never seen him around here before.

7 Q Okay. And -- and when he was coming out, did y'all
8 yell at him from this building over here?

9 A Yes, sir.

10 Q You did?

11 A Yes, sir.

12 Q Okay. So y'all were basically saying this -- you
13 don't know why this guy is here and you wanted to check
14 that out; is that right?

15 A Yes, sir. Because -- all right. Listen. He been
16 looking -- I mean, it's nighttime.

17 Q Uh-huh.

18 A And he got on all in one, now. He got on all black --
19 all in one, as I can recall. He looking like he about to
20 do something. He don't look like no regular person walking
21 around.

22 Q I gotcha. I gotcha. And there's a lot of crime goes
23 in that apartment complex.

24 A Yes, sir.

25 Q Okay. Were you aware of prior shootings over there?

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- 1 A Yes, sir.
- 2 Q Okay. A prior murder over there?
- 3 A Just -- a murder just happened on --
- 4 Q Right before -- shortly before this, right?
- 5 A Yes, sir.
- 6 Q Okay. Now, y'all leave C here, right?
- 7 A Yeah.
- 8 Q C; C up here.
- 9 A Yes, sir.
- 10 Q And you start walking down this way; is that right?
- 11 A Well, Parker behind me; I walking in front of him.
- 12 So, I walked on really this way. He lagging behind me.
- 13 Q Parker's behind you.
- 14 A Yes, sir.
- 15 Q Okay. And at some point over in here -- is it in here
- 16 where the detective pulls his gun out? (Indicates.)
- 17 A I don't know about no gun, now. I just -- you know,
- 18 fidgeting. He start fidgeting up in here.
- 19 Q But did Parker say something to you about I see -- he
- 20 saw a gun?
- 21 A That'd been over here. If Parker was behind me, he
- 22 couldn't a tell what it'd been neither.
- 23 Q Uh-huh.
- 24 A I don't think so.
- 25 Q Okay. So you never saw a gun? You just -- you never

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1 saw a gun?

2 A No, sir.

3 Q Well, why the devil did you pull yours out and start
4 shooting at the fellow?

5 A Because I see him fidgeting. And I don't know what he
6 be doing, what he be trying to do.

7 Q Okay. Were you scared?

8 A Yes, sir.

9 Q Okay. And -- and if this -- you followed him -- where
10 did you pull your gun out?

11 A Like right here. (Indicates.) I cut -- see this -- I
12 followed him. He walked around -- he walked around --

13 THE COURT: I tell you what. It would be so helpful
14 if you could back up just a little bit, Mr. Davis. But you
15 can't do that; you don't have the laser pointer.

16 MR. ARCHER: Here.

17 (Mr. Archer hands laser pointer to witness.)

18 THE COURT: There you go. Now. Now, if you could
19 start that part over.

20 A He come like this way here. (Indicates.)

21 Q Uh-huh.

22 A He walk around this building, so I lose sight of him
23 right here. (Indicates.) I didn't walk around behind him.

24 I cut through this way. (Indicates.) So I backtracked a

25 little bit. I cut through right across and came through

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1 here, on the other side.

2 By the time -- he been walking around, so I had to
3 backtrack a little bit. So, by the time I get around here,
4 he done been walking in front of me a little bit. I came
5 around right here (indicates) and I tell him -- in fact, I
6 tell him, I say, "Don't come back round here no more."

7 That's when he looked back and he say nothing. I see
8 him whip out -- I still couldn't tell, but I see him have
9 something, so I fired first.

10 Q Did you have an idea of what he was whipping out?

11 A Yes, sir.

12 Q And what did you think it was?

13 A I thought it was a gun.

14 Q Oh.

15 A I didn't see it be no gun, but I thought it was a gun.

16 Q You thought he was pulling a gun on you.

17 A Yes, sir.

18 Q And point of fact, it was actually a gun.

19 A It was a gun.

20 Q It was a gun. Okay. So at that point, did you think
21 he was about to take a shot at you?

22 A Yes, sir.

23 Q All right. And when you get back over here, is Parker
24 still behind you?

25 A No, sir. He ain't never -- he never came through

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1 this part right here. (Indicates.)

2 Q Uh-huh.

3 A He must have stopped. When -- when I running, this
4 whole time I'm walking right here, I ain't know what Parker
5 doing. I ain't looking at him. He -- but he never came
6 behind me. He -- when I turn around, he wasn't behind me.

7 Q Uh-huh.

8 A When I turn around and run, he wasn't behind me.

9 Q Okay. And this is the dumpster area down here, right?

10 A Pretty sure.

11 Q Yeah. And where -- where are you when you first
12 starting shooting at the detective?

13 A Probably about -- I'd say at the dumpster right here.

14 Q Uh-huh.

15 A I was a little bit behind the dumpster, so he'd been
16 up here a little bit.

17 Q Okay. Was he running away from you, or walking ---

18 A Yeah. As I -- as I fire, he -- he run. He take off.

19 Q Uh-huh. When you fired?

20 A Yes, sir.

21 Q But not before?

22 A No.

23 Q Oh, okay. Okay.

24 A He take off, but I turn around. So, I didn't see
25 really where he be running. I just turn around.

CROSS-EXAMINATION BY MR. ARCHER - QUINN TAVIOUS DAVIS 274

1 Q Now, after you fire shots at him, when's the next time
2 you see Mr. Parker?

3 A When I turn around and get right here. (Indicates.)

4 Q Uh-huh. Right in by C?

5 A Not all the way by, bout up in this side right here.
6 (Indicates.)

7 Q Okay. And where do you see him?

8 A See who?

9 Q Parker.

10 A Right in this area here. (Indicates.)

11 Q In this area?

12 A Yes, sir.

13 Q Okay. And when you get to here (indicates) -- when
14 you get to here -- when you first get to here, have you
15 heard more gunshots yet?

16 A Yes, sir.

17 Q You had heard some more gunshots?

18 A Yes, sir.

19 Q Okay. And what kind of gunshots are you hearing? Are
20 they big bangs or little bangs or --

21 A Gunshots. I don't know how to tell guns by their
22 shots. I know it's just "boom." Yeah. It sound like
23 sonmething big. I don't know how to tell guns by their
24 shots.

25 Q Uh-huh. Well, the shots seem to be coming -- did you

CROSS-EXAMINATION BY MR. ARCHER - QUINN TAVIOUS DAVIS 275

1 see Parker over here when you run -- run back here?

2 A No, sir.

3 Q But did you see him ever shooting the gun?

4 A Not at first. When I be hearing the shots, I didn't
5 see him shooting.

6 Q Okay. And when you heard the -- when you heard the
7 shots, where were you? Right in here? (Indicates.)

8 A Running back there. See, I start hearing them when I
9 start running, though. I take -- I shoot, then take off
10 running by the time I run through here. So I can't tell
11 you who was shooting.

12 Q Uh-huh.

13 A But then I get right here, I see Parker and he ain't
14 been shooting. I -- I hear the shots, then that's when he
15 ran right here. (Indicates.)

16 Q Wait a minute. You got here and you saw Parker.

17 A Yeah. He was already running this way.

18 Q He was running which way?

19 A This way right here. (Indicates.)

20 Q Running this way around the -- the part by the --

21 A First, he be running like this way.

22 Q Uh-huh. Towards the parking lot.

23 A Yes, sir.

24 Q You saw him running.

25 A This way -- coming this way --

CROSS-EXAMINATION BY MR. ARCHER - QUINNTAVIOUS DAVIS 276

1 COURT REPORTER: I'm sorry. I cannot hear you.

2 A Like this right here. (Indicates.)

3 Q Uh-huh. Okay. When you saw him going that way, was
4 that before you heard shots or after?

5 A After.

6 Q It was after you heard shots. Okay. So, before you
7 heard the shots, where -- what -- what area was he in?

8 A I was coming this way. (Indicates.) I don't ---

9 Q You came this way, but I'm talking about you first saw
10 Parker, you were somewhere out in here.

11 A When I turn -- when I turned around and run back,
12 Parker been running this way. When -- when I been over
13 here, I don't know what he was doing. (Indicates.)

14 Q Uh-huh. Okay. But it's not -- I'm just trying to
15 figure -- he's running this way and towards this way, as
16 you say. (Indicates.)

17 But when do you hear the shots? When you -- is it
18 before he starts running that way or after or --

19 A When I'm running -- let me see this one time. When
20 I'm running this way right here --

21 Q Uh-huh.

22 A -- shot -- I hear shots. Right -- I don't -- when I
23 get right here, Parker running this way. I don't see him
24 shooting nothing, until he get right here. (Indicates.)

25 Q Uh-huh. Okay. So when you -- you hear -- you don't

CROSS-EXAMINATION BY MR. ARCHER - QUINN TAVIOUS DAVIS

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1 hear him shoot until he gets here?

2 A Til -- I see him shoot, when he get right there.

3 (Indicates.)

4 Q You saw him shoot? I thought you said earlier you
5 didn't see him shoot.

6 A No. I said when we come out the house, I didn't see
7 him with a gun.

8 Q Uh-huh.

9 A When we came out the house, I didn't see him with a
10 gun.

11 Q Uh-huh.

12 A When he was walking, I saw him pull no gun. When I
13 came back right here, I ran right there and he ran that
14 way, I say I saw him shoot. I didn't say I didn't.

15 Q Uh-huh.

16 A He had a ---

17 Q Okay. Now, let me ask you this. Did -- did you ever
18 threaten Donnell Campbell, when you got back in the
19 apartment, you gave him the guns?

20 A No such way I -- I threaten him.

21 Q You didn't threaten to shoot him if he didn't take the
22 guns?

23 A No, sir. I can't threaten to shoot him. He can take
24 it from me and shoot me.

25 Q Yeah. Okay. Did you at any time tell him, "The dude

CROSS-EXAMINATION BY MR. ARCHER - QUINN TAVIOUS DAVIS 278

1 -- the guy had a tone. It was him or me"?

2 A No, sir. I was not talking. I was trying to get out.

3 Q Okay. But I mean, when you got back in the apartment.

4 A I know you talking about did I tell Donnell that.

5 Q Yeah.

6 A No, sir.

7 Q Okay.

8 A When I get in there, I ran in the house. Keysha
9 already been -- being hysterical.

10 Q Uh-huh.

11 A Saying, "Get out."

12 Q Uh-huh. Uh-huh.

13 A Donnell come to me. He say, "Give me them. I'm going
14 to hide them."

15 I give it to him, I switch shirts, and I leave.

16 Q Okay. Was -- does that look like what Mr. Parker was
17 wearing that night? (Indicates.) Or do you know?

18 A I don't know. That been 13 months ago.

19 Q Uh-huh.

20 A All I know we been outside; I know what I had on.

21 Q Okay. Now, you can go back and have a seat.

22 (The witness returns to the stand.)

23 Q Now, you have not pled guilty yet to this charge, have
24 you?

25 A No, sir.

RE-DIRECT BY MR. BELL - QUINN TAVIOUS DAVIS

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1 Q Do you understand your right to plead guilty is
2 conditioned on anything?

3 A No. Explain. I don't know what you're talking about.

4 Q Well, I mean does it depend on whether you testify in
5 your mind -- and I'm talking about your mind -- whether you
6 testify in a manner that suits the prosecutor?

7 A Not that I think of. They ain't tell me I had to
8 testify.

9 Q They didn't tell you you had to testify?

10 A No, sir.

11 Q You had to testify to get the deal, didn't you?

12 A They said they'd give me a deal, because they don't
13 believe I been the one shoot him. They ain't said I had to
14 testify. I'm testifying because of what I know.

15 I'm ready to get this over with and go on about my
16 life. I'm tired of sitting in this place.

17 Q And you're just a good citizen?

18 A If you want to call it that.

19 Q I have no other questions.

20 THE COURT: All right. Re-direct?

21 RE-DIRECT EXAMINATION BY MR. BELL:

22 Q Mr. Davis, what gun did you have?

23 A A .380.

24 Q Is that a revolver or automatic?

25 A Automatic.

1 Q Show you what's been marked as State's 6 and ask if
2 you --

3 A That's the one I had.

4 Q That's the one you had?

5 A Yes, sir.

6 Q Okay.

7 THE COURT: Can you identify the exhibit number,
8 please, Mr. Bell?

9 MR. BELL: I'm sorry. I thought I said it was State's
10 6.

11 THE COURT: Thank you. You may have and I missed it.

12 Q Thank you, Mr. Davis. I don't have anything further.

13 THE COURT: All right. Cross-examination?

14 RE-CROSS-EXAMINATION BY MR. ARCHER:

15 Q After you got back to the apartment, did you see Mr.
16 Parker with a gun?

17 MR. BELL: Your Honor, I object. That's beyond the
18 scope ---

19 MR. ARCHER: I withdraw.

20 THE COURT: Very well. No cross? No further?

21 MR. ARCHER: No further, Your Honor.

22 THE COURT: All right. Very well. Is this witness
23 free to leave?

24 MR. BELL: Yes, Your Honor.

25 THE COURT: Very well. You are free to go.

1 All right. Call your next witness, please. Well,
2 we're five minutes to five, Mr. Bell.

3 MR. BELL: Well, Your Honor, that's all the witnesses
4 we have today. We have some more in the morning that ---

5 THE COURT: Excellent planning.

6 MR. BELL: --- I've scheduled.

7 THE COURT: All right. Very well.

8 Ladies and gentlemen, you've heard now the witnesses
9 that you will for today. And in a moment, I'm going to
10 release you and you're going to be going home. And so, I
11 want you to know that the curiosity is going to be
12 heightened. So, I wanted to share that with you. So,
13 whomever is curious about what you have been up to today,
14 yet heightened from what it was yesterday, I want you to be
15 mindful that you cannot discuss this matter or allow anyone
16 to discuss it with you. But don't you take any upset; you
17 put it on the Judge, and tell them that the Judge has told
18 you cannot discuss the matter or allow anyone to discuss it
19 with you.

20 Now, when you have been dismissed from your service on
21 this jury -- and I promise you there will be no question in
22 your minds when that time has come -- you will be at
23 liberty to talk about this matter, if you wish.

24 However, until that time comes, you must not -- anyone
25 that is curious as you -- when you leave the courthouse

1 that wishes to discuss this matter, you must not discuss
2 the matter or allow them to discuss it with you.

3 Do not read anything, do not listen to anything about
4 this matter, and that includes the newspaper, the radio,
5 the television, and of course, now the internet. So,
6 please be mindful of that. You must receive all of the
7 information from which you will make up your mind, here in
8 court while court is in session.

9 Now, ladies and gentlemen, we're going to start in the
10 morning at 9:30. Remember about the "Wheaties." You want
11 to have like a half a bowl in the morning, not a whole
12 bowl, because Ms. Salisbury is back in full force. So,
13 just be mindful of that in the morning.

14 Ladies and gentlemen, if you will please remember my
15 admonition and have a very pleasant evening. And I look
16 forward to seeing you in the morning at 9:30.

17 (To the bailiff) If you will take your jury.

18 (The jury exits at 4:52 p.m.)

19 THE COURT: All right. Okay. Anything further before
20 we break for the evening from the State?

21 MR. BELL: Nothing from the State, Your Honor.

22 THE COURT: All right. From the Defense?

23 MR. ARCHER: No, Your Honor.

24 THE COURT: Very well. See you guys in the morning --
25 all of you in the morning at nine -- about 9:25/9:30. Have

1 a good evening.

2 (Off the record at 4:52 p.m.)

3 DAY THREE

4 (On the record at 10:02 a.m.)

5 THE COURT: Anything from the State before we bring
6 the jury out?

7 MR. BELL: Nothing from the State.

8 MR. ARCHER: I've got one small thing, Your Honor.

9 THE COURT: Well, let's wait until Mr. Parker comes
10 out. I mean, I hate -- Mr. Parker's not here.

11 MR. ARCHER: Oh, yeah. We need to get Mr. Parker.

12 THE COURT: Yeah. Let's wait until Mr. Parker comes
13 out. Yeah.

14 (Sotto voce discussion between the Court and the bailiff.)

15 THE COURT: All right. Yes?

16 MR. ARCHER: Your Honor, this is my wife. This is Ms.
17 Jeannie Howe Archer. I have had her with me virtually
18 every criminal trial for the last 15 years. She's a
19 certified paralegal. She grew up in the Howe family, where
20 she had two uncles who were solicitors; daddy's a lawyer
21 and a Federal magistrate. She's always been a tremendous
22 help to me. I request permission to have her accompany at
23 the table.

24 THE COURT: Of course.

25 MR. ARCHER: Now, I would say this --

1 THE COURT: Absolutely.

2 MR. ARCHER: -- for the past couple years, she suffers
3 from degenerative disk disease, which is why she wasn't
4 here the first day. So, it may be necessary for her, on
5 occasion, to get up and leave the courtroom.

6 THE COURT: That's fine. Welcome.

7 MS. ARCHER: Thank you for having me.

8 THE COURT: Welcome. Welcome. Let me ask you this
9 question.

10 MR. ARCHER: Uh-huh?

11 THE COURT: Well, I probably -- she just is so
12 youthful, Mr. Archer.

13 MR. ARCHER: Uh-huh.

14 THE COURT: You must have married her when she was so
15 young that you -- you know, you had to dodge the Sheriff
16 yourself.

17 MS. ARCHER: Thank you, Your Honor.

18 MR. ARCHER: Well, I -- I ---

19 THE COURT: You're welcome.

20 MR. ARCHER: --- told her I wasn't sure you were going
21 to let her come in, because ---

22 THE COURT: Awww...

23 MR. ARCHER: --- the two of you would be the two
24 prettiest women ---

25 THE COURT: Oh. Listen to -- did you see that? You -

1 --

2 MR. ARCHER: --- you might not want the competition.

3 THE COURT: Welcome. Welcome. And welcome. All
4 right.

5 All right. Let us have the jury.

6 (The jury enters at 10:06 a.m.)

7 THE COURT: Ms. Husser, you found them all and brought
8 them all back again.

9 JUROR HUSSER: Yes, ma'am.

10 THE COURT: You -- you're just awesome.

11 Ladies and gentlemen, I hope you had a very pleasant
12 evening last evening. And at this time, we will continue
13 with the State's case.

14 Mr. Bell, if you'd call your next witness, please.

15 MR. BELL: The State would call Ray Dixon to the
16 stand.

17 (The witness comes forward.)

18 RAY DIXSON, having been first duly
19 sworn, testifies as follows:

20 THE COURT: If you'd please be seated, and if you
21 would state your full name for the record and spell your
22 last name.

23 WITNESS: Raymond Dixon, D-i-x-s-o-n.

24 THE COURT: Thank you so much.

25 Your witness, Mr. Bell.

DIRECT EXAMINATION BY MR. BELL - RAY DIXSON

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1 MR. BELL: Thank you, Your Honor.

2 DIRECT EXAMINATION BY MR. BELL:

3 Q Would you state your name again for the record?

4 A Raymond Dixson.

5 Q And where are you employed?

6 A Dorchester County Sheriff's Office.

7 Q And how are you employed there?

8 A I'm a detective with them.

9 Q How long have you been with the sheriff's office?

10 A Approximately 10 years.

11 Q And how long have you been in law enforcement?

12 A Approximately 15 years.

13 Q And generally, what kind of training have you had?

14 A Pretty much everything from the basic academy to
15 homicide investigation to other specialized training.

16 Q Okay. I want to direct your attention back to
17 February -- the night of February 28, 2008. Do you recall
18 that night?

19 A Yes, sir.

20 Q I believe that was the night Sergeant Gibbons was
21 shot?

22 A Yes, sir.

23 Q Okay. Did you have any involvement with that
24 investigation?

25 A Yes, sir.

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1 Q What was that?

2 A I was contacted at my residence by Captain Marshall,
3 who asked me to respond to the sheriff's office. Upon
4 arrival, I was asked to type a search warrant for a
5 residence at Haven Oaks Apartments.

6 Q And what residence were you asked?

7 A Apartment [REDACTED].

8 Q And what -- you typed out a search warrant. What did
9 you do then?

10 A I met with the on-call judge, which is Judge Lonigan.
11 Judge Londergan signed the warrant, the search warrant.
12 Went to the apartment, and did the return on the search
13 warrant while it was being executed.

14 Q Okay. And you executed it -- you didn't execute it
15 alone, did you?

16 A No, sir.

17 Q There were other officers ---

18 A Yes, sir.

19 Q --- with the sheriff's department over there?

20 A Yes, sir.

21 Q Okay. Thank you, Detective Dixson. Please answer any
22 questions Mr. Archer has for you.

23 MR. ARCHER: No questions.

24 THE COURT: Very well. Is this witness free to leave?

25 MR. BELL: Yes, Your Honor. We'd ask that ---

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1 THE COURT: You are free to go.

2 (The witness leaves the stand.)

3 Call your next witness.

4 MR. BELL: The State would call Lieutenant Earl Asbell
5 to the stand.

6 (The witness comes forward.)

7 EARL ASBELL, having been first
8 duly sworn, testifies as follows:

9 THE COURT: If you'd please be seated, and when you
10 are seated, if you would state your full name for the
11 record and spell your last name.

12 WITNESS: Earl Vincent Asbell, A-s-b-e-l-l.

13 THE COURT: Your witness, Mr. Bell.

14 MR. BELL: Thank you, Your Honor.

15 DIRECT EXAMINATION BY MR. BELL:

16 Q Would you state your name again, please, sir?

17 A Earl Vincent Asbell.

18 Q Where are you employed?

19 A Dorchester County Sheriff's Office.

20 Q And what is your rank at the Dorchester County
21 Sheriff's Office?

22 A Lieutenant over the Crime Scene Unit.

23 Q Okay. How long have you worked with the sheriff's
24 department?

25 A Twenty-one years in July.

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1 Q Is that -- have you worked anywhere else in law
2 enforcement?

3 A I had 13 years prior experience, as far as reserves,
4 with Dorchester County. I've got a total of about 32 years
5 -- 33 years with Dorchester County all together.

6 Q And you said you're the lieutenant over the crime
7 scene. How have you -- how long have you been working
8 crime scene with the sheriff's office?

9 A I went into it full-time in 1993. I was doing it --
10 started in 1990. I was a detective at that time, and I was
11 working crime scenes and case files. And then in 1993, I
12 took over the evidence room and the crime scene at that
13 time.

14 Q Okay. And now, you -- you used to be the only crime
15 scene person; is that correct?

16 A For seven years, yes, sir.

17 Q How -- how many crime scene detectives do you have
18 now?

19 A There's four of us; three of us are full-time. We
20 were up to four; we lost one last year. And we've got one
21 working part-time with us now that just handles the
22 evidence and transports the evidence for us.

23 Q Okay. And if you could tell the jury a little bit --
24 I know you have an extensive training background -- kind of
25 some of the highlights of your training background as it

1 relates to crime scene.

2 A Well, graduated from the academy in '89. I also
3 attended the auto theft school in that year. In 1990, I
4 started with fingerprint classes, the basic. 1990 through
5 '99, I went through several fingerprint classes: basic
6 advance techniques by the FBI.

7 I've been to classes dealing with all specs of the --
8 aspects of the crime scene: blood spatter, entomology,
9 odontology, digital photography, several photography
10 classes, several kinds of technician classes in Florida,
11 North Carolina, Boston, and Washington, D.C.

12 Q Can you tell the jury a little about what -- what you
13 do as a crime scene investigator?

14 A Well, we try to reconstruct what happened. This
15 particular scene here was going to be a SLED scene, so we
16 didn't go as depth into it, because we knew they were going
17 to be doing it.

18 Our job is to figure out what the evidence is,
19 document it with photographs, collect it and preserve it,
20 send it wherever it needs to be sent to. Most of our
21 evidence go to either Charleston Police Department or SLED,
22 depending on what we're having done to it.

23 Q And have you testified as a crime scene investigator
24 before? Have you been qualified as an expert in crime
25 scene investigation before?

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1 A Yes, sir. In different aspects of it: the processing
2 part of it, the fingerprint comparisons, blood spatters.
3 Just about any aspect of crime scene you can think of, I've
4 testified as an expert in it.

5 MR. BELL: Your Honor, at this time I would offer him
6 as a expert in general crime scene investigation.

7 MR. ARCHER: No objection.

8 THE COURT: Very well. So qualified.

9 Let me just explain to the -- to the jury what has
10 occurred.

11 Ladies and gentlemen, normally under our rules, folks
12 are not allowed to testify regarding their opinion.
13 However, there are exceptions, and one of the exceptions is
14 that when, by virtue of someone's knowledge, training,
15 experience, education or profession, they have become an
16 expert in a field. And in that circumstance, then they are
17 allowed to testify regarding their opinions and the reasons
18 for their opinions, within that expertise.

19 What has just happened is that I have just qualified
20 Mr. Asbell as a -- an expert in crime scene investigation.
21 And what that means is that he would be allowed to testify
22 regarding to his opinions, and the reasons for those
23 opinions within that area of expertise.

24 Now, having said that, ladies and gentlemen, I will
25 give you further instruction when I give you the concluding

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1 instruction on the law. But I will give you the short
2 instruction, which is: Expert opinion testimony is given
3 for the purpose of helping you understand the evidence, and
4 certainly not for the purpose of controlling your judgment.

5 Thank you, Mr. Bell.

6 MR. BELL: Thank you, Your Honor.

7 DIRECT EXAMINATION BY MR. BELL CONTINUES:

8 Q Lieutenant Asbell, I want to direct your attention
9 back to the late evening of February 28th, 2008/early
10 morning of February 2029 -- February 29th, 2008. Do you
11 recall that night?

12 A Yes, I do.

13 Q That was the night that Shawn Gibbons was shot at
14 Haven Oaks?

15 A That's correct.

16 Q How did you become involved in that?

17 A I received a call from -- at this time, it was Corporal
18 Jamie Zensen. She was the on-call crime scene that night.
19 They notified her and she called me. Then we both arrived
20 on the scene about the same time. On the way there, I had
21 dispatch contact, Chris Limehouse, and had him "25" us
22 there, also.

23 Q Okay. And who is Chris Limehouse?

24 A He was working with us in crime scene at that time.

25 Q Okay. And about -- do you recall what time you

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1 arrived out there at Haven Oaks?

2 A It was -- let me refer to my notes. I think it was
3 22:25 that I received the call, and I arrived -- I think
4 it was at 22:39. I believe is the correct time. About 30
5 minutes after the shooting, I believe.

6 Q Okay. So that would be sometime after 10 p.m. that
7 night?

8 A Yes.

9 Q In layman's time?

10 A Yes, sir.

11 Q When you got there, what did you find?

12 A The roads were cordoned off. There was a lot of
13 tension. A lot of officers was arriving on the scene at
14 that time. I believe I contacted Detective Driggers, to
15 begin with, to find out what exactly had happened.

16 He told me that Shawn had been shot, and they were
17 transporting him to the hospital. Then I spoke with
18 Detective Napoli and Detective Mosher, trying to get an
19 idea of what was going on and where the crime scene was.

20 At first, they told me that he was receiving fire from
21 both sides of Apartment D. I talked with the Major, and he
22 said that SLED had been notified and they were coming. And
23 we were trying to find out exactly where the crime scene
24 was that night.

25 So I went inside the tape, and I went to the left side

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1 of Apartment D, because they told me one gentleman had an
2 automatic that we knew of. So, we was looking for shell
3 casings, and I was just trying to find the general area of
4 the scene.

5 No shell casings were located around -- on the
6 lefthand side of Apartment D. And at that time, I called -
7 - or Shawn called; he was talking to somebody. So, I spoke
8 to him while he was at the hospital. And he told me that
9 it started around the dumpsters on Apartment D, I believe
10 it was.

11 And -- and I asked him where he was located. He said
12 there was an opening in the fence, and just past that,
13 there's a little drain area. He was right in that area
14 there.

15 So myself, Chris Limehouse, and Jamie, we went to the
16 ditch to begin with, and we started looking for the shell
17 casings and we found them. Well, while we there, Jamie was
18 called away to do a GSR on somebody they had in the
19 vehicle. At the time, I didn't know who it was.

20 Q What's a "GSR"?

21 A That's a gunshot residue kit that we perform on any
22 type of shooting -- anybody that was in the area or we
23 suspect of being in the area at that time -- to pick up the
24 gunshot residue after a gun's been fired.

25 And from that point, Chris and I kept looking. And we

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1 started finding Shawn Gibbons's shell casings, and we found
2 some blood. So, what I did is I took a red flag and I just
3 flagged each one of the shell casings.

4 And while I was talking to Shawn, he told me that the
5 shooting actually started by the dumpsters at C --
6 Apartment E, excuse me.

7 So we went around to Apartment E, and there were two
8 shell casings laying in the road. One kind of in the
9 middle of the road; I think Detective Mosher found that
10 one. And then where the parking lot was, there was another
11 shell casing laying in the road, behind one of the
12 vehicles. I flagged that.

13 I asked Corporal Thompson to get a uniformed unit from
14 around to that side of the building, and move the tape
15 further out, because the crime scene had just increased
16 from where we thought it was. And I think it was Sergeant
17 Petree came around from that side, put -- cordoned off that
18 area, and parked his patrol car and stayed there.

19 At that time, I exited the scene until SLED arrived.

20 Q Okay. If I could get you, Lieutenant Asbell, to come
21 down and look at what's been marked as State's 1, which is
22 a photograph of Haven Oaks Apartments.

23 (The witness steps down from the stand.)

24 MR. BELL: Your Honor, you have your laser pointer? I
25 forgot to bring mine in this morning.

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1 THE COURT: I haven't seen it since you all had it
2 yesterday, so I don't know where it is. Is it up here?

3 MR. BELL: I laid it down right there.

4 (Sotto voce discussion between the Court and Mr. Bell.)

5 WITNESS: Somebody will have to tell me how to operate
6 this one.

7 Q All right. Lieutenant Asbell, if you could first kind
8 of show the jury exactly what you just described about
9 where you went and what you found approximately where.

10 A Should I wait for Mr. Archer to get up here.

11 MR. ARCHER: Yeah. Let me get over here.

12 THE COURT: Of course, everybody remember you do not
13 have the benefit of -- the benefit of the microphones.

14 (To Mr. Bell) And come hither. I have another one.

15 (Hands laser pointer to Mr. Bell.)

16 Now everybody's got one. If Mr. Archer needs one,
17 y'all will share it with him.

18 A This is Bi-Lo here and the shopping area. This is 17A
19 and Old Orangeburg. When I came in, I came in from 17A,
20 came into the entrance of Haven Oaks, and drove around; and
21 the road was cordoned off somewhere in this area right
22 here, and I parked my vehicle.

23 And when I spoke with Detective Mosher and Napoli --
24 when I was on the way there, I had no idea which officer
25 had been shot, how bad it was, or anything. Didn't know

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1 anything about the situation. And I found out from
2 Detective Driggers that it was Shawn. Then I spoke with
3 Napoli and Mosher.

4 They said he was taking fire from both sides of
5 Building D. So, when I first got there, this is the area I
6 searched here for shell casings. (Indicates.) We didn't
7 find anything there.

8 This is the opening in the fence, and Shawn said he
9 was a few feet down from that. So, we started walking down
10 the fence line, and right along here is where we found his
11 shell casings. (Indicates.)

12 There was some blood just below the shell casings and
13 to the right, within about five feet from where the shell
14 casings were. And right over here, on this parking area,
15 is where we found a real deep impression of somebody
16 running where they had hit. You know, it just went right
17 straight to where he laying.

18 While I was talking to him, he told me that the
19 shooting started somewhere in the vicinity of the dumpster
20 over here. So, we walked around the road, and there was
21 two shell casings laying in the marker -- in the road.

22 Petree brought his car around from the back side and
23 parked it over here, and put a piece of tape across the
24 road at this point. And I laid two red flags next to those
25 two shell casings, and then I exited the scene at that

1 time.

2 The officers were arriving to start doing search
3 warrants on Apartment C. So, they -- I kind of stayed out
4 of their way and I just waited for SLED to get there,
5 because my job and my job only is the crime scene.

6 Q Okay. Can you take this red pen and mark on State's
7 1, put like a "SC" for shell casings: (a) Where you found
8 Detective Gibbons's shell casings; and then where you found
9 the other two shell casings, approximately?

10 A (Complies.)

11 There's a parking lot right here. I think in the
12 first -- I believe it was the first one. It might have
13 been the second one. Excuse me.

14 There was a truck parked there right behind -- I
15 believe it was a pickup truck, if I remember correctly.
16 There was a shell casing on the ground behind that. That's
17 the one I located. And the other one was pretty much --
18 maybe a little bit behind the dumpster which sits right
19 here, right in the middle of the road. And that's where
20 the two .380 shell casings were located.

21 And all of Shawn's were located right along this fence
22 here. (Indicates.) There's a little opening there, kind
23 of like a drain pipe, and that's where we located his shell
24 casings.

25 Q Okay. Thank you. You can take a seat.

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1 (The witness returns to the stand.)

2 MR. ARCHER: No objections to these.

3 (Sotto voce discussion between Mr. Bell and Mr. Archer.)

4 MR. ARCHER: Lieutenant Asbell, why don't you come on
5 down here.

6 MR. BELL: What?

7 THE COURT: I don't think he's finished.

8 MR. ARCHER: Huh?

9 THE COURT: I don't think he's finished his direct.

10 MR. ARCHER: Oh, I thought you'd finished.

11 THE COURT: That's okay.

12 MR. ARCHER: I'm sorry.

13 THE COURT: That's okay.

14 (Sotto voce discussion between the

15 court reporter and Mr. Bell.)

16 (Marked State's Exhibit No. 9 and No. 10,

17 photos, for identification.)

18 Q Lieutenant Asbell, let me show you what's been marked
19 State's 9 and ask if you can identify that picture.

20 A Yes. State's Exhibit 9, these are the red flags that
21 I placed by the shell casings, from where Officer Gibbons
22 was at when he was returning fire.

23 Q And let me show you what's been marked as State's 10,
24 and ask you if you can identify that.

25 A Yes. State's Exhibit 10 is off the lefthand side of

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1 Apartment E, and to the left of the dumpsters. This is the
2 shell casing that was in the middle of the road, and Mr.
3 Mosher located it. And the one by the parking lot is the
4 one I located.

5 Q And the red flags on there are your red flags?

6 A Those are my red flags.

7 Q Okay. What are the numbers there, the yellow panels?

8 A That was placed there by the SLED crime scene when
9 they arrived.

10 MR. BELL: Your Honor, we'd offer exhibits 9 and 10
11 into evidence.

12 WITNESS: (Coughs) Excuse me.

13 THE COURT: Have you shown them to counsel?

14 MR. BELL: Yes. I just showed them to him.

15 THE COURT: Any objection?

16 MR. ARCHER: I have no objection.

17 THE COURT: Very well. And that's 8 and 9?

18 MR. BELL: Nine and 10.

19 THE COURT: Nine -- I'm sorry -- 9 and 10. Two
20 photographs, State's 9 and 10 in evidence without
21 objection.

22 MR. BELL: Thank you, Your Honor.

23 THE COURT: Uh-huh.

24 (State's Exhibits No. 9 and 10, photographs,
25 moved into evidence.)

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1 MR. BELL: We'll publish them to the jury by putting
2 them up.

3 THE COURT: All right.

4 Q And you've got -- still have the laser pointer?

5 A Yes, sir.

6 Q You can just kind of point out for the jury.

7 A They're kind of hard to see, but right at the base of
8 each one of these flags, I think that's the shell casing
9 laying right there. All I did was place the shell -- the
10 flag right next to each shell.

11 Q Okay. Do you recall how many you saw?

12 A I believe there was five.

13 Q Okay. And what is this fence again?

14 A That's the fence that separates Haven Oaks from Bi-Lo
15 shopping center. That's probably about middle-ways of the
16 shopping center there.

17 Q Okay. And I'm going to place State's 10 on here.

18 A That is the back road at Haven Oaks, at the very back
19 of it, when you go around behind it. This is a shell
20 casing that I located (indicates); this is the one that
21 Mosher located (indicates). And these flags were placed
22 there by me. The numbers are placed by SLED.

23 This is the beginning of the parking lot behind
24 Apartment E, and just to the right of that are the
25 dumpsters.

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1 Q Now, you said after you put your flags down, you got
2 out of that crime scene with the -- on the outside of the
3 buildings?

4 A Yes. We just wanted to establish where the crime
5 scene was before SLED arrived for them, and then we exited
6 the crime scene.

7 Q Okay. What did you do next?

8 A Kind of just stayed, waited around there for SLED to
9 arrive. And once they arrived on-scene -- it was a little
10 after one o'clock in the morning, I believe -- I did a
11 walk-through with them.

12 In the meantime, they were still getting search
13 warrants, clearing Apartment C. There was a lot going on
14 around Apartment C that I was not involved in at that time.

15 Q Okay. All right.

16 A And some time later than that, they did execute a
17 search warrant; and while they were doing the search
18 warrant, I entered Apartment C as well, I think it was.

19 Q Okay. Who was the SLED agents that came there? Do
20 you recall?

21 A Eddie Porter and Jeff Parrott.

22 Q Okay. And once you walked through them, they went and
23 did --

24 A Yeah. They did whatever. They just went ahead and
25 processed the crime scene, took all the measurements, and

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1 all the photographs.

2 Q Okay. Now, do you recall what time you got to
3 Apartment [REDACTED]?

4 A I've got no idea. It was between one and two o'clock.
5 I don't -- we didn't get home until six o'clock that
6 morning. I'm not sure exactly what time the search warrant
7 was executed.

8 Q Okay.

9 A Probably somewhere close to two or three o'clock in
10 the morning.

11 Q Okay. Who -- who went in the apartment with you? Do
12 you recall?

13 A They were already in there. Chris Limehouse was in
14 there. He was doing the photography on the search
15 warrants. Sergeant Dixson, he's the one that served the
16 search warrant. There were several other officers in
17 there. I'd have to see a copy of the return to see who all
18 was there.

19 Q What did you do when you went into the -- that
20 apartment?

21 A When I came up and opened the door, there was a closet
22 there. And I went through that closet; didn't locate
23 anything. And I walked -- just walked through the
24 apartment. Walked in the bedroom where Chris was at; and
25 he was in the closet in the bedroom, going through the --

1 clothing and stuff on the shelves. And somebody called him
2 out of there to take a picture.

3 So when he did, I just went ahead and went in the
4 closet and started to do it, and there was a clothes basket
5 sitting on the floor. And I picked that clothes basket up
6 and brought it back into the bedroom and sit it on the bed
7 and started just peeling the clothes up.

8 Q Okay.

9 A (Coughs.) Excuse me.

10 Q Lieutenant Asbell, let me show you what's been marked
11 as State's 5 into evidence, and ask you if you recognize
12 that.

13 A Yes. State's Exhibit 5 is the clothes basket after I
14 sit it on the bed. It shows the clothes folded back.
15 While we were folding them back, I noticed a hammer of a
16 pistol sticking up out of the clothes.

17 At that time, I stopped and called Chris Limehouse to
18 come in and photograph it.

19 Q Okay. I'm putting State's 5 on here. Would you point
20 where you saw the pistol?

21 A This right here (indicates) is the butt of the .380
22 automatic that was located.

23 Q Okay.

24 A After he photographed the gun, I went ahead and
25 removed it. The gun -- the hammer was back; it was cocked,

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1 loaded -- what we call "hot" -- at that time. I just laid
2 it on the bed and continued going through the clothing.
3 And a little further down, I came across the revolver.

4 (Mr. Bell shows photograph to Mr. Archer.)

5 MR. ARCHER: No objection.

6 (Marked State's Exhibit No. 11, photograph.)

7 (Marked State's Exhibit No. 12, photograph.)

8 THE COURT: And what number is that? Oh. We don't
9 have one yet.

10 COURT REPORTER: State's 11 and State's 12.

11 THE COURT: State's 11 -- is it offered in evidence?

12 MR. BELL: Yes. I'm offering 11 and 12 into evidence.
13 I was going to have him identify them.

14 THE COURT: Very well.

15 Q Lieutenant Asbell, I'm going to show you what's been
16 marked as State's 11 and ask if you can identify that
17 picture.

18 A This is the same clothes basket. This is a copy of
19 the -- a photograph of the Rossi .38 when I peeled the
20 clothes back from where it was laying. I had Chris come in
21 and photograph it before I moved it.

22 Q And I'll show you what's been marked as State's 12 and
23 ask you if you can identify that.

24 A State's 12 is a photograph of both of the guns. I put
25 the automatic back into the clothes basket, and the pistol,

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1 and had him just photograph both guns. He had already
2 photographed them individually as they were coming out.

3 MR. BELL: I'd move 11 and 12 into evidence, if I
4 haven't done so.

5 THE COURT: Very well. As I understand, there is no
6 objection. State's 11 and 12 in evidence without
7 objection. They are photographs.

8 (State's Exhibits Nos. 11 and 12, photographs,
9 moved into evidence.)

10 Q And I would publish, if I could, State's 11 up on the
11 screen. And if you'd just point out --

12 A (Complies.) That's the .38 caliber Rossi. That's the
13 way it was laying when I peeled the clothes back.

14 Q And that's -- is that your hand --

15 A Yes.

16 Q -- pulling it back?

17 A It is.

18 Q Okay. Let me show you what's been marked as State's
19 12.

20 A I placed the Walther PK .380 back in the basket and
21 had Chris photograph both guns. And as you can see, the
22 hammer is cocked back on it. There was a live round in the
23 chamber, and six more in the clip.

24 Q Okay. And they were both found in the laundry basket?

25 A Both of them found in the laundry basket. The .380

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1 first, and then the .38 was a little bit deeper down.

2 Q And let me just show you what's been marked as State's
3 -- State's 6 into evidence and ask if you can identify
4 that.

5 A Yes. This is a Walther PK .380 that I removed. And
6 this is the first gun I came to, this .380 automatic.

7 Q I'll show you what's been marked as State's 7.

8 A This was the Rossi .38 caliber pistol that I removed
9 from the basket.

10 Q And you took those into your possession?

11 A Yes, I did. At that time, the gun was hot, so I
12 exited the search warrant and went out to Jamie Zensen's
13 truck, and put together two 10-by-10 boxes. We got some
14 string; we tied the .38 up and suspended it from the box to
15 protect it from having any of the prints, or anything that
16 might be on it, from being destroyed.

17 The .380 was still hot. So, at that time, I dropped
18 the clip out of it and ejected the live round of the
19 chamber. That gun was also placed in another 10-by-10 box
20 and suspended by string.

21 Q How many -- do you recall how many rounds were in the
22 clip?

23 A There was -- I think it was five in the clip and one
24 in the chamber, which made it six rounds.

25 (Sotto-voce discussion between Mr. Bell and Mr. Archer.)

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1 MR. ARCHER: No objections.

2 (Marked State's Exhibit No. 14, gun clip,
3 and State's 13, six live rounds, for identification.)

4 Q Lieutenant Asbell, let me show you what's been marked
5 as State's 12 first. I mean -- I'm sorry -- State's 14
6 first, and ask if you can identify that.

7 A Yes. State's Exhibit 14 is the clip that was removed
8 from the Walther PK.

9 Q Okay. Which would -- let me just make sure -- which
10 would be State's 6.

11 A That's correct.

12 Q Okay. And also show you what's been marked as State's
13 13.

14 A These are the six live rounds of ammunition that I
15 removed from that pistol.

16 Q Okay. And are you ---

17 A State's Exhibit -- I'm sorry. State's Exhibit 13 are
18 the live rounds I removed from that Walther PK.

19 Q Are you familiar with this weapon, which is State's 6?

20 A Yes, I am.

21 Q Do you know how -- which is State's 14, the clip. Do
22 you know how many rounds the clip holds?

23 A I think it holds eight.

24 Q Now, you said that you were -- you took these guns and
25 you suspended them in a box. Why did you do that?

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1 A To protect them from rubbing against anything. They
2 were already underneath clothing, so whatever was on them
3 had a chance of already being destroyed.

4 So, I just went ahead and tied them up by the trigger
5 guards, and just hung them upside down in the box until we
6 could get them back to the office. And that's just trying
7 to protect any fingerprints that might be on the gun at
8 that time.

9 Q Is that a standard -- standard -- it's standard --

10 A It's standard procedure on our crime scene when we
11 recover a weapon. We suspend it until we have time to get
12 it back to the office. After I did that, I secured the
13 guns into Corporal Zensen's truck at that time.

14 Q Okay. Did you -- did you take into possession any
15 other weapons that evening?

16 A Shawn Gibbons's. I received that from Frank Thompson.

17 Q Let me show you what's been marked as State's 4 and
18 ask if you recognize that.

19 A Yeah. This is Shawn Gibbons's duty weapon. It's a
20 Glock Model .22, serial number -- it looks like (as read)
21 "D-H-H-8-2-1-U-S." I received this from Frank Thompson,
22 who had secured it from the vehicle after he arrived on the
23 scene.

24 Q And what did you do with this weapon?

25 A I placed it in my vehicle; and when Eddie Porter

1 arrived, I turned it over to him.

2 Q Okay. What did you do after you'd secured all those
3 items?

4 A Basically, we just stayed there until SLED finished up
5 their crime scene. And then later on that evening, after
6 all the search warrants, we transported all the evidence
7 back to the sheriff's office.

8 Q Okay.

9 A Once we got back to the office, I removed the pistols
10 from the box and put them in what we call -- it's -- it's a
11 fish tank and we use it for super gluing to -- when you
12 super glue a weapon and you heat the super glue up, it
13 starts smoking.

14 And when you place something in there that has any
15 type of moisture on it, it adheres to that moisture and
16 forms kind of a acrylic -- it polymerizes to it. It's kind
17 of a permanent fingerprint that's on there.

18 And then I just left them right there in the lab that
19 night.

20 Q Does that take some time to do, with the super gluing?

21 A It's usually about two minutes is all we leave them in
22 the tank.

23 Q Okay.

24 A And we place them back in the box.

25 Q Now -- and I assume at that point, you went home

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1 shortly thereafter?

2 A Yeah. It was about six o'clock in the morning and I
3 was kind of tired, so I went on home.

4 Q Okay.

5 A We finished processing the guns later.

6 Q Okay. Did you do anything else that -- which would be
7 -- this would be on February 29th?

8 A That was a little confusing. That was Leap Year and
9 we had our dates mixed up.

10 Later on, I met Detective Garrison out at Haven Oaks.
11 He hasn't been inside a crime scene at that time, so we
12 went back to the area and did a walk-through where the
13 actual shooting happened. Showed him where was Shawn was
14 located.

15 And while we were there, we noticed a couple areas of
16 the dirt that had been kicked up, looked like maybe a
17 bullet had hit them. So, we started photographing that.
18 Got the metal detector out and we started digging in that
19 area, and located a spent bullet at that time, which looked
20 like it was a .40 caliber.

21 And from where Shawn was at in the ditch, and you look
22 at this -- the track of the bullet -- and he fired one of
23 his rounds that hit the ground, traveled underground and
24 stayed there -- that was in direct line to the area between
25 Apartment D and Apartment C.

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1 (Mr. Bell shows photographs to Mr. Archer.)

2 MR. ARCHER: No objections.

3 (Marked State's Exhibit No. 15, 16, and 17,
4 photographs, for identification.)

5 MR. BELL: While I'm here, Your Honor, I don't recall
6 if I did it. I need to -- I'd move State's 13 and 14 in
7 evidence.

8 THE COURT: And so moved into evidence without
9 objection.

10 (State's Exhibit No. 13, six live rounds, and State's
11 Exhibit No. 14, gun clip, moved into evidence.)

12 Q Lieutenant Asbell, first of all, I want to show you
13 what's been marked as State's 16, and ask you if you can
14 identify that.

15 A Yeah. This is my metal detector. A little kit we
16 have and our trowel if we're doing a little bit of digging.
17 And photo placard 8 -- excuse me, A.

18 And right behind that is the trench where we found the
19 shell casings, and you can see the track of the bullet in
20 the ground here.

21 I forgot to mention one other thing. While I was in
22 the crime scene that night, while I was coming out of it,
23 the lady in Apartment [REDACTED] came out and said a bullet had
24 went through her bedroom window.

25 At that time, I went over to her apartment and she

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1 showed me where it went through the window, went into the
2 closet door. I asked her to shut that door, secure it
3 until SLED got there, and I left.

4 And during that time after, everybody in Apartment C
5 was removed from the building. So, at some time later, she
6 was brought back over there when SLED arrived and they went
7 in and recovered the bullet, which was another .40 caliber,
8 just like what came from Shawn's gun.

9 Q Okay. Let me show you what -- and I would move
10 State's 16 into evidence.

11 MR. ARCHER: No objection.

12 THE COURT: Very well.

13 (State's Exhibit No. 16, photograph, moved into evidence.)

14 Q Let me show you what's been marked State's 15 and ask
15 you to identify.

16 A Yes. This is a little box that we use to reflect
17 spent rounds or shell casings at a crime scene. On the
18 front of it, it's got the case number, the date, collected
19 by, and description.

20 In this case, it was a spent projectile, photo placard
21 A, which is the photo placard that's in that photograph.
22 And that's where I placed the bullet for transportation to
23 SLED.

24 MR. BELL: And we move State's 15 into evidence.

25 THE COURT: Any objection?

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1 MR. ARCHER: Which one is this?

2 MR. BELL: State's 15.

3 MR. ARCHER: I've got no objection.

4 THE COURT: Very well. So moved into evidence.

5 (State's Exhibit No. 15, photograph, moved into evidence.)

6 Q And I'll show you what's been marked as State's 17, I
7 believe that number is.

8 A This is a photograph I took from the position where
9 Shawn was at that night, where the shell casings were
10 located. And what it does is show you Apartment C and
11 Apartment D, and this is the area from where he stated the
12 gunfire was coming and where he returned fire to.

13 MR. BELL: And we move State's 17 into evidence.

14 THE COURT: And as I understand it, there's no
15 objection.

16 MR. ARCHER: No objection.

17 THE COURT: State's Exhibit 17 into evidence without
18 objection.

19 (State's Exhibit No. 17, photograph, moved into evidence.)

20 MR. BELL: I want to put these up on the screen.

21 Q This is State's 16. If you could point out --

22 A This is the fence that separates Haven Oaks from the
23 Bi-Lo shopping center. Right here where you see the letter
24 "A," this is where we had located projectile. That's my
25 metal detector, and that's just a tool kit we carry when we

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1 do a scene.

2 Q And that's -- you took what was found at placard A and
3 put it in the box as State's 15.

4 A Correct. That's correct.

5 Q And what is that back to the middle top of the picture
6 again?

7 A You talking about the building behind that?

8 Q No. The depression.

9 A This area is where we were digging for the bullet.
10 You can see the track that was -- well, it's kind of messed
11 up now because we did a lot of digging already. We'd
12 already dug our trench. It was coming from this direction,
13 back towards -- you can see where it started at the back
14 and where we located it.

15 Q And that -- that piece under the fence, is that where
16 you put the flags the night before, that's -- that are in
17 State's 9?

18 A That's correct. That little area right there.

19 Q Okay.

20 A The opening where he went through the fence is about
21 20 feet to the left. It's just off this area right here,
22 where he escaped through the fence.

23 Q I'm going to put State's 17 up and ---

24 A I took this photograph from the position where Shawn
25 would have been. This was Apartment [REDACTED] -- This is [REDACTED] on the

1 bottom right here. And this window -- there's a hedge
2 right there, and if you blow it up, you might be able to
3 see the bullet hole. It's about a foot to the left of that
4 window, just above the hedge.

5 This is Apartment D, so he was having fire returned
6 from here, and then to the left of that and behind it is
7 Apartment E. And the dumpster is where it started.

8 Q Okay. So this is Apartment D that's in the foreground
9 on the left?

10 A That's correct.

11 Q And that's C Building that's on the right.

12 A That's correct.

13 Q Okay.

14 A You can see a little window right where I was
15 pointing, right there. His bullet entered that room just
16 to the left of that window there.

17 Q Okay.

18 (Mr. Bell shows photograph to Mr. Archer.)

19 MR. ARCHER: No objections.

20 (Sotto voce discussion between Mr. Bell
21 and the court reporter.)

22 (Marked State's Exhibit No. 18,
23 photograph, for identification.)

24 Q Let me show you what's been marked as State's 18 and
25 ask you if you can identify that.

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1 A State 18, I mean -- excuse me. Exhibits -- State's
2 Exhibit 18, this is a photograph of the bullet hole to the
3 left of the window that's above the hedge.

4 Q Okay.

5 MR. BELL: We move this into evidence, Your Honor.

6 THE COURT: Any objection?

7 MR. ARCHER: No objection.

8 THE COURT: All right. In evidence.

9 (State's Exhibit No. 18, photograph, moved into evidence.)

10 Q Before I move, State's 17 show where Detective Gibbons
11 was firing back at?

12 A That's correct.

13 Q His angle.

14 A That's correct.

15 Q More toward the corner of D Building?

16 A Yes, sir.

17 Q Okay.

18 A To the right corner of B Building, and to the left
19 side of C Building.

20 Q I'm going to put State's 18 up, and if you could point
21 out --

22 A You notice a shadow. There's two shadows on the wall
23 of the limb, right? Just to the right of that shadow right
24 there, that's the bullet hole from Shawn Gibbons's pistol.

25 Q All right. Now, after you'd gone out to the scene,

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1 what did you do in regards to this case, Lieutenant Asbell?

2 A I think I went back to the office; I believe it was
3 the next day. We just photographed the scene in daylight
4 and did a walk-through on it. At some point in time, I
5 went back out there with Shawn; I'm not exactly sure what
6 day that was. And that afternoon, I transported the
7 evidence that we had found back to the sheriff's office.

8 Q Okay. Did you have opportunity after that to -- to do
9 some things with some of the evidence you had?

10 A Yes. I believe it was on March 2nd. Let me check
11 here real quick. On March the 2nd, I went back to the
12 office and I'd already super glued the guns. So, at that
13 time, I did a DNA swab on each one of the pistols, on the
14 checkering on the handle. On the .380 -- I'd have to see
15 my envelopes.

16 Q Well, let me ask you this. At some point -- before we
17 get to that, at some point, did you have a chance to
18 examine State's 7, which is the .38 revolver?

19 A That night when I super glued them -- after the guns
20 were super glued, then I opened them up -- the revolver.
21 At that time, it hadn't been opened as of yet. And in the
22 revolver -- it's a five-shot revolver, and underneath the
23 hammer was a fired -- spent casings. "Spent" means it's
24 already been fired. To the left of that was another spent
25 casing, and then the other three rounds were live.

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1 On the Rossi, when you pull the trigger on it, the
2 cylinder rotates counter-clockwise. So actually, what I
3 got listed as No. 2 would have been the first round, and
4 the one under the hammer would have been the second round
5 that was going off. There were two fired bullets and three
6 live rounds.

7 (Mr. Bell shows package to Mr. Archer.)

8 MR. ARCHER: No objections.

9 THE COURT: Very well.

10 (Marked State's Exhibit No. 19,

11 five bullet shells, for identification.)

12 Q Lieutenant Asbell, I'm going to ask you -- show you
13 what's been marked as State's 19, and ask you if you could
14 identify it.

15 A Yeah. These are the five shells that I removed. Two
16 of them had been fired and three live rounds that I removed
17 from the Rossi. Placed in a heat-sealed pouch, initialed
18 it, and put the case number on it.

19 Q Okay. And that was taken from State's 7?

20 A That's correct.

21 Q Okay.

22 (Sotto voce discussion between Mr. Bell and Mr. Archer.)

23 MR. BELL: Your Honor, I need to get these marked.

24 THE COURT: All right.

25 COURT REPORTER: How many?

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1 MR. BELL: Eight.

2 (Marked State's Exhibit No. 20 through 27,
3 DNA swabs, for identification.)

4 COURT REPORTER: It's the State's 20 through 27.)

5 MR. BELL: Twenty through 27?

6 COURT REPORTER: Yes, sir.

7 MR. ARCHER: Without objection, Your Honor.

8 MR. BELL: We move State's 20 through 27 in then.

9 THE COURT: Yes. State's 20 through 27 in evidence
10 without objection.

11 (State's Exhibits 20 through 27, DNA swabs, in evidence.)

12 Q Lieutenant Asbell, I want to hand you again what's
13 been marked as State's 6, which is the Walther .380.

14 A Yes, sir.

15 Q Okay. I'm going to hand these as a group, but you can
16 do them one at a time. These are State's 20, 21, 22, and
17 23, and ask if you can identify them first.

18 A Yeah. These are the DNA swabs that I took off of the
19 Walther PK .380. What I did was on the handle -- most of
20 your pistols have a checkering on the handle. So, you're
21 not going to get any latent prints from that section of it.
22 So we swab that for DNA.

23 What I did was swab the checkering on the handle --
24 which is swab number 4 -- placed it in this envelope,
25 sealed it, and put my initials on it.

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1 No. 2 is off the trigger. I'm going to remove this
2 one to about here.

3 Q If you want to step down to show the -- show the jury
4 exactly about the area that you took the swabs from.

5 Let me start -- before you do that. What do you mean
6 by "taking swabs"? What are you actually doing?

7 A You take a sterile swab and we wet it with saline.
8 And then we go in and swab whatever we're going to swab.
9 Try to pick up skin cells or any type of DNA off the weapon
10 or whatever we're processing at the time.

11 Q Okay. And what do you take -- it's like a sterile Q-
12 tip, I guess, and --

13 A And just rub it on the area and then we got a little
14 holder in there. We stick it in and let it air-dry when we
15 working on the rest of it.

16 Q Okay. All right. If you could step down and show the
17 jury the areas that you took the swabs on State's --
18 State's 6?

19 A Do you mind if I remove the pistol from the bag?

20 (The witness steps down from the stand.)

21 THE COURT: Oh, in order to show them? No. That's
22 perfectly fine, because the trigger lock is on it. No
23 problem.

24 A I took five swabs off of this pistol. One was on the
25 trigger. If you notice, the trigger has grooves in it.

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1 So, we wet the swab and we just swabbed ---

2 THE COURT: Can everyone see? Can you all see on this
3 end? We might -- what you might want to do, Detective, is
4 just come on down and maybe just show a couple of areas.
5 That way, everyone can see.

6 A Okay. I've got ---

7 COURT REPORTER: You need to speak up just a little
8 bit for me, since your back's to me.

9 WITNESS ASBELL: All right.

10 COURT REPORTER: Thank you.

11 A Got four swabs here. Swab No. 1 is the clip.

12 Q And which State's exhibit is that? If you could,
13 refer to the State's exhibit.

14 A This is State's Exhibit 20. And the pistol was --
15 could you look on that bag for me? I believe it's State's
16 6.

17 Q State's 6.

18 A State's 6? We removed the clip. We swabbed all
19 around the edge of the clip, and where they pushed the
20 bullets down into it, we swabbed that rim right there.
21 That's where the skin is scrapping most of the time.

22 So, we would have swabbed around this area here, the
23 butt of the clip, and the area where the bullets are
24 actually located in the clip.

25 No. 2 is the trigger. I've already explained that.

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1 You'll see it on this trigger that it has grooves. And
2 what we catching is when they scrape over it, hoping to
3 pick up some kind of skin cells or DNA that's left there.

4 No. 3 is the safety. Same thing. You notice the
5 safety has grooves on it, and then you've got grooves on
6 the side of the gun here, so when you want to wrap it, you
7 can grab hold of it and pull it back. Gives you something
8 to grab on. So we swabbed that area and then swabbed
9 forward just to check under the handle. I just swabbed all
10 of the handle on there.

11 Q And what State's exhibits are those that you referred
12 to?

13 A I'm sorry. The clip is State's Exhibit 20; the
14 trigger is State's Exhibit 21; and the checkering on the
15 handle, which is swab number 4, is Exhibit 22; and the
16 safety release and the slide is State's Exhibit 23.

17 Q Okay. As you come I'll -- come retrieve that State's
18 6. And I'll take 20 through 23 away, and I will hand you
19 what has been marked State's 24, 25, 26, and 27. And I
20 will bring you what's been marked as State's 7, and ask you
21 to do the same thing.

22 A State's 7 is a Rossi .38 caliber. And again, we did
23 the same thing on No. 5 -- as swab No. 5, which was State's
24 Exhibit 24. This trigger has a groove in it, also. And we
25 just wet the swab with saline and then swab those grooves.

1 State's Exhibit 25, which is swab No. 6, is the
2 hammer. This particular gun, if you'll notice that the
3 checkering on the handle is real rough. So, we swabbed
4 that also for DNA.

5 State's Exhibit 26, swab No. 7: On the side of this
6 weapon is what we call the "cylinder release." You can see
7 it's checkered also, real rough. This is where you push it
8 forward and pull the cylinder out so you can load the gun
9 or unload it. This area here was also swabbed, the
10 checkered area on the cylinder release.

11 And No. 8 was just the checkering on the handle.

12 Q And what State's Exhibit is that?

13 A I'm sorry. State's Exhibit 27 is the swab No. 8,
14 which is the checkering on the handle.

15 Q Okay. You can have a seat.

16 (The witness returns to the stand.)

17 Q Now, do you know -- after you did all of this, took
18 the swabs with the guns and checked them, did you also --
19 did you do anything as far as fingerprints after you had
20 done the super glue?

21 A Yes, I did. After we -- the guns were super glued, we
22 used different dye stains. I used one -- we just go by the
23 name "MBD." I do not know the scientific name for it. I
24 can never pronounce it, anyway.

25 But what we do is just spray the weapon with the dye

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1 stain. It dries in a matter of about 30 seconds to a
2 minute. And then we examine the gun with an alternate
3 light source. We use different wave lengths and different
4 colored goggles.

5 When you use the dye stain, it's not visible until you
6 use this -- it's kind of like a laser light beam is what it
7 is. And they're viewed through different wave lengths.

8 This particular wave length was set on 530, and I was
9 using the orange goggles, which made the prints visible.
10 Once I located the prints, I placed scale tape next to the
11 latents, and then took them over to the camera and
12 photographed them.

13 Q Okay. And what are "latents"?

14 A A latent print is what's known as a "hidden print."
15 You can't really see it until you apply like a chemical or
16 a powder or something to make them visualize.

17 In this particular case, once it was super glued, you
18 could actually see the super glue on the gun. You can see
19 an outline of what's there. Sometimes it's not real
20 discernable until you put the dye stain on it. After you
21 hit it with the dye stain, it becomes more visible.

22 Q And you took photographs of it and you put those in
23 evidence?

24 A Yes, I did. I photographed all latents. And after
25 the swabs had dried, we packaged up the guns, the swabs,

1 and had -- did all the paperwork to get everything ready to
2 go to SLED.

3 Q Okay. So at this point, the guns -- that is the
4 State's 6 and 7, the -- the Walther .380 and the .38 Rossi;
5 all their bullets and -- unfired bullets and fired bullets;
6 the swabs and your pictures of latent prints were packaged
7 up. And were they sent to SLED at that point?

8 A They were sent the next day.

9 Q Okay. And do you know who took them?

10 A Chris Limehouse.

11 Q Okay. And he -- he was a member of your crime scene
12 team at that time?

13 A Yes, sir. He was one of my crime scene officers.

14 Q Okay. Now, Lieutenant Asbell, some time later -- in
15 fact, early this year, did you do some other collection of
16 evidence?

17 A Yes, sir. I did.

18 Q And what was that?

19 A We had some DNA off of the two weapons, and they
20 needed DNA samples. So, we did what we call "buccal
21 swabs." I take the same type swab, which is a sterile
22 swab, and we swab the inside cheeks and right around the
23 gum area for DNA. After they are swabbed, they are placed
24 back in the envelope, and at some point in time, are taken
25 to SLED.

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1 On this particular morning, Buster Edwards was with
2 me. He started with us at the first part of the year.
3 He's a retired SLED agent, and he helps us enter our
4 evidence. He does not have a key to the evidence room; all
5 he has is a key to the office. He enters -- logs the
6 evidence in the computer, and he does our transporting back
7 and forth to SLED now.

8 And at that point, I swabbed each one of the
9 individuals, and I have the dates and the times on the
10 swabs when I get them.

11 (Mr. Bell shows package to Mr. Archer.)

12 MR. ARCHER: No objections.

13 (Marked State's Exhibits No. 28, 29 and 30,
14 buccal swabs, for identification.)

15 Q And Lieutenant Asbell, I'll show you what's now been
16 marked as State's 28, 29, and 30, and ask you if you can
17 identify them individually.

18 A State's Exhibit 28 is a buccal swab I did on Dervick
19 Parker. After I do the swab -- these swabs have a little -
20 - they're kind of little plastic caps on them. You just
21 slide them out, do your swabbing, pull them back down, and
22 close the lids. And they have vent holes in them so they
23 can air dry.

24 I placed it back in the envelope it came out of; put
25 "Dervick Parker"; the case number, 08001876; the date, 2/11

1 of '09; my initials; and the time, 9:55 a.m., is what time
2 I did the swabs on him.

3 Q Okay. And Dervick Parker is the defendant in this
4 case?

5 A That's correct.

6 Q Seated at the counsel table?

7 A That's correct.

8 Q Okay. And that's the one that you took from him.

9 A State's Exhibit 29 is the same thing. It's another
10 swab I did on Quinntavious Davis on February, the 11th at
11 10:03 a.m. And it has his name, case number, the date, my
12 initials, and the time that I took it.

13 Q Okay.

14 A State's Exhibit 30, all the writing is on the back.
15 This is on Donnell Campbell. Again, with the case number,
16 my initials, the date, and the time, 9:49 a.m.

17 We had each individual brought in separately. In
18 between, we changed gloves so that we don't contaminate any
19 of the swabs from another person's DNA. The same thing
20 with a gun. When we handle one gun, we change gloves, go
21 to another glove to handle the other gun. That's to keep
22 from having any cross-contamination.

23 Place it back in this envelope. If you'll notice,
24 there's a red Dorchester County Sheriff's Office seal on
25 there. Folded that over, initialed it, and turned them

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1 over to Buster Edwards, right there at the jail. He got in
2 his vehicle, went straight to SLED, and delivered these to
3 SLED at 11:25 that morning.

4 MR. BELL: Your Honor, we'd offer State's 28, 29, and
5 30 into evidence.

6 THE COURT: Any objection?

7 MR. ARCHER: No objection.

8 THE COURT: No objection? In evidence.

9 (State's Exhibits No. 28, 29 and 30, buccal swabs,
10 moved into evidence.)

11 Q Lieutenant Asbell, let me back up. That was the end
12 of the evidence collection in this case?

13 A Yes.

14 Q Okay. Going back to the night of the shooting,
15 February 28th, you said that SLED had been called in. Why
16 was that?

17 A Any time you have a police-officer-involved shooting,
18 SLED is notified. Usually, their crime scene -- probably
19 in 90/95 percent of the cases -- actually work the shooting
20 when an officer has fired his weapon or has been shot.
21 That's up to the sheriff at that time who they want to
22 call, but SLED is called on almost all of them. They do
23 all the internal investigations on police officer
24 shootings.

25 -----(Sotto voce-discussion between Mr. Bell-----

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1 and Officer Garrison.)

2 Q Thank you, Lieutenant Asbell. Please answer any
3 questions Mr. Archer may have for you.

4 THE COURT: All right. Yes, sir, Mr. Archer. Cross-
5 examination.

6 (Sotto voce discussion between Mr. Bell and Mr. Archer.)

7 CROSS-EXAMINATION BY MR. ARCHER:

8 Q Lieutenant Asbell, I'm going to probably jump around a
9 little bit here. But you say that the .380, which is the
10 automatic -- semi-automatic --

11 A That's correct.

12 Q -- was found cocked?

13 A Yes, it was.

14 Q If you fire -- and I don't know that much about
15 firearms. If you fire a .380, okay? You shoot it.

16 A Correct.

17 Q Does it end up cocked after you shoot it or --

18 A Yes, sir.

19 Q So it stays cocked. How do you -- how do you undo it,
20 so as not to fire the next round?

21 A Different weapons are different. Some of them have a
22 safety hammer; you can just push them -- pull on the side
23 and the hammer goes down.

24 Q Uh-huh.

25 A This particular one here, you have to hold the hammer,

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1 if I remember correctly, and let it down. But you pull the
2 trigger and let it down with your ---

3 Q Okay. So that one, if I -- if I -- if I -- do you
4 have to cock it to fire it the first time?

5 A I'm not sure on the .380. Some of them you can just
6 go ahead and have -- they have what's called a "double
7 action," where you just pull the trigger. All your
8 automatics are like that on the first shot. You just pull
9 the trigger.

10 Q Yeah. I mean, I ---

11 A The hammer stays back on the ---

12 Q I've seen the ones where the cartridge slides back and
13 all you got to do is just pull the trigger, pull the
14 trigger.

15 A Yeah. Once you put the -- insert the clip and what we
16 call "rack it" one time, it injects the bullet into the
17 chamber and it is ready to fire at that time.

18 Q But this particular weapon -- the .380 -- after it's
19 fired, it leaves the hammer cocked?

20 A That's correct.

21 Q Okay. And the .380 holds eight rounds, does it not?

22 A Yes, sir. That's correct.

23 Q Huh?

24 A Yes, sir.

25 Q And you recovered six unfired rounds from that -- from

1 the weapon, did you not?

2 A That's correct.

3 Q All right. And you recovered two rounds over in --
4 over by the dumpster.

5 A I didn't recover them. All I did was mark them. I
6 never touched the shell casings.

7 Q Okay. But there were two shell casings over by the
8 dumpsters?

9 A That's correct.

10 Q Were they .380 shells?

11 A Yes, sir. They were.

12 Q Okay. They were .380 shells. So that's six in the
13 gun and two empty shells you find out on the ground,
14 correct?

15 A That's correct.

16 Q Now, there was testimony to the effect that maybe
17 four, as many as five shots were fired from that gun. That
18 would not be possible, would it?

19 A There's a lot -- there were some people said that
20 there were two or three shots. They didn't know how many.
21 Some said three or four. I don't believe anybody really
22 knew how many shots were fired that night.

23 Q Uh-huh.

24 A But yes, it is possible. You can always reload those
25 clips.

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1 Q Right.

2 A When we're going through our shooting on the range, we
3 have what they call a "tactile," you have to reload. So,
4 yeah. He could have filled his clip back up and put more
5 rounds in it after he shot.

6 Q Sure. In fact, police officers carry extra clips on
7 them, do they not?

8 A That's correct.

9 Q Huh?

10 A That's correct. To keep from them having to ---

11 Q They won't have to refill them, they can just pop them
12 right in.

13 A That's correct.

14 Q Okay. So -- and of course, there's some testimony
15 that's been that there was three or four rounds -- and at
16 least three rounds, maybe four fired in one location, and
17 at least four rounds and maybe five rounds fired in another
18 location. That would come up to somewhere, I believe,
19 between seven and nine rounds. Nine would have fully
20 emptied that gun, would it not?

21 A Yes, sir.

22 Q Okay. And so, there would have -- if nine shots had
23 been fired from that gun.

24 A Yes, sir.

25 Q All right. And you found two rounds missing, or

1 having been fired, in Dervick's gun. In the revolver,
2 right?

3 A That's correct.

4 Q All right. Now, if three or four rounds were fired at
5 the officer, we're back to the same situation, are we not?
6 You would have -- that gun would have had to been reloaded,
7 if that was the gun that was fired at.

8 A That's correct. If you take the two rounds from the
9 .380 and the two rounds from that and the five from Shawn,
10 that's nine rounds right there that was fired that night,
11 just from the ---

12 Q I'm talking about the rounds fired at Shawn.

13 A I -- I've got no idea how many rounds was fired at
14 Shawn.

15 Q Let's say there were -- yeah. Well, let's say there
16 were seven to nine rounds fired at him. If there were
17 seven to nine rounds fired at him, that becomes a problem
18 in -- in counting up the number of bullets that you find
19 remaining in these guns, does it not?

20 A If it was, in fact, four rounds? Yeah, that would be
21 a problem.

22 Q Yeah.

23 A I don't know if there was four rounds. There could
24 have been more shell casings. That's a big area out there,
25 and depending on -- if the shooting started somewhere else,

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1 you know, further away, it could be more shell casings over
2 in the grass that we didn't locate.

3 Q And of course, there's another way that that could be
4 accounted for, is there not? There could have been either
5 a third gun used or a third person. That could account for
6 the extra shots, could it not?

7 A I mean, it could, but there was no mention of any --
8 of a third person.

9 Q I understand. Well, let's -- you mind coming down
10 here? You got the pointer up there?

11 A Sure.

12 (The witness steps down from the stand.)

13 Q All right. You -- this is where the dumpster is,
14 right? (Indicates.)

15 A Yes, sir. Up in there. (Indicates.)

16 Q And -- and -- and you said you processed or looked
17 around that area; is that correct?

18 A No, sir. I didn't. I said I searched this area here,
19 to the left of Apartment D. When Shawn told me -- after I
20 talked to him at the hospital -- it had happened around the
21 dumpster, we walked around over here, found the two shell
22 casings in the road. I marked those and then I left the
23 scene.

24 Q Okay. But there's -- there's two shell casings found
25 here, right?

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- 1 A Yes, sir.
- 2 Q And those are the only two casings you could find out,
3 not in guns, right?
- 4 A That's correct.
- 5 Q And no others were found?
- 6 A (No audible answer.)
- 7 Q All right. And this is where you found Shawn's ---
- 8 A That's correct.
- 9 Q --- casings, right?
- 10 (Sotto voce discussion between Mr. Archer
11 and the court reporter.)
- 12 Q All right. And if you might look at this. That is
13 what has been marked as State's Exhibit 18.
- 14 A State's Exhibit 18 is a closeup I shot -- I took while
15 I was walking from where Shawn was to Apartment C ---
- 16 Q Uh-huh.
- 17 A --- showing -- showing the bullet hole, to the left of
18 the window in Apartment C was.
- 19 Q All right. And this is the far-off shot of that,
20 correct?
- 21 A That's correct.
- 22 Q And -- and the bullet hole really is up here next to -
23 --
- 24 A --- the bullet hole was over here.
- 25 COURT REPORTER: I'm sorry. Could you speak up

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1 louder, please?

2 THE COURT: Yeah. Y'all got to keep your voices up.
3 There you go.

4 Q Let -- let's put it up on the screen. That'll be much
5 better. I'm going to put both -- oops. I guess I can't
6 get them both up here. All right. All right.

7 That's -- well, that's -- that's where -- this is --
8 is -- is that thing on -- where is the bullet hole? Show
9 them.

10 A Right there. (Indicates.)

11 Q Yeah. It's -- it's --

12 A See it on the screen? I got it marked on the screen.

13 Q Oh, it's up there.

14 A Yes, sir.

15 Q Okay. I was looking at that. I guess that's a -- a
16 blooming ---

17 A That's the cable wire going in.

18 Q That's the cable wire going in. Okay.

19 And this is what? That's a photograph from about
20 where --

21 A From where Shawn was standing.

22 Q Where was Shawn was standing or was on the ground.

23 A Yes, sir. There's the corner of Building D ---

24 Q Huh?

25 A --- that's where the bullet went in there, so it's up

1 ---

2 Q Okay. So, he's firing -- that's -- that's -- which is
3 going in somewhere over here, is a -- a shot he missed
4 firing at somebody.

5 A Correct.

6 Q Okay. If the person who supposedly fired at him -- I
7 don't want to block anybody's view -- was standing right
8 around the corner here, you would expect that shot to have
9 gone into this -- this building, not in that building,
10 right?

11 A No, sir. If he was to the right of the building,
12 shooting from the open space ---

13 Q Yeah, if he -- yeah.

14 A --- shooting from that corner ---

15 Q He's right -- if he's over from the right of the
16 building, but if he's right around the corner here, you
17 wouldn't expect it to hit that building.

18 A If you look, there's not very much area between the
19 two of those. If you -- if you look at the diameter of
20 that area in there, he's not shooting at Building D. He's
21 shooting in between the two buildings.

22 Q Yeah. That's right. So ---

23 A And one of the rounds -- I don't know if the subject
24 was moving and he was shooting. I have no idea.

25 Q Uh-huh. Yeah. But you have no idea.

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1 But I'm just saying for that bullet to end up in that
2 wall, that the person cannot be standing in this area right
3 there.

4 A No. He would have to been to the right side of
5 Building D.

6 Q To the right. Okay. Okay. Now -- all right.

7 So, show me the areas that were searched for
8 projectiles or weapons on this thing.

9 THE COURT: And what is the exhibit number?

10 MR. ARCHER: The exhibit number -- oh, yeah.

11 THE COURT: State's Exhibit No. 1, isn't it?

12 MR. ARCHER: The exhibit number is -- I think
13 Prosecution's Exhibit ---

14 THE COURT: One.

15 MR. ARCHER: One.

16 THE COURT: All right.

17 A Arial photograph which is the -- State's Exhibit 1 is
18 the aerial photograph of Haven Oaks.

19 Q Uh-huh.

20 A When I first arrived, they said he was being fired at
21 from both directions, from both sides of Apartment B.

22 That's what they told me at the time. I hadn't talked to
23 Shawn at that time. So, I searched this area here when I
24 first arrived for shell casings. We did not locate any.

25 While I was there, Shawn was at the hospital, and he

1 called and I talked to him. And I asked him where he was
2 at, and he told me. And at that time, I moved from here,
3 after I didn't locate anything, and Chris and Jamie and I
4 moved across the street and started searching this area
5 (indicates) where Shawn was located. And that's where we
6 found the shell casings that Shawn fired.

7 And he told me at that time -- I learned that the
8 shooting actually happened by the dumpster, which was by
9 Apartment E.

10 So we just walked around here, and when we saw the
11 shell casings laying in the road -- at that time, I had no
12 idea how many shots had been fired. Still don't know how
13 many shots were fired. Found two shell casings laying in
14 the road, flagged them; and then I didn't do anything else
15 after that. We left the scene.

16 You know, we looked around that parking lot area and
17 didn't see anything else, and then we moved out of the
18 scene after we marked them.

19 Q So, your biggest searches were right off over into
20 here. (Indicates.) And somebody had seen something over
21 here, so you collected something there. And you looked
22 very closely in this area, correct? (Indicates.)

23 A We also searched this area right here (indicates) that
24 night, but the first search was right here. (Indicates.)

25 Q Uh-huh.

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1 A They say there was shooting from both sides of the
2 apartment; there was a lot of gunfire going back and forth.
3 So, this is where I started, was on the left side of
4 Apartment D. And then I moved from there to where Shawn
5 was on the fence line -- excuse me -- right in here.

6 (Indicates.)

7 While I was talking to him, he told me that it started
8 over here, so we walked over there. (Indicates.)

9 Q Okay. Did you search back in here? (Indicates.)

10 A Yes, we did. We looked sometime during the night
11 there. We did search this area right in here, because it's
12 not that long of an area -- maybe 30 -- no, I didn't look
13 back here. (Indicates.)

14 Q Didn't look back in here.

15 A No. Shawn could not have been shot from back here.

16 The shots had to be coming from that direction there.

17 (Indicates.) So, we searched all around that big oak tree
18 sitting there, around the apartments, in the bushes in
19 front of the apartments. Didn't find any shell casings at
20 all anywhere around Apartment B.

21 Q Well, you just say you don't think he could have been
22 shot from -- from back in here.

23 A Well, he -- if you look at the corner of Apartment C -

24 -

25 Q Uh-huh.

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- 1 A -- I'm not sure, but I believe that is probably
2 visible -- just the very corner -- from where Shawn was. I
3 mean, he could have been shooting from there, but Shawn
4 stated he was on the right-hand side of Apartment B.
- 5 Q Well, doesn't it seem to be a clear line goes right
6 through those apartments; comes up to where at least -- you
7 know, it -- this is where he leaves the fence. And this --
8 this is all approximate, as I understand, approximate
9 locations.
- 10 A I cannot say that you can see the corner of Apartment
11 C from there.
- 12 Q Yeah. Okay.
- 13 A He told us that the shots were coming from the right
14 side of Apartment D when he got hit.
- 15 Q Uh-huh.
- 16 A So that's where we looked.
- 17 Q Looked right side looking at it.
- 18 A Yes, sir.
- 19 Q Okay.
- 20 A As he was looking at the apartments.
- 21 Q Okay.
- 22 A If he was hit, he was getting gunfire from right here.
23 (Indicates.)
- 24 Q Okay.
- 25 A Right side of Apartment D.

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1 Q Okay. All right. Now, did all the bullet you found -
2 - you only found one actual bullet, or two?

3 A I found one the next day. SLED recovered one from the
4 Apartment --

5 Q Okay.

6 A -- C that night.

7 Q Yeah. That's the -- the one that was recovered that
8 went through that wall, right?

9 A Correct.

10 Q And you found one where? Somewhere -- tell me where
11 you found --

12 A This little bit of grassy area right here.
13 (Indicates.) If you could put your photograph that you had
14 up, showing from where Shawn was -- where I took that
15 photograph from where he was standing.

16 Q You want me to put it back up here?

17 A Yes, sir.

18 Q Thank you, sir. Okay.

19 A This was taken before we started any searches.

20 Q Right.

21 A When we got there, I just did a panoramic photograph
22 across.

23 Q Uh-huh.

24 A "A" is going to be right in this general area here.

25 (Indicates.) It was traveling in a direct line with the

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1 corner -- right corner of Apartment B and the left corner
2 of Apartment C.

3 Q So you find it ---

4 A In that general area right in there.

5 Q In that general area. Okay.

6 A It was a line probably about a foot long in the grass
7 when we got down there close enough we could see the dirt.

8 Q Uh-huh.

9 A Run our finger down in the trench til we got to the
10 end of it and then started digging.

11 Q And how did you ever -- I mean, you were able to tell
12 the direction of how it is this groove starts and moves up?
13 Is that it? How you -- how you ---

14 A We didn't know which way it was going when we first
15 started. It was just a trench in the dirt.

16 Q Right.

17 A And when you stick your finger in there, you could
18 feel the hole where the bullet went. So -- you go to each
19 end ---

20 Q The hole was pointing that way.

21 A That's correct. That's how we knew it was one --
22 probably one of his gunfire.

23 Q Okay. All right.

24 A And we also searched the ditch lines with metal
25 detectors, trying to find the bullet that might have went

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1 through his leg, where he first entered the ditch, and all
2 we ---

3 Q Uh-huh.

4 A --- coming up with was a bunch of trash.

5 Q Now, let me let you look at this picture close up, and
6 I'm going to direct your attention right there.

7 (Indicates.)

8 A Okay. So you can see the ---

9 Q You can see Building F back there, can't you?

10 A You can see all the way back up to that apartment.

11 Q Yeah. Okay.

12 A Between the corner of D and the tree there. You can
13 see that.

14 Q Yeah. I mean, there's a space between the corner --
15 there's a space between the corner of D and the corner of C
16 where you can see part of G, right?

17 A Depending on where you're standing, yes. But that
18 particular picture, you can see the tree. You can see D
19 and the tree. You can't actually see the corner of
20 Apartment C. But just moving a little bit either
21 direction, yeah, you could see in between them.

22 Q Yeah. I mean, but you do see -- you see a little tiny
23 piece of -- of Apartment G back there, in this picture.

24 A Yes, sir.

25 Q So it would be possible, if that was -- if you took it

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1 from where he was standing, for a shot to have come from
2 back here. (Indicates.)

3 A That's possible, but that's not what he told me us
4 that night.

5 Q Well, I know it's not. But I mean, it's physically
6 possible for the shot to have come from back in this area.
7 (Indicates.)

8 A Oh, yes, sir.

9 Q And -- and you -- and you processed -- you didn't
10 really process that area, did you?

11 A I didn't see a need to process it.

12 Q I -- I understand you thoroughly. Okay. I don't
13 think I need this right now. I may get you back up. I
14 have a habit -- bad habit of jumping around, so I may get
15 you back up.

16 THE COURT: And now that we've taken a break in the
17 action --

18 MR. ARCHER: Yes?

19 THE COURT: -- we're going to take our morning break.

20 MR. ARCHER: Good.

21 THE COURT: Ladies and gentlemen, in a moment, I'm
22 going to ask you to step to your jury room. Do not discuss
23 this matter or allow anyone to discuss it with you.

24 (To Mr. Taylor) George, if you have any smokers, let
25 them smoke. And we're going to take about 20 minutes.

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1 Thank you.

2 (The jury exits at 11:26 a.m.)

3 (Sotto voce discussion between the
4 court reporter and the Court.)

5 THE COURT: Our -- our most compassionate and
6 concerned court reporter wants everyone to know -- if you
7 have a cough, she is equipped -- as I am also -- with
8 Hall's Mentholyptus. She wants no one in the courtroom to
9 suffer the discomfort of having a cough. So, if you have a
10 cough, if you'd just raise your hand, Mr. Taylor will bring
11 you a cough drop.

12 MR. ARCHER: She just don't want nobody coughing on
13 her.

14 THE COURT: No. She's marvelous. She's concerned
15 about everyone's health. With all the pollen, it's a
16 wonder we're not all coughing.

17 (Off the record at 11:27 a.m.)

18 (On the record at 11:54 a.m.)

19 THE COURT: Anything before I bring the jury out from
20 the State?

21 MR. BELL: Nothing from the State, Your Honor.

22 THE COURT: From the Defense.

23 MR. ARCHER: I have nothing, Your Honor.

24 THE COURT: Very well.

25 (The jury enters at 11:55 a.m.)

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1 THE COURT: All right. Ladies and gentlemen, at this
2 time, we will continue with the State's case and the cross-
3 examination of Lieutenant Asbell.

4 All right.

5 CROSS-EXAMINATION BY MR. ARCHER CONTINUES:

6 Q Lieutenant Asbell, this thing isn't real sharp, but
7 this right here (indicates) is about where Detective
8 Gibbons went down? That -- that dip is?

9 A That's correct, sir.

10 Q Okay. And I'm -- and that -- that -- when I say,
11 "this right here," I'm referring to State's Exhibit 16.
12 All right? And I'm now putting Defendant's Exhibit 5 down.
13 It won't fit all the way on there.

14 (Sotto voce discussion between Mr. Archer and Mr. Bell.)

15 Q That's the same dip you're referring to?

16 A It looks like the same area, yes, sir.

17 Q Right. Okay. And this is a picture of that same
18 fence, going down roughly from where Defendant's Exhibit 5
19 ends, right? I'll bring you --

20 A Is that the gate or the opening in the fence, or
21 that's still just part of the fence line?

22 Q That's still part of the fence. Here -- we'll get
23 this here. This is an opening in the fence, and there's
24 one -- a little thin one right past it.

25 A That's correct.

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1 Q Okay. Which one of those do you understand that
2 Detective Gibbons went through?

3 A The one in the center right here.

4 Q The one -- yeah. And that -- that actually sticks out
5 over into the Haven Oaks -- towards Havens [sic] Oaks. The
6 other one just -- the other opens flush with the fence,
7 right?

8 A That's correct.

9 Q Okay. Now, in -- as I understand, how much of that
10 fence -- and if you want to, we can use this. This may be
11 -- it shows the whole thing. You can come over so you can
12 point here.

13 (The witness steps down.)

14 Q That's the gate there that he went through. This is
15 where he was allegedly struck. (Indicates.) Did you
16 examine the fence itself?

17 A Yes, sir. We went through the second opening over
18 here.

19 Q Uh-huh.

20 A Right -- like I said, we walked all the way from there
21 down to the end of the fence, on both sides, looking for a
22 bullet hole through the fence, for where maybe the
23 gentleman shooting the .380 bullet hole might have been.

24 Q Right.

25 A But we never located any bullet hole in the fence.

- 1 Q Did you do that in the daytime?
- 2 A Yes, sir.
- 3 Q Okay.
- 4 A We did it that night; we did also the next day when --
- 5 -
- 6 Q Right.
- 7 A --- Detective Garrison and I went back out there.
- 8 Q Any theory, as an expert -- I mean, somebody's firing
- 9 in this direction, and this is -- should hit the fence, it
- 10 would seem. And the same thing if somebody is firing here
- 11 and misses, or even it goes through his leg, it should hit
- 12 the fence.
- 13 A I don't ---
- 14 Q Any theory as to why you -- weren't any bullets in the
- 15 fence?
- 16 A I have no theory at all. The bullet could have hit
- 17 the road and bounced over. I don't know where exactly he
- 18 was standing when he fired.
- 19 Q Uh-huh.
- 20 A He could have been firing across the road, and it
- 21 could have went to the right of the fence from back there.
- 22 I just got no idea. We searched the fence; we searched
- 23 this ditch line, which is the ditch right here --
- 24 Q Uh-huh.
- 25 A -- with metal detectors, and we were not able to

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1 locate. We started right here where he first entered the
2 ditch.

3 Q Uh-huh.

4 A We looked there and where the blood was, trying to
5 find it. And then we walked on down here, but we just kept
6 coming up with a lot of trash. Never did find any
7 projectiles.

8 Q Okay. You found something up on top of the Bi-Lo,
9 didn't you?

10 A Yeah. There was one bullet hole in the air-
11 conditioning up there on the side of Bi-Lo. Just happened
12 to look up and see that, and I went up and examined that
13 from the inside. And all along the inside of the bullet
14 hole was rough, so it had been there for a while.

15 Q Uh-huh. Never found the bullet that went in there?

16 A No. It went -- you got to see inside that air-
17 conditioning system. There are a lot of nooks and crannies

18 ---

19 Q Yeah.

20 A --- and underneath the thing. It could be anywhere.

21 Q Okay. So you didn't bother to really search ---

22 A I wasn't really concerned about it when I saw the
23 rust.

24 Q I -- I gotcha. Okay. Now, I'm just trying to see if

25 -- I get any more questions for the map before I tell you to

1 go sit down.

2 Oh. Let me ask you this: This photograph was not
3 made in preparation for this case, was it?

4 A I didn't make that. That was the solicitor that had
5 that made.

6 Q The solicitor had that?

7 A I'm assuming that's who. I didn't make this one, so -
8 --

9 Q Okay. So you don't know where this particular
10 photograph came from?

11 A It looks like it came from Dorchester County. I'd
12 have to read the insignia on the bottom of it to tell you.

13 Q Uh-huh. Okay. All right. You can go back and take a
14 seat.

15 (The witness returns to the stand.)

16 Q This case, is this the only time you've been out to
17 Haven Oaks to process a crime scene?

18 A No, sir.

19 Q It isn't?

20 A No. We've been there quite a few times.

21 Q Okay. How many of them involved shootings or
22 discharges of firearms?

23 A We have quite a few shootings out in that area.

24 Q I gotcha. And there was -- there was one -- and this
25 is what? What's the date of this? Like the end of

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1 February this one took place, right?

2 A Yes, sir.

3 Q You had a fellow shot in the back out there in
4 December?

5 A Yeah. There was a gentleman murdered out there. I'm
6 not sure of the date, but --

7 Q Was that -- was that -- was that the few months before
8 this?

9 A I believe it was. I'm not exactly sure about when it
10 was.

11 Q Right. And then there was a fellow murdered out there
12 in like 2007, right?

13 A Probably so. Yes, sir.

14 Q Yeah. Okay. But it's a pretty hot spot.

15 A Yeah. We have a lot -- lot of trouble out there.

16 Q Yeah. It isn't exactly a place you'd recommend your
17 son or daughter to get a -- a place to stay or apartment
18 in, right?

19 A No. No, sir.

20 Q Okay. Now, when you talked with Detective Gibbons by
21 phone at the hospital --

22 A That's correct.

23 Q -- do you know whether or not, at the time you talked
24 to him, he had been administered pain medication?

25 A I have no idea.

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1 Q I gotcha. And now, you're the head of this
2 department, that we now all refer to as the "CSI Unit,"
3 right? Is that correct?

4 A Yes, sir.

5 Q Okay. And you have training in most of the areas of
6 the forensic sciences?

7 A Quite a few of them.

8 Q How about gunshot residue?

9 A We just collect it off the hands is all we do. They
10 got -- when you open the kit up, it's got instructions
11 telling you what to do.

12 Q Uh-huh.

13 A Just about anybody can do it, if they'll read the
14 instructions.

15 Q Okay.

16 (Sotto voce discussion between Mr. Archer
17 and the court reporter.)

18 (Marked Defense Exhibit No. 10, photograph,
19 for identification.)

20 Q Well, you're familiar with how and why taking gunshot
21 residue tests work, are you not?

22 A Yes, sir. Somewhat.

23 Q Somewhat? Okay. I'm showing you what is marked
24 Defendant's Exhibit 10, which I've previously shown to the
25 solicitor. I understand there's no objection.

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1 MR. BELL: No objection.

2 Q This is a high-speed photography picture of a revolver
3 being shot, correct?

4 A That's correct.

5 Q And would you say that's a fair representation of what
6 happens when you fire a revolver?

7 A Yes, sir.

8 Q Okay. And you've got all this cloud of stuff that
9 comes flying out of it, right?

10 A That's correct.

11 Q And that's where the gunshot residue that we referred
12 to comes from, right?

13 A Yes, sir.

14 Q Is all this stuff that just comes flying out of the
15 gun at the time it's fired.

16 A That's correct.

17 Q And that has a tendency to get on -- all over the
18 place, as a matter of fact, doesn't it?

19 A Anything that's out in front of it. Usually the
20 person holding the weapon ---

21 Q Right. In fact, it has been known to get on things as
22 far as 200 meters away, hasn't it?

23 A Not that far, I wouldn't think. No, sir.

24 Q Okay. Okay.

25 A Within --

CROSS-EXAMINATION BY MR. ARCHER - EARL ASBELL

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1 Q All right.

2 A --- I cannot -- it's not my expertise.

3 Q I -- I hear you.

4 A I couldn't tell anybody that ---

5 Q Okay.

6 MR. ARCHER: Delivering that to the jury, Judge. I'm
7 going to give them a minute to look at it ---

8 THE COURT: All right.

9 MR. ARCHER: --- before I continue questioning.

10 (Jury looks at photograph.)

11 Q Okay. But -- so when a gun's fired, there is a high
12 likelihood that some sort of residue will be deposited on
13 the hands and clothing of the person who fires it, correct?

14 A Not in all cases, but in most cases.

15 Q In most cases. Right. And was there, to your
16 knowledge, a gunshot residue done on -- testing done on any
17 of the defendants in this case?

18 A All three of them.

19 Q All three of them.

20 A Yes, sir.

21 Q All right. Now, when Dervick -- I mean, not you.
22 Quinntavious Davis was not arrested that night, was he?

23 A I have no idea.

24 Q You don't know. Okay. Were you there when my client
25 Dervick Parker was arrested?

CROSS-EXAMINATION BY MR. ARCHER - EARL ASBELL

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1 A No, sir. I saw him come out of the apartment, but I
2 wasn't anywhere around that situation there. That was the
3 detectives.

4 Q Okay. And you may or may not know the answer to this
5 question, but I'm showing you -- oops -- better get it
6 marked.

7 COURT REPORTER: Defendant's 11.

8 (Marked Defendant's Exhibit No. 11,
9 photograph, for identification.)

10 Q Defendant's Exhibit 11, to your recollection, is that
11 how he was dressed when he came out?

12 A I couldn't tell you. I saw him from a distance when
13 they brought him out. I never had any contact with him
14 that night.

15 Q Okay.

16 A The first time I had contact, if I'm not mistaken, is
17 when I did the buccal swabs.

18 Q I got you. Who would have had contact with him that
19 night?

20 A At that time, it was Sergeant; now it's Corporal
21 Zensen, I believe, did the GSR test on his hands.

22 Q Corporal Adams and --

23 A No. Zensen.

24 Q Zen ---

25 A -- Jamie Zensen.

1 Q Jamie Zensen. Okay. All right.

2 Now, just -- and I -- what was sent off to SLED on the
3 gunshot residue test? Or maybe you can explain how you do
4 the residue test that night.

5 A We use a combination kit that has atomic absorption --
6 but I forgot what the last word was -- and then the Sims,
7 which is -- it's a little capsule.

8 Q Uh-huh.

9 A It's got a sticky end on it and you pull them apart,
10 and then you just dab it on the hands. We do one for the
11 back of the palm, and one for the actual palm itself.

12 Q All right.

13 A Then after we do that, then we do the atomic
14 absorption, which is -- I think it's a five percent
15 solution of nitric acid. The swabs are wet and then we do
16 the same thing. We swab the back of the hands, and we swab
17 the front of the hands; and we do a control. There's, I
18 think, 12 swabs in the envelope, or 10. I'm not -- I'd
19 have to count them up. But each one is a separate test.

20 Q Right.

21 A The back is a separate; the palm is a separate.

22 Q Okay. Now -- and so that would have been done to the
23 hands of these fellows, right?

24 A Yes, sir.

25 Q Somewhere during the night, that evening, y'all seized

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1 this piece of clothing, I believe, which is supposed to be
2 something worn by my client.

3 A I'm not sure who it was supposed to be worn by. I --
4 we -- I know it was seized in a search warrant, but that
5 was not part of my dealing.

6 Q Right. Well, didn't -- didn't you know -- where are
7 these things you dab on the hands and all over people?
8 Those were sent off to SLED for analysis?

9 A They were turned over to SLED agents that night.

10 Q Do you know whether the clothing was sent off to SLED?

11 A Not to my knowledge, no.

12 Q Okay.

13 MR. ARCHER: I have no other questions of this
14 witness.

15 THE COURT: Re-direct?

16 RE-DIRECT EXAMINATION BY MR. BELL:

17 Q Lieutenant Asbell, in regards to the GSR, the gunshot
18 residue test --

19 A Yes, sir.

20 Q -- you -- when you collect them, you send them off to
21 what agency?

22 A To SLED, the State Law Enforcement Division.

23 Q Is their -- do they put any restrictions on gun --
24 taking gunshot residue tests?

25 A I believe it's a four -- it's either four hour or six

RE-CROSS EXAMINATION BY MR. ARCHER - EARL ASBELL

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1 hour. I believe it's after four hours, they won't accept
2 them because the -- the articles are just deposited on the
3 hand. Just by putting your hands in your pocket, washing
4 your hands, wiping them off on anything will take the
5 substance off your hands.

6 Q Thank you.

7 MR. BELL: No further questions.

8 THE COURT: All right. Re-cross?

9 MR. ARCHER: Yeah.

10 RE-CROSS EXAMINATION BY MR. ARCHER:

11 Q Do you know approximately what time the gunshot
12 residue test -- the gunshot residue test was done on the
13 scene, was it not?

14 A They were done that night. Yes, sir.

15 Q That night on the scene.

16 And approximately how long after the shooting were
17 they done?

18 A I couldn't tell you for sure. It was a couple hours.
19 Detective Zensen might be able to tell you. I think she
20 said they were being done -- the report stated they were
21 being done when SLED arrived.

22 Q Okay.

23 A And that was after one o'clock in the morning. So it
24 was a couple hours after the shooting.

25 Q Couple hours. But you sent them off to SLED; SLED did

DIRECT EXAMINATION BY MR. BELL - JAMIE ZENSEN

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1 not reject the samples, did they?

2 A No. No. They were within the time limit.

3 Q Okay.

4 MR. ARCHER: No other questions.

5 THE COURT: All right. Is this witness free to leave?

6 MR. BELL: He's free to leave, Your Honor.

7 MR. ARCHER: No further, Your Honor.

8 THE COURT: You're free to go. Yes. All right. Call
9 your next witness, please.

10 MR. BELL: The State would call Jamie Zensen to the
11 stand.

12 JAMIE ZENSEN, having been first
13 duly sworn, testifies as follows:

14 THE COURT: Very well. And would you please be
15 seated.

16 THE WITNESS: Thank you, ma'am.

17 THE COURT: State your full name for the record,
18 spelling your last name.

19 THE WITNESS: Detective Sergeant Jamie Zensen, Z-e-n-
20 s-e-n.

21 COURT REPORTER: Spell your first name for me, please.

22 THE WITNESS: Jamie, J-a-m-i-e.

23 DIRECT EXAMINATION BY MR. BELL:

24 Q Sergeant Zensen, where are you employed?

25 A - Dorchester County Sheriff's Office.

DIRECT EXAMINATION BY MR. BELL - JAMIE ZENSEN

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1 Q And in what capacity are you employed there?

2 A I'm a detective in the Crime Scene Unit.

3 Q How long have you been with Dorchester County
4 Sheriff's Office?

5 A Since February 15th of 1999.

6 Q How long have you been in law enforcement?

7 A Since 1992.

8 Q Generally, what kind of training have you had in your
9 law enforcement career?

10 A I was what is considered an evidence custodian or an
11 evidence technician down in Florida, which is where we go
12 out and process crime scenes.

13 I worked the road for many years, and I worked in
14 detectives crime scene.

15 Q Okay. And you are currently a sergeant in crime
16 scene; is that correct?

17 A Yes, I am.

18 Q Okay. And were you working there back in February
19 28th of last year, 2008?

20 A Yes.

21 Q And did you have an occasion to go out to Haven Oaks
22 Apartment that evening?

23 A Yes, I did.

24 Q Why?

25 A In reference to an officer shooting.

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1 Q Do you recall what time you went out approximately?

2 A No. Can I refer to my notes?

3 Q Sure.

4 A Approximately 10:30 I was contacted to respond.

5 Q And did you contact anybody else to respond?

6 A I contacted Lieutenant Earl Asbell.

7 Q And how long did it take you to get out to the scene
8 at Haven Oaks?

9 A It didn't take me very long at all. I couldn't give
10 you a time frame. I know I was dressed and there.

11 Q Okay. When you got there, what -- what was going on?

12 A The scene had been secured, and I met with Lieutenant
13 Earl Asbell, who started taking photographs. He advised me
14 that SLED was en route to come down in order to process the
15 scene as an officer-involved shooting. And that the Deputy
16 Gibbons -- Detective Gibbons had been taken to the hospital
17 in reference to a wound to the leg.

18 Q And what were you doing -- what were y'all doing
19 first?

20 A At that time, I was called over to a car that Deputy
21 Adam Smith had Quinntavious Davis in the back of, and I
22 performed a GSR kit on him.

23 Q And what's a GSR kit?

24 A It's a gunshot residue. It's an identification kit.

25 Q Okay.

1 (Sotto voce discussion between Mr. Bell

2 and Detective Garrison.)

3 (Sotto voce discussion between Mr. Bell and Mr. Archer.)

4 MR. ARCHER: I have no objection to the GSR test of my
5 client, Your Honor. There's two others, which are
6 Quinntavious Davis and Donnell Campbell, and I do object to
7 those. They're not on trial here.

8 THE COURT: All right. Ladies and gentlemen, I need
9 you to please step to your jury room. Do not discuss this
10 matter, or allow anyone to discuss it with you. We will be
11 with you very shortly. There's a matter that I need to
12 take up outside your presence.

13 (The jury exits at 12:16 p.m.)

14 THE COURT: Very well. All right. Yes, sir, Mr.
15 Bell?

16 MR. BELL: Your Honor, I think it's -- he would
17 object. I would -- we would put in the one. We have three
18 gunshot residue kits: One from Dervick Parker, as the
19 testimony would show; one from Donnell Campbell; and one
20 from Quinntavious Davis. And we would enter all three.

21 THE COURT: All right. There's an objection to the
22 two of them on the basis that they are not on trial, and --
23 and I gather that the objection is that they are,
24 therefore, not relevant. What matter, which is of
25 consequence to this litigation, does their -- the other

1 gentlemen's test make more probable or less probable?

2 MR. BELL: Your Honor, first of all, I would (a) argue
3 he has no standing to object to the other individuals'
4 tests, regardless if they're not on trial; and (b) I think
5 it is relevant. I think there's an abundance of evidence
6 of three individuals being involved in the shooting of --
7 of Sergeant Gibbons.

8 In fact, Mr. Davis admitted to firing a gun yesterday
9 afternoon on the stand, and I think that the ---

10 THE COURT: He did.

11 MR. BELL: --- evidence of the gunshot residue or lack
12 of gunshot residue of these individuals, tends to ferret
13 out who may or may not have shot -- have fired the guns in
14 this -- in this case.

15 THE COURT: So, you're -- so, what you're saying is it
16 certainly corroborates or impeaches the testimony given
17 yesterday.

18 MR. BELL: It may and it may show ---

19 THE COURT: Okay.

20 MR. BELL: --- it may go to show some other testimony.
21 I think it's highly relevant.

22 MR. ARCHER: Well ---

23 THE COURT: All right. Yes, sir?

24 MR. ARCHER: --- Your Honor, Mr. Davis admitted to
25 having fired at Sergeant Gibbons. All right? So, I mean,

1 I don't see where -- the testing is merely cumulative or
2 what have you. He's already admitted it. Why do we -- why
3 do we need this? Okay?

4 There's no indication at all that Donnell Campbell was
5 out on the -- was out there. I'm willing to stipulate to
6 Donnell Campbell -- I mean, not Donnell -- yeah, Campbell
7 was out there.

8 THE COURT: Right.

9 MR. ARCHER: So, I mean I -- I just don't want to
10 start getting into evidence that's against other defendants
11 when the issue is -- there's no issue that Davis fired a
12 weapon. Okay? They say that; we say that. Okay?

13 THE COURT: You mean that Campbell fired a weapon.

14 MR. ARCHER: Huh?

15 THE COURT: You mean that Campbell fired. There is
16 evidence that Davis fired a weapon; there is no evidence
17 that Campbell fired.

18 MR. ARCHER: No evidence Campbell fired.

19 THE COURT: Okay. All right.

20 MR. ARCHER: You know, so, I mean, that -- that's --
21 I'd just like to keep this down to what Parker did, and not
22 start getting into evidence ---

23 THE COURT: Okay.

24 MR. ARCHER: --- of other things.

25 THE COURT: Very well.

1 MR. BELL: Your Honor, I confer that as how I believe
2 how the evidence will go -- how it's even more relevant in
3 this case, especially from the State's prospective, is that
4 ---

5 THE COURT: Set aside Davis. I'm done with Davis.

6 MR. BELL: Well, I ---

7 THE COURT: I'm going to overrule it with regards to
8 Davis, because I think it is ---

9 MR. BELL: Well, it kind of includes Davis, because
10 what I would say is what it's going to turn out is to show
11 that all three tests were negative. We know that Davis has
12 admitted firing a gun, and his test was negative.

13 So therefore, it would be relevant to show that you
14 could fire a gun and still have a negative test ---

15 THE COURT: Okay.

16 MR. BELL: --- from the State's perspective.

17 THE COURT: All right.

18 MR. BELL: Also, there's evidence that Donnell
19 Campbell handled the gun shortly thereafter, which would
20 lead that he may have some residue on his hand if he
21 handled the gun. And also showing a negative test that
22 would show that, while he may have handled the guns, he
23 made a -- the tests were negative as well. So, you could
24 handle the guns and have negative tests.

25 So I think it's very relevant from that perspective.

1 THE COURT: I understand.

2 MR. ARCHER: Well, I mean, now he brings it up after
3 these people have already testified.

4 THE COURT: Okay.

5 MR. ARCHER: Don't have the ability to go back and re-
6 cross them.

7 THE COURT: Okay. Very well. Overruled. Bring in
8 the jury.

9 MR. BELL: I can get them marked real quick.

10 THE COURT: Yeah. While the jury's coming in, you can
11 get them marked.

12 (Sotto voce discussion between Mr. Bell
13 and the court reporter.)

14 (Marked State's Exhibits No. 31, 32, and 33, Gunshot
15 residues tests, for identification.)

16 (The jury enters at 12:21 p.m.)

17 (Sotto voce discussion between the Court
18 and the Clerk of Court.)

19 THE COURT: Very well. Ladies and gentlemen, we will
20 now continue with the State's case. The objection is
21 overruled. The exhibits may be offered, and they are
22 exhibits --

23 MR. BELL: Thirty-one, 32, and 33. State's exhibits.

24 THE COURT: Thirty-one, 32, 33 on behalf of the State.
25 Very well.

DIRECT EXAMINATION BY MR. BELL - JAMIE ZENSEN

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1 MR. BELL: Okay.

2 DIRECT EXAMINATION BY MR. BELL CONTINUES:

3 Q Sergeant Zensen, I would first show you what's been
4 marked as State's 31 --

5 A Okay.

6 Q -- and ask you if you can --

7 A It's a gunshot residue evidence collection kit that
8 was performed on Quinttavius Davis.

9 Q And you collected that?

10 A Yes, I did.

11 Q Okay.

12 MR. BELL: And just offer that into evidence formally,
13 Your Honor.

14 THE COURT: Very well.

15 (State's Exhibit No. 31, gunshot residue kit,
16 admitted into evidence.)

17 Q Well, let me ask you this before I give you the other
18 two. What do you do when you're doing a -- a gunshot
19 residue test?

20 A The actual kit itself is sealed, and we break the seal
21 -- the manufacturer's seal. In this kit, it contains a
22 white piece of tissue paper, along with some plastic gloves
23 that you're supposed to put on while performing the test.
24 It has little vials in it. Can I open one?

25 Q Sure.

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1 A Inside the vials -- each of them are marked
2 individually: left palm, right palm, left back, right
3 back. And what happens is this portion of it comes off,
4 and it has a sticky metal -- almost like a magnet
5 underneath it.

6 And what -- you tap it on there and it collects the
7 dust or any kind of sticky debris or powder that you may
8 have on your hands. This is then sealed and placed back
9 into the actual kit.

10 After you do that is when you do a wet absorption kit,
11 which is swabs with nitric acid. And that's just to
12 collect and get down in between the fingers to make sure
13 that you pick up any metals that you may have missed with
14 that actual collection of the kit. And those are also
15 placed in individual containers that are marked "left palm,
16 right palm, left back, right back."

17 And then you have a control sample. We take the
18 control sample from a place that is obviously covered,
19 hopefully by clothing -- usually up on the leg, underneath
20 the arm sleeve -- so that it wouldn't have any -- couldn't
21 have any -- it's not supposed to have any contamination, so
22 it's basically protected. So it'll be like a clean kit
23 that they run the sample of.

24 That's then placed all back inside that envelope, with
25 the evidence seal put on there and the initials, after

DIRECT EXAMINATION BY MR. BELL - JAMIE ZENSEN

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1 you've filled the questionnaire out on the inside.

2 Q Did you place that in your evidence?

3 A No. Actually, I released that to Agent Porter with
4 SLED that night, after performing the test.

5 Q Okay. Do you recall about what time you did State's
6 31?

7 A I did that as soon as I arrived. After I arrived and
8 checked in with the Lieutenant, I was told that
9 Quinttavius was placed in a vehicle, and I went
10 immediately to that vehicle and -- and did that test. So
11 probably about 10 -- I'm not -- I couldn't say. Probably
12 by 11.

13 Q Okay. Now, did you do any other tests that evening?

14 A Yes, I did. I performed two other tests: One on a
15 Donnell Campbell, who was removed from Building C; and a
16 Dervick Parker.

17 Q And where did he come from?

18 A Building C.

19 Q Okay. Let me show you State's 32 and 33 and ask if
20 you can identify those?

21 A Yes. Dervick -- this is Donnell Parker and -- or
22 Dervick Parker and Donnell Campbell. And that's also my
23 handwriting and signature on the front of all of these.

24 Q Okay. And who did you turn these over to?

25 A Agent Porter with SLED.

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1 Q Okay.

2 MR. BELL: I would offer 32 and 33 into evidence at
3 this time.

4 THE COURT: I believe they're already in.

5 MR. BELL: I just want to make sure.

6 THE COURT: Very well. Over the objection of the
7 defense.

8 MR. BELL: Okay.

9 (State's Exhibits No. 32 and 33, gunshot
10 residue kits, in evidence.)

11 Q And you followed the same procedure with State's 32
12 and 33 that you did with State's 31 that you showed the
13 jury?

14 A Yes, I did.

15 Q Do you recall what time you did 32 and -- State's 32
16 and State's 33?

17 A I could not give you an exact time. It was time that
18 they moved people out of the building. I want to say it
19 was -- it was right as SLED was arriving on scene. I'm not
20 sure what time they arrived on scene. SLED was actually
21 pulling in when I was performing the test on Donnell Parker
22 -- on Donnell Campbell.

23 Q Okay. And these -- so these were done before or after
24 Quinntavious Davis, State's 31?

25 A After Quinntavious Davis.

CROSS-EXAMINATION BY MR. ARCHER - JAMIE ZENSEN

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1 THE COURT: I think the objection actually was to 31.
2 It was not to Mr. Parker, but to the other two.

3 MR. BELL: Thirty-one and 32, Your Honor.

4 THE COURT: Thirty-one and 32. So that they are in
5 over the objection of the Defense.

6 MR. BELL: Okay.

7 Q Thank you, Sergeant Zensen. Please answer any
8 questions Mr. Arch has for you.

9 THE COURT: Cross-examination?

10 CROSS-EXAMINATION BY MR. ARCHER:

11 Q How much training and background do you have in
12 gunshot residue?

13 A I'm not an expert. I don't perform any tests on
14 gunshot residue.

15 Q Have you ever gone to classes to learn about gunshot
16 residue tests?

17 A No.

18 Q Okay. So basically, you just break the package open
19 and do what?

20 A The test, yes.

21 Q Do the test. Okay. You know enough about it to know
22 which type of weapon is likely to emit the most gunshot
23 residue?

24 A I'm not an expert in that. I -- I wouldn't know.

25 Q -- You don't know that either.

1 A No.

2 Q Okay. You did see Mr. Parker that evening because you
3 took some -- you took the test to him, right?

4 A Yes.

5 Q At the time you saw him, do you recall if that was
6 what he was wearing?

7 A Yes. I believe so.

8 MR. ARCHER: All right. Judge, she has identified
9 Defendant's Exhibit -- I believe it's 11, if I can read it
10 correctly.

11 THE COURT: Thank you. All right.

12 MR. ARCHER: Which has previously been indicated that
13 there was no objection by the State, I believe.

14 THE COURT: Okay.

15 MR. BELL: No objection, Your Honor.

16 THE COURT: Very well.

17 MR. ARCHER: I'm going to pass that down.

18 (The jury reviews a photograph.)

19 Q All right. When you took your samples, what -- I
20 understand this -- is this the kind of Scotch tape you put
21 on people and pull off?

22 A No. They're vials --

23 Q Uh-huh.

24 A -- that have like a sticky -- when you pull it off, it
25 has a sticky magnet --

CROSS-EXAMINATION BY MR. ARCHER - JAMIE ZENSEN

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1 Q Uh-huh.

2 A -- and when you place it on, you place it on the hand

3 --

4 Q Right.

5 A -- the back portion of the hand. Even in the
6 instructions, it actually demonstrates and draws it out for
7 you as to where to -- to put each one -- what's considered
8 the "back palm," what's the -- the -- the back and the
9 palm.

10 Q All right. Is there any kit for processing clothing
11 for gunshot residue, to your knowledge?

12 A Not to my knowledge.

13 Q Okay. But gunshot residue does accumulate on clothing
14 as well as on skin, does it not?

15 A Yes.

16 Q All right. Now, let me ask you this: Did you -- at
17 any time, to your knowledge, was any clothing of the -- any
18 of these defendants ever processed to determine the
19 presence of gunshot residue?

20 A Not to my knowledge.

21 Q Okay. And isn't it true -- if you don't know, just
22 say I don't know. Isn't it true that gunshot residue can
23 remain far longer on clothing than it does on skin?

24 A I -- I wouldn't know that. I'm not an expert.

25 Q Fair answer.

DIRECT EXAMINATION BY MR. BELL - CHRIS LIMEHOUSE

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1 MR. ARCHER: No further questions.

2 THE COURT: All right.

3 MR. BELL: Nothing further for this witness, Your
4 Honor.

5 THE COURT: Very well. Is this witness free to leave?

6 MR. BELL: Free to leave for the State.

7 THE COURT: You are free to go.

8 WITNESS: Thank you.

9 THE COURT: Yes.

10 (The witness steps down from the stand.)

11 THE COURT: Call your next witness, please.

12 MR. BELL: The State would call Deputy Chris
13 Limehouse.

14 (Sotto voce discussion between the Court
15 and the Clerk of Court.)

16 CHRIS LIMEHOUSE, having been first
17 duly sworn, testifies as follows:

18 THE COURT: Your witness.

19 MR. BELL: Thank you, Your Honor.

20 DIRECT EXAMINATION BY MR. BELL:

21 Q Deputy Limehouse, where are you employed?

22 A Dorchester County Sheriff's Office.

23 Q And how long have you been there?

24 A Approximately four years.

25 Q How long have you been in law enforcement?

DIRECT EXAMINATION BY MR. BELL - CHRIS LIMEHOUSE

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1 A Since January of 2005.

2 Q And how are you currently employed at the sheriff's
3 office?

4 A I am currently a road deputy.

5 Q And have you been in any other assignments with the
6 sheriff's office?

7 A Yes, sir. At one -- one point was in the crime scene
8 division.

9 Q And when was that?

10 A It was approximately from -- either -- I believe it
11 was July, 2007 to -- it was approximately about 11 months.
12 It was from 2007 to 2008.

13 Q Were you in the crime scene -- crime scene department
14 in February of 2008?

15 A Correct. Yes.

16 Q And did you respond out to Haven Oaks Apartments on
17 February 28th, 2008?

18 A Yes, I did.

19 Q Do you recall about what time you went out there?

20 A I believe it was approximately around 10 o'clock.

21 Q Okay. And when you got out there, what did you do?

22 A I met up with Lieutenant Asbell, who was on the scene,
23 and checked in with him to see what assignment he had for
24 me, or what he would like me to do to start at.

25 Q Okay. What -- do you recall what you did at first?

DIRECT EXAMINATION BY MR. BELL - CHRIS LIMEHOUSE

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- 1 A Do not recall the first thing I did. I was advised
2 that SLED was on the way out to the scene, and that they
3 were going to process the actual crime scene.
- 4 Q Okay. At some point afterwards, did you happen to go
5 to a particular apartment?
- 6 A Yes, I did.
- 7 Q Do you recall what apartment that was?
- 8 A May I refer to my notes?
- 9 Q Certainly.
- 10 A It was apartment [REDACTED].
- 11 Q And what did you do in apartment [REDACTED]?
- 12 A I -- I photographed the apartment prior to the search
13 warrant being executed.
- 14 Q And what about after the search warrant being
15 executed?
- 16 A I collected all the evidence that the detectives that
17 were executing it deemed necessary to collect for evidence.
- 18 Q Okay. Was Lieutenant Asbell there?
- 19 A Yes, he was.
- 20 Q Okay. And did you take photographs inside the
21 apartment?
- 22 A Yes, I did.
- 23 (Mr. Bell shows Mr. Archer a photograph.)
- 24 MR. ARCHER: No objection.
- 25 (Marked State's Exhibit No. 34,

DIRECT EXAMINATION BY MR. BELL - CHRIS LIMEHOUSE

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1 photograph, for identification.)

2 Q Let me show you what's been marked as State's 34 and
3 ask if you can identify this.

4 A That was a jacket that was located inside the
5 apartment.

6 Q Okay. Were you told whose jacket this was?

7 A I do not believe so. No, sir.

8 Q But you recovered it anyway.

9 A It was recovered.

10 Q Was other clothing recovered?

11 A I do believe so.

12 Q Okay.

13 Q And State's 34 --

14 MR. BELL: -- which I would move it into evidence,
15 Your Honor.

16 THE COURT: Without objection.

17 MR. ARCHER: Yes.

18 MR. BELL: Okay.

19 (State's Exhibit No. 34, photograph, moved into evidence.)

20 Q Would -- would be a photograph of what's been marked
21 as State's -- and I will show you what's been marked as
22 State's 8. And that's what you collected?

23 A Yes, sir.

24 Q Okay. And I believe some guns were also found there?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. BELL - CHRIS LIMEHOUSE

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- 1 Q And you took those into your possession?
- 2 A Those -- those were collected. Yes, sir.
- 3 Q Okay. Which would be what I would show you as State's
- 4 6 and 7, I believe. Those were the guns?
- 5 A Yes, sir.
- 6 Q Okay. And I believe that at some point, you took in -
- 7 - along with State's 6 and 7, the guns -- what's now been
- 8 marked as State's 14, which is a clip; what's been marked
- 9 as State's 13; what's been marked as State's 15; what's
- 10 been marked as State's 19; and what's been marked as
- 11 State's -- now 20, some swabs 20 through 27. Those all
- 12 familiar?
- 13 A Yes. These were taken by Lieutenant Asbell.
- 14 Q Okay. And did you have possession of them after he
- 15 took all -- these evidence?
- 16 A Yes, sir.
- 17 Q And what did you do with those?
- 18 A They were transported to SLED and they were given to
- 19 Agent Eddie Porter.
- 20 Q Okay. At SLED?
- 21 A Yes, sir.
- 22 Q Okay. You took them from Dorchester County to
- 23 Columbia to the State Law Enforcement Division?
- 24 A Yes, sir.
- 25 Q And gave them to Agent Eddie Porter?

CROSS-EXAMINATION BY MR. ARCHER - CHRIS LIMEHOUSE

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1 A That is correct.

2 Q Okay. And it was along with the guns, too, 6 and 7.

3 A Correct.

4 Q Okay.

5 (Sotto voce discussion between Mr. Bell and Mr. Archer.)

6 Q Thank you, Deputy Limehouse. Please answer any
7 questions Mr. Archer has for you.

8 A Sure.

9 THE COURT: Cross-examination?

10 MR. ARCHER: All right.

11 CROSS-EXAMINATION BY MR. ARCHER:

12 Q Are these the packages you took them in?

13 A Those are. Correct.

14 Q They -- they are. Okay.

15 THE COURT: And can you -- just for our record, and
16 there are a lot of them. But give us those numbers.

17 MR. ARCHER: Yes. There's State's Exhibit 20, 21, 22,
18 23, 24, 25, 26, 27, 19, 15, 13, and 14.

19 THE COURT: And there were two packages referred to
20 earlier.

21 MR. ARCHER: Oh, yes. The two -- the two pistols, the
22 guns. Exhibit 6 and Exhibit 7. All right.

23 THE COURT: Yes.

24 Q Did you actually seize these -- all of these things?

25 A From the actual search warrant?

CROSS-EXAMINATION BY MR. ARCHER - CHRIS LIMEHOUSE

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- 1 Q Yeah.
- 2 A From that night?
- 3 Q Uh-huh.
- 4 A No, sir. Those were collected by Lieutenant Asbell
- 5 during the search warrant.
- 6 Q By Lieutenant Asbell?
- 7 A Correct. He -- the -- the guns were actually located
- 8 during the search warrant by Lieutenant Asbell.
- 9 Q Okay.
- 10 A But I -- I transported them back to the office.
- 11 Q And what -- what are these, again now?
- 12 THE COURT: You're showing him?
- 13 MR. ARCHER: I'm showing him -- excuse me. Let's see,
- 14 this is State's Exhibit 20, 21, 22, 23, 24, 25, 26, and 27.
- 15 Q What are those?
- 16 A These were DNA swabs taken from the various items by
- 17 Lieutenant Asbell.
- 18 Q I gotcha. Number 15 is what?
- 19 A It's a spent projectile.
- 20 Q Okay. Let me ask you. Isn't it -- isn't it sort of
- 21 customary, when you hand over evidence from one person to
- 22 another, to -- for the person receiving it to initial the
- 23 evidence?
- 24 A When it is sealed correctly, it's sealed by the
- 25 individual that collected it.

CROSS-EXAMINATION BY MR. ARCHER - CHRIS LIMEHOUSE

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1 Q Okay. And where would be the -- and it's initialed
2 generally, is it not?

3 A Correct.

4 Q And where would that be?

5 A It would be taped; it would be initialed across the
6 piece of tape sealing the envelope.

7 Q Like right here.

8 A Correct.

9 Q And where would it be here?

10 A It is on the tape, taping the box shut.

11 Q All right. You're no longer with the crime scene
12 unit?

13 A No, I'm not.

14 Q How come you left?

15 A I just missed the road.

16 Q I hear you.

17 MR. ARCHER: No further questions of this witness.

18 THE COURT: All right. Re-direct?

19 MR. BELL: None, Your Honor.

20 THE COURT: Is this witness free to leave?

21 MR. BELL: Yes. We ask he be excused.

22 THE COURT: Very well. You are free to go.

23 WITNESS: Thank you, Your Honor.

24 THE COURT: Let's send you back to the road. All
25 right.

DIRECT EXAMINATION BY MR. BELL - EDWARD PORTER

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1 (The witness exits the stand.)

2 THE COURT: Call your next witness, please.

3 MR. BELL: The State would call Eddie Porter to the
4 stand.

5 EDWARD PORTER, having been duly
6 sworn, testifies as follows:

7 THE COURT: Your witness, Mr. Bell.

8 DIRECT EXAMINATION BY MR. BELL:

9 Q State your name for the record, please, sir.

10 A Edward Porter, P-o-r-t-e-r.

11 Q Back on February 28th, 2008, you were employed with
12 SLED?

13 A That's correct.

14 Q That's the South Carolina State Law Enforcement
15 Division?

16 A That's correct.

17 Q How were you employed there?

18 A In the Latent Print Crime Scene Unit.

19 Q Okay. And what did you do in the Latent Print Crime
20 Scene Unit?

21 A Part of the duties included processing the evidence
22 submitted by local agencies for fingerprint evidence,
23 conducting footwear and tire tread comparisons, crime scene
24 reconstructions of blood stain pattern analysis, as well as
25 other -- a variety of processes.

DIRECT EXAMINATION BY MR. BELL - EDWARD PORTER

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1 Q Did you have an occasion to be called to Dorchester
2 County, to the town of Summerville, sometime around
3 February 28th?

4 A Yes, I did.

5 Q Do you recall when that was?

6 A It was on February 28th of -- of 2008.

7 Q Okay. And you had to come from Columbia; is that
8 correct?

9 A That's correct.

10 Q So about what time did you arrive in -- in
11 Summerville?

12 A I first off received a phone call at 11:34 that night,
13 of the 28th. And myself and Agent Parrott arrived on
14 February 29th at 1:15 in the morning, the very next
15 morning.

16 Q Okay. And when you arrived in Summerville to the
17 Haven Oaks Apartment complex, what did you find?

18 A Well, the scene was still active with the Dorchester
19 County Sheriff's Office SWAT Team and all that, trying to
20 locate potential subjects. And so, it was a lot of
21 commotion, a lot of vehicles, a lot of people, you know,
22 running about the area.

23 Q Okay. What was your first purpose to do?

24 A When I first got there, the first thing we did, we met
25 with Lieutenant Earl Asbell of Dorchester County, and got a

DIRECT EXAMINATION BY MR. BELL - EDWARD PORTER

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1 brief synopsis of what -- of events known at that time, so
2 that we could come up with kind of a game plan on how to go
3 ahead and process the evidence. And at that time, I
4 received some potential evidence.

5 Q What kind of evidence did you receive at that time?

6 A At that time, I received three different gunshot
7 residue kits from Sergeant Zen [sic].

8 Q Okay. Let me show you what's been marked as State's
9 31, 32, and 33, and ask if you recognize those?

10 A State's Exhibit 31, 32, and 33, yes, sir. I can do
11 that by internal SLED tracking number, as well as
12 identification item number, and with my initials on each
13 item.

14 Q Okay. And that's what you took from Detective Zensen?

15 A That's correct.

16 Q Okay. And what did you do with -- eventually, what
17 did you do with these packages?

18 A I eventually returned them to SLED headquarters in
19 Columbia at the State Law Enforcement Division and
20 transferred them to evidence control; therefore, it could
21 be sent to our trace department there at SLED laboratory.

22 Q Okay. After receiving those items, what did you do?

23 A Agent -- well, at that same time or shortly
24 thereafter, I received a Glock 40, belonging to Detective
25 Gibson [sic], from Earl Asbell.

DIRECT EXAMINATION BY MR. BELL - EDWARD PORTER

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1 Q Okay. Let me show you what's been marked as State's
2 4, and ask if you can identify that?

3 A Can I take it out of the bag?

4 THE COURT: Yes, you may.

5 A Yes, I can.

6 Q Okay. What is it?

7 A It's a Glock 40 Model 22, belonging to Detective
8 Gibson, which I can also identify by the serial number.
9 And also on the bag in which it's sealed -- was sealed in,
10 it has my initials along with the SLED laboratory number
11 and item number, and my initials on the bag as well.

12 Q Okay.

13 A And that is State's Exhibit 4.

14 Q And eventually, what did you do with State's Exhibit
15 4?

16 A The -- I believe it was on -- couple of days later, I
17 actually logged it in to SLED lab and put an item number on
18 it with a lab tracking number, and I gave it directly to
19 Agent Dan DeFreese in our SLED firearms department.

20 Q Okay. After receiving the gun, State's 4, what did
21 you do?

22 A Agent Parrott, at that time, was walking around the
23 crime scene, doing initial crime scene photographs. We did
24 our initial walkthrough. And the first thing we noticed
25 was where Lieutenant Asbell had already located several

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1 cartridge casings, and he actually put red flags marking
2 each of them for us.

3 Q Okay.

4 A And at that time, Agent Parrott photographed each flag
5 as it was when we first got there. And eventually, we
6 removed them and put on placards, which were yellow item
7 numbers at each scene.

8 Q Okay. Let me show you what's been marked as State's
9 9, and ask if that -- if you could identify that picture?

10 A That's a representation of the scene as it was when we
11 first arrived there, with the red flags that Lieutenant
12 Asbell of Dorchester County had placed.

13 Q Okay.

14 A State's Exhibit 9.

15 Q All right. What did you eventually do with the items
16 that were represented by these flags?

17 A After they were photographed, they were collected by
18 myself, and eventually returned to SLED laboratory and also
19 transferred to Agent Dan DeFreese in SLED firearms.

20 Q Okay.

21 MR. BELL: One moment, Your Honor.

22 THE COURT: All right.

23 (Mr. Bell shows items to Mr. Archer.)

24 MR. ARCHER: No objection.

25 (Marked State's Exhibits No. 35 through 39, shell casings.)

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1 MR. ARCHER: Your Honor, I believe these are empty
2 shells from Officer Gibbons's gun.

3 THE COURT: Okay.

4 MR. ARCHER: We're willing to stipulate that they were
5 collected at the scene and properly delivered to the SLED
6 laboratory.

7 MR. BELL: That's State's 35, 36, 37, 38, and 39.

8 THE COURT: Thirty-five, 36, 37, 38, and 39. And you
9 are offering them in evidence.

10 MR. BELL: Yes.

11 THE COURT: Without objection?

12 MR. ARCHER: No objection.

13 THE COURT: With the proposed stipulation. What is
14 that, Mr. Bell?

15 MR. BELL: That Agent Porter collected these and took
16 them to SLED and gave them to the proper department at
17 SLED, which would have been firearms.

18 MR. ARCHER: So stipulated.

19 THE COURT: Very well.

20 MR. BELL: Okay.

21 THE COURT: Okay.

22 (State's Exhibits Nos. 35, 36, 37, 38, and 39, shell
23 casings, moved into evidence.)

24 Q After collecting those items, which are now State's 35
25 through 39, what did you do, Agent Porter?

DIRECT EXAMINATION BY MR. BELL - EDWARD PORTER

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1 A We walked around the entire scene of the apartment
2 complex, looking for additional evidence, being either
3 blood or additional cartridge casings or any bullet holes
4 to that effect.

5 Q Okay. Did you find any?

6 A Actually, where the five cartridge cases were -- where
7 Officer Gibbons was located -- there was also a little
8 small pool of blood. And which we also collected a swab of
9 blood from that particular area as well.

10 (Mr. Bell shows item to Mr. Archer.)

11 MR. ARCHER: No objection. We will stipulate that he
12 collected and it was transported to SLED and delivered to
13 the property authority.

14 THE COURT: All right. And this would ---

15 MR. ARCHER: And we do not object to it's
16 admissibility.

17 MR. BELL: State's 40 ---

18 THE COURT: State 40 in evidence.

19 MR. BELL: --- moved into evidence, Your Honor.

20 THE COURT: Okay.

21 (State's Exhibit No. 40, DNA of blood sample,
22 moved into evidence.)

23 Q Okay. That was your item 17 and marker 6, just for
24 the record. The blood that you found?

25 A Yes, sir. Item 6 -- marker 6. That's correct.

DIRECT EXAMINATION BY MR. BELL - EDWARD PORTER

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1 Q Okay. After collecting that, did you -- you look
2 around for any other evidence?

3 A We walked all around the -- we looked along the fence
4 line, and then also in the trenches and in the parking lot
5 area. And we eventually made our way back around to the
6 dumpster area, which I believe was beside -- just beside
7 Building E.

8 Q Okay. And was it ---

9 A And at that time, we located two .380 spent cartridge
10 cases.

11 Q Before you did anything, had they been marked in some
12 fashion?

13 A Yes, they had.

14 Q How had they been marked?

15 A I believe with a marker as well, or -- I don't recall.
16 They were marked at some point.

17 Q Okay. Let me show you what's been marked as State's
18 10 that's in evidence, and ask if you can identify that?

19 A Yes, I can.

20 Q What is that? What is State's 10?

21 A State's Exhibit 10 is the parking lot near where the
22 dumpster is located, and there are also red flags laid on
23 the ground, which -- denoting the -- the evidence that was
24 located. And then once we got there, began our set
25 photographs, we put the yellow place markers in the place

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1 for visual effects.

2 Q Okay. Are they numbered? Your markers numbered?

3 A Our markers are 7 and 8.

4 Q Okay. And did you collect those shell casings?

5 A Yes, I did.

6 MR. ARCHER: I have no objection and willing to
7 stipulate they were properly collected and properly
8 transported to SLED and delivered to the proper laboratory
9 technician for processing.

10 THE COURT: And this would soon be Defense Exhibits --

11 COURT REPORTER: State's Exhibit.

12 THE COURT: I mean State's Exhibit. I'm so sorry.

13 State's Exhibits --

14 MR. BELL: Forty-one and 42.

15 THE COURT: Forty-one and 42.

16 MR. BELL: And they are in evidence.

17 THE COURT: In evidence without objection. And with
18 the stipulation intended.

19 (State's Exhibits 41 and 42, .380

20 shell casings, in evidence.)

21 Q Just for the record, I will show you State's 41 and
22 42, and those are identified as -- each is a .380 shell
23 casing?

24 A Yes, sir. I can identify it also. It has the writing
25 on it from where I located them at, as far as the markers 7

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1 and 8. And I also wrote on there they are "RP brand .380
2 auto cartridge cases," as well as the date, time, and my
3 initials, in which I collected them.

4 Q Okay. And those were eventually taken to SLED
5 firearms?

6 A That's correct.

7 Q Okay.

8 A To Agent Dan DeFreese.

9 Q Thank you. After locating that, did you locate any
10 other evidence?

11 A We walked all around the general area, the front, back
12 of the buildings and all that; and we did locate one hole
13 in Building C, Charlie 1, of the apartment complex.

14 Q Okay.

15 A At that time, we met with the homeowner in that
16 building, and she gave us written consent to enter her
17 residence and search for evidence.

18 Q Okay.

19 A And at that time, we did locate one fired bullet.

20 MR. ARCHER: No objection. We will stipulate it was
21 properly collected, properly bagged, and delivered to the
22 appropriate SLED laboratory technician or whatever.

23 THE COURT: You have that down. You have that down.

24 MR. BELL: That's State's 43.

25 THE COURT: Thank you. State's 43 ---

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1 MR. BELL: In evidence.

2 THE COURT: --- in evidence without objection and with
3 an intended stipulation.

4 MR. BELL: Okay.

5 THE COURT: Uh-huh.

6 (State's Exhibit No. 43, spent bullet,
7 marked and moved into evidence.)

8 Q And that bullet that you found in [REDACTED] -- the spent
9 bullet that you collected that's now State's 43 -- you
10 eventually took that to firearms at SLED?

11 A That's correct.

12 Q Okay. How -- how far did you search around the
13 complex did you and the other agent search to -- to try to
14 collect evidence?

15 A We -- the immediate parking lot area, directly in
16 front, where Officer Gibbons discharged his weapon. That
17 immediate area all around Apartment D, behind D, E, F, and
18 around C, so that entire general area ---

19 Q Okay.

20 A --- that we searched.

21 Q Let me put up what's State's 1. Can you just kind of
22 come down here? This is an overview of ---

23 A May I?

24 THE COURT: You may. Just remember to -- I don't --
25 keep your voice up. I don't know that we have to worry

DIRECT EXAMINATION BY MR. BELL - EDWARD PORTER

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1 about that too much, but keep your voice up, because you no
2 longer have the amplification. You may not need it.

3 (The witness steps down from the stand.)

4 Q And if you can use that, that's a laser pointer. This
5 has all previously been marked State's 1, an overview of
6 Haven Oaks apartment. If you can kind of show the ---

7 THE COURT: There you go.

8 Q --- jury where ---

9 THE COURT: Perfect. There you go.

10 Q --- y'all searched?

11 THE COURT: That's perfect.

12 A Right here is the Bi-Lo shopping center, and here's
13 the fence line. Right where the circle is, it pretty much
14 denotes where Officer Gibbons was when he discharged his
15 weapon.

16 We searched the area all -- this apartment. Let me
17 refer to my sketch real quick.

18 THE COURT: All right.

19 A This is Apartment Building D; D, F, C, and E. We
20 searched the front of both of Building D; front and back
21 and the both sides of it, and then also the immediate area,
22 the courtyard right here between C and F. Pretty much what
23 they have circled right here, we searched pretty much that
24 entire general area for any potential evidence.

25 Q Did you find any other shell casings, bullets --

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1 A Right here is Building B, the dumpster, and then this
2 is where we found the .380 cartridge casings (indicates).
3 And then this is where we found the five bullet cartridge
4 casings from Officer Gibbons, as well as a blood swab.
5 (Indicates.)

6 Q Okay. Did you find any other evidence or firearms?
7 Did you find any -- any cartridges, any -- anything else?

8 A No, we did not.

9 Q Okay. You can have a seat.

10 (The witness returns to the witness stand.)

11 Q Did you find any other magazines around?

12 A No, we did not.

13 Q That go to automatic weapons in the area?

14 A I don't recall if we did or not.

15 Q Okay. You would have made a note in it if you'd found
16 it?

17 A Yes.

18 MR. ARCHER: Objection. Leading.

19 THE COURT: Sustained.

20 Q Agent Porter, at some time after that night, about how
21 long did y'all stay around Haven Oaks, approximately?

22 A Like I said, we arrived at 1:15 in the morning, and we
23 left at 4:27. So approximately a little over three hours
24 we were at the scene.

25 Q At some time after that, did you receive some other

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1 evidence in this case?

2 A Yes, I did.

3 Q From who?

4 A Detective Chris Limehouse.

5 Q Do you recall what date that was?

6 A March 4th of '08.

7 Q I'm going to show you a bunch of stuff. I'm going to
8 show you again what's been marked State's 6 and 7; and I'm
9 going to show you what's been marked State's 13, 19;
10 State's 15; State's 14; and then State's 20 through 27.
11 And ask if you received all these items.

12 MR. ARCHER: I would -- stipulating receipt from Agent
13 -- from Deputy Limehouse and properly transported to the
14 appropriate SLED technician in Columbia and delivered to
15 those technicians.

16 MR. BELL: Okay.

17 THE COURT: Very well.

18 MR. BELL: And all these items are stipulated they
19 made it to SLED.

20 THE COURT: Yes, they are. Put -- put the numbers on
21 the record, please sir, so there's -- so everyone is clear.

22 MR. BELL: Okay. I'll go back to State's 20 through
23 27 ---

24 THE COURT: Yes.

25 MR. BELL: --- that's eight exhibits.

CROSS-EXAMINATION BY MR. ARCHER - EDWARD PORTER

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1 THE COURT: Yes.

2 MR. BELL: State's 6, 7, 14, 15, 19, and 13.

3 THE COURT: Very well.

4 MR. BELL: Thank you, Mr. Porter. Please answer any
5 questions Mr. Archer has for you.

6 CROSS-EXAMINATION BY MR. ARCHER:

7 Q Mr. Porter, when you were searching for evidence, what
8 time of day or night was that?

9 A It was between 1:15 in the morning to about four -- I
10 think I left at 4:27, I believe. So it was nighttime.

11 Q 4:27?

12 A Yes, sir.

13 Q But you didn't come back in the daytime and search ---

14 A No, I did not.

15 Q Okay. And did you -- hold on one second. I think
16 we've got -- how -- how were you able to see out there to
17 search for these things?

18 A Well, there were street lamps in there, as well as
19 flashlights.

20 Q You had flashlights?

21 A Yes, sir.

22 Q Yeah. And I'm assuming some areas are fairly dark out
23 there.

24 A That's correct.

25 Q And there you would use flashlights, right?

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1 A That's correct.

2 Q Which would be, of course, limited to whatever spot.
3 What were you doing? Going back and forth like -- waving
4 your arms from one side to the other?

5 A We do a little bit methodical and a little bit slower,
6 make sure you cover the entire area without missing
7 anything.

8 Q Right. And this is the fence line there. Did you
9 walk -- and I'm showing you Exhibits 5 -- Defendant's 5 and
10 Defendant's 7. They don't quite meet, but they come close
11 to it. Did you walk that whole fence, or just the part
12 round where Detective Gibbons fell?

13 A That general area, I believe it was in front of D
14 towards up to C, that general area. But we did not walk
15 the entire -- entire area.

16 Q Are you the guys sent out all the time, or y'all put
17 on rotation?

18 A We're on rotation. There's several of us.

19 Q Thank goodness.

20 A There's several of us.

21 Q How frequently you got to take off at twelve or one
22 o'clock at night to go drive to Charleston, Greenville, or
23 Spartanburg?

24 A A good bit.

25 Q Wow. Well, you married?

1 A Yes, sir. With kids.

2 Q Oh, boy. I suspect that causes some trouble.

3 A Understanding wife.

4 Q That is very nice. No further questions. I have one,

5 too, so I can appreciate it.

6 THE COURT: Very well.

7 MR. ARCHER: Thank you.

8 THE COURT: Yes. Re-direct?

9 MR. BELL: Nothing further from the State.

10 THE COURT: Is this witness free to leave?

11 MR. BELL: Yes, he is.

12 THE COURT: You are free to go.

13 WITNESS: Thank you, ma'am.

14 THE COURT: All right. Ladies and gentlemen, we are

15 going to take our lunch break at this time. During the

16 lunch break, please be mindful not to discuss this matter,

17 or allow anyone to discuss it with you. Do not read

18 anything, do not listen to anything about this matter, of

19 course, on the radio, television, or internet.

20 Have a wonderful lunch. Ladies and gentlemen, I have

21 a short matter at two o'clock, so I am going to extend your

22 lunch to 2:30 today, and it may be a minute or two before

23 we begin, but it shouldn't be much -- much more than just -

24 - just a minute or two. But as soon as we conclude our two

25 o'clock matter, we will call you back out and get right

1 back to work. Have a good lunch.

2 (The jury exits at 1:03 p.m.)

3 (Sotto voce discussion between the Court
4 and the law clerk.)

5 MR. ARCHER: Are we excused now, Your Honor?

6 THE COURT: We're -- I'm sorry. I was working on an
7 order of another matter.

8 MR. ARCHER: I'm sorry. Do you want to know if
9 there's anything further from the defense or prosecution.

10 THE COURT: You know I -- you know I -- you know I
11 want to know that. It's like we've been -- we've been at
12 this for a bit. Anything from the State?

13 MR. BELL: Nothing from the State, Your Honor.

14 THE COURT: Anything from the Defense?

15 MR. ARCHER: Nothing from the Defense, Your Honor.

16 THE COURT: Very well. Take your beautiful bride to
17 lunch.

18 MR. ARCHER: Good.

19 THE COURT: Very well. And we'll -- let me -- let me
20 just share that with everyone. We do have a matter at two,
21 so if you come back in and we're -- we have convened, don't
22 let that throw you. We've just got a matter at two. We'll
23 start back as soon as that's done. Hopefully around 2:30.

24 (Off the record at 1:04 p.m.)

25 (On the record at 3:09 p.m.)

1 THE COURT: All right. I believe that counsel has a
2 stipulation that they want to place on the record.

3 MR. ARCHER: Yes, Your Honor. Mr. Bell has three
4 exhibits here, which are basically forensic evidence. I'm
5 prepared that they were properly collected, properly
6 bagged, and were properly transported to SLED, where they
7 were delivered to the appropriate expert for examination.

8 MR. BELL: That would be in reference to State's 28,
9 29, and 30.

10 THE COURT: Thank you. And they are also in evidence
11 without ---

12 MR. ARCHER: In evidence.

13 MR. BELL: They're in evidence.

14 MR. ARCHER: And no objection to their ---

15 THE COURT: Without objection.

16 MR. ARCHER: --- being in evidence.

17 THE COURT: Very well. Now, anything before I bring
18 the jury out?

19 MR. BELL: Anything else? I don't have anything else.

20 MR. ARCHER: I don't have anything else, Your Honor.

21 THE COURT: Very well. All right. Let us have the
22 jury.

23 (The jury enters at 3:10 p.m.)

24 THE COURT: Wow. Ladies and gentlemen, I hope you had
25 a good lunch and I apologize for keeping you in your jury

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1 room. The matters that I attended to took a little longer
2 than I had anticipated. But I do appreciate so very much
3 your patience while -- while I was able to handle those
4 matters. So I appreciate that very, very much.

5 And at this time, we will continue with the State's
6 case. Mr. Bell?

7 MR. BELL: The State would call Jeff Parrott to the
8 stand.

9 JEFF PARROTT, having been first
10 duly sworn, testifies as follows:

11 THE COURT: If you'd please be seated, and when you
12 are seated, if you would state your full name for the
13 record, and spell your last name.

14 THE WITNESS: My name is Jeff Parrott. Last name is
15 spelled P-a-r-r-o-t-t.

16 THE COURT: Your witness, Mr. Bell.

17 DIRECT EXAMINATION BY MR. BELL:

18 Q Would you state your name again, so I can get a sound
19 check?

20 A Yes. It's Jeff Parrottt.

21 Q Mr. Parrottt, back in February of 2008, you were
22 employed with SLED, the State Law Enforcement Division?

23 A That's correct.

24 Q In what capacity were you employed?

25 A I was Senior Agent there, assigned to the latent print

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1 crime scene unit.

2 Q Okay. And No. 1, as part of your duties, did you have
3 occasion to come down to Dorchester County ---

4 A Yes, sir.

5 Q --- some time during that day or late night?

6 A Yes, sir, I did.

7 Q Okay.. Why did you come down here?

8 A They had an officer-involved shooting that we were
9 called in to respond to do the crime scene investigation.

10 Q Okay. And you came down here with Agent Porter?

11 A Yes, sir, I did.

12 Q Okay. And you were -- were you in the courtroom when
13 he testified?

14 A Yes, sir.

15 Q And you basically did the crime scene as he did, you
16 walked around with Agent Porter?

17 A That's correct. We work in tandem; there's a primary
18 agent and a secondary agent. The primary agent is the one
19 that usually gets stuck with all the reports, and the
20 secondary agent usually kind of works as a gopher. You're
21 the legs at the scene, do a lot of the tagging and bagging,
22 that sort of thing. So, that's how it -- it's an even
23 trade-off.

24 Q Okay. Did you have any other duties with the crime
25 scene department at -- at SLED?

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1 A Yes, sir. I was officer responsible actually for
2 seven fields of forensic science. They include the crime
3 scene investigation, crime scene reconstruction, latent
4 print analysis and comparison, footwear analysis, tire
5 tread analysis, bloodstain pattern analysis, and impression
6 evidence.

7 I also cross-trained in the -- in the finding,
8 documenting, and collecting of trace evidence, firearms
9 evidence, anything evidence processing related as well --
10 DNA related. So a little bit of everything.

11 Q And as to latent fingerprints, what kind of training
12 did you have?

13 A My -- my training started in -- in -- in collection of
14 latent fingerprinting about sixteen and a half years ago,
15 with my first course in crime scene investigation.

16 Since then, I've taken about 4500 hours of training
17 over that course of time, including about 64 advance
18 classes in crime scene/crime scene processing, latent
19 print examination, that sort of thing.

20 Q And have you ever been qualified as an expert in the
21 State of South Carolina courts or any other courts as a
22 latent fingerprint examiner?

23 A Yes, sir. Both State and Federal Courts I've been
24 qualified as an expert in those fields.

25 MR. BELL: Your Honor, we'd offer Agent Parrottt as an

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1 expert in latent fingerprint examination.

2 MR. ARCHER: Okay. No objection, Your Honor.

3 THE COURT: So qualified.

4 Q Agent Parrottt, hopefully, I'll make this brief. In
5 regards to this case, were there some photographs of
6 fingerprints taken off file and submitted to SLED?

7 A Yes, sir, there were.

8 Q By the Dorchester County Sheriff's Office?

9 A That's correct.

10 Q And did you have an occasion to examine those and
11 compare those to three individuals' known prints --

12 A That's correct. I did.

13 Q -- that were Dervick Parker, Quinntavious Davis, and
14 Donnell Campbell?

15 A Yes, sir. That's correct.

16 Q Were you able to match any fingerprints of the known
17 samples from the three individuals to any of the latent
18 prints that you were submitted?

19 A No, sir. Of the -- the latent prints that came in to
20 be examined were what we call "no value for
21 identification." And basically what that means is that
22 they -- they come in, they don't have identifying
23 characteristics. The minutia in it you might see on your
24 TV shows like "CSI," where they put up the screens, you see
25 the -- the little thing reading "bop-bop-bop-bop-bop-bop."

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1 What it's doing is it's indicating the identifying
2 characteristics within those fingerprints.

3 Well, under this circumstance, they just didn't have
4 enough identifying characteristics to actually compare
5 against known prints.

6 Q So if I'm hearing you right, there were fingerprints
7 there, you just -- they were not ---

8 A They were not -- that's correct. They were not of the
9 quality where I could actually do a comparison against the
10 -- the known qualities.

11 Q How long have you been in law enforcement?

12 A Close to 17 years.

13 Q And you've been doing fingerprints for how long?

14 A Well, sixteen and a half doing actual identifying of
15 fingerprints. I was starting my tenth year in that.

16 Q Is this an unusual thing in your experience?

17 A Not at all. Not at all. Unfortunately, you don't
18 always leave a fingerprint on an item when you touch it.
19 It's not necessarily the rule. It is a chance impression,
20 and the term "latent" means hidden, so it has to be found.
21 It's not always readily available. So it is -- it is a
22 very fragile thing that could be easily wiped away.

23 Q Thank you, sir. Please answer any questions Mr.

24 Archer has for you.

25 A Thank you.

CROSS-EXAMINATION BY MR. ARCHER - JEFF PARROTT

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1 THE COURT: Cross-examination.

2 CROSS-EXAMINATION BY MR. ARCHER:

3 Q So you're the Gil Grissom of Columbia lab?

4 A That'd be nice.

5 Q Yeah. Mr. Parrottt, let me ask you: There were a
6 bunch of prints that were sent to you for analysis, right?

7 A Yes, sir. Yes, sir.

8 Q Off of both of the -- the guns in question?

9 A That's correct. Yes, sir.

10 Q All right. Now, in your line of business, you start -
11 - you talk about the points of comparison.

12 A Correct.

13 Q Okay. What is it that you and the standards at your
14 lab require -- how many points of comparison do you require
15 in order to analyze fingerprints?

16 A There -- there's not a set number of points, and the
17 reason being that ---

18 Q Let's do this. Let's explain -- we ought to explain.
19 You know what they are; I know what they are. Let's
20 explain to the jury what points of comparison is. And I
21 hate to interrupt you.

22 A No. That's okay. Points of comparison: You have
23 ridges on your fingers. If you should look at your
24 fingers, you'll see lines -- that would be the easiest way
25 to explain it -- which are ridges. And some may go along

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1 and stop abruptly, some may go along and split into two,
2 and some might just be a dot. And those dots are the same
3 width, ridge, or line that you see as the other lines.

4 And so you have your ending ridge, your bifurcation,
5 and then your dots. And those are some of the points that
6 we use to compare these impressions. So if they don't have
7 enough -- or enough to -- like I said -- points of
8 reference, then -- then you can't make identification.
9 Now, if you don't have any points on a large surface, then
10 that in itself could be identifying characteristic.

11 So you have to look at the totality of the impression
12 that you receive. Sometimes it's quality and sometimes
13 it's quantity. And that's how we have to make that
14 comparison.

15 Q So basically, the points of comparison are unique
16 aspects of that particular fingerprint, that you can look
17 at this one and then look at the other one and say, "Those
18 two unique factors are the same."

19 A That's correct. It's showing the same relationship,
20 the same ridge count, a number of factors. Yes, sir.

21 Q Okay. And I believe you were starting to explain that
22 there's no particular number points of comparison that you
23 need. Now, that -- some departments, do they not, have a
24 certain set number that they ---

25 A That's --- that's correct. Some departments even rely

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1 on a computer. I think there's about four or five state
2 agencies that rely on computer to do the comparisons rather
3 than a human.

4 Q Uh-huh.

5 A So different agencies have different things.

6 Q All right. And -- and there's -- there is just
7 disagreement, is there not, among fingerprint experts as to
8 how many points of comparison you need in order to
9 positively identify a fingerprint, is there not?

10 A It can be. It can also rely a lot on the training
11 that that person has had. Typically, the longer you've
12 been in, the easier it is to make those calls, if it's a
13 more difficult print. So that can also have a factor.

14 Q It's an art as well as a science.

15 A It is. I mean, like everything, it takes time to
16 become proficient.

17 Q Right. And you don't -- you don't use the computer
18 comparisons?

19 A Well, they do as a -- it's called "AFIS," the
20 Automated Fingerprint Identification System. Sometimes
21 they'll use that to do a general search with the
22 population, but then they bring us -- if it does -- if they
23 do find a hit or what's called a "hit."

24 Basically, that could only mean that it's, "This is
25 really close; you might want to take a look at it," type of

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1 a thing. They usually have about 20 to 25 of those, and
2 then you look through those and then find a -- find the one
3 that looks closest, and then go from there with the actual
4 one-to-one comparisons.

5 Q And -- and basically, if I understand or remember
6 correctly -- I probably ought to say "at my age" -- you
7 start off -- it's basically like three major categories of
8 designs for fingerprints; is that right?

9 A Ridge formations. Yes, sir.

10 Q Huh? Yeah.

11 A Ridge formations.

12 Q And first, you look to see if it falls into the same
13 general design.

14 A Absolutely correct.

15 Q Okay. If it does, that might eliminate two-thirds of
16 the people in America.

17 A Absolutely. Yes, sir.

18 Q Okay. And then you go on from that point. That's
19 when you start looking for the really unique things; is
20 that right?

21 A That's exactly right. There's -- there's levels ---

22 Q Uh-huh.

23 A --- of -- of detail that you look for.

24 Q Okay.

25 A And that would be the first level of detail.

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1 Q Here we go. Now, about how many prints were submitted
2 to you? Do you remember?

3 A I'm sorry?

4 Q How many prints were submitted to you?

5 A I'd have to count, if you don't mind me taking ---

6 Q That's why I got this out; I was going to count, too.

7 A Okay.

8 Q I'll take your word for it ---

9 A Okay.

10 Q --- if you tell me.

11 A All right. I'm counting 16.

12 Q Okay.

13 A Are you getting the same thing?

14 Q And how many of those were from the revolver as
15 opposed to the automatic? Can you tell me that?

16 A I cannot. I don't -- I didn't have the -- the
17 breakdown as to which one came from which one without
18 seeing the actual photograph itself. That's the way it was
19 indicated.

20 Q Okay. Now -- and I assume that what you're saying
21 when you say they weren't of value is that they did not
22 meet your criteria for number of positive points in
23 identification to -- in order to say, "This is this
24 person's signature -- this is this person's fingerprint."

25 Or is it that -- or is it they were all so bad you

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1 couldn't find any points of comparison?

2 A Well, and it's -- it could have been that -- that way,
3 but you're not saying, "Well, it's not this person."
4 You're just saying it can't be compared to anybody with --
5 when it says "no value by identification." So you can't
6 use it for comparison, is what it's saying.

7 Q So you don't even -- when you say that -- and you're
8 so -- the prints are so bad you can't even start looking
9 for points of comparison?

10 A Well, you -- you might find one ---

11 Q Yeah.

12 A --- or two, but again, it's quality versus quantity.

13 Q Right.

14 A And you have to -- you have to take that into account.
15 And again, it's the totality of the print and impression.

16 Q And as an expert, you're being called upon to render
17 an opinion --

18 A Correct.

19 Q -- to a reasonable degree of scientific certainty.

20 A That's correct.

21 Q Which is a whole lot different, is it not, than --
22 it's more probable than not?

23 A Sorry. Yes, sir.

24 Q Yeah. So I mean you might find a print with one of
25 those three basic deals, and you might say, -- "Well, I can

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1 say, this is consistent with his fingerprint as it is," but
2 you can't say that's his fingerprint.

3 A That's correct.

4 Q Right. Now, recognizing that. that there's simply not
5 enough points of comparison in any of these prints for you
6 to feel comfortable saying, "This print came from that
7 guy," or "This print came from that guy." Did you find
8 with some of the prints that there were distinct
9 similarities, but not enough points for you to feel
10 comfortable? Do you understand what I'm asking?

11 A I do, and I understand what you're saying. To that
12 fact, I can't say anything --

13 Q Uh-huh.

14 A -- just based on I'd have to see those impressions
15 again ---

16 Q Right.

17 A --- to -- to give you that type of a conclusion. And
18 that's what you're basically saying, if your -- if your
19 client had an arch and I found an arch, you know, could I
20 or could I not rule him out. That's -- I think that's what
21 you're saying.

22 Q I think -- I would assume you don't come into court
23 and testify, "This is this guy's fingerprint," unless
24 you're 95 or 96 or 97/98 percent sure.

25 A Oh, I -- I wouldn't testify unless I was 100 percent

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1 sure.

2 Q A hundred percent sure.

3 A Yes, sir.

4 Q So anything less than a hundred percent would not
5 satisfy your standard.

6 A No, sir. Not mine.

7 Q I was just wondering whether you had got any that --
8 that you would have thrown in that 70 to 80 percent that
9 probably belonged to this person, or probably belonged to
10 that person. Did you ever get that far?

11 A I have had -- in the past, I have had latents that
12 were -- that were not clear enough. They had the same
13 ridge flow, some of the same ridge counts. But again, the
14 clarity wasn't there, in order for me to feel comfortable
15 with and make a determination to a reasonable degree of
16 scientific certainty to make a call like that.

17 Q All right. Now, let me ask you another question:
18 Examining the prints from the two -- that came from these
19 two guns, did you receive the guns themselves to look at,
20 or just -- or what? What did you get?

21 A I saw the guns, but I got the photos and a disk
22 containing the same photos.

23 Q Okay. They were taken by Dorchester County?

24 A Yes, sir. Yeah.

25 Q Okay. I gotcha. Did you, in examining the 16 sets of

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1 prints, find any prints that were inconsistent with the
2 control samples that you were getting -- the control sample
3 being you got a print from my guy and he says "That's a
4 print from -- from Dervick Parker." You got a print from
5 Quinntavious and this is a print from Quinntavious Davis.
6 And you got a print from Donnell Campbell.

7 Now, in looking at those -- all the 16 prints, did you
8 find any that were not consistent with any of those people?

9 A Again, I'd have to ask you a question that -- or
10 answer your question this way: That it was, again, a
11 matter of quality and quantity, and in order to be able to
12 make that -- that call, I'd have to look at those again.
13 But the determination, after looking at those impressions,
14 were -- was the fact that they were of no value to compare.

15 And again, that's of no value to compare against
16 anybody, you or anybody else in here. That they were just
17 of no value. When you have an impression that might be the
18 side of the -- the finger, you know, that's -- that's where
19 I'm getting at.

20 Q How about palm prints? Were there any palm prints on
21 there?

22 A I don't recall. I don't recall.

23 Q And I'm trying to remember the photograph itself.

24 A Yes, sir. I -- I haven't seen them since that day.

25 Q Yeah. Okay. So, the answer is when you did them, you

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1 didn't see anything, and -- and to answer some of the
2 questions I'm asking, you'd have to go back and look at
3 them again; is that it?

4 A Correct. Yes.

5 Q Okay. No further questions.

6 THE COURT: Re-direct?

7 MR. BELL: Nothing further.

8 THE COURT: Very well. Is this witness free to leave?

9 MR. BELL: The witness may be excused, Your Honor.

10 THE COURT: You are free to go.

11 (The witness exits the stand.)

12 THE COURT: Please call your next witness.

13 MR. BELL: The State would call Dan Defreese to the
14 stand.

15 (Sotto voce discussion between
16 the Court and court security.)

17 DAN DEFREESE, having been first
18 duly sworn, testifies as follows:

19 THE COURT: If you'd please be seated, and when you
20 are seated, if you'd help me by swinging that microphone.
21 Thank you so much. State your full name for the record and
22 spell your last name.

23 WITNESS: My name is Frank Dan DeFreese. That's D-e-
24 F-r-e-e-s-e.

25 THE COURT: And I'll bet our court reporter wants me

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1 to ask you to spell your first name.

2 WITNESS: It's F-r-a-n-k.

3 THE COURT: All right. Got it.

4 WITNESS: Thank you.

5 DIRECT EXAMINATION BY MR. BELL:

6 Q Mr. DeFreese, you're employed by the State Law
7 Enforcement Division?

8 A Yes, sir. I am.

9 Q How long have you been with SLED?

10 A For 42 years.

11 Q And what are your current duties with SLED?

12 A I'm currently assigned to the firearms section within
13 the forensic services laboratory. That's where we do the
14 identification of firearm and tool mark evidence.

15 Q Can you please tell the jury about your experience as
16 to firearms and tool mark evidence?

17 A I was employed with SLED in 1967. After my
18 employment, I began a course of instruction in the
19 identification of firearm and tool mark evidence, which
20 lasted approximately two and a half years.

21 MR. ARCHER: Your Honor, I've dealt with Mr. DeFreese
22 before. He is imminently qualified in his field. I'm
23 certainly not -- if he wants to go ahead and continue to
24 qualify him, that's fine, but I'm willing to stipulate he's
25 an expert in this area.

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1 THE COURT: Very well.

2 MR. BELL: We would offer him as an expert in firearms
3 identification.

4 THE COURT: And -- and he is so qualified without
5 objection.

6 MR. BELL: Thank you.

7 Q Agent DeFreese, tell us generally in -- and especially
8 firearm identification -- what are you looking for? How do
9 you compare firearms and -- and projectiles from firearms?

10 A Our most requested service is the identification of
11 ammunition components, bullets and cartridge cases,
12 principally. When bullets are fired through the barrel of
13 a rifle firearm -- and that includes rifles, pistols, and
14 revolvers -- the bullet is gripped by the rifling on the
15 interior surface of the barrel, for the purpose of spinning
16 the bullet to impart stabilization to the bullet in flight,
17 much in the same way that a quarterback spins a football as
18 he releases it to keep it from tumbling end over end.

19 But because the bullet comes into very close contact
20 with that rifling, the imperfections that are present on
21 the rifling are transferred to the bullet. And when
22 bullets are recovered in sufficiently good condition, and
23 when firearms themselves are consistent in the markings
24 that they leave, it's possible to identify a particular
25 bullet back to the particular gun barrel from which it was

1 fired.

2 Similarly, with cartridge cases, when a cartridge is
3 fired in a firearm, the firearm confines the cartridge
4 within its chamber and its breach. The breach is what
5 closes the back of the cartridge. There are marks that are
6 imparted on the cartridge by the firing pin as -- which
7 strikes the cartridge to initiate firing. And then when
8 the pressure rises within the cartridge -- the pressure
9 which eventually expels the bullet from the firearm -- this
10 pressure transfers any imperfections that might be present
11 in the chamber and breach of the firearm onto the cartridge
12 case.

13 And in the case of semi-automatic firearms, there are
14 other structures within the -- the firearm, such as the
15 extractor or the ejector, which may also impart unique
16 markings on a cartridge case.

17 The way we do our test is to obtain, from any given
18 firearm, test cartridge cases and test bullets which we
19 know that firearm fired. Because if we do a side-by-side
20 comparison of bullets with each other, we don't directly
21 compare the firearm barrel or the firearm breach face or
22 what have you with the -- an evidence specimen.

23 So where we have a firearm submitted, we'll test fire
24 it. We use a water tank to recover the bullets, and we --
25 we simply either remove or catch the fired cartridge cases

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1 as they are expelled from, for instance, a semi-automatic
2 firearm.

3 And then we have a microscope. It's an optical
4 microscope that permits us to view two objects at the same
5 time. It permits us to view two test specimens, first to
6 confirm that the test specimens are sufficiently marked and
7 consistent in their markings. Then after that, we'll take
8 one, either test bullet or a test cartridge case, and
9 compare it with an evidence bullet or evidence cartridge
10 case.

11 Where we find a sufficient area of unique markings,
12 we're able to conclude that a particular bullet was fired
13 by a particular firearm, or a particular cartridge case was
14 fired in a -- in a given firearm.

15 Q Okay. And you were asked to examine, in this
16 particular case, several firearms and several spent
17 cartridges; is that correct?

18 A That's correct.

19 Q Okay. Agent DeFreese, first let me show you what's
20 been marked as State's 4, and ask if you can identify it.
21 I know there's a bunch of numbers on it, but it's State's 4
22 for our purposes.

23 (Sotto voce discussion between Mr. Bell and Mr. Archer.)

24 A Yes, sir. I can.

25 MR. ARCHER: No objection.

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1 Q And how do you identify State's 4?

2 A Well, by its serial number, and also by the markings
3 which I placed on the firearm. I customarily will mark all
4 my evidence specimens before proceeding with my test, to
5 make sure I don't mix them up. And the -- the firearm
6 itself is marked on its barrel and its slide and its
7 magazine with my case number, my item number, and my
8 initials.

9 Q Okay. And do you recall what condition you received
10 that weapon, State's 4?

11 A It's in about the same condition as it is right now.
12 It's in -- in generally very good to excellent condition,
13 with a little wear on its slide.

14 Q Was it loaded or unloaded when you received it?

15 A When I received it, it was unloaded.

16 Q Okay. Did you receive anything with it?

17 A Yes, sir. There were 10 unfired cartridges that were
18 received with this item.

19 (Sotto voce discussion between Mr. Bell
20 and the court reporter.)

21 (Marked State's Exhibit No. 44,
22 unfired cartridges, for identification.)

23 Q Let me show you what's been marked as State's 44, and
24 ask if you can identify these.

25 A Yes, sir. I can.

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1 Q And what are they?

2 A These are .40 caliber Smith & Wesson cartridges --
3 unfired cartridges that were received with item -- State's
4 Exhibit 4.

5 Q Thank you.

6 MR. BELL: Your Honor, we'd offer these into evidence.

7 MR. ARCHER: No objections.

8 THE COURT: Very well. And they are marked as
9 Defendant's Exhibit ---

10 MR. BELL: State's 44.

11 THE COURT: State's -- I'm so sorry. State's 44 in
12 evidence without objection.

13 MR. BELL: All right.

14 THE COURT: Very well.

15 (State's Exhibit No. 44, unfired cartridges,
16 moved into evidence.)

17 Q Let me ask you about State's 4. What kind of gun is
18 it?

19 A It's a Glock Model .22. It's a .40 Smith & Wesson
20 caliber semi-automatic pistol.

21 Q Okay. What do you mean by "semi-automatic"?

22 A A semi-automatic pistol functions by means of using
23 some of the energy from the cartridges firing to load the -
24 - the firearm for the next shot.

25 In the case of State's Exhibit 4 -- and for that

1 matter, all semi-automatic firearms -- you see it now with
2 the slide in the retracted or rearward position. When it's
3 fired, the slide would be forward. Each time you pull the
4 trigger, the gun will fire once. And for each firing, a
5 bullet will be expelled from the barrel, and the fired
6 cartridge case will be extracted and ejected, thrown out of
7 the gun automatically. It requires no -- no effort on the
8 part of the firer for the gun to do this.

9 Then the slide will return forward, stripping an
10 unfired cartridge from the box magazine that's in the grip,
11 and it'll be prepared for the next firing. And then the
12 shooter either lets go of the trigger and pulls it again to
13 commence with firing the next round.

14 And this -- this gun will fire as many as 16 rounds
15 without reloading. It will hold 15 cartridges in a
16 magazine, and an additional cartridge could be placed in
17 the chamber.

18 Q Okay. And when it fires, it expels the spent
19 cartridge out into the world.

20 A Yes, sir.

21 Q Let me show you what's been marked as State's 6 into
22 evidence, and ask if you recognize this?

23 A I do, sir.

24 Q And what do you recognize it as?

25 A This is a Walther Model PPK .380 auto-caliber semi-

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1 automatic pistol.

2 Q Okay. Well, let me show you also along with that
3 what's been marked as State's 14, and ask if you recognize
4 that?

5 A I do.

6 Q And what is that?

7 A This is the magazine assembly that was received with
8 this pistol.

9 Q And so it fits State's -- the State's 6?

10 A Yes, sir.

11 Q Okay.

12 A It's not actually the correct magazine for this
13 pistol, but it will fit and function in this pistol. This
14 is the correct magazine for a different model of Walther
15 pistol.

16 Q Okay. And again, what kind of pistol is this?

17 A It's a semi-automatic pistol, and it functions much in
18 the same way that State's Exhibit 4 does.

19 Q Okay.

20 A In that for each -- as long as ammunition's present
21 and the gun's loaded for each pull of the trigger, a bullet
22 and a cartridge case will be expelled from the gun.

23 Q Okay. So when it's fired, the cartridge case is
24 expelled into the world as well.

25 A Correct.

DIRECT EXAMINATION BY MR. BELL - DAN DEFREESE

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1 Q And what is the capacity of this weapon?

2 A Indulge me just a minute.

3 (The witness reviews his notes.)

4 A With the magazine submitted, it has a magazine
5 capacity of seven rounds, and a maximum capacity of eight
6 rounds.

7 Q Okay. That's with one in the chamber; is that
8 correct?

9 A Correct.

10 Q Okay. And let me show you what's been marked as
11 State's 7 into evidence, and ask if you recognize that.

12 A I do.

13 Q And how do you recognize it?

14 A Well, it -- it also bears my case number, my item
15 number, and my initials.

16 Q Okay. And what type of weapon is that?

17 A This is a Rossi Model 88; it's a .38-Special caliber
18 revolver.

19 Q Okay. And what is the capacity of it?

20 A It has a maximum capacity of five rounds before being
21 empty. You could fire as many as five shots without
22 reloading.

23 Q Okay. Does it differ from the previous two weapons
24 that you've talked about?

25 A It does, in that a revolver is a manually operated

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1 firearm. To fire it, normally you -- you put however many
2 cartridges up to the maximum capacity of five, close the
3 cylinder, and then you would pull the trigger, in either
4 the single or double-action mode. But each time you pull
5 the trigger, a bullet will leave the barrel, but the
6 cartridge case stays in the cylinder; that at the end of
7 firing, it's necessary to open the cylinder in the position
8 it is now, and to manually extract and eject the cartridge
9 cases to permit more unfired cartridges to be inserted.

10 Q So when this fires, nothing leaves the gun, other than
11 the projectile out front.

12 A Correct. Up to five times.

13 Q Okay. Let me show you a couple of other exhibits.
14 This is State's 13, and ask if you recognize these.

15 A I do.

16 Q And what are they?

17 A These are unfired .380 auto-caliber cartridges.

18 Q And do they go to one of these three weapons?

19 A They do. They are associated with State's Exhibit 6,
20 with the .380 auto-caliber Walther pistol.

21 Q Okay. And let me show you what's been marked as
22 State's 19, and ask if you recognize those.

23 A I do.

24 Q And what are those?

25 A State's Exhibit 19 contains three unfired .38 special--

1 caliber cartridges and two fired .38 special caliber
2 cartridge cases. And these were received with State's
3 Exhibit 7.

4 Q And that's the .38 Rossi?

5 A The Rossi revolver. Yes, sir.

6 Q Okay. Now, first of all, let's go back to the Rossi
7 and -- which is State's 7, and let's talk about State's 19,
8 as well.

9 A Yes, sir.

10 Q Did you -- there were -- you said two fired cartridges
11 in there?

12 A That's correct.

13 Q Did you make a determination if those rounds were
14 fired by State's 7?

15 A I did.

16 Q And how did you do that? How you described earlier?

17 A In that way. I obtained my test cartridge cases,
18 compared them with the two fired cartridge cases in State's
19 Exhibit 19. I found sufficient matching markings on them
20 to conclude that these two cartridge cases were fired by
21 the revolver, by State's Exhibit 7.

22 Q Okay.

23 A I made no comparison of the three unfired cartridges,
24 except to note that they're the same caliber and brand and
25 type of ammunition.

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1 Q And they're appropriate for that weapon?

2 A They are the correct caliber for use in State's
3 Exhibit 7.

4 Q Okay. Agent DeFreese, I'm going to show you a bunch
5 of things. These are fired cartridges found. And they
6 start with State's 35 -- I think 35, 36, 37, 38, and I
7 believe 30 -- 39. And hand those to you and ask you if
8 you've seen those before.

9 A Yes, sir. I have seen all of these before.

10 Q Okay. And what are they?

11 A Each one of these containers has a fired .40 Smith &
12 Wesson caliber cartridge case in it.

13 Q Okay. And that's 35, 36, 37, 38 and 39; is that
14 correct?

15 A Yes, sir.

16 Q And did you compare those to -- with State's 7 -- 6,
17 7, and 4?

18 A I did. I compared test cartridge cases from State's
19 Exhibit 4, from the Glock pistol, with these five fired
20 cartridge cases. And I found sufficient matching breach-
21 face markings on them to conclude that all five of these
22 cartridge cases were fired by State's Exhibit 4, by the
23 Glock .40 Smith & Wesson caliber pistol.

24 Q Okay. I'm just going -- I want to show you what's
25 been marked as State's 41 and 42, and ask if you've seen

1 those before.

2 A Yes, sir. I have.

3 Q And what are those?

4 A State's Exhibits 41 and 42 are fired .380 auto-caliber
5 cartridge cases.

6 Q And did you compare them with State's 4, 6, and 7?

7 A I did. I found matching characteristics on test
8 cartridge cases fired by State's Exhibit 6, by the Walther
9 .380 auto-caliber pistol, and on both of these cartridge
10 cases in State's Exhibits 41 and 42. From that, I
11 concluded that these two cartridge cases were fired by this
12 pistol.

13 Q Okay. While I'm asking you, if -- just go back to I
14 believe it's State's 13, the unfired .380's.

15 A Yes, sir.

16 Q That's how many? Six unfired?

17 A Yes, sir.

18 Q And you have two fired. That would add up to the
19 capacity of that weapon, which is State's 6.

20 A Correct. The maximum capacity of that firearm using
21 that magazine.

22 Q Okay. Let me show you now -- I'll take those out of
23 your way -- what has been marked as State's 15. It's still
24 in this bag, so you may have to cut it open. And ask if
25 you can identify State's 15.

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1 A Yes, sir. I can.

2 Q And what is that?

3 A This is a fired -- either a .40 Smith & Wesson caliber
4 or a .10 millimeter auto-caliber bullet. That -- it
5 happens that .40 Smith & Wesson caliber firearms and .10
6 millimeter auto-caliber firearms use essentially the same
7 diameter and weight bullets. But this is consistent of the
8 -- of the three pistols -- the three handguns we have, it's
9 consistent with bullets that would be fired by State's
10 Exhibit 4.

11 Q But you could -- could you make an exact match on what
12 -- on what gun fired it?

13 A No, I could not in this case. That -- this bullet
14 simply did not -- this bullet was not in sufficiently good
15 condition, and didn't bear markings that would permit me to
16 identify it with any particular firearm.

17 Now, it could not have been fired by the revolver --
18 by the Rossi in State's Exhibit 7, or by the Walther pistol
19 in State's Exhibit 6. It's too large a bullet for either
20 one of those handguns to have fired.

21 Q Okay. Finally, let me show you what's been marked as
22 State's 43 into evidence, and ask if you recognize that.

23 A I do.

24 Q And what do you recognize it as?

25 A This is also a jacketed bullet that's either a .40

1 Smith & Wesson caliber or a .10 millimeter auto-bullet.

2 And my -- essentially, my results of examinations were the
3 same. This bullet is in somewhat better condition, but it
4 was still not sufficiently well-marked to permit me to
5 identify this bullet as being fired by State's Exhibit 4,
6 to the exclusion of all other similar weapons.

7 This bullet could not have been fired by the Rossi
8 revolver in State's Exhibit 7, or by the -- the Walther
9 pistol in State's Exhibit 6.

10 Q Okay. Now, Agent DeFreese, just to recap, referring
11 to State's 41 and 42, there are two .380 auto shell
12 casings. You say they're definitely fired by State's 6; is
13 that correct?

14 A That's correct, sir.

15 Q And then State's 35 through 39, which were Federal .40
16 shell casings -- cartridge casings, they were definitely
17 fired by State's 4; is that correct?

18 A That's correct.

19 Q And then, finally, State's 15 and 43, you couldn't
20 make a definitive call on which gun fired that, correct?

21 A I couldn't identify either bullet with a particular
22 firearm.

23 Q However, it's consistent with State's 4.

24 A Yes, sir.

25 Q And could not be fired by State's 6 or 7.

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1 A Correct.

2 MR. BELL: Put these right here.

3 (Removes exhibits from the witness stand.)

4 MR. BELL: One moment, Your Honor.

5 THE COURT: Okay.

6 MR. BELL: Thank you, Agent DeFreese. Please answer
7 any questions Mr. Archer has for you.

8 CROSS-EXAMINATION BY MR. ARCHER:

9 Q Okay. Now, is there -- you've fired guns a lot, I
10 assume, in the process of test-firing.

11 A Yes, sir. I do.

12 Q Okay. And you've got a -- a .380 here and a .38
13 caliber --

14 A Yes, sir.

15 Q -- weapon. There's not a whole lot of difference in
16 the -- the ammunition for those, is there?

17 A There's not a lot of difference in the bore diameter.

18 Q Uh-huh.

19 A The diameter of the bullets are nearly the same.

20 Q Uh-huh.

21 A Normally, a .38 special shoots a bullet that's about
22 .357 or .358 inch in diameter.

23 Q Uh-huh.

24 A The .380 auto-bullet is nominally .355, so there's

25 only two or three-thousandths of an inch difference in the

1 diameter.

2 Q Uh-huh.

3 A Now, there's a considerable difference in the normal
4 weight of bullets loaded into these two cartridges.

5 Q Uh-huh.

6 A With .380 auto typically being somewhat lighter; that
7 the standard ball round in .380 auto is about a 95-grain
8 bullet, and the standard .38 special bullets vary from
9 about 130 to 158 grains.

10 Q What about the -- the officer's gun, the .40 caliber?

11 A Forty?

12 Q How many grains in that?

13 A .40 Smith & Wesson ammunition is typically loaded with
14 bullets that range from about 155 --

15 Q Uh-huh.

16 A -- to as much as 200 grains, with most of them being
17 no heavier than 180 grains.

18 Q Okay. Well, let me ask you: Is there a major
19 difference in the loudness when you fire the, say, .380 and
20 the .38 caliber -- .38 Special?

21 A There is a difference, which would be detectible if
22 you had instrumentation, but I'm not sure it would be
23 detectible to the human ear.

24 Q Uh-huh.

25 A Especially if there were any sort of environmental

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1 interference with it.

2 Q All right. So if you had real high-tech equipment,
3 you -- they could tell a difference, but basically most of
4 us couldn't.

5 A That would be correct.

6 Q All right.

7 A It would be very difficult for most people to tell.

8 Q All right. How about as between the .38 -- the
9 difference in sound between the .38 Special and the .380
10 and the Glock? Is there a major difference in the sound
11 when it's fired?

12 A My results would be the same there, too: That
13 instrumentally you might be able to tell a difference. I'm
14 not sure the human listening to them could tell much
15 difference in them.

16 Q Right. Because maybe they have a few more grains of
17 powder and stuff, but basically they're not all that far
18 apart in calibers, is it?

19 A Correct.

20 Q Right. Now, maybe with a .22 versus a -- the -- the
21 .40 caliber.

22 A Surely. Or if you were firing a high-powered rifle as
23 opposed to these handguns, you might be able to tell a
24 distinct difference.

25 Q Right. But it would -- it would be unlikely that --

1 that somebody at a distance of -- of a 100/200 feet or so,
2 or even 40 or 50 feet, would be able to tell the difference
3 in the sounds between any of these three weapons; is that
4 right?

5 A I would not be able to tell the difference with --
6 with certainty between the three.

7 Q And it's your business.

8 A Yes, sir.

9 Q I gotcha. And with respect -- oh. I got a question.
10 Yeah. Where's the -- the PP -- Walther? This one. Okay.

11 Now, I just got a question. When you fired this gun -

12 -

13 A Yes, sir.

14 Q -- this comes flying back, right?

15 A The slide moves to the rear --

16 Q Uh-huh.

17 A -- very shortly after the bullet leaves the barrel.

18 Q Yes, sir. So you don't want to have your thumb back
19 there, right?

20 A That would be correct.

21 Q It might break your thumb.

22 But when it comes back, does it leave it cocked?

23 A It does.

24 Q It does? And how do you -- I mean, if you've finished
25 shooting, how do you uncock it? What do you do to get it

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1 uncocked without discharging it?

2 A Well, that gun -- there are two ways to do it. The
3 easy way is there's a lever on the side of the slide.

4 Q Uh-huh.

5 A Which is now in the down position, the safe position.

6 Q This? Yeah.

7 A Yes, sir. That's the -- the safety.

8 Q Uh-huh.

9 A It is a de-cocking safety.

10 Q I gotcha.

11 A And if -- if I had shot the gun, and there was a round
12 in the chamber ---

13 Q Uh-huh.

14 A --- the hammer was cocked, and I wanted to cease
15 firing, the simplest thing to do would be simply to rotate
16 that safety down. The hammer would drop, but it would not
17 fire the cartridge, and it would place the gun in a safe
18 position.

19 Q Okay. So to fire, it has to be up like -- up --

20 A Correct.

21 Q That has to be. And you pull it down, and pull the
22 trigger, and it --

23 A Well, you don't need to pull the trigger.

24 Q Oh. It's just automatic.

25 A It does it -- it does it by itself, as -- as you're

CROSS-EXAMINATION BY MR. ARCHER - DAN DEFREESE

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- 1 pulling the -- the de-cocking safety lever down --
- 2 Q Uh-huh.
- 3 A -- it will -- will place the -- the gun in a safe
- 4 position and lower the hammer by itself.
- 5 Q Now, did I hear you say that the -- the cartridge from
- 6 this gun was not the one originally that would have come
- 7 with it?
- 8 A No. The magazine.
- 9 Q The magazine. I'm -- magazine.
- 10 A Yes, sir. That's a magazine for a pistol known as a
- 11 "PPK-S."
- 12 Q Uh-huh.
- 13 A Which is another variation of that pistol. It has one
- 14 additional cartridge capacity over the PPK pistol.
- 15 Normally, a PPK ---
- 16 Q Uh-huh.
- 17 A --- magazine would hold six cartridges. A PPK-S
- 18 magazine would hold seven.
- 19 Q Oh, okay. So the normal cartridge -- this gun would
- 20 hold six.
- 21 A The normal magazine would hold six.
- 22 Q Okay.
- 23 A And this one, you know, the body of the magazine and
- 24 the internal parts of the magazine are substantially
- 25 identical --

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1 Q Uh-huh.

2 A -- to the correct magazine of that pistol. But when
3 it's inserted, you'll see that there's about three-eighths
4 of an inch or half of an inch of magazine that hangs out
5 below the -- the bottom of the pistol.

6 Q It's going to hang out below here? (Indicates.)

7 A Right. About -- it'll hang out about that far.

8 Q Let's go down and show them how far it's going to
9 hang. What's keeps it from falling out?

10 A It has a -- a latch mechanism.

11 Q Uh-huh.

12 A In fact, we can probably just take it out and put it
13 in there.

14 Q Yeah.

15 A Removing State's Exhibit 14.

16 Q Uh-huh. Okay. So it clicks in there.

17 A Right. It has a catch --

18 Q Uh-huh.

19 A -- which retains the magazine, because, of course, the
20 magazine is forcing cartridges up --

21 Q Uh-huh.

22 A -- with spring tension, and if there weren't something
23 to hold the magazine in it, it would simply fall out.

24 Q I gotcha. But I'm going to walk down and let these
25 folks see how far this thing sticks out -- out of the gun.

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1 (Mr. Archer shows item to the jury.)

2 Q So this gun -- I mean, that's pretty clearly -- I
3 mean, it don't go -- it -- it doesn't go with that gun.
4 When you tick it in there and it sticks out like that, that
5 --

6 A Yeah. I'm sure it's not the magazine that the -- the
7 manufacturer would have originally shipped with that gun.

8 Q Uh-huh.

9 A But it's a perfectly functional magazine.

10 Q Sure.

11 A It's -- it's made by the same people; it's just made
12 for a different model, a different variation of the PPK
13 pistol.

14 Q Uh-huh. How do we get it out of there?

15 A There's -- there's a release button. (Demonstrates.)

16 Q Right up there?

17 A Yes, sir.

18 Q Well, let's get it out, because I don't -- it doesn't
19 have any bullets.

20 A I mean, it ---

21 Q It doesn't have any bullets.

22 A --- it can't fire them, because it has the cable
23 through the barrel.

24 Q Right. Oh, good. Good.

25 Now, the original -- the original magazine, what's the

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1 maximum number of bullets it'll hold?

2 A Six.

3 Q It holds six, so the maximum number of shots is seven.

4 A Correct.

5 Q This cartridge holds seven, so the maximum number of
6 cartridges -- fire -- times it could be fired, if fully
7 loaded, is eight.

8 A This magazine holds seven.

9 Q Seven.

10 A Seven plus the one in the chamber would make a maximum
11 of eight, without reloading.

12 Q Okay. Now, to get it to the maximum, I suspect -- at
13 least without being an expert -- you got to put the
14 magazine in, load a cartridge.

15 A That would be one way. Yes, sir.

16 Q Then take the -- then take this out and put another
17 bullet back there.

18 A Correct.

19 Q What's another way?

20 A The other way would be to simply drop -- or open the
21 slide, drop a round in the chamber --

22 Q Uh-huh.

23 A -- close the slide, and then insert a fully loaded
24 magazine.

25 Q Okay. Okay. And, of course, we have no way of

1 knowing whether it was at max or not at max.

2 A No. Max is -- eight rounds is the most you can put in
3 the combination of State's Exhibit 6 and State's Exhibit
4 14.

5 Q Okay. How fast can you pop an empty out of here and
6 pop another cartridge in?

7 A Another magazine?

8 Q Another magazine. I keep wanting to say "cartridge."
9 Magazine.

10 A It depends on the skill of the shooter.

11 Q Uh-huh.

12 A A skilled shooter can do it in -- in a second or two.

13 Q Uh-huh.

14 A An unskilled shooter might take considerably longer.

15 Q Right. But it can be done in maybe one or two
16 seconds.

17 A It can be done very quickly ---

18 Q Uh-huh.

19 A --- by someone who's practiced at doing it.

20 Q Particularly if you don't want to stop and pick up the
21 old cartridge -- I mean the old magazine, right?

22 A Correct.

23 Q Yeah. Okay. Now, what you found with respect to this
24 gun was that there were two empty cartridges that matched
25 it, right?

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1 A Correct.

2 Q And what you found with respect to the officer's gun
3 is there were how many empty cartridges that matched?

4 A There were five fired 40 Smith & Wesson cartridges
5 that were fired by State's Exhibit 4, by what I understand
6 to be the officer's ---

7 Q There were fired -- okay. There were five spent
8 shells.

9 A Correct.

10 Q And how many live shells from it did you -- came in?

11 A Ten.

12 Q Ten. So it was -- as far as what you had by way of
13 spent shells and the live shells, you were one -- how many
14 -- this holds 16?

15 A It holds 15 in the magazine, plus the one in the
16 chamber.

17 Q Plus the one ---

18 A It could have held as many as 16 rounds, without
19 reloading.

20 Q Okay. And so we had -- you had five and how many?
21 Ten?

22 A Yeah. Five fired 40's and 10 unfired 40's.

23 Q So it's possible for what we have here there could be
24 one other bullet, or it could not have -- or maybe it just
25 wasn't loaded to capacity.

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- 1 A I don't know.
- 2 Q Don't know.
- 3 A It could be either way.
- 4 Q And with respect to the revolver, what you were able
5 to determine was that the two spent shells that were found
6 in here were fired in here.
- 7 A That is correct.
- 8 Q That didn't take a whole lot of science, did it?
- 9 A Well, it -- it takes the same technique as ---
- 10 Q Yeah.
- 11 A --- the other. It's done in exactly the same way.
- 12 Q I understand. But I mean, you're going to test fire
13 and -- and such, but I mean ---
- 14 A We have to do it the same way ---
- 15 Q Sure.
- 16 A --- to get the same results.
- 17 Q But -- but in a common-sense way, if it's -- if it's
18 two spent shells in here -- have you ever had a situation
19 where somebody substituted spent shells in a gun?
- 20 A I cannot think of one.
- 21 Q I bet you hadn't. Not in over 30-something years. So
22 really, you didn't find much of anything on that gun?
- 23 A Well, other than the fact that the gun was fired; it
24 had fired two shots at some point in time.
- 25 Q At some point in time. Could have been in the last --

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1 a week beforehand, a year beforehand. You couldn't tell
2 how soon it was fired.

3 A I can't tell who fired it or when they fired it. I
4 can just tell that that gun fired those two cartridges.

5 Q Well, let me ask you something. You -- you're the
6 expert on this stuff, and I know this isn't too much a
7 scientific test. When a gun has been recently fired --

8 A Yes, sir.

9 Q -- can you smell it and tell it?

10 A I can't.

11 Q You can't?

12 A No.

13 Q Okay.

14 A That's something we pick up from western movies.

15 Q Yeah.

16 A Where people were shooting black powder.

17 Q Uh-huh.

18 A And the black-powder-propelled cartridges do have a
19 different odor about them than smokeless powder.

20 Q I gotcha. And what about have you ever had a
21 situation where the gun itself was tested for gunpowder
22 residue -- gunshot residue?

23 A I don't distinctly recall one, but there -- there
24 probably have been those.

25 Q And -- and that's not really your area?

DIRECT EXAMINATION BY MR. BELL - KATHLEEN AMICK

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1 A It's not. And you know, you would expect to find
2 gunshot residue on a firearm, perhaps even if it -- it had
3 been cleaned --

4 Q Uh-huh.

5 A -- due to the fact that it's exposed to so much
6 gunshot residue in its course of use.

7 Q Sure. Okay. No further questions.

8 THE COURT: All right. Re-direct?

9 MR. BELL: No further questions, Your Honor.

10 THE COURT: All right. And is this witness free to
11 leave?

12 MR. BELL: Agent DeFreese is free to leave, Your
13 Honor.

14 MR. ARCHER: Free to leave, Your Honor.

15 THE COURT: You are free to go.

16 (The witness steps down from the stand.)

17 THE COURT: Very well. Call your next witness.

18 MR. BELL: The State would call Kathleen Amick to the
19 stand.

20 THE COURT: All right.

21 KATHLEEN AMICK, having been first
22 duly sworn, testifies as follows:

23 THE COURT: Would you please be seated? And when you
24 are seated, if you would state your full name for the
25 record, and spell your last name.

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1 WITNESS: My name is Kathleen Amick, A-m-i-c-k.

2 THE COURT: Your witness.

3 MR. BELL: Thank you, Your Honor.

4 THE COURT: Yes.

5 DIRECT EXAMINATION BY MR. BELL:

6 Q Ms. Amick, could you state your name again, please?

7 A My name is Kathleen Amick.

8 Q All right. Make sure you speak up so that all the
9 jury can hear you. Okay?

10 A Okay.

11 Q Where are you employed?

12 A With the South Carolina Law Enforcement Division, in
13 the trace evidence laboratory.

14 Q Okay. And how long have you been with the State Law
15 Enforcement Division?

16 A Almost three years.

17 Q And what is your educational background?

18 A I have a Bachelor in Science -- a Bachelor of Science
19 in Chemistry from Converse College.

20 Q Okay. And did you come -- come to SLED straight out
21 of college, or did you have some other -- some other
22 occupational experience?

23 A I worked for Milliken & Company for seven years prior
24 to coming to the South Carolina Law Enforcement Division.

25 Q You have any other law enforcement experience?

1 A No, sir.

2 Q And you said you are in the trace division. What is
3 trace division?

4 A In the trace laboratory, we analyze several different
5 types of evidence, one being gunshot residue. We also do
6 paint analysis, glass analysis, fire debris analysis, and
7 bullet hole.

8 Q What training do you have in the field of trace
9 analysis?

10 A I am fully trained in fire debris analysis and gunshot
11 residue analysis, as well as bullet hole.

12 Q Okay. Have you ever been qualified to testify as an
13 expert in trace analysis in the courts of the State of
14 South Carolina?

15 A Yes, I have.

16 Q Approximately how many times?

17 A Three times; this will be the fourth.

18 Q Your Honor, we offer Ms. Amick as an expert in the
19 field of forensic trace analysis.

20 THE COURT: Voir dire?

21 MR. ARCHER: No, Your Honor.

22 THE COURT: Objection?

23 MR. ARCHER: No, Your Honor.

24 THE COURT: She's so qualified.

25 Q Ms. Amick, talking about trace analysis, let's talk

DIRECT EXAMINATION BY MR. BELL - KATHLEEN AMICK

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1 specifically about gunshot residue. Can you tell the jury
2 what you're looking for in gunshot residue?

3 A Well, gunshot residue is comprised of barium,
4 antimony, and lead, and in -- there are microscopic
5 chemicals found in the primer residue of a bullet or a
6 cartridge case.

7 Q Okay. And what happens to them when a gun is fired?

8 A Those chemicals -- well, the -- the primer cap is
9 struck by the hammer, and when that happens, a small -- it
10 causes a spark to cause those chemicals -- it's a very
11 small explosion that builds pressure that pushes the bullet
12 out the barrel of the gun. And those chemicals form kind
13 of a -- a cloud coming out of the barrel of the gun. And
14 that's gunshot residue, and it can land on anything in the
15 vicinity of the fire -- of the weapon when it's fired.

16 Q And within how far of the vicinity?

17 A Usually, we -- we say about six feet, but it does
18 depend on the weapon and the type of ammunition. So it --
19 it does, you know, have some circumstances associated with
20 it.

21 Q Okay. And how large or small are these particles?

22 A They are microscopic chemicals; you can't see them
23 with the naked eye. They're very small.

24 Q Do they tend to stay around on places very long?

25 A What kind of places?

1 Q A hand.

2 A On your hand? We do not analyze GSR kits that have
3 been taken longer than six hours after the time of an
4 incident. That -- and the reason for that is gunshot
5 residue is -- is very fragile evidence. If you wash your
6 hands, just rubbing your hands together, taking them in and
7 out of your pockets, handling various things, you can lose
8 the gunshot residue evidence that is on the hand.

9 It's also absorbed by the skin. Sweating can remove
10 it. So, it is very fragile evidence.

11 Q Okay. And in this particular case, you were sent some
12 items to analyze, some gunshot residue kits to analyze?

13 A Yes, I was.

14 Q Okay. I'm going to take them individually. First
15 what I'll show you is what's been marked as -- in evidence
16 as State's Exhibit 31, and ask if you recognize that.

17 A Yes, I do.

18 Q Okay. And did you examine this particular item of
19 evidence, or what's inside the bag, for traces of gunshot
20 residue?

21 A Yes.

22 Q And what were your findings?

23 A On all four areas, which is the right palm, the right
24 back, the left palm, and the left back, the quantity of the
25 metals found did not indicate the presence of gunshot

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1 residue.

2 Q Okay. And that subject name on that is Quinntavious
3 Davis?

4 A Yes.

5 Q Okay. I'll show you what's been marked as State's
6 Exhibit 32, and ask if you recognize that.

7 A Yes, I do.

8 Q And what did you recognize that as?

9 A A gunshot residue kit taken from Donnell T. Campbell.

10 Q And did you analyze that kit?

11 A Yes, I did.

12 Q And what were the results of that?

13 A On his right palm and right back, the quantities of
14 metals did not indicate the presence of gunshot residue.

15 On his left palm, no gunshot residue was found. And
16 on his left back, quantities of metals did not indicate a
17 presence of gunshot residue.

18 Q So that would mean there's no residue found; is that
19 correct?

20 A That's correct.

21 Q And finally, State's 33. I ask if you recognize that?

22 A Yes, I do.

23 Q And who did that -- what subject was that from?

24 A This is a GSR kit from Dervick Parker.

25 Q Okay. And you analyzed this?

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1 A I did.

2 Q And what did you find on that?

3 A On all four areas of his hand -- again, the right
4 palm, the right back, the left palm, and the left back --
5 the quantities of metals found did not indicate a presence
6 of gunshot residue.

7 Q Okay. Now, Ms. Amick, does the lack of gunshot
8 residue conclusively mean that somebody didn't fire a gun?

9 A No, sir. It does not.

10 Q What does it mean?

11 A It means that at the time the kit was collected, that
12 the quantities of metals that were present on his hands or
13 her hands would not indicate a presence of gunshot residue.

14 Q But they could have fired a gun and had it all wiped
15 off; is that correct?

16 A That is a possibility.

17 Q Okay. Let me ask you another question: Besides just
18 firing a gun, can you get gunshot residue from touching a
19 gun as well?

20 A Yes, you can.

21 Q Okay. But it's still as fragile as if it had
22 deposited on your hands from shooting a gun?

23 A Yes.

24 MR. BELL: Thank you, Ms. Amick. Please answer any
25 questions Mr. Archer has for you.

CROSS-EXAMINATION BY MR. ARCHER - KATHLEEN AMICK

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1 THE COURT: Cross-examination?

2 MR. ARCHER: Yes.

3 CROSS-EXAMINATION BY MR. ARCHER:

4 Q A revolver tends to emit more particulate than does an
5 automatic, does it not?

6 A It depends on the condition of a weapon and the type
7 of ammunition used.

8 Q Well -- well, when does it and when doesn't it?

9 A If a weapon is -- if it's dirty, if any components are
10 loose, or you know, if it were to emit less -- maybe the
11 components were tighter. There are various different
12 reasons why it could emit more or less.

13 Q Uh-huh.

14 A So I can't really testify ---

15 Q Well, the automatic -- the -- the explosion is
16 contained more inside the gun than it is in -- in a
17 revolver, is it not?

18 A The gunshot residue will come out. In a automatic --
19 in a semi-automatic, gunshot residue can come out the
20 barrel of the gun, and also as the slide -- as the slide
21 moves --

22 Q Uh-huh.

23 A -- it can come out of the ejector port; anywhere where
24 there's an opening.

25 Q Okay. Well, this has been previously admitted into

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1 evidence. That's -- that's a fair representation of what
2 happens with respect to particulate matters coming out of a
3 revolver when it's fired, is it not?

4 (Mr. Archer shows photograph to the witness.)

5 A I've seen photos similar to that.

6 Q Yeah. Okay. Now, gunshot residue doesn't just
7 accumulate on your skin. It accumulates also on clothing,
8 right?

9 A Yes, it can.

10 Q And on clothing, if properly packaged and sent off, it
11 remains there a lot longer than it does on somebody's skin;
12 is that not correct?

13 A When gunshot residue deposits on an inanimate object,
14 it will remain there indefinitely until it is removed, you
15 know, by an outside source.

16 Q Okay. And it's simply the actions of the human body
17 and the human being that tend to make it disperse off of
18 your hands and skin quicker, right? Because you're -- I
19 mean, you -- you're rubbing them, you're perspiring. You
20 may be washing them.

21 A Right. On a living person, that's where the time
22 limit comes in. On a living person, you're -- you're
23 moving around. The gunshot residue can be absorbed through
24 the skin. You're sweating.

25 Q Uh-huh.

CROSS-EXAMINATION BY MR. ARCHER - KATHLEEN AMICK

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1 A That kind of thing. So on a -- on a person that is no
2 longer living, we can -- we can take a gunshot residue kit
3 outside of that six-hour time frame.

4 Q Did you ever receive this for examination for gunshot
5 residue? (Mr. Archer holds up jacket.)

6 A I don't think so. I'd have to see if my initials are
7 on it.

8 Q Yeah. Well, it might be kind of sort of memorable,
9 given the design of it.

10 A I get a lot of clothing.

11 Q I hear you. Did you get any clothing in this case to
12 examine for gunshot residue?

13 A No, sir.

14 Q Okay. Now, you depend on somebody else to take the
15 sample, right?

16 A To take the sample --

17 Q At the scene.

18 A Do you mean of -- on the GSR kit or off of clothing?

19 Q On the gunshot -- on the GSR kit, the stuff you put on
20 hands and such.

21 A Oh, correct. The -- an agent or officer at the scene
22 will take the GSR kit.

23 Q Is there any way to -- to -- I would say screw up the
24 taking of the sample -- but to contaminate the taking of
25 the sample?

CROSS-EXAMINATION BY MR. ARCHER - KATHLEEN AMICK

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1 A I'm sure that's a possibility. I don't go to scenes
2 and collect the GSR kits, so it's ---

3 Q By the time it gets to you, you've got no way of
4 knowing whether the officer correctly or incorrectly
5 collected the sample.

6 A I can't -- I can't testify to the collection of the
7 kit.

8 Q Right. You just look at what's sent to you.

9 A Correct.

10 Q Okay. But if gunshot residue -- you're saying gunshot
11 residue is going to remain on inanimate objects until it's
12 physically removed by something; is that right?

13 A Yes, sir.

14 Q Okay. But in clothing, that would be maybe by washing
15 them or something.

16 A Right.

17 Q Okay. So in theory, if it's on a piece of glass, if
18 it's on a table, or it's on a piece of clothing, it could
19 stay there for years, if nothing ever happened to take it
20 off?

21 A Right.

22 Q Okay. I have no other questions.

23 THE COURT: Re-direct?

24 MR. BELL: Yes, Your Honor.

25 THE COURT: All right.

RE-DIRECT EXAMINATION BY MR. BELL - KATHLEEN AMICK

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1 RE-DIRECT EXAMINATION BY MR. BELL:

2 Q The particulates that are still -- are still fragile,
3 if they're on an object, as well as on a hand or a
4 particular part of the body; is that correct?

5 A They are still fragile if they are on a person or an
6 inanimate object. They -- on a -- on a living person,
7 bodily function will -- like I said, the skin absorbs
8 gunshot residue. On an inanimate object, it has to be
9 physically removed.

10 Q If the object was thrown around, would that -- could
11 that remove it?

12 A Yes.

13 Q Thank you. Nothing further.

14 THE COURT: Re-cross?

15 MR. ARCHER: No, Your Honor.

16 THE COURT: Very well. Is this witness free to leave?

17 MR. BELL: Yes, Your Honor. We ask that she be
18 excused.

19 THE COURT: You are free to go.

20 WITNESS: Thank you.

21 (The witness exits the stand.)

22 THE COURT: Call your next witness, please.

23 MR. BELL: The State would call Lilly Gallman to the
24 stand.

25 LILLY GALLMAN, having been first

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1 duly sworn, testifies as follows:

2 THE COURT: Please be seated and state your full name
3 for the record, and spell your last name.

4 WITNESS: My name is (coughs) -- excuse me -- Lilly
5 Smalls Gallman. Gallman is spelled G-a-l-l-m-a-n.

6 THE COURT: And how do you spell "Lilly"?

7 WITNESS: L-i-l-l-y.

8 THE COURT: Okay. Your witness, Mr. Bell.

9 MR. BELL: Thank you, ma'am.

10 THE COURT: Uh-huh.

11 DIRECT EXAMINATION BY MR. BELL:

12 Q Where are you employed?

13 A I am employed with the South Carolina Law Enforcement
14 Division.

15 Q And how long have you been employed there?

16 A Since January of 1990.

17 Q And how are you employed at the State Law Enforcement
18 Division.

19 A I'm employed as a DNA analyst.

20 Q And how long have you been a DNA analyst at the State
21 Law Enforcement Division?

22 A Since January, 1990.

23 Q Would you please tell the jury about your educational
24 background.

25 A As I stated, I began working with the South Carolina

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1 Law Enforcement Division in January of 1990. Prior to
2 that, I worked at the University of South Carolina, where I
3 received my degree in biology, in the area of molecular
4 genetics. With that training at the university, I became a
5 DNA analyst at SLED.

6 During my first year at SLED, I was trained in the
7 area of serology, where you identify body fluids. I
8 attended the FBI DNA typing schools, both the advanced ---
9 the beginners and the advanced. And I also attended South
10 Carolina Law Enforcement Agency to become a certified
11 police officer.

12 Q And have you ever been qualified as an expert in the
13 field of DNA typing or forensic DNA in the courts of the
14 State of South Carolina?

15 A Yes, I have.

16 Q Approximately how many times?

17 A Approximately 60.

18 MR. BELL: Your Honor, we'd offer Ms. -- Agent Gallman
19 as an expert in DNA identification.

20 THE COURT: Is there any voir dire?

21 MR. ARCHER: No voir dire; no objection.

22 THE COURT: Very well. She's so qualified.

23 Q Agent Gallman, let's talk a little bit about DNA
24 typing. What are we talking about? Explain that to the
25 jury.

1 A DNA is considered to be the blueprint of the body.
2 You get part of your DNA from your mother, and part from
3 your father. DNA stands for deoxyribonucleic acid.

4 Since everyone's DNA is different -- except for
5 identical twins -- we're able to take evidence that was
6 collected from a crime scene and compare it to a known
7 standard from an individual -- be it the victim or the
8 subject in a case -- and determine whether there is a match
9 or there is not a match for two -- between the two items.

10 Q How do you find somebody's DNA?

11 A Well, items are submitted -- it could be cuttings from
12 clothing, swabs from different items are submitted to us.
13 We extract the DNA from that item, meaning we release the
14 DNA from that item, and then we develop a DNA profile from
15 that extracted DNA.

16 Q Okay. And what method do you use in this at -- at
17 SLED?

18 A We utilize PCR, which is polymerase chain reaction,
19 and the analysis that we use is STR analysis, which is
20 Short Tandem Repeat Analysis.

21 Q And what does that do? I mean how do you -- how do
22 you get a sample DNA to analyze it?

23 A During the course of -- as you can tell, I've been
24 doing DNA for quite a while. With advances in DNA
25 technology, we utilize in PCR, which is polymerase chain

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1 reaction.

2 What it does is it amplifies the DNA, so you can start
3 with a very small quantity of DNA. I know everyone has
4 seen this on television where you get "touch DNA." You
5 will be able to get -- generate a DNA profile. Well, with
6 PCR, you can do that.

7 And so, what we utilize PCR to do to amplify the DNA,
8 and once the DNA is amplified, we look at certain areas on
9 that DNA for a comparison from the evidence to a standard.

10 Q And why do you look in that specific areas?

11 A Because the analysis we utilize is the STR analysis,
12 which is, as I said, Short Tandem Repeats. It's just
13 repeats of DNA, not actual genes, that are found in the
14 DNA.

15 Q Okay. And what are these areas called?

16 A They are called "loci."

17 COURT REPORTER: I'm sorry?

18 WITNESS: Loci, l-o-c-i.

19 Q And what are the significance of the loci in -- in DNA
20 identification?

21 A Well, you're looking at different areas on a person's
22 DNA. Each one of the areas that we look at -- they are
23 independent of the other, so that when it's time to
24 generate a statistic for that particular DNA profile,
25 you're able to multiply each -- it's -- locus is singular

1 for loci -- each locus against each other to generate a
2 frequency of that event in a given population.

3 Q Okay. And these loci, have they been -- have they
4 been kind of studied in a population?

5 A Yes. It all started back in academia, when I was
6 working at the University of South Carolina. I did that
7 type of work on bacteria and on yeast, and then -- to look
8 at different genes as they applied to humans.

9 So, the procedures that I use in forensic DNA analysis
10 have been used widely for years.

11 Q Okay. And what you're -- correct me if I'm wrong --
12 what you're looking at is a particular trait at that loci.
13 It occurs so many times in so -- in such a population, such
14 as one in a hundred or one in two hundred. Is that what
15 you're looking at?

16 A Yes. But the first thing we do is establish that we
17 have a match between the evidence and the standard. That's
18 the very first thing that you do. And then we are required
19 to attach a statistics to that, or a frequency of that
20 event in a population.

21 Q But the frequency is what you're looking at to -- to
22 make the specific identification; is that correct?

23 A To generate the numbers that we have, but the match is
24 already established.

25 Q Okay. Now, you were submitted some items of evidence

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1 in this particular case; is that correct?

2 A Yes, I was.

3 Q All right. Initially -- I will pull these out.

4 You were submitted items. Now, these are State's
5 numbers. These aren't your numbers, so there might be some
6 confusion.

7 These are State's Exhibits 20 through 27, and also
8 State's 40. And I ask if you'd look at those and if you
9 recognize those.

10 A Yes, I do. Besides having the State Exhibit numbers
11 on it, it also have the SLED case numbers -- case number on
12 here, and the item numbers --

13 Q Okay.

14 A -- from SLED.

15 Q And as to State's 20 through 27, do you know what
16 those items were that were submitted to you?

17 A Yes. These are swabs from -- from guns.

18 Q Okay. And what was State's 40?

19 A That's a swab from marker -- marker No. 6, that was
20 taken at the scene.

21 Q Okay. Now, when you received these items, what was
22 the first thing that you were looking for on -- on these
23 swabs?

24 A The first thing I'd normally look for -- the very
25 first thing I do -- they are packaged in a -- a heat-sealed

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1 pouch, and we check to see that the pouch is sealed
2 properly.

3 Q Okay.

4 A And if it is, then you proceed to open it. I take the
5 swabs out and I look to see if there's a presence of blood
6 possibly on the swabs. If it indicate that it might be
7 blood, then I test it for the presence of blood. Because
8 the one that was taken from marker No. 6 of -- when the
9 swab was taken, it said that it could possibly be blood
10 there. So I tested it for the presence of blood.

11 Q Did it have blood?

12 A Blood was indicated on there.

13 Q And that's State's 40; is that correct?

14 A That's correct.

15 Q Okay. Let me back up for a second. Were all of these
16 -- State's 20 through 27 and State's 40 -- were they
17 properly sealed when you examined them?

18 A Yes, they were.

19 Q Okay. Now, as to 20 through 27, what were you -- what
20 did you do in analyzing those?

21 A Well, I -- first, I checked the log-in sheets and they
22 said that they were sent for DNA, that they were swabbed
23 from guns. I checked the swab when I opened the package to
24 see if it could possibly be blood on -- like I said.

25 There was no indication that it could -- that there

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1 was blood on it, and I moved to the next step, where I took
2 the cutting from the swab and I put -- put it in the
3 solution to extract the DNA.

4 Q Okay. And did you find DNA in 20 through 27? That's
5 State's 20 through 27. I'm sure that differs from your
6 numbers.

7 A Uh-huh. Okay. On item number -- State Exhibit No.
8 20, which is our item No. 18, there was no human DNA
9 extracted, so it was no DNA on that item.

10 Q Okay.

11 A On State Exhibit 21, which is my item No. 19, there
12 was a partial DNA profile developed there, but it was not
13 suitable for what we consider to put into our data base.

14 Q Okay. And does that mean you couldn't compare it
15 against anything?

16 A None of the standards that I had gave me an indication
17 that -- there was nothing -- not enough information there
18 to give a -- a result to.

19 Q Okay. State's -- the next one.

20 A It was the same for State Exhibit 22 and 23.

21 Q Okay. That there was not enough to put in your data
22 base?

23 A That's correct.

24 Q Okay.

25 A State Exhibit No. 24: There was a partial DNA profile

1 developed from this item, but it was insufficient for
2 reliable interpretation, so I could not interpret that
3 particular DNA profile.

4 You have to remember, all of these swabs are coming
5 from guns. They were just coming from someone handling
6 them, not from blood or -- or -- or any other kind of body
7 fluid.

8 Q Okay.

9 A Okay? All right. And then you have State Exhibit No.
10 25, which is my item No. 23. No DNA profile was developed
11 from this item. I was able to get human DNA, but did not
12 develop a DNA profile from it.

13 Q Okay. So you couldn't compare that to anything.

14 A No, I could not.

15 Q Okay.

16 A State Exhibit No. 26, which is my item No. 24, there
17 was a -- a partial DNA profile developed from this
18 particular item, and it matches the -- it matched the DNA
19 profile of Dervick Parker --

20 Q Okay.

21 A -- on that.

22 Q Let me set that aside for a second.

23 A Okay.

24 Q And the next ---

25 A State Exhibit No. 27, which is my item No. 25, it was

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1 a mixture of at least three individuals. So, more -- more
2 than two people handled it. DNA was present in there on
3 this particular sample, of Dervick Parker and -- and the
4 contributors to 19, 20, and 21 could not be excluded from
5 the mixture.

6 Q Okay. All right. And finally, that's 40.

7 A Okay. This particular item was from marker No. 6.
8 It's from an unidentified individual. I did not have a
9 standard to compare that to.

10 Q Okay.

11 A A standard that I received did not match that.

12 Q Okay. Let me show you what's been marked as State's -
13 - I'll do them one at a time -- State's 28, and ask if you
14 recognize that.

15 A Yes. This is my item No. 49, which is a buccal swab.
16 A buccal swab just means that you take a -- like a Q-tip
17 and swab the inside of someone's mouth to be able to get
18 their DNA, develop their DNA profile. And this item, my
19 item No. 49, is a buccal swab from Dervick Parker.

20 Q Okay. Let me show you what's been marked as State's
21 29, and ask you to identify that.

22 A Okay. This is my item No. 50. It's from Quinntavious
23 Davis.

24 Q Okay. And finally, let me show you what's been marked
25 as State's 30, and ask if you can identify that.

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1 A This is my item No. 51, and it is the buccal swab from
2 Donnell Campbell.

3 Q Okay. And these were the standards that you were
4 presented to compare State's 20 through 27 and 40 with?

5 A Yes.

6 Q Okay. And let's return back to what's now State's 26,
7 which is your item 24. Okay? Now, what was the result
8 upon comparison?

9 A Okay. I'm reading from my report.

10 Q Okay.

11 A And it states that (as read): "The partial DNA
12 profile developed from item 24 ---

13 COURT REPORTER: Could you slow down just a little bit
14 when you read?

15 WITNESS: I'm sorry.

16 COURT REPORTER: That's okay.

17 A (As read): "The partial DNA profile developed from
18 item 24 matches the DNA profile of Dervick L. Parker."

19 Q Okay.

20 A And then we are required to apply a statistical value
21 to that DNA profile.

22 Q What was the statistical value that you gave to that
23 profile?

24 A It reads that (as read): "The probability of randomly
25 selecting an unrelated individual having a DNA profile

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1 matching this item is approximately one in 2.2 trillion."

2 Q Okay. So that means that there -- that's one in 2.2
3 trillion chance of finding another individual matching
4 Dervick Parker; is that correct?

5 A Yes. A unrelated individual.

6 Q Okay. Do you know how many people are on the earth?

7 A Between six and seven billion.

8 Q Okay. And 2.2 trillion is a little more than 5, 6 and
9 7 billion; is that correct?

10 A Quite a bit more.

11 Q Let's go to item -- State's -- I'm sorry. State's 27.
12 What was the comparison there?

13 A Okay. On this particular item, no DNA profile was
14 developed from this item, which is item No. 23.

15 Q Okay. Hand me the one that had the mixture.

16 A Twenty-five; my 25.

17 (Sotto voce discussion between Mr. Bell and the witness.)

18 A I'm sorry. That's not my handwriting. I'm sorry.
19 It's my item No. 25.

20 Q Okay. What was the result in that?

21 A I'm sorry.

22 MR. ARCHER: I'm a little confused. I hate to
23 interrupt.

24 A Okay. This is State Exhibit No. ---

25 THE COURT: Stop. Stop, please. Sorry.

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1 MR. ARCHER: Are you saying "State's 27" ---

2 THE COURT: No, no.

3 MR. ARCHER: --- is your 25?

4 THE COURT: Say again. Address your comments to the
5 Court, please.

6 MR. ARCHER: I -- I was confused. I'm not -- I can't
7 -- I'm not sure what one she's saying is equal to what.

8 THE COURT: Okay. You want to know what is a Court's
9 exhibit.

10 MR. ARCHER: Yeah. What number is the Court's exhibit
11 and what is her -- the -- what is her number for the same
12 exhibit.

13 THE COURT: Okay. For the ones she just did, or the
14 ones she's beginning to speak about?

15 Q The one she just started speaking about.

16 THE COURT: Speaking about. Okay.

17 A Okay. This is State Exhibit No. 27 ---

18 MR. ARCHER: Uh-huh.

19 A --- and my item No. 25.

20 MR. ARCHER: Okay.

21 A And that is the item that a mixture of at least three
22 individuals were on that particular swab. And the results
23 were that Dervick Parker and the individuals that were
24 found on 19, 20, and 21 could not be excluded as
25 contributors to this mixture.

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1 Q What about the other two, Quinntavious Davis and
2 Donnell Campbell? Could they be included or excluded on
3 that item?

4 A (Pause as witness reads her report.) They are
5 excluded.

6 Q Okay. So they couldn't have been -- that couldn't
7 have been their DNA on that then. Is that what you're
8 saying?

9 A That's correct. I excluded them.

10 Q Okay. And as to the others, 20 through -- 20, 21, 22
11 -- these are State's numbers -- 24 and 25, you could not
12 include or exclude anybody, or --

13 A No, I could not.

14 Q There was not enough for comparison?

15 A Not enough information there to -- to give you a
16 conclusive results.

17 Q Okay. So the bottom line is State's 27, which is your
18 item 25, that is Dervick Parker's DNA on that, in one in 22
19 trillion.

20 A My item No. 24.

21 Q Twenty-four. I'm sorry.

22 A Uh-huh.

23 Q State's 26, your item 24. Okay?

24 And then State's 27, your item 25, he just can --
25 can't be excluded; is that correct?

1 A That's correct.

2 Q And there's no numerical value on that; is that right?

3 A No, there's not.

4 Q Okay. So, let me ask you this about DNA typing: In
5 your experience, in the years that you've worked at it, has
6 there ever been two individuals that matched DNA?

7 A Only identical twins.

8 Q Only identical twins. And that's because they share
9 the same egg; is that correct?

10 A That's correct.

11 Q But other unrelated individuals, has there ever been a
12 match in all the DNA testing at all?

13 A Not in my time doing DNA.

14 Q Now, let me go back a little bit to that one in 22
15 trillion figure. How do you arrive at that number?

16 A We look at 16 different areas on a chromosome, and
17 each one of those areas carry a certain value with them, as
18 being able to see in a particular population. And each one
19 of those areas, we take that statistical value from each
20 area, and we multiply them against each other, and come up
21 with what the final value is. In this case, it's 2.2
22 trillion.

23 Q Okay. So correct me if I'm wrong, if you find -- if
24 you find that a -- a loci matches a particular individual
25 and that particular loci or that characteristic of that

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1 loci occurs one in 20, that's -- that's -- that's
2 statistical for that loci, correct?

3 A For that locus, yes.

4 Q And then for the next loci, you find the same thing,
5 if they match; and that value is one in 100, correct? You
6 take one in 20 times one in 100 and you get one in 2,000;
7 is that correct?

8 A Yes.

9 Q Okay. That's how you multiply out?

10 A That's correct.

11 Q How many loci did Dervick Parker match on that
12 particular item, your item 24, State's item 26?

13 A I tested him at 16 loci. But with it being a small
14 quantity of DNA, all of the loci did not give a DNA
15 profile. So, I have 12 out of 16 that I was able to use to
16 generate the statistical value that was applied to this
17 particular DNA profile.

18 Q And based on your -- your experience and your
19 analysis, that's his DNA?

20 A Yes. As I said in -- the very first thing you do when
21 you do your comparison is to check to see if there is a
22 match between evidence and the standard. If there is a
23 match, then you -- the next step is to go to generating a
24 statistical value for that DNA profile.

25 Q Let me ask you a couple more questions. No. 1, the

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1 standards that you used of the three individuals, did you -
2 - when they arrived at SLED or when they arrived in your
3 hands, did you examine to see if they were packaged
4 correctly?

5 A Yes, I did.

6 Q And were they?

7 A Yes, they were.

8 Q That's State's 28 to 29 and 30? Each -- each of those
9 was packaged correctly?

10 A Yes.

11 Q And just for informational purposes, let me show you
12 again what State's 26, your item 24 -- which is the match -
13 - could you read the label, where that came from on that
14 label?

15 A It says (as read): "Cylinder release for the Rossi.
16 One" -- is that one? -- "38," and the person's initial who
17 took the swab.

18 Q Okay.

19 MR. BELL: One moment.

20 THE COURT: All right.

21 MR. BELL: Thank you, Agent Gallman. Please answer
22 any questions Mr. Archer has.

23 THE COURT: Cross-examination?

24 CROSS-EXAMINATION BY MR. ARCHER:

25 Q Yeah. I'm just a little confused and I want to make

CROSS-EXAMINATION BY MR. ARCHER - LILLY GALLMAN

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1 sure that I got basically what you're saying here.

2 Obviously, to start, you take three known samples.

3 Okay. Like a known sample from Dervick Parker, a known

4 sample from Donnell Campbell, and one from Quinntavious

5 Davis. And that's sort of a starting point, right?

6 A Well, in this particular case, the evidence came to me
7 first, and I already developed the DNA profile from the
8 evidence.

9 Q Uh-huh.

10 A So, when the standards were submitted, I just had to
11 develop a DNA profile from them and then compare it to the
12 evidence.

13 Q Right. Okay. Now, when you -- when you -- so, you'd
14 already analyzed the swabs, or whatever they were, and
15 gotten some sort of profile, good or bad, from them.

16 A That's correct.

17 Q Okay. Now, when you do that -- we're all corrupted by
18 "CSI Miami" and "CSI New York" and "CSI." Okay.

19 At that point, you got a bunch of unknown samples of
20 DNA, right? You don't know where they go to.

21 A That's correct.

22 Q Okay. Can you feed them into the computer, into the
23 national database, and have it draw a picture of who it
24 belongs to if they're in there, like they do on TV?

25 A No. That's TV.

1 Q That's TV. That's what I figured.

2 Is there any way to take an unknown sample and just
3 match it against large numbers of people to see who it
4 belongs to? Is there any system for that in this country?

5 A The national database, it is.

6 Q Okay. So, if you got a certain profile, you can
7 submit it to the national database and find out if anything
8 matches, or maybe find some close relatives; is that
9 correct?

10 A Yes. If you have enough information there.

11 Q Oh, yeah. Did you have enough information from any of
12 the samples you collected to submit it to the national
13 database?

14 A (Pause as the witness looks over her report.) The only
15 one I could have done that with would have been my item No.
16 24.

17 Q Now ---

18 A The others did not give me enough information.

19 Q Okay. Twenty-four you find three different sets of
20 DNA; is that correct?

21 A No. My item No. 25 is like that.

22 Q That's 24. What's 24? Twenty-four --

23 A It's from the cylinder release.

24 Q Well, see, that's where I'm confused, because I had
25 written down "insufficient." And I'm probably getting

CROSS-EXAMINATION BY MR. ARCHER - LILLY GALLMAN

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1 confused between the State's number and your number. What
2 did you find on 24?

3 A Okay. My item No. 24?

4 Q Your 24.

5 A Okay. That's the partial DNA profile that matched
6 Dervick L. Parker.

7 Q Okay. Okay. The partial that matches Dervick Parker,
8 and it came from what sort of item or thing?

9 A It's from the Rossi, from the cylinder release.

10 Q The revolver.

11 A Yes.

12 Q Okay. Now, on one of these things, if I understand
13 you correctly, you found a mixture of three different sets
14 of DNA; is that correct?

15 A A mixture of at least three individuals.

16 Q At least three individuals. Were you able to match
17 any one of those individuals to Dervick Parker?

18 A I could not exclude him from that mixture, based on
19 the information that was there.

20 Q Okay. Do you have any way -- and does that come off
21 the Rossi revolver?

22 A I don't know.

23 Q Look at -- you will need to look at the piece of
24 evidence. Is this it here? I'm not sure.

25 (Sotto voce discussion between Mr. Bell and Mr. Archer.)

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- 1 A It says, "Swab from checkering on handle." But I
2 don't know which gun it was.
- 3 Q You don't know which gun?
- 4 A No.
- 5 Q Would looking at these help you? (Hands packages to
6 the witness.)
- 7 A Yes, please.
- 8 Q That's all I can find down there.
- 9 A It's from the Rossi.
- 10 Q It's from the Rossi. So somewhere on that Rossi --
11 you could tell us at least that three different people
12 handled that gun; is that right?
- 13 A They -- yes.
- 14 Q You can't necessarily say who, but you can say three
15 different people. And you cannot exclude one of them being
16 Dervick.
- 17 A That's correct.
- 18 Q Okay. Now, is the fact -- are you able to -- when
19 you've got multiple DNA that overlaps, is there any way to
20 separate it out? To say this part of it came from this
21 person, this part of it came from this person, and this
22 part of it came from some other person?
- 23 A No. You can't, once it's a mixture ---
- 24 Q Once ---
- 25 A --- like that. You can only look at the information

CROSS-EXAMINATION BY MR. ARCHER - LILLY GALLMAN

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1 that was generated, and make a determination of whether
2 someone could be included or excluded from that mixture.

3 Q Okay. So, I mean -- but you can tell part of the
4 mixture may belong to -- I'm just trying to figure out how
5 you say you can't -- you say you can't exclude Dervick,
6 right? Is that all you're saying?

7 A Yes. What I do, I look at each locus -- each locus
8 individually.

9 Q Uh-huh.

10 A And see if -- whose information is present or not
11 present at that area.

12 Q Uh-huh.

13 A If it is, I cannot exclude that person.

14 Q So -- okay. So basically, with that sample, you're
15 able to see enough to tell that three different people
16 deposited DNA there. But probably, even if you had that
17 DNA, you -- you'd only be able to say, "I can't exclude
18 this person. I cannot exclude that person, or I cannot
19 exclude person No. 3."

20 A I -- I would be able to say whether I could include
21 them or exclude them.

22 Q Okay. Okay. And so far, not -- has been submitted to
23 you to compare it against on that multiple sample, so --
24 for you to say other than Dervick. But you can include
25 him.

- 1 A Repeat that, please. I did not understand what you
2 said.
- 3 Q I'm not sure I understand what I'm asking you. In
4 other words, you can say -- you can say, "I cannot exclude
5 Dervick," because you had his sample.
- 6 A Yes. And I also had Mr. Campbell and also Mr. Davis'
7 sample.
- 8 Q Okay.
- 9 A I had excluded them.
- 10 Q You excluded them.
- 11 A Yes.
- 12 Q Right. So they didn't handle that gun. You know
13 that.
- 14 A There -- on that particular sample ---
- 15 Q On that particular sample.
- 16 A --- there DNA was not present.
- 17 Q I gotcha. So -- so, but -- so, at this point, you can
18 say, "It might have been Dervick Parker, and I don't know
19 who else the other two belong to." That's what it would
20 come down to; is that right?
- 21 A No. What I'm saying is that I could not exclude him
22 as being a contributor to that sample.
- 23 Q Okay. Okey doke. Maybe yes; maybe no. We got -- of
24 the three, we've got one person it could be maybe yes or
25 maybe no.

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1 A There's no "maybe no." There's "I couldn't exclude
2 him. If there's a "no," then I would say "I could exclude
3 him."

4 Q Okay. Okey doke. All right. But as respect to the
5 other two donors, you just don't have anything; is that
6 right?

7 A In respect to the other two, I excluded them as being
8 contributor to -- contributors to that sample.

9 Q The other two, meaning Davis and Parker. Would you be
10 able, looking at the ---

11 A No. Davis and Campbell.

12 Q Davis and Campbell. You're right.

13 With respect to the - the two unidentified DNA's,
14 could you look at them and tell whether they were close
15 relatives or not?

16 A (Pause as witness looks through her notes.) No. I
17 don't have enough information to do that.

18 Q Okay. So, whether you're able to do that or not, it
19 depends on how much information you've got, right?

20 A That's correct.

21 Q Okey-dokey. So, with respect to that particular
22 sample, all you're able to say is more than one person
23 handled that gun, and they were not Donnell Campbell and
24 Quinntavious Davis.

25 A What -- exactly. I can say that, and I also can say

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1 that Mr. Parker could not be excluded.

2 Q Right. So Mr. Parker may be one, but those two others
3 we don't know. But we know it couldn't have been Mr. -- we
4 know it could not have been Mr. Davis or Mr. Campbell.

5 A Yes. That's correct. I excluded them as being
6 contributor to that sample.

7 Q Okay. Did you find that with any of the other samples
8 that you got in? That you had multiple DNA?

9 A On the others, I could not -- I'll just give you my
10 item No. 19, 20, and 21.

11 Q Uh-huh.

12 A They weren't suitable for, of course, entry to check
13 and see whose possible DNA it was. And item -- my item No.
14 22, it was insufficient for reliable interpretation. So, I
15 could not draw a conclusion from that.

16 Q So the first three, you couldn't figure -- you can't
17 say anything about one; you could -- had some information,
18 but not enough to render an opinion. Is that what you're
19 trying to tell us?

20 A I had one that matched Mr. Parker.

21 Q Uh-huh.

22 A And I had one that was a mixture where I could not
23 exclude him, but I excluded Mr. Davis and Mr. Campbell.

24 Q Right.

25 A And the others, I did not get enough information to

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1 draw a conclusion with.

2 Q Okay. That's what I'm looking for. So, one you
3 matched; one you couldn't exclude; and all the rest of
4 them, you just didn't have enough information to match or
5 to not match. Is that what you're saying? I'm trying to
6 get it down in my language.

7 A That's correct.

8 Q I know you -- you have to speak in technical language,
9 but I want to get it down to ...

10 The rest of the samples, you just didn't have enough
11 to work with.

12 A That's correct.

13 Q Good. That's what we need. No further questions.

14 THE COURT: All right. Re-direct?

15 MR. BELL: Nothing further, Your Honor. We ask that
16 Ms. Gallman be excused.

17 THE COURT: Very well. You are free to go.

18 (The witness steps down from the stand.)

19 THE COURT: Call your next witness, please.

20 MR. BELL: May I check with the court reporter?

21 THE COURT: Certainly.

22 (Sotto voce discussion between Mr. Bell
23 and the court reporter.)

24 MR. BELL: Your Honor, at this point, we wouldn't have
25 any other witnesses today, and we may not have any

1 witnesses tomorrow. But I just want to make sure. And we
2 may be resting first thing in the morning.

3 THE COURT: Very well. All right. Ladies and
4 gentlemen, you have now heard the witnesses and received
5 the evidence which you will for today. And I do need to
6 give you some instruction, because shortly you will be
7 going home, and believe it or not, the curiosity yet is
8 going to be heightened.

9 Remember, don't you take any upset; you put it on the
10 Judge, and tell whomever is curious that you cannot discuss
11 this matter or allow anyone to discuss it with you. Put it
12 on the Judge, remember.

13 Now, ladies and gentlemen, do not read anything or
14 listen to anything about this case in the newspaper. Do
15 not listen to anything on the television or the radio, and
16 do not read anything or listen to anything on the internet.

17 No Columbo. Do not do any sort of research. Don't go
18 on the internet trying to research topics. You must
19 receive all of the information from which you will make up
20 your mind here in court, while court is in session. So no
21 -- y'all are too young to remember Columbo. Maybe one or
22 two of you know who Columbo is. No Columbo, please.

23 Now, ladies and gentlemen, we are going to reconvene
24 in the morning at 9:30, at 9:30. So please have a
25 wonderful evening, and I so look forward to seeing you in

1 the morning.

2 (The jury exits at 4:59 p.m.)

3 (Sotto voce discussion between Mr. Bell
4 and the court reporter.)

5 THE COURT: All right. Anything further from -- from
6 the State for this evening?

7 MR. BELL: Nothing from the State, Your Honor.

8 MR. ARCHER: Nothing at this time, Your Honor.

9 THE COURT: I gather you all do not have any requested
10 charges at this point that you have submitted. If you do,
11 I'd appreciate having them. I have my standard charge.

12 I'm not telling you that you must have them, because I
13 certainly prefer my own, and I should have them all. And
14 quite frankly, I think I do have them all. But I didn't
15 want to -- of course -- chill your desire to submit any
16 requested charges.

17 We have put together a charge; I'm going to review it
18 over the evening and will be happy to share it with you all
19 tomorrow. Okay?

20 Very well. Thank you. Have a good evening.

21 MR. BELL: You want to inquire of the defendant at
22 this time?

23 THE COURT: Yeah. I can do that. Yeah. I do want to
24 do that. I did want to do that. Well, thank you. Thank
25 you for reminding me of that.

(Sotto voce discussion between the Court
and the law clerk.)

THE COURT: Let me ask you -- let me ask really, Mr. Archer, are you satisfied that you know of any record that Mr. Parker might have? I guess that's the first thing that I think I want to be sure you know. Do you know what I mean?

MR. ARCHER: Know of any -- what do you mean?

THE COURT: Record. Any record.

MR. ARCHER: Excuse me?

THE COURT: I just want to be sure that you are aware. I'm -- I don't mean to suggest that Mr. Parker -- I don't know if he does or not. But my question to you is: Are you satisfied that you are aware of whatever his record is -- if he has one? Because you've got to have that in order to advise him ---

MR. ARCHER: Right.

THE COURT: --- one of the elements about testifying. That's ---

MR. BELL: Your Honor, I'll short-circuit that. I will tell -- I will state to the Court that the State would not plan to question Mr. Parker if he were to testify on any prior convictions.

THE COURT: All right. And you say that with an eye towards counsel relying on that. In other words, you would

1 intend for Mr. Archer to rely on the fact that you would
2 not be intending to cross-examine Mr. Parker about any
3 prior record.

4 MR. BELL: That is correct, Your Honor.

5 THE COURT: All right. And --

6 MR. ARCHER: And I have one question since we're going
7 over this.

8 THE COURT: Yes?

9 MR. ARCHER: In the beginning, I made a motion to
10 suppress a statement. Mr. Bell indicated he did not intend
11 to use that statement, though, right?

12 THE COURT: That's my memory.

13 MR. ARCHER: And, Your Honor, putting my client on the
14 stand, and he's going to testify, on one point, different
15 from that prior statement -- what he said in the prior
16 statement was not true. All right? Which was that the
17 person out there was Donnell Campbell, as opposed to
18 Quinntavious Davis. He's going to testify that it was
19 Quinntavious Davis.

20 If -- if -- and I -- I want to know if -- if he -- if
21 he testifies truthfully that it was Quinntavious Davis,
22 does Mr. Bell intend to impeach him with the prior
23 statement where he said ---

24 THE COURT: I'm with you.

25 MR. ARCHER: --- it was Donnell Campbell? If he does,

1 how I approach that will be different.

2 THE COURT: I understand.

3 MR. BELL: I think the answer to that would be "most
4 certainly."

5 THE COURT: "Most certainly" would be the response.

6 MR. BELL: I think what I said at the beginning of the
7 case is I was not going to use his prior statement in the
8 State's case in chief.

9 MR. ARCHER: All right. Well, that tells me what I
10 need to know.

11 THE COURT: Very well. Very well. Thank you.

12 MR. ARCHER: Okay.

13 THE COURT: All right. Now -- now, I would propose,
14 at this point, to just discuss with Mr. Parker his rights
15 regarding testimony.

16 Mr. Archer, any objection to that at this point?

17 MR. ARCHER: No, Your Honor. I would request that you
18 do talk with him.

19 THE COURT: Very well. Now, Mr. Parker, I want you to
20 stand and raise your right hand for me.

21 DERVICK LAMONT PARKER, having been
22 first duly sworn, testifies as follows:

23 THE COURT: And Mr. Parker, you can sit down.

24 Now, Mr. Parker, at this time, I'm going to explain to
25 you certain of your rights.

1 DEFENDANT: Yes, ma'am.

2 THE COURT: If you do not understand anything that I
3 say, please let me know. Okay?

4 DEFENDANT: Yes, ma'am.

5 THE COURT: You know, Mr. Parker, there are many ways
6 to explain any one thing. And so it is very, very
7 important to me that you understand what I'm talking about.
8 Okay?

9 DEFENDANT: Yes, ma'am.

10 THE COURT: Thank you, Mr. Parker. Now, we've now
11 gotten very close to the stage of the trial where you may
12 present your defense.

13 As you know, right before the jury left this evening,
14 Mr. Bell said we may be finished -- we may have finished
15 our case and we may rest, but I want to rest in the
16 morning.

17 That's what happens when a lawyer gets to the end of
18 the day, and they worry they're going to have a flash of
19 brilliance or something over the night or have forgotten
20 something. And they -- they want to -- they save for
21 themselves the ability to do that the next morning.

22 But we truly, I believe, are coming very close to the
23 end -- if we have not come to the end -- of the State's
24 case. Do you understand that?

25 DEFENDANT: Yes, ma'am.

1 THE COURT: All right. Obviously, when we reach the
2 end of the State's case, then you have your opportunity to
3 present anything you wish to, in your -- to present your
4 defense, right?

5 DEFENDANT: Yes, ma'am.

6 THE COURT: Okay. Now, Mr. Parker, you have the
7 right, certainly, to testify, and you have the right not to
8 testify. And that's what I'm going to be talking to you
9 about.

10 Your right not to testify, of course, comes from your
11 constitutional right to claim the Fifth Amendment. And the
12 Fifth Amendment to the Constitution of the United States
13 says, in part, that (as read): "No person shall be
14 compelled in any criminal case to be a witness against
15 himself."

16 It says in the constitution "himself." I always like
17 to add "or herself."

18 Now, this means you cannot be required to testify in
19 this case. You have the right -- you have the right to
20 testify on your own behalf, but no one can make you testify
21 in this case.

22 DEFENDANT: Yes, ma'am.

23 THE COURT: This is a personal right. Your Fifth
24 Amendment right is a personal right. Meaning, Mr. Parker,
25 it belongs to you, and no one can waive your Fifth

1 Amendment right except you.

2 If you decide to testify, you will be subject to the
3 same rules that govern other witnesses, and you may be
4 examined and cross-examined on any relevant issue in this
5 case.

6 DEFENDANT: Yes, ma'am.

7 THE COURT: Now, I understand, Mr. Parker, based upon
8 the representations of Mr. Bell, that Mr. Bell does not
9 intend -- should you choose to testify -- to cross-examine
10 you about any prior convictions.

11 DEFENDANT: Yes, ma'am.

12 THE COURT: Okay. You understand that?

13 DEFENDANT: Yes, ma'am.

14 THE COURT: Okay. You need to have many elements go
15 into your decision. And you can rely on that, Mr. Parker.
16 Okay?

17 DEFENDANT: (No audible response.)

18 THE COURT: Now, if you decide to testify, the
19 decision -- your decision -- must be made freely and
20 voluntarily and intelligently, with the knowledge of the
21 protections given to you by the Fifth Amendment, and the
22 consequences of your decision to testify.

23 In other words, you've got to know -- you've got to
24 know both sides. You've got to know your options.

25 You have the right to take the Fifth Amendment. And

1 no one can waive your Fifth Amendment rights but you. But
2 you have the right to testify, if you choose to testify.
3 It's just important that you understand that if you
4 testify, that you would be subject to the same rules of
5 evidence as would any other witness; except based upon the
6 representation that Mr. Bell has made, you would not be
7 cross-examined about any prior convictions. Okay?

8 DEFENDANT: Yes, ma'am.

9 THE COURT: All right. Now, you understand I don't
10 know if you have them or not. I don't need to know,
11 because of Mr. Bell's representation, but I want you to
12 know that you can -- you can rely on that.

13 Now, if you decide not to testify, I think it is
14 important that you know that I would instruct our jury that
15 they cannot give the fact that you chose not to testify any
16 consideration whatsoever. And that there is to be
17 absolutely no prejudice to you because you did not testify.

18 In fact, Mr. Parker, my instruction tells the jury
19 that they are not even allowed to discuss the fact that you
20 did not testify in the jury room, in the event that you
21 chose to take the Fifth Amendment.

22 In other words, I do two things: I tell them that you
23 cannot be prejudiced by that, and they can't even talk
24 about it in the jury room. Okay?

25 DEFENDANT: Yes, ma'am.

1 THE COURT: Okay. Now -- and the reason for that
2 makes perfect sense, Mr. Parker, because, you see, you
3 don't have the burden of proving yourself not guilty. The
4 burden is and remains on the State of South Carolina to
5 prove you guilty beyond a reasonable doubt. That's the
6 reason for that.

7 That's the reason that you tell the jury, "You know,
8 you can't hold this against a person if they don't testify,
9 because that's their right. They don't have a burden to
10 prove anything. The burden is and remains on the State of
11 South Carolina."

12 Now, of course, you know, it's very important, Mr.
13 Parker, that you understand that it is certainly reasonable
14 for you to consult with family, very trusted friends, and
15 perhaps most importantly, your lawyer. But you must
16 understand, Mr. Parker, that at the end of the day, so to
17 speak, the decision is yours.

18 You must consult those whom you trust, those who have
19 judgment -- I urge you to consult and discuss, of course,
20 with your lawyer, and -- but I want you to understand, Mr.
21 Parker, that when it's all said and done, the decision is
22 your decision.

23 Now, do you understand what I've said to you this
24 afternoon?

25 DEFENDANT: Yes, ma'am.

1 THE COURT: Do you have any questions at all ---

2 DEFENDANT: No, ma'am.

3 THE COURT: --- for me about what we talked about?

4 DEFENDANT: No, ma'am.

5 THE COURT: And you feel like you understand these
6 issues?

7 DEFENDANT: Yes, ma'am.

8 THE COURT: I think you do, too, Mr. Parker. You've
9 given me excellent attention, and I appreciate that so very
10 much.

11 Now, do this for me though, Mr. Parker. Over the
12 evening, if you happen to think of a question, if you will
13 just let Mr. Archer know that in the morning, he will say,
14 "Okay, Judge. Mr. Parker thought about what y'all talked
15 about and he does have a question." Okay?

16 And he will let me know and then I'll be happy to
17 answer that question for you. Okay?

18 DEFENDANT: Yes, ma'am.

19 THE COURT: Just help me, because I probably won't --
20 I know I won't ask you again, because I'll think okay, now
21 we've done this. If you come up with a question that you
22 want me to try to answer, you feel very, very free to ask
23 Mr. Archer and he'll let me know that in the morning.
24 Okay?

25 DEFENDANT: Yes, ma'am.

1 THE COURT: All right. Very well. Now -- now, Mr.
2 Parker, let me tell you the procedure oft times is that I
3 ask a defendant at this point if they choose to testify or
4 not. I'm not going to ask you that now, because it's no
5 need to ask you that now, because the time for you to
6 testify or not testify hadn't come.

7 So, what I'm going to do is I'm just going to look to
8 Mr. Archer to tell me about your decision, and if we need
9 to talk further, we will. Okay?

10 DEFENDANT: Yes, ma'am.

11 THE COURT: Thank you, Mr. Parker.

12 All right. We got -- anybody got a Hall's
13 Mentholyptus ---

14 MR. ARCHER: Oh, yeah.

15 THE COURT: --- for Mr. Archer? We got a whole stack
16 of them for you.

17 All right. Now, anything further from the State
18 before we conclude this evening?

19 MR. BELL: Nothing from the State, Your Honor.

20 THE COURT: Okay. How about from the defense?

21 MR. ARCHER: Nothing from the defense.

22 THE COURT: I'll see you all in the morning. I'm
23 going to try to -- I'm going to try to get here a little
24 bit early, because I really would like -- about 9:15 --
25 because if you're going to rest, I'd love -- instead of

1 having you come out and rest, and then send the jury right
2 back -- if you're going to rest in the morning, I would
3 like to go ahead and argue the motions before they come
4 out. So I'm going to try to get here about 9:15. Okay?

5 MR. ARCHER: Okay.

6 MR. BELL: Okay.

7 THE COURT: That means he's -- you know, he's got to
8 get the coffee on the road in the morning. Thank you all.

9 (Off the record at 5:14 p.m.)

10 DAY FOUR

11 (On the record at 9:35 a.m.)

12 THE COURT: All right. Now, Mr. Bell, will you have
13 any additional witnesses on behalf of the State today?

14 MR. BELL: No, Your Honor. And I've checked with the
15 -- the court reporter. I believe that all 40 -- what is
16 it?

17 THE COURT REPORTER: Forty-four.

18 MR. BELL: Forty-four State's exhibits are in
19 evidence. Just in case, I would move -- make a motion to
20 move all State's Exhibits into evidence at this time, just
21 to make sure ---

22 THE COURT: Very well.

23 MR. BELL: --- that everything's in.

24 THE COURT: In other words, one -- the ones that you
25 offered, you intended for them all to be admitted into

1 evidence?

2 MR. BELL: That is correct, Your Honor.

3 THE COURT: All right. Very well.

4 MR. ARCHER: I do the same thing. There are ---

5 THE COURT: Just to be certain.

6 MR. ARCHER: --- two or three I identified earlier
7 that I marked, but did not offer. But ...

8 THE COURT: Very well. Thank you. Thank you so much.

9 MR. BELL: Your Honor, also for the purposes of the
10 record -- I thought about this last night. And I just want
11 to put this on the record as to State's 3, which was the
12 recording that we played fairly early in the trial.

13 THE COURT: Yes.

14 MR. BELL: It's on a CD that has it's own program to
15 play, it's own internal program to play. So, it can be
16 played on any computer. It has several selections on it,
17 and I just wanted to -- for the record, that we played from
18 Session 2 on that. It's a program called "Firebird."

19 And if you open up and it has selections, we played
20 from Sessions 2, which is marked further as from February
21 28, 2008, a start time of 22:53:17, to an end time of
22 23:11:31. And we specifically played the portion starting
23 at 22:55:50, and ended approximately 22:56:43.

24 Just so that can be there for reference.

25 THE COURT: Let me -- very well. Thank you so much.

1 I would not send the disk in, if there are other
2 things on the disk, with the jury. I think that it is
3 appropriate -- and I hope you all will help me remember to
4 tell the jury -- that in the event that they need to hear
5 the recording, to let us know. And we will just simply
6 have them come here, and assist them in that regard because
7 of the particularities of the disk.

8 MR. ARCHER: I know what he's doing. During the
9 break, sometime before we get to argument with the jury,
10 I'd like to listen to the part again where he's talking to
11 the defendants. My client noticed something that I didn't
12 notice, and I want to listen to make sure it's on there.

13 THE COURT: Okay. Very well. Thank you. Thank you,
14 Mr. Archer.

15 You -- I believe you'll have time. I need to notify
16 you all that at eleven o'clock, I'm going to have to take a
17 -- a break, because we have our building committee meeting
18 for our courthouse. And today is important. It actually
19 starts at ten.

20 MR. ARCHER: Uh-huh.

21 THE COURT: But I told them I thought I could break
22 around eleven, and I'll go there and come back just as --
23 I've got to be present for one portion of that meeting, and
24 then I will return.

25 Now -- so, there will not be any additional witnesses?

1 MR. BELL: No, Your Honor.

2 THE COURT: And the State will -- will you rest then,
3 off the record?

4 MR. BELL: Yes, the State would rest. And we can rest
5 on the record as well.

6 THE COURT: Of course. I think you should. But with
7 regards to motions, do you have any motions at this point?

8 MR. BELL: The State has no motions at this point.

9 THE COURT: Good.

10 Mr. Archer?

11 MR. ARCHER: Well, I can state -- I can argue this
12 motion. I have the standard motion: Motion for directed
13 verdict ---

14 THE COURT: Of course you do.

15 MR. ARCHER: --- based on self-defense and haven't
16 been proved by the State -- "duh, duh, duh, duh, duh, duh,
17 duh, duh, duh, dah." Preserve my ---

18 THE COURT: Thank you. Absolutely, as I would want
19 you to do. And I would respectfully deny your motion.

20 MR. ARCHER: Your Honor, I would inform the Court
21 there's a good chance my case will be through by eleven
22 o'clock or shortly thereafter.

23 THE COURT: I -- I -- if in fact it is, then what we
24 will do is we will take a break from eleven to 12:30 --

25 MR. ARCHER: Uh-huh.

1 THE COURT: -- and during that period, I will have a
2 meeting. We will go over the charge. We're adding one
3 more paragraph to the charge on experts that I wanted to
4 add. And then I will give that charge to you. I have
5 included everything depending on how the testimony came
6 down.

7 And then we'll go over some of it --

8 MR. ARCHER: Yes, ma'am.

9 THE COURT: -- will necessarily be ---

10 MR. ARCHER: I will be asking for some lesser included
11 offenses to be charged.

12 THE COURT: All right. Very well. Okay.

13 Now -- well, anything from the State before we bring
14 the jury in?

15 MR. BEJL: Nothing from the State, Your Honor.

16 THE COURT: And let me ask of you, has -- oh. Bless
17 your heart. You better move that thing. You're gonna
18 fall.

19 Mr. Archer, has Mr. Parker made his decision whether
20 or not he wishes to testify?

21 MR. ARCHER: He has Your Honor.

22 THE COURT: Great. Very well.

23 MR. ARCHER: He does wish to testify.

24 THE COURT: Very well. Very well.

25 Well, anything further before we bring the jury out?