Volume I of IV

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Honorable G. Thomas Cooper, Circuit Court Judge

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S.C. SUPREME COURT

TAURUS WATTS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000500

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)

STATE OF SOUTH CAROLINA)
)
PLAINTIFF,)
) 07-GS-40-5913
VS.) 07-GS-40-5914
)
TREMAINE WRAY AND TAURUS WATTS,)
) VOLUME 1
DEFENDANT.)
)
)

OCTOBER 5, 2009
COLUMBIA, SOUTH CAROLINA

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE MICHELLE CHILDS, JUDGE, AND A JURY

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

ATTORNEYS FOR THE STATE:
VANESSA SHIPLEY, ESQUIRE
JOANNA MCDUFFIE, ESQUIRE

ATTORNEY FOR DEFENDANT WRAY
JACK SWERLING, ESQUIRE
ARIE BAX, ESQUIRE

ATTORNEY FOR DEFENDANT WATTS
THERESA JOHNS, ESQUIRE

HILDA M. JORDAN, CVR
CIRCUIT COURT REPORTER

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THE COURT: I'm ready to proceed. Go ahead.

MS. MCDUFFIE: Your Honor, they are transporting the defendants up one at a time, so it may take a moment.

THE COURT: Okay. That's fine. And if somebody sneaks in we'll deal with that, but I told them I need full attention to you-all. They'll just have to wait for breaks and all of that.

As we are waiting, any objections to voir dire on either side?

MR. SWERLING: We have none, Your Honor.

MS. MCDUFFIE: We have none.

THE COURT: Okay.

MR. SWERLING: I don't know where my co-counsel is.

THE COURT: Okay.

MS. MCDUFFIE: And, Your Honor, we don't have the strike sheets yet.

THE COURT: Oh, okay. All right.

You all can come in now, if you can catch me, because I've had delays this morning. I need to give them my full attention, but if anybody can catch me I'm happy to hear you.

Mr. Truett, you're aware that we're waiting on more to be added in --

MR. TRUETT: Yes, ma'am.

THE COURT: All right.

MS. SHIPLEY: At this time, the state calls the case against Tremaine Wray and Taurus Watts. Both are indicted for the charge of murder. Taurus Watts indictment number of 2007-GS-5913. Tremaine Wray's indictment number is 2007-GS-40-5914. Mr. Watts is represented by Teresa Johns, and Mr. Wray is represented by Jack Swerling. The state is represented by the Vanessa Shipley, myself, and Joanna McDuffie.

THE COURT: Okay. And are we ready to proceed to jury selection, all parties?

MS. MCDUFFIE: We just got handed --

MR. BAX: Your Honor, the defendant is coming in right now.

THE COURT: I apologize.

MS. MCDUFFIE: Your Honor, we just got Ms. Johns' voir dire, if we could look over it.

THE COURT: Sure, go ahead.

(Pause.)

THE COURT: Okay, let the record reflect that both defendants are in the courtroom.

MS. SHIPLEY: Should I recall the state, Your Honor.

THE COURT: That will be fine.

MS. SHIPLEY: Thank you, Your Honor.

Your Honor, at this time, the state calls the case against Taurus Watts and Tremaine Wray. As I indicated earlier, Your Honor, the defendants are both indicted for murder. The Taurus Watts indictment number is 07-GS-40-5913, and Tremaine Wray's indictment also for murder under 2007-GS-40-5914.

THE COURT: Are the parties ready to proceed to jury selection?

MR. SWERLING: Yes, Your Honor.

MS. MCDUFFIE: In terms of voir dire handed up by Ms. Johns, the state would object to number two, number three, number seven, numbers 10, 11, 13 and 15.

THE COURT: Okay. Let me review those.

(Pause.)

THE COURT: Okay, what's wrong with number 11?

MS. MCDUFFIE: Your Honor, we only object to the wording of regular patient. I don't think that --

THE COURT: Patient -- okay. All right, with that -- other than that objection is that okay?

MS. MCDUFFIE: Yes, Your Honor.

THE COURT: Okay.

As to questions number three and number seven and number 10 and number 15 -- I'm categorizing. Those I would submit would be properly as jury charges as opposed to asking that at this point in time, so I am inclined to not

ask those particular questions.

MS. JOHNS: Your Honor, do you give a preliminary charge to the jurors with regards to -- at the beginning of the case with presumption of innocence?

THE COURT: I will state some general language about that this case has been brought forth for trial based upon an indictment. An indictment does not indicate that a defendant is guilty or innocence, but just is a formal document by which this case is brought to trial. The defendants have exercised their constitutional rights to a jury trial. It's the states burden to prove them guilty.

MS. JOHNS: That is the charge that --

THE COURT: Sure.

MS. JOHNS: -- prior to the start --

THE COURT: Right.

MS. JOHNS: And that should cover all these, Your Honor. THE COURT: Okay. Okay, all right. So with that notation of the Court on the preliminary charge, I understand Ms. Johns to be withdrawing the request that you requested

MS. MCDUFFIE: You Honor, we still object to question number 13. I believe it's --

THE COURT: I'm sorry. I missed one. Okay.

MS. MCDUFFIE: -- State v. Adams. That is not proper.

THE COURT: Okay. I would agree with that.

MS. MCDUFFIE: And Your Honor, finally, on number two. I don't know if you said that or not, but I believe that's also covered in your charge.

THE COURT: Okay. That's number two. That is also in that category so that is covered in the charge, as well.

So I believe the only one that I actually have to rule on is number 13, is that correct?

MS. MCDUFFIE: That is correct, Your Honor.

THE COURT: Okay. So I will agree with that.

Okay, and then I understand that the state has no objection to defense's voir dire and defense has no objection to the state's voir dire, and that would include both defendants; is that correct?

MR. SWERLING: Yes, Your Honor.

MS. JOHNS: Yes, Your Honor.

MS. MCDUFFIE: Yes, Your Honor.

THE COURT: Okay. All right.

Are we now ready to proceed with jury selection?

MS. SHIPLEY: Yes, Your Honor.

THE COURT: And all parties have gotten their strike sheet?

MR. SWERLING: Yes. You have my voir dire and the witness list. We crossed out the ones that -- I just want

to be sure you have that one.

THE COURT: Okay. And the state -- I do not have a witness list from you.

MS. MCDUFFIE: Your Honor, it's on the bench with our voir dire.

THE COURT: Okay. Let me just make sure I have it. Okay got it. Oh, yeah, I remember seeing this.

Okay, just so you know, because this is a criminal proceeding all jurors will be referred to by number. No names will be mentioned. The clerks will monitor except when the jurors are asked to stand at the appropriate time, but they would only be indicating their juror numbers. There will be questions that I deem to be appropriate in terms of their responses to be heard outside the jury and, of course, I will invite the attorneys to come over by me with the court reporter and hear those responses. Okay.

MS. JOHNS: Your Honor, there are just a couple more housekeeping matters with regards to this jury. Everybody has electronic devices now. I don't know how Your Honor handles those issues, but I'd like for them to specifically be instructed not to use communication devices even during their lunch break. To either tweet somebody to let them know their status is or what they're doing right now on Facebook or any of those other social networking groups. I do believe that they are collected and then they

are dispersed when they go to lunch and then when they go home. But even overnight, I will ask the Court to charge the jurors not to communicate anything about this case through those networking sites.

Also, Your Honor, it's not going to be a problem, but just out of an abundance of caution I would like for the Court to instruct the staff of the courtroom and anybody that has any direct or indirect dealings with the jurors that are selected, not to discuss the proceeding in any manner with them, whether we're doing motions or we're negotiating a plea, whether we're going to discuss whether or not they're going to get lunch. I mean, those kinds of things can develop into a conversation, and misconstrued, and I just want to make sure that these jurors remain fair and impartial in this case.

THE COURT: Okay. I will so instruct the staff of the court to include the clerk, the court reporter, any of the deputies or anybody else that they are not to have any type of conversation or instructions or conversations with the jurors. I'll also indicate that to the jurors that these persons are not being rude, but that is just to deal with how we will be proceeding. Okay. Are the parties ready to proceed?

MS. SHIPLEY: Yes, ma'am.

MS. JOHNS: Yes, for defendant Watts.

THE COURT: Okay. All right. Jurors please.

(Jury panel members enter courtroom.)

MR. SWERLING: Judge --

THE COURT: Yes?

MR. SWERLING: -- we're going to strike jointly.

THE COURT: Oh, okay.

MR. SWERLING: It will save time, make it easier -- could you instruct the jury as to why we're doing that, instead of individually, we'll do it together.

THE COURT: Oh, okay.

MS. SHIPLEY: And it's ten, ten, and ten for us.

THE COURT: Oh, okay.

(Pause. More jury panel members enter courtroom.)

BAILIFF: All members of the jury panel are present, Your Honor.

THE COURT: Ladies and gentlemen of the jury panel, if you would please direct your attention to me. My name is Michelle Childs. I'm a circuit court judge here in Richland County, and we are about to proceed with a criminal case. You-all have been duly qualified this morning to be in the process of selection for various juries that we have going on in court -- throughout this term of court, this one week until this Friday. There are civil cases and there are criminal cases. We are about to proceed with a criminal case in this matter, and you-all would be asked certain

questions to determine your qualifications to serve on this particular jury.

The state has the case of the State versus Tremaine Wray, as well as the State versus Taurus Watts. Both of these defendants will be tried here today together. They have both been true billed by indictments, and that just means that they have been true billed for murder, but these are indictments only. They are the formal instrument by which this case is brought to trial. It does not mean that they are guilty. They are exercising today their constitutional right to a jury trial, which means that the state has the burden of proving them guilty beyond a reasonable doubt. They are not required to prove themselves innocent. So they are exercising their constitutional right to have you as potential jurors to determine their guilt or innocence during this proceeding.

I'm going to ask you all a series of questions, but before we do so I will have the clerk swear you in for your qualification process at this time.

Madam Clerk.

THE CLERK: Thank you, Your Honor. Ladies and gentlemen of the jury panel, please.

(WHEREUPON, the jury panel was sworn to tell the truth.)

THE COURT: Ladies and gentlemen of the jury, I'm

going to ask that if you have a response to any of the questions that I ask you, please stand in your place and indicate your juror number only. Do not indicate your name for purposes of this proceeding at any time. Indicate your juror number only, and we will have your name on our sheets. You do not need to state your name out loud. Then you can indicate your response.

There may be certain questions that you do not wish to respond to in front of your fellow jurors. I still need to hear your response. So, just raise your hand and direct yourselves to one of the bailiffs and they will then allow you will be invited to come over here with me by the court reporter, and I will invite the attorneys up, the defendants as well as the state, to hear your answers so they will be entitled know what your response will be but it won't be in front of your fellow jurors so as to protect your privacy issues. We are not here to embarrass you at all. We are just here for full information to assist us with the selection process for you to serve as a juror in this particular case.

So I'm ready to proceed now please listen carefully to the various questions I will ask you.

First let me introduce you to the lawyers and their clients. The state is being represented by Ms. Vanessa Shipley and Ms. Joanna McDuffie. They are both employed by

the Richland County Solicitor's Office. Do any of you know either of these persons or have a close personal or social relationship with either of them or have you or have any member of your family been a victim such that they have represented your interest for the state? If so please stand. I need your juror number.

JUROR NO. 18: Number 18.

THE COURT: 18. Okay juror number 18.

JUROR NO: I wouldn't say it's a personal nature, but I think I was her neighbor for a very short period of time.

THE COURT: And which person are you referring to.

JUROR NO. 18: Vanessa Shipley. She doesn't --

MS. SHIPLEY: I don't know her.

THE COURT: Okay.

JUROR NO. 18: A very short time.

THE COURT: Okay. Okay. Would that affect your ability to proceed as a fair and impartial juror in this case.

JUROR NO. 18: I don't think so.

THE COURT: Okay. Thank you for the information. Yes, ma'am?

JUROR NO. 85: Number 85. I met Joanna at a gathering that we were --

THE COURT: Okay. Would that affect your ability

to proceed as a fair and impartial juror in this case?

JUROR NO. 85: No.

THE COURT: Okay. Thank you. Thank you for that information.

Jurors, I would like to introduce you to Tremaine Wray, who is being represented by Jack Swerling and then, also, Mr. Ari Bax. Do any of you know Mr. Tremaine Wray, have a close personal associate relationship with Mr. Tremaine Wray. If so please stand. Okay, do either of you know Jack Swerling or Ari Bax, who are representing Mr. Tremaine Wray. Do you have a close personal or social relationship with him, have you or any member of your immediate family or close friends or family ever been represented by Mr. Swerling's law firm, who is a sole practitioner -- is that still correct?

MR. SWERLING: That is correct.

THE COURT: Okay. And then also Mr. Ari Bax, who works with his wife, Ms. Richardson-Bax?

MR. BAX: That's correct, Your Honor.

THE COURT: Okay. Yes ma'am, you know them?

JUROR NO 66: Yes, ma'am. I know them. This wouldn't affect my ability to serve, but a friend of mine works for Mr. Swerling.

THE COURT: Okay. And you should be fair and impartial in this case.

JUROR NO. 66: Yes.

THE COURT: Okay. All right.

JUROR NO 135: My father was represented by Jack Swerling.

THE COURT: Okay, would that affect your ability to be a fair and impartial juror in this case.

JUROR NO 135: No, ma'am.

THE COURT: Okay. Thank you. All right. Thank you, gentlemen.

We now have Mr. Taurus Watts, who is represented by Teresa Johns. Does anyone on the jury panel know Mr. Taurus Watts or have a close personal or social relationship with him, if so please stand. Juror No. 135 stands.

JUROR NO. 135: Yes, ma'am.

THE COURT: Okay, tell us your relationship?

JUROR NO. 135: He's a real good friend of mine. I'm real close to his family.

THE COURT: Okay. All right, with that affect your ability to proceed as a fair and impartial juror in this case.

JUROR NO. 135: No, ma'am.

THE COURT: Okay. Thank you.

And does anyone know Ms. Teresa Johns, who also practices alone. Do you have a close personal or social relationship with Ms. Teresa Johns or has anyone in your

family or yourself been represented by her law firm for any type of matter. Okay.

All right listen carefully to another series of questions that I have for you. Has any member the jury panel or any member of their family ever been a victim of a crime of violence; if so please stand. Okay, I'm going to ask you to come forward on these.

THE CLERK: Number 44.

(Off the record discussion with Juror No. 44, counsel and the Court.)

THE COURT: Okay. Juror number 44 will remain with us.

THE CLERK: Juror number six.

(Off the record discussion with Juror No. 6, counsel and the Court.)

THE COURT: All right. Juror No. 6, will remain with us.

THE CLERK: Juror number 285.

(Off the record discussion with Juror No. 285, counsel and the Court.)

THE COURT: All right. Juror No. 285 will remain with us.

THE CLERK: Juror No. 192.

(Off the record discussion with Juror No. 192, counsel and the Court.)

THE COURT: All right. Juror No. 192 will remain with us.

THE CLERK: Number 236.

(Off the record discussion with Juror No. 236, counsel and the Court.)

THE COURT: All right. 236 will remain with us.

THE CLERK: Number 247.

(Off the record discussion with Juror 247, counsel and the Court.)

THE COURT: All right. 247 will remain with us.

THE CLERK: Number 232.

(Off the record discussion with Juror 232, counsel and the Court.)

THE COURT: 232 will remain with us.

Just to be sure that I have clarification on this question. Has any member of the jury panel or any member of their immediate families related by blood or marriage or close personal friends or acquaintance of Warren B. Giese, known as Barney Giese, the solicitor or any employee of the Fifth Circuit Solicitor's Office here in Richland County, if so please stand.

All right, I'm now going to give you certain of the witnesses who might be in this case before I proceed to other voir dire questions. Please listen carefully because some of these persons may not actually be physically in the

courtroom, so listen for their names.

Do any of you, and this will be the preference to all these questions, have a close personal or social relationship or know any of these following persons: Investigator Don McRae, Richland County Sheriff's Department. He is president in the courtroom and is standing. Deputy Ray Weldon Gregory, formerly with the Richland County Sheriff's Department. Deputy Brian Galinski, Richland County Sheriffs Department. Deputy James Gore, Richland County Sheriff's Department. Deputy Michael P. Smith, Richland County Sheriff's Department. Investigator Gilbert Gallegos, Richland County Sheriff's Department, and he is present and standing. Sergeant Eric Barnes, Richland County Sheriff's Department. Investigator Heidi Scott, Richland County Sheriff's Department. Investigator Matt Ellis, Richland County Sheriff's apartment.

THE BAILIFF: Your Honor.

THE COURT: I apologize.

Juror number?

JUROR NO. 209: 209.

THE COURT: Okay.

JUROR NO. 209: I have known Matt Ellis for several years, about 15 years, now.

THE COURT: In what capacity?

JUROR NO. 209: Socially, business when he was -- before he was with the Sheriff's Department.

THE COURT: Okay. Would that affect your ability to proceed as a fair and impartial juror in this case?

JUROR NO. 209: No.

THE COURT: Okay, thank you for the information.

Lt. Zane Padgett, Richland County Sheriff's Department. Investigator David Collins --

THE CLERK: Your Honor, there's a juror --

THE COURT: I'm sorry I'm looking down, and I need to look back up.

JUROR NO. 73: Number 73.

THE COURT: Okay, thank you. And your association -- is it with Lt. Zane Padgett or --

JUROR NO. 73: Yes, ma'am. I just know him. We've been friends a long time.

THE COURT: Okay. Will that affect your ability to proceed as a fair and impartial juror in this case?

JUROR NO. 73: No, ma'am.

THE COURT: Okay.

Investigator David Collins, Investigator Patricia Reid-Enzor, Richland County Sheriff's Department. Same with David Collins. Investigator Harold Bouknight, Richland County Sheriff's Department. And the remainder of these persons will be Richland County Sheriff's Department: Lt.

Anna Elsey, Investigator Robert Oates, Investigator Trish Odom, Investigator Stan Richards, Tina Goff, Will Cedarstaff, Curtis Burnett, Dr. Grayson Amick, Sgt. Christopher White, and that is Columbia Police Department on that one. Okay, Richland County Sheriff's Department again. Sgt. Dave McRoberts, Capt. Stan Smith. Lt. Scott McDonald, both Richland County Sheriff's Department. Jim Reese, Coroner's Office, Christine Vincent, Coroner's Office. Amy Stephens, South Carolina Law Enforcement Division or also known as SLED. Nikki Perry, SLED. Selena Kinard, SLED. Lisa McReynolds, SLED. Karonda Williams, formerly with the Department of Health and Environmental Control or DHEC. Michael Moskal, SLED. Jennifer Blair, 911 Communications. Tim Grambow, SLED. Dr. Clay Nichols, Palmetto Richland Mental Health -- Palmetto Richland Memorial Hospital. Excuse me. Dr. Michael Taillon, Providence Northeast Hospital. Suncom Custodian of Records, Ray McDonald. And the following persons are essentially lay witnesses: Cary Watson, Ricky Jacobs, Stephanie Boston, Verda Roberts, Travis Malone, Charlie Bates, Earl Jerome Green, Luther Landrum, Nathaniel Johnson, Jalicca "Lisa" Johnson, Darrell Wray, James Lamont Goodwin, Chris Crosby, Bryan --

Oh, yes, sir. Juror No. 135; is that correct?

JUROR NO. 135: Yes, ma'am. Chris Crosby.

THE COURT: Okay. Yes, sir. Okay. How do you

know Mr. Crosby?

JUROR NO. 135: He used to be my uncle-in-law.

THE COURT: He is your former uncle-in-law?

JUROR NO. 135: Yes, ma'am.

THE COURT: Okay. Will that affect your ability to proceed as a fair and impartial juror in this case?

JUROR NO. 135: No, ma'am.

THE COURT: Okay. Thank you for the information.

Bryan Johnson, Shawn Watts, Nellie Wray, Kasondra Roper, Jarrell Dansby, Rashonda Simpson, Brian Watson.

I would also go over some other witnesses: Ronald Wray. Brian Johnson. Darius White. Brian Morris.

Yes? Juror number?

JUROR NO. 250: 250. Brian Morris.

THE COURT: Okay, that's a defense potential witness. Can you give us some further information to assist the clerk?

MS. JOHNS: What was the question, Your Honor?

THE COURT: Brian Morris. She knows the name so she needed a little more information.

MR. SWERLING: I think we need to approach on that.

THE COURT: Okay. All right.

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

THE COURT: Okay. All right, let's do it this way. We need to narrow it down by which Brian Morris you know.

JUROR NO. 250: My son. He's a Kershaw County Deputy.

THE COURT: That's your son?

JUROR NO. 250: Yes.

THE COURT: Brian Morris -- Okay. That's not who we're referring to. Okay. State your juror number.

JUROR NO. 236: I also know a Brian Morris.

THE COURT: Okay. State your juror number:

JUROR NO. 236: Juror number 236.

THE COURT: Okay. All right.

JUROR NO. 236: And I'm not sure -- it's a medical insurance company that he works for.

THE COURT: Okay. That's not the Brian Morris here.

JUROR NO. 236: Okay.

THE COURT: Okay. Thank you all.

Okay. Ray Livingston, Richland County Sheriff's Department? Okay. Juror number?

JUROR NO. 57: Juror number 57.

THE COURT: Okay, how do you know Mr. Livingston?

JUROR NO. 57: A neighbor.

THE COURT: Okay, do you feel that you can be a

fair and impartial juror?

JUROR NO. 57: Of course.

THE COURT: Okay. Thank you.

Timothy Weldon. Darian Gordan. Marcus Gordon. Marion Jacobs. Maurice Cunningham. Dave McDougall. Jeff Holyfield. Gary Clark. Okay.

All right. Okay.

Are you or any member of your family employed by any law enforcement agency, if so please stand. Juror number please?

JUROR NO. 250: 250.

THE COURT: Okay.

JUROR NO. 250: My son is a deputy with Kershaw County Sheriff's Department.

THE COURT: Okay. Would that affect your ability to be a fair and impartial juror?

JUROR NO. 250: No, ma'am.

THE COURT: All right. Your juror number?

JUROR NO. 247: 247. Is that just locally or --

THE COURT: Anywhere. It could be anywhere.

JUROR NO. 247: Well, my brother is an investigator in Chicago.

THE COURT: Okay. Would that affect your ability to proceed as a fair and impartial juror in this case?

JUROR NO. 247: No, ma'am.

THE COURT: Okay. Anyone else?

Are you or anyone in your family personally acquainted with anyone employed by any law enforcement agency? Juror number?

JUROR NO. 66: I have several close friends who are law enforcement investigators and my husband is a former law enforcement officer.

THE COURT: Who are they employed by?

JUROR NO. 66: Lexington County.

THE COURT: Okay. Would that affect your ability to be a fair and impartial juror in this case?

JUROR NO. 66: No, ma'am.

THE COURT: Okay. Juror number?

JUROR NO. 151: 151. I have a friend with the Richland County Sheriff's Department and another friend with the City of Columbia. That will not affect my service as a juror.

THE COURT: Okay. The person with the Richland County Sheriff's Department is not listed as a witness here?

JUROR NO. 151: Correct. No.

THE COURT: Okay. Thank you. I just wanted to clarify.

Yes, sir?

JUROR NO. 296: All right.

THE COURT: What's your number:

JUROR NO. 296: 296. I deal with Richland County, most of the law enforcement departments all over the country.

THE COURT: In what capacity?

JUROR NO. 269: I am a defense realization marketing service for CLA (sp).

THE COURT: Okay. Would that affect your ability to be a fair and impartial juror?

JUROR NO. 269: No.

THE COURT: And as I listed the various names for potential witnesses here, did any of those names ring a bell for you?

JUROR NO. 269: No.

THE COURT: Okay. Thank you.

Yes?

JUROR NO. 34: Actually, I think I know --

THE COURT: Juror number, first?

JUROR NO. 34: 34.

THE COURT: Okay.

JUROR NO. 34: I have a relative who's in law enforcement. He's on the Federal District Court of Appeals and a circuit judge in Florida?

THE COURT: Okay. That's not -- would that affect your ability to be a fair and impartial juror?

JUROR NO. 34: No, ma'am.

THE COURT: Okay. Thank you.

Are you or any member of your family related to anyone employed by any law enforcement agency, and if you've already answered that question then you don't need to stand. Okay. Are you or any member of your family -- and we've already asked about the solicitor's office, fifth circuit. And we've covered everybody there. Okay. Or the South Carolina Attorney General's Office, if so, please stand. The South Carolina Attorney General's office, meaning, are you or any member of your family related to anyone employed there? Are you personally acquainted with any member of the solicitor's office or the South Carolina Attorney General's Office, and we're referring to the Fifth Circuit Solicitor's Office.

Yes, ma'am?

JUROR NO. 142: My family --

THE COURT: Juror number first, please?

JUROR NO. 142: Oh. 142. My father is real good friends with Henry McMaster, the Attorney General.

THE COURT: Okay, and would that affect your ability to proceed as a fair and impartial juror here?

JUROR NO. 142: No. No, ma'am.

THE COURT: Okay.

JUROR NO. 301: 301.

THE COURT: Okay.

JUROR NO. 301: My friend works for the Attorney General's Office.

THE COURT: You have a friend at the Attorney General's Office?

JUROR NO. 301: Yes.

THE COURT: Okay. Would that affect your ability to be a fair and impartial juror here?

JUROR NO. 301: No.

THE COURT: Okay. Yes, sir?

JUROR NO. 9: Number 9. My sister is good friends with Henry McMaster.

THE COURT: Would that affect your ability to proceed as a fair and impartial juror here?

JUROR NO. 9: Not at all.

THE COURT: Okay. Yes, sir.

JUROR NO. 197: I have a friend who works --

THE COURT: Juror number first.

JUROR NO. 197: 197.

THE COURT: Okay.

JUROR NO. 197: I have a friend who works in Barney Giese's office.

THE COURT: Would that affect your ability to proceed as a fair and impartial juror here?

JUROR NO. 197: No, ma'am.

THE COURT: Okay.

JUROR NO. 273: 273. Close personal friends with the McMasters.

THE COURT: Would that affect your ability to proceed as a fair and impartial juror here?

JUROR NO. 273: No.

THE COURT: Okay.

Have you seen, heard or read anything in the news accounts of this case; if so please stand.

Have you formed an opinion about the guilt or innocence of this defendant based on what you have seen, heard or read. Nobody's indicating they've seen, heard or read anything. Have you expressed an opinion about the guilt or innocence of the defendant to any individual, and that is regardless of whether or not you've seen, heard or read anything; if so please stand.

Has anyone expressed an opinion to you about the guilt or innocence of these defendants; if so please stand.

Have you participated in any discussions with any other individuals concerning the facts and circumstances of this case; if so please stand.

Based upon any conversations that you may have had is there any information that you are aware of that would render you unable to give both the state and the defense an impartial trial; if so please stand.

Are you aware of an conscious or any bias or any

prejudice either for or against the defendant in this case; if so please stand.

Are you aware of any evidence in this case as a result of any conversations or through the news media; if so please stand.

The victim is Demuria Johnson of Columbia, South Carolina. Are you related by blood or marriage to Demuria Johnson or any member of his family; if so please stand.

MS. JOHNS: Demuria Johnson, Your Honor.

THE COURT: Demuria Johnson. Thank you.

Do you know Demuria Johnson or any member of his family; do you have any close personal relationships with anyone who knows or is related to Demuria Johnson or any member of his family; if so please stand.

Can anyone, at this time, think of any reason why you would not be impartial to both the state and the defense in this case; if so please stand.

Okay. Some other questions. Just to make sure. This case stems from a shooting in June of 2007, at the H&J Club, also known as Chasers Lounge on Hardscrabble Road. Has any jury member heard anything about this case in the media or otherwise; if so please stand.

Has any member of the jury panel discussed this case or heard anyone discuss this or a similar case either today or before today; if so please stand.

This case involves an accusation of homicide. Does that fact cause you to feel uneasy, hesitant or frightened in any way; if so please stand. And then, of course, the Court needs to know if you can be a fair and impartial juror.

MS. JOHNS: Your Honor.

THE COURT: Yes. Okay. Juror number?

JUROR NO. 61: 61.

THE COURT: Okay. Can you come forward, please.

(Off record discussion with Juror No. 61, counsel and the Court.)

THE COURT: All right. Juror No. 61 will remain with us.

THE CLERK: Number 301.

THE COURT: You can come forward.

(Off the record discussion with Juror No. 301, counsel and the Court.)

THE COURT: Juror No. 301 will be excused from the trial of this case.

Earlier, I indicated that the victim is Demuria Johnson from Columbia, South Carolina, but it's actually from St. Matthews, South Carolina. So if that changes your mind as to whether any of you know this person and have a close personal or social relationship with him, please indicate so to the Court. Okay.

And has any member of the jury panel or any member of their family ever been charged with or convicted of a crime of violence; if so please stand. Please come forward. What juror number?

THE CLERK: Number 8.

THE COURT: Okay.

(Off the record discussion with Juror No. 8, counsel and the Court.)

THE COURT: Okay.

(Juror No. 8 remains.)

THE CLERK: Number 175.

THE COURT: Yes, sir.

(Off the record discussion with Juror No. 175, counsel and the Court.)

THE COURT: Thank you, sir.

(Juror number 175 remains.)

THE COURT: This case contains facts regarding drinking, cursing, fighting, and fatal injuries. Does the nature of these facts cause any member of the panel discomfort, suspicion, or any problem sitting as an impartial juror; if so please stand. And other than those person who have indicated earlier, is any member of the jury panel a friend or acquaintance of any employee of Richland County Sheriff's Department?

Do you have any new information to add, because I asked

the question earlier about knowing such persons and being acquainted? Okay.

Yes, ma'am, juror number?

JUROR NO. 273: 273. My dad worked for Sheriff Lott a long time ago.

THE COURT: Would that affect your ability to be a fair and impartial juror?

JUROR NO. 273: No, ma'am.

THE COURT: Okay.

Yes, sir?

JUROR NO. 159: Juror No. 159. I had friends on the Richland County Sheriff's Department a few years ago.

THE COURT: Okay. Would that affect your ability to proceed as a fair and impartial juror in this case?

JUROR NO. 159: No, ma'am.

THE COURT: Okay.

Yes, sir.

JUROR NO. 8: Number 8. I have a friend at the Richland County Sheriff's Department, as well.

THE COURT: Would that affect your ability to proceed as a fair and impartial juror?

JUROR NO. 8: No.

THE COURT: Okay.

Okay, listen carefully to this one because it deals with scheduling. This case, we expect, will proceed

at least until Friday. I need to know if any of you have second or third shift work such that you're here in the day time and you're trying to be awake and participate, but you also have to go to work right after at night, and maybe lose some sleep and be trying to come here. We need whoever is on the panel to be very attentive and to be fair to both sides. So just be honest about that information at this time, please stand.

Juror number?

JUROR NO. 89: 89.

THE COURT: Okay.

JUROR NO. 89: I work second shift, but I'm excused for this week.

THE COURT: Okay. Thanks for the information.

JUROR NO. 159: 159. I have a full-time job in the day, 6:30 to 3:00, and I have my own business in the afternoons. I usually work from 4:00 to 7:00 or 8:00 p.m.

THE COURT: Okay, but you -- you're on jury duty this week?

JUROR NO. 159: Yes, but I --

THE COURT: Okay. I understand. And so indicated so I understand that information, but I can't excuse you for just that reason, but thanks for the information.

All right. Is any member of the jury panel more than a causal smoker. If so do you believe you can limit your

urges to just cigarettes during the break, and we're not trying to be funny about that, but, again, this goes to attentiveness to the trial and to make sure that you're okay -- just to give you general information. We generally start about 9:30. We'll go on to 5:00, 5:30. Just depends on where we are with a witness. You'll get your appropriate breaks. We try to break at appropriate times during the trial, but you will have comfort breaks during the trial. Okay. Thank you very much.

All right, and just generally, is there any member of the jury who is a member of any organization supporting, promoting, contributing to law enforcement rights; if so please stand. Juror number?

JUROR NO. 32: I'm a volunteer at social services and I work with a non-profit organization with Pardon and Parole sometimes.

THE COURT: Would that affect your ability to proceed as a fair and impartial juror?

JUROR NO. 32: No, ma'am.

THE COURT: Okay.

Anyone else?

Is there any member of the jury who is a member, contributor, supporter or member of any organization supporting victims rights; if so please stand?

Juror number?

JUROR NO. 172: Juror number 172. I volunteer at DAWN.

THE COURT: And what does that organization do?

JUROR NO. 172: It's for battered people.

THE COURT: Okay. Would that affect your ability to proceed as a fair and impartial juror?

JUROR NO. 172: No.

THE COURT: Is there any member of the jury panel who is a member, supporter or contributor of rights of person's who have been accused or arrested for a crime; is so please stand? Okay.

All right, do any party's counsel need for the Court to exercise any more questions to the jurors?

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

MR. SWERLING: Nothing.

MS. JOHNS: No, Your Honor.

THE COURT: Okay. Ladies and gentlemen, at this time we will now proceed to jury selection. Do the parties need a break at or would you like to proceed on? Okay. All right.

Generally, when we have a trial where there is more than one defendant, the state would have the opportunity to strike 10. For the nature of the charges here, each defendant will have the opportunity to exercise 10 strikes. I've been informed by defendant counsel that they will do

their strikes jointly at this time. But you need to know that as we proceed with the trial that each defendant has their own counsel. So you'll need to listen to the facts carefully and be separate and independent in your thinking as to the state's burden of proof as to each defendant on the trial of the case, but just for this purpose of proceeding they intend to exercise their strikes jointly.

Madam Clerk, I'm ready to proceed.

THE CLERK: Thank Your Honor.

Ladies and gentlemen of the jury panel, as I call your number please come down and stand in front of this microphone and give your occupation, okay. Bring all your belongings with you.

Number 169.

JUROR NO. 169: I'm a family nurse practitioner.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

MR. BAX: Please excuse the juror from the trial of this case. Thank you.

THE CLERK: Have a seat back in the jury box.

Juror No. 47.

JUROR NO. 47: Truck driver for Shaw Industries.

THE CLERK: What says the state?

MS. SHIPLEY: Please excuse the juror.

THE CLERK: Have a seat back in the back of the courtroom, please.

Juror 9.

JUROR NO. 9: Account manager for a local furniture company.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

MR. BAX: Please excuse the juror from the trial in this case. Thank you.

THE CLERK: Have a seat back in the courtroom, please.

Number 224.

JUROR NO. 224: I'm a quality management systems coordinator for an automotive shop.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

MR. BAX: Please seat the juror in the trial of this case. Thank you, ma'am.

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

Number 297.

JUROR NO. 297: I work in collections.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

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

THE CLERK: Thank you. Have a seat in the jury box, please.

Number 34.

JUROR NO. 34: I'm a homemaker.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

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

THE CLERK: Please have a seat back in the courtroom, please.

Number 36.

JUROR NO. 36: I'm a graduate teaching assistant at USC.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

MR. BAX: Please seat the juror in the trial of this case. Thank you.

THE CLERK: Have a seat in the jury box, please.

Number 28.

JUROR NO. 28: I work for the National Bank of

South Carolina.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

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

THE CLERK: Please have a seat back in the courtroom.

Number 151.

JUROR NO. 151: I'm a budget analyst with the Richland One Finance Department.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

MR. BAX: Please excuse the juror from the trial in this case. Thank you.

THE CLERK: Please have a seat back in the courtroom.

Number 247.

JUROR NO. 247: I work at the Department of Veteran Affairs. I'm a veteran's service specialist.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

MR. BAX: Please excuse the juror from the trial

in this case.

THE CLERK: Please have a seat back in the courtroom.

Number 222.

JUROR NO. 222: Chief Warrant Officer, United States Army.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

MR. BAX: Please excuse the juror from the trial in this case. Thank you.

THE CLERK: Please have a seat back in the courtroom.

Number 218.

JUROR NO. 218: I am an application analyst with South Carolina State.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

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

THE CLERK: Have a seat in the jury box, please.

Number 244.

JUROR NO. 244: I'm a self-employed furniture upholsterer.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

MR. BAX: Please seat the juror in the trial of this case. Thank you.

THE CLERK: Please have a seat it the jury box, please.

Number 253.

MR. BAX: Would you repeat the number, please?

THE CLERK: 253, 2, 5, 3. 253.

JUROR NO. 253: Contractor.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

MR. BAX: Please seat the juror in the trial of this case. Thank you.

THE CLERK: Have a seat in the jury box, please.

Number 172.

JUROR NO. 172: Currently unemployed.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

MR. BAX: Please excuse the juror from the trial of this case. Thank you.

THE CLERK: Have a seat back in the courtroom,

please.

Number 212.

JUROR NO. 212: South Carolina Department of Education.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

MR. BAX: Please seat the juror in the trial of this case. Thank you.

THE CLERK: Have a seat in the jury box, please.

Number 210.

JUROR NO. 210: I work for a holding company -- beverages.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

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

THE CLERK: Have a seat in the jury box, please.

Number 260.

JUROR NO. 260: I'm the associate director of a non-profit organization.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

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

THE CLERK: Have a seat in the jury box, please. Number 135.

JUROR NO. 135: I'm in manufacturing.

THE CLERK: What says the state?

MS. SHIPLEY: Please excuse the juror.

THE CLERK: Have a seat back in the courtroom, please.

Number 175.

JUROR NO. 175: Chemist manager for South Carolina DHEC. THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

MR. BAX: Please excuse the juror from the trial of this case. Thank you.

THE CLERK: Have a seat back in the courtroom, please.

Number 197.

JUROR NO. 197: Engineering tech.

THE CLERK: What says the state?

MS. SHIPLEY: Please seat the juror.

THE CLERK: What says the defense?

MR. BAX: Please excuse the juror from the trial of this case. Thank you.

THE CLERK: Have a seat back in the courtroom, please.

Number 250.

JUROR NO. 250: I'm employed by National Bank of South Carolina.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

MR. BAX: Please excuse the juror from the trial of this case. Thank you.

THE CLERK: Have a seat in the back of the courtroom, please.

Number 91.

JUROR NO. 91: I'm a manager (inaudible)the state.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

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

THE CLERK: Have a seat in the jury box, please.

Number 154.

JUROR NO. 154: I'm a veterinarian

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

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

THE CLERK: Please have a seat back in the courtroom.

Number 170.

JUROR NO. 170: Operations technician International Paper.

THE CLERK: What says the state?

MS. SHIPLEY: Please excuse the juror.

THE CLERK: Please have a seat back in the courtroom, please.

Number 265.

JUROR NO. 265: Hairstylist.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

MR. BAX: Please seat the juror in the trial of this case. Thank you.

THE CLERK: Have a seat in the jury box, please.

Number 285.

JUROR NO. 285: I'm a social worker for Palmetto Health Richland.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

MR. BAX: Please excuse the juror from the trial in this case. Thank you.

THE CLERK: Have a seat in the back of the courtroom, please.

Number 8.

JUROR NO. 8: Recovery specialist for a recovery service.

THE CLERK: What says the state?

MS. SHIPLEY: Please excuse the juror.

THE CLERK: Have a seat in the back of the courtroom, please.

Number 16.

JUROR NO. 16: Chemical Engineer.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

MR. BAX: Please excuse the juror from the trial of this case. Thank you.

THE CLERK: Have a seat in the back of the courtroom, please.

Number 236.

JUROR NO. 236: I'm the manager of a retail store in Columbia.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

MR. BAX: Please excuse the juror from the trial in this case. Thank you.

THE CLERK: Take a seat in the back of the courtroom, please.

Number 44.

JUROR NO. 44: Director of a non-profit organization.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

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

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

Number 159.

JUROR NO. 159: I'm a supervisor with a landscaping company.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

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

THE CLERK: Have a seat back in the courtroom, please.

Number 11.

JUROR NO. 11: I work in the finance department at Richland School District One.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

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

THE CLERK: Have a seat in the jury box, please. Number 209.

JUROR NO. 209: Computer programmer.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

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

THE CLERK: Please have a seat in the back of the courtroom, please.

Number 157.

JUROR NO. 157: I work at Sanders (sp) Theatrics.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

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

THE CLERK: Have a seat in the back of the

courtroom, please.

Number 205.

JUROR NO. 205: Retired media specialist from Richland School District Two.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says defense?

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

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

THE COURT: All right. We now have the jurors who will be seated for this case. I'm going to ask that the remainder of you go back to your jury room for further instructions.

(Jury panel exists courtroom at 3:30 p.m.)

THE COURT: Okay. I'm going to ask that these potential jurors if you would be excused to your jury room until the Court gets back with you.

(Jury out to jury room 3:31 p.m.)

THE COURT: Okay. As it understand it right now, all the jurors who were not selected on this case have gone to the jury room, but both clerks are here, Mr. Truett and then, of course, our deputy clerk, but those jurors will remain with us until this Court releases them; is that correct, just in case we have Batson Motions or other

issues; is that correct?

MR. TRUETT: Yes.

THE COURT: Okay. The potential jurors for this case have not been sworn, but they are now in the jury room for our purposes now.

There was one female that was motioning to me, wanting to speak to the Court. State your jury number.

JUROR NO. 89: 89.

THE COURT: Okay. And I'm going to ask that you take the stand as you have information you think is important?

THE CLERK: Please raise your right hand.

(WHEREUPON, JUROR NO. 89, was sworn to tell the truth.)

THE CLERK: Thank you. Please have a seat in the witness stand. State your name?

THE COURT: And for purposes of this proceeding, I'm going to ask that she not state her name.

THE CLERK: I'm sorry, Your Honor.

THE COURT: That's okay. That's okay. We'll all trying to catch each other because of the process of this courtroom.

Ma'am, you had just approached the bench right before I had asked everybody to be excused who was not selected for the jury. Do you have any information that you would like

to shed light on with respect to any of your fellow jurors?

JUROR NO. 89: Yes, one juror -- I overheard him on the phone state that he was going -- whatever it was, it was going to be guilty.

THE COURT: Okay. And you said, he. So you're indicating a male juror?

JUROR NO. 89: Yes.

THE COURT: Do you know if that juror was excused to the jury room and was not selected for this case or was that juror actually part of the jury panel that got to go back to the jury room?

JUROR NO. 89: Part of the panel.

THE COURT: Okay. Can you describe the juror?

JUROR NO. 89: Black shirt, beige sweater.

THE COURT: Okay. Tell me when you overheard this statement?

JUROR NO. 89: Prior to our first break, before lunch.

THE COURT: Okay, so --

JUROR NO. 89: On the cell phone.

THE COURT: So that was prior to you all even knowing what the case was about?

JUROR NO. 89: Right.

THE COURT: Because the Court only indicated what the case was about when all jurors were in the room.

JUROR NO. 89: Right.

THE COURT: Okay. So you need to set the scene for us. You said prior to lunch?

JUROR NO. 89: Prior to lunch. It was what -- 11:00 o'clock when we got into the jury room. And they were on the cell phones when we were allowed to have phones. And he was on the phone and said, whatever it was it was going to be guilty.

THE COURT: Okay. He was on his cell phone speaking to someone --

JUROR NO. 89: Someone -- yeah.

THE COURT: Okay. And you heard him speaking?

JUROR NO. 89: Yes.

THE COURT: Okay. Did he direct his comment at all to you?

JUROR NO. 89: No.

THE COURT: You just overheard him speaking --

JUROR NO. 89: I just overheard.

THE COURT: -- as if someone else was on the other end of that phone call?

JUROR NO. 89: Yes.

THE COURT: Okay. All right. Since then, have you heard any other conversation by this gentlemen to indicate any follow-up to that comment?

JUROR NO. 89: No.

THE COURT: Okay. I appreciate you relaying that to the Court.

I will also allow any other of the parties to question her at this time.

MS. SHIPLEY: Could you describe him for us, please. What did he look like?

JUROR NO. 89: He was the third juror on the end in the front row.

MS. SHIPLEY: Okay. Thank you, ma'am.

JUROR NO. 89: You're welcome.

MR. SWERLING: You said he was seated in the front --

JUROR NO. 89: Yes, he was. In the front.

MR. SWERLING: Did you say; is he Caucasian or Afro-American?

JUROR NO. 89: Caucasian.

MR. SWERLING: Okay. I see --

JUROR NO. 89: The USC instructor.

MR. SWERLING: I'm sorry?

JUROR NO. 89: A USC instructor.

THE COURT: Any other questions of this juror?

MS. SHIPLEY: Nothing further from the state, Your Honor. That appears to be -- based on her description that possibly could be Number 36.

THE COURT: That's what my notes may indicate.

MR. SWERLING: It looks like it.

THE COURT: Okay. All right. Thank you for your honesty and forthrightness with the Court. If you can, you're excused to your jury room, and you'll be announced when you can be relieved of your duties for today.

JUROR NO. 89: Okay.

THE COURT: We appreciate it.

JUROR NO. 89: You're welcome.

(Juror No. 89 exits courtroom.)

THE COURT: Okay. At this time, it's the Court's inclination to call this particular juror out to question him about this information.

If you could ask Juror No. 36 to come out.

THE BAILIFF: Yes, ma'am.

(Juror No. 36 enters courtroom.)

THE COURT: I'm going to ask that you take the witness stand right there, first.

Madam Clerk, would you swear him in.

(WHEREUPON, Juror No. 36, was sworn to tell the truth.)

THE CLERK: Thank you.

THE COURT: All right, sir. Earlier to day you-all were qualified for your potential qualification as jurors for any of the trials in this case -- civil or criminal or by another judge. Did you participate in that

proceeding?

JUROR NO. 36: Yes.

THE COURT: Okay. And then prior then, thereto, you were sent to your jury room and eventually a panel was pulled for this particular case, and you were on that panel; correct?

JUROR NO. 36: Correct.

THE COURT: Okay. At the questioning before your jury selection after you-all were sworn, I asked you a series of questions and some of those questions indicate did you have any information about this case, did you have any bias, opinion or prejudice about the case, and just have any statements regarding the case; do you remember that?

JUROR NO. 36: Yes.

THE COURT: And I don't believe that you answered in the affirmative at all on any of those; is that correct?

JUROR NO. 36: Correct.

THE COURT: All right. Some information has come to me that someone may have overheard you speaking with someone about this case; do you understand that?

JUROR NO. 36: I understand the statement.

THE COURT: Was there any point at which you were in the jury room at which you were on a cell phone?

JUROR NO. 36: No, ma'am.

THE COURT: Did you ever speak to anybody on a

cell phone while you were in the jury room?

JUROR NO. 36: No.

THE COURT: Okay. Did anyone ever call you?

JUROR NO. 36. No. I had it off the whole time.

THE COURT: Okay, so you never exercised by putting that cell phone to your ear whether to check a message or anything?

JUROR NO. 36: No.

THE COURT: Have you made any statements in this courtroom at all regarding any of the cases in the courtroom?

JUROR NO. 36: No.

THE COURT: Did you even know what cases you were coming forward to hear, whether it be civil or criminal?

JUROR NO. 36: No.

THE COURT: Did you have any opinions about this case?

JUROR NO. 36: No.

THE COURT: You are aware that these two gentlemen are being tried for murder?

JUROR NO 36: Yes.

THE COURT: Okay. Did you form any express opinions about this case?

JUROR NO. 36: No.

THE COURT: Did you mention any opinions to

anyone?

JUROR NO. 36: No.

THE COURT: Do you have any opinions about the case?

JUROR NO. 36: No. I -- I vaguely remember that it was mentioned in the news.

THE COURT: This case, and you never indicated that -- you heard me ask a question about that?

JUROR NO. 36: I had no idea where the incident took place.

THE COURT: But you're telling me now that you did hear something mentioned on the news?

JUROR NO. 36: Just that -- you know, that there was an arrest made.

THE COURT: Okay, but I asked earlier specifically about anyone of the jury panel hearing anything on the news, because that information is very important to all of us here about how much information any juror knows prior to going into a case.

JUROR NO. 36: Well, I didn't really feel that it would affect my ability to --

THE COURT: Okay, you understand that for all of the questions that the Court asked, I need to receive the information, and then it's the Court's judgment that makes that determination, not yours; do you understand that?

JUROR NO. 36: Yes, ma'am.

THE COURT: Okay. So I need all information -- you need to tell me all the details about what it is that you heard on the news; just everything that might affect your ability of going into this case with any more information than any other juror might have. That's very important to us. So tell me what it is that you know?

JUROR NO. 36: The only reason that it -- I have any recollection of it was because it was on Hardscrabble Road.

THE COURT: Okay. And did you become aware that it was on Hardscrabble Road prior to me mentioning that in one of my questions to your fellow jurors?

JUROR NO. 36: Until you mentioned it, no.

THE COURT: Okay, but when I mentioned it you were aware that this particular incident took place on Hardscrabble Road?

JUROR NO. 36: Uh-huh. (affirmative response.) Yes.

THE COURT: Okay, and I do recall defendant's request to voir dire from Taurus Watts -- I believe might have been where that came from.

MS. JOHNS: Yes, Your Honor. Number one.

THE COURT: Okay. All right. I indicated that this case stems from a shooting in June of 2007, at the H&J

Club, also known as Chaser's Lounge on Hardscrabble Road, and I specifically asked if any juror member had ever hear anything about this case in the media, and then I added or otherwise. So you had an affirmative response to that question?

JUROR NO. 36: Yes.

THE COURT: Okay, and why didn't you indicate that you knew anything about it?

JUROR NO. 36: I didn't think it was important.

THE COURT: Okay, but the Court was asking you specifically did you know. Do you understand. And these questions are very important because everyone, including myself, and all parties in these proceedings are entitled to full information from all jurors. It does not mean that you would have necessarily been excused, but we are entitled to know the information so that they can properly and appropriately exercise any strikes in the case; do you understand that?

JUROR NO. 36: Yes.

THE COURT: Is there anything else that you know?

JUROR NO. 36: No.

THE COURT: What specifically did you hear on the news?

JUROR NO. 36: Just that there was a murder.

THE COURT: And you also indicated that you heard

a murder on Hardscrabble Road. Was there anything else. I want to make sure you're not leaving out any details.

JUROR NO. 36: No. I didn't.

THE COURT: Did you know who was alleged to have committed the murder?

JUROR NO. 36: No.

THE COURT: Did you know what time it occurred or the method by which the murder occurred?

JUROR NO. 36: No.

THE COURT: Okay. Did you know if there was more than one person involved?

JUROR NO. 36: No.

THE COURT: Did you know any of the people who may have been witnesses or anything?

JUROR NO. 36: No.

THE COURT: Did you even know where this area was; the H&J Club or Chaser's Lounge?

JUROR NO. 36: I have no idea where it is.

THE COURT: Okay. Is there anything else that you can indicate that you may know that you may not have admitted or indicated to the Court earlier?

JUROR NO. 36: No.

THE COURT: Okay. And then as to any other questions I may not have asked you; do you have any bias, prejudice towards the state or the defendants in this case?

JUROR NO. 36: No.

THE COURT: Have you made up your mind on the subject matter of this case; meaning, a violent crime or murder in this case at all?

JUROR NO. 36: No.

THE COURT: In terms of any opinions that you render toward them?

JUROR NO. 36: No.

THE COURT: Do you understand that all jurors are tasked with the understanding that they are to come to this case giving the state the opportunity to present their case and then if the defense chooses, because it does not have to put up a case, they are innocent until proven guilty, if the defense chose to put up a case then they -- you would give them full opportunity to and then make up your mind?

JUROR NO. 36: Yes.

THE COURT: Counsel approach if you think there's anything else the Court should ask.

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

THE COURT: All right, sir, do you live or happen to work around or have any reason to go around the area of Hardscrabble Road?

JUROR NO. 36: I live in Lake Carolina.

THE COURT: Okay. Do you know where Chaser's

Lounge or H&J Club is?

JUROR NO. 36: I have never seen it.

THE COURT: Okay. All right. At one point you indicated that you heard this information on the news and then another case you indicated that you heard that they were arrested or somebody was arrested. So I'm just trying to be a little more familiar with your responses, but I don't want to put words in your mouth.

JUROR NO. 36: I was aware that someone was arrested, but when these proceedings started I did not recognize the name of either defendant.

THE COURT: Okay. And how did you become aware that someone was arrested?

JUROR NO. 36: On the television.

THE COURT: Okay. Did you also hear of the incident on the news or just that someone had been arrested in connection with the incident?

JUROR NO. 36: It was together.

THE COURT: Okay, so one setting on the TV or --

JUROR NO. 36: Yeah.

THE COURT: -- or more than one time?

JUROR NO. 36: Just once.

THE COURT: Once on TV. Okay, you have your cell phone with you?

JUROR NO. 36: Yes.

THE COURT: Okay. I'm going to need to see it. And I'm going to need for you to show the Court your call directory for the time period 11:00 to 2:00 o'clock. And you can step down. I'm going to ask all counsel to approach.

(Juror No. 36 and counsel approach the bench with cell phone.)

THE COURT: Sir, just so you can indicate for the record, how do you get to the time of your calls, I see the numbers.

JUROR NO. 36: I don't know. I've never checked the time.

THE COURT: Okay, I've got a call from -- at 1:18 p.m. that you received. Okay. And 10:46 a.m. there's another call. Oh, this is 10/2. That was the 1:18.

Okay. Thank you, sir. Okay. I'm going to ask you to go to your jury room. Thank you very much. It doesn't indicate that I've got received or dialed calls. Thank you.

JUROR NO. 36: Thank you.

MR. SWERLING: Judge, I think we'd just ask that he not discuss this with --

THE COURT: Right. And let me ask you; have you discussed this case at all with your fellow jurors?

JUROR NO. 36: No.

THE COURT: Okay. And I ask you not to discuss

the case with anybody throughout the trial, anyway. Thank you, sir.

Okay. Any respective issues -- anything else?

MS. SHIPLEY: Not from state.

MR. SWERLING: Judge, I think he needs to be taken off the panel. First of all, he wasn't candid with the Court in his responses out here in voir dire. I'm not -- I can't tell the Court whether or not at that particular time I would have exercised a strike or not, but I would have considered it, knowing that he knew about it, but I'm not going to represent to the Court that I know I would have, knowing that would have been part of the assessment. Second of all, this woman came forward -- frankly, I can never remember anybody coming forward and voluntarily giving that kind of information. I think she was trying to do her civic duty whatever she heard. She knew who it was, and it may have been a conversation, but it concerns me because it seems like she would have had no motive to come forward and not tell the Court in camera about something she overheard something this juror say.

THE COURT: Okay.

MR. SWERLING: And third of all, at this time he is probably now fond of any of us in the courtroom after going through it, which I think we needed to do. But I'd ask the Court to exercise your discretion and excuse him

from the panel. We still have a panel left, one more juror or you could restore one strike to each of us. We still have -- that's what I would request.

THE COURT: Okay.

MS. JOHNS: I would join with Mr. Swerling for all his reasons.

THE COURT: All right. The Court is going to rule that I have to strike this particular juror. My concerns are that I really felt like I had to dig for this information. While the person who came forward may have been mistaken about the information it is clear that he heard something, saw something and then did not give me that information. And in his words, he didn't think that it was important or he didn't think he was -- what have you, but that was not his call. So I don't need him trying to direct in my courtroom what is appropriate. So respectfully, I'm going to strike that juror.

I think the best way to proceed is we still have the balance of the jurors left. We can move who was the first alternate into the panel and then allow you-all to proceed with another alternate from the balance of the jurors. Okay.

All right, so Madam Clerk, I'm going to ask that the balance of the jurors be instructed to come back in.

MR. SWERLING: Judge are you going to bring him

out?

THE COURT: Yes, I'll bring him out now. Bring that juror out.

THE BAILIFF: Yes, ma'am.

MR. SWERLING: Judge you want to hold them --

THE COURT: Hold them up one moment. Just one moment.

(Juror No. 36 enters courtroom.)

THE COURT: All right, sir, I've had enough time to speak with the attorneys. I'm going to ask that you be excused from the trial of this case. I do thank you for being forthright as we came forward and asked you certain other questions, but I will excuse you from the trial of this case. You'll need to report to the jury room, and they will give you instruction for the remainder of the week.

JUROR NO. 36: I apologize for not mentioning all that.

THE COURT: All right. Thank you, sir.

(Juror No. 36 exits the courtroom.)

THE BAILIFF: Okay, bring them in.

(Jury panel enters courtroom.)

THE BAILIFF: The jury panel is all present, Your Honor.

THE COURT: All right, ladies and gentlemen of the jury, we're going to strike one more alternate for this

case. So if you would listen as numbers are called.

THE CLERK: Number 66.

JUROR NO. 66: I'm a program analyst.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror?

THE CLERK: What says the defense?

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

THE CLERK: Please take a seat in the back of the courtroom, please.

Number 85.

JUROR NO. 85: I work for Blue Cross Blue Shield.

THE CLERK: What says the state?

MS. SHIPLEY: Please present the juror.

THE CLERK: What says the defense?

MR. BAX: Please seat the juror in the trial of this case. Thank you.

THE CLERK: Have a seat in the jury box.

THE COURT: Ladies and gentlemen of the jury, if you have not been selected I'm going to excuse you to your jury room again, and just hold up a moment with respect to jury issues and whether or not I'm going to need additional alternates. And then we will release you accordingly. Thank you all.

(Jury panel exits courtroom. at 4:30 p.m.)

THE COURT: Do the parties have any issues with respect to jury selection?

MS. SHIPLEY: None from the state, Your Honor.

MR. SWERLING: Defendant Wray has none.

MS. JOHNS: None for defendant Watts.

THE COURT: Okay. All right. I'm going to take a break with you all. Then we can get as far as we can with pre-trial motions, which I believe we can complete today. What time would you all like to start in the morning with opening and --

MS. SHIPLEY: 9:30 is fine with the state, Your Honor.

MR. SWERLING: That's fine.

THE COURT: Okay. Bring those jurors out, and I'll give them their instructions. Then we'll release them, and then we'll take a break.

(Jury in at 4:34 p.m.)

THE BAILIFF: The jury is all present, Your Honor.

THE COURT: Okay. Ladies and gentlemen of the jury. You-all have been selected to be jurors in this case. I'm not going to swear you in at this time. I'm going to release you, and we will start the case fresh in the morning. So I'm going to ask that you report back to your jury room at 9:30.

You will hear me say this several times during the

trial of this case, and after you're sworn in I'll give you some official instructions to let you know to proceed, but you are not to discuss this case in any shape, form or fashion with anyone. You are not to discuss the parties, you are not to discuss the defense counsel or the state's counsel. You are not to even discuss the type of case, because a lot of times people will inject their opinions on you just by mentioning any particular subject matter whether you've asked them or not. And I need you to be very educated about this case only by the evidence and facts that you will hear in this courtroom. Your mind is to be made up by what you hear here, not what you hear through TV or media outlets or anything of that nature. And in response to that, that you are not to look at TV, if you hear anything about this case you are to turn that off. Same thing with any news reports or media. you are also going to hear from me throughout the trial, you are not to be tweeting, twittering and letting anybody know what you're doing.

This is very sincere efforts that we need by you and to be fair to all parties you cannot be letting somebody know what's going on in your life at this juncture in time. These are real people, real issues, and we need your real attention with regard to this matter.

Thank you all for what has been a long day and very deliberate proceedings, and we needed you to be comfortable

as well as educated and informed under the decisions that you have to make. I'll give you further instructions in the morning. I'll remind you not to discuss the case.

Have a good evening.

(Jury out at 4:40 p.m.)

THE COURT: Okay. You all can be at ease for about 15 minutes or so.

(Court in recess for short break)

(Court in session after short break.)

THE COURT: All right.

MS. SHIPLEY: Your Honor, on the Jackson verses Denno matter, I believe that Ms. Johns indicated she will not be requiring the state to put one of the hearings up. Just so we can be on the same page. I'll let the court know exactly the words we're planning on introducing as being made by her client.

Your Honor, her client was Mirandized upon his arrest on July 3, 2007, and after he invoked his right to remain silent. He was taken to the crime scene unit over that sheriff's department for major case prints to be taken. At that time he made an unsolicited statement to Investigator Gallegos, and he wrote in his notes that Watts felt it strange why the other parties involved were not patted down. He stated his friends were always checked for weapons at the club. He stated during the fight the other side pulled out

firearms. Investigator Gallegos indicated he did not say anything further about the incident.

And that's basically that's the only --

THE COURT: Okay. Do you understand that, Ms. Johns?

MS. JOHNS: Yes.

THE COURT: Okay. And you're not challenging that statement?

MS. JOHNS: Not for its voluntariness, no.

THE COURT: All right.

MS. SHIPLEY: Your Honor, at this time the state would call Ricky Jacobs.

THE CLERK: Raise your right hand.

(WHEREUPON, Ricky Jacobs, was sworn to tell the truth.)

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

RICKY JACOBS - DIRECT EXAMINATION

BY MS. SHIPLEY:

Q Please state your name for the record, sir?

A Ricky Jacobs.

Q Mr. Jacobs, can you let the Court know where it is that you work?

A At Chaser's Club on Hardscrabble Road.

Q And do you own that store, that business?

A Yes, I do.
Q Can you tell the judge what kind of business it is?
A It's a bar and restaurant.
Q Bar and restaurant?
A Yes.
Q I'm going to ask you to speak into the microphone. And how long have you owned and operated that bar and restaurant?
A Nineteen years.
Q Nineteen years. Do you and your family own it together?
A Yes.
Q And so are you from the Columbia area?
A Yes.
Q Are you familiar with the people that frequent your establishment?
A Yes.
Q And being an owner and operator of a nightclub and restaurant, do you get to know people by faces only --
A Well --
Q -- where you only recognize them by face?
A Yes. Face, name. Yes.
Q I'm sorry. Could you repeat that?
A Face, name; yes.
Q Okay. And so you got to know the customers that

frequent your nightclub by face and name?
A Right. Yes.
Q And is it true that sometimes you don't know their full names?
A Yes.
Q I'm going to bring your attention to the early morning hours of June 30, 2007; do you remember what happened that night?
A Yes.
Q And, specifically, was that a Saturday night or Friday night going into Saturday morning?
A Yes.
Q And how late does your nightclub stay open?
A Friday nights we close about 3:30.
Q Okay. On this occasion were you still open about 4:00 a.m.?
A I was closing up.
Q You were getting ready to close up?
A Yes.
Q And can you tell Judge Childs your routine when you close up your bar; is there a particular place where you park your vehicle?
A I normally park at my dad's house, which is across the street from the business.
Q Okay, and so why is it you park your car at your dad's

house?
A For excessive parking, so people will park -- so I won't taking up space.
Q Okay. So you park across the street at your dad's house so you don't take up parking space from customers?
A Right. Correct.
Q And do you -- is that your routine every time you close down?
A Well, when I open up, yes. That's the routine, yes.
Q And so when you closed the business this night did you have to cross the street to go to your dad's house to get to your car?
A Yes.
Q And can you tell Judge Childs why is it your bar was closing down on this particular occasion?
A Well, an altercation, and I was going to just end it.
Q Okay. So there was an altercation, and you needed to close your bar at that point?
A Yes.
Q And can you tell Judge Childs -- we're going to just show -- Are you familiar with this diagram on State's No. 7; have you seen this diagram before?
A Yes.
Q And I've shown this diagram to you?
A Yes, you have. Yes.

Q Does it accurately depict the layout of the car wash and the Hardscrabble Road and your nightclub?
A Yes.
Q Okay. And if you could, on this diagram, using this pointer, show Judge Childs where your club is on this diagram, State's No. 7.
A Right here.
Q Okay. What is right next to your nightclub?
A Car wash.
Q Car wash. And what about on this side; what's that business right there?
A My dad's store.
Q Your dad's store. And what's underneath this roof area right here?
A Gas pumps.
Q Gas pumps?
A Yes.
Q And at night is this place lit?
A Yes.
Q And are there lights on the street; are there street lights?
A Security lights.
Q You have security lights?
A Right here.
Q And where are the lights on your property?

A Up under the canopy.
Q In the canopy. Okay.
A Under the canopy, yes.
Q And how would you characterize the lighting conditions; is it bright?
A Yes.
Q Do you have any trouble seeing your parking lot at night?
A No.
Q Now, on this occasion, can you tell Judge Childs, when you were crossing -- getting ready to go get your car from your dad's house, did you encounter the defendants, Taurus Watts and Tremaine Wray, in the parking lot?
A Yes.
Q Okay. And did you -- where did you first encounter the person that you knew at the time as Taurus; where did you see him?
A Here, up in here.
Q In this area in here?
A Yes.
MS. SHIPLEY: And I'm going to turn it so the defense can see it.
BY MS. SHIPLEY:
Q And again, did you say there is lighting all underneath the canopy area?

A Yes.
Q Okay. And where is your father's house located on this map or if it's not on the map, where exactly -- how do you get to your dad's house?
A It's right here.
Q Where the R is pretty much?
A Yes, pretty much.
Q Can you see part of the driveway on the diagram?
A Barely. Yes.
Q Barely. Okay, now, when you first encountered the person you know as Taurus, what exactly did -- was there a conversation between the two of you on that night?
A Yes.
Q Okay. What did you say to him when you saw him walking towards the club?
A Told him the club was closing, to leave. I told him we was closing now, to leave.
Q So you told him you were closing, and they needed to leave?
A Yes.
Q What, if anything did he say to you when you told him that?
A He said, -- well, he went back to his car.
Q And what car was he walking back to?
A Suburban.

Q And what color Suburban?
A Tan or champagne.
Q Tan or champagne color?
A Yes.
Q And where was this tan or champagne colored Suburban parked?
A Up in here.
Q Up in that same general area where you encountered him?
A Yes.
Q Okay. Could you see a driver to that vehicle; to that champagne colored Suburban?
A Yes.
Q And did you recognize that person?
A Yes.
Q And where had you seen him before?
A At the business.
Q At your nightclub?
A Yes.
Q And has you seen Taurus before at your nightclub?
A Yes, I have.
Q And approximately how many times have you seen each individual before at your nightclub?
A For years.
Q For years?
A Yes.

Q All right. So you've owned and operated this nightclub for 19 years. Of those 19 years how many years do you think you've seen each individual frequenting your club?
A I've seen them at least 25 years.
Q Longer than that --
A Yes.
Q -- longer than you've operated --
A Yes.
Q Where did you know them before your club?
A The store.
Q From the store?
A Yes.
Q Your father's store?
A Exactly.
Q And so is this store somewhere where people who live in the area will go and purchase things?
A Yes.
Q Now, when you saw Taurus going back to the tan Suburban, can you tell the Judge what, if anything, you saw in his hand?
A Yes.
Q What did you see?
A A weapon, a pistol.
Q You saw a weapon in his hand?
A Yes.

Q And can you describe the weapon for us?
A (No response.)
Q Were you able to show Investigator McRae --
A Yes.
Q -- a picture of the weapon?
A Yeah, if I see a picture I can describe it. I mean, I can point it out.
Q Okay. Did you make a note of what, if anything, Mr. Taurus Watts was wearing at this time; do you remember what you told the investigators he was wearing?
A A white t-shirt --
Q Uh-huh. (Affirmative response.)
A -- and jeans or something.
Q Okay. And what about -- could you see what Mr. Tremaine Wray was wearing; could you tell from where he was seated in the vehicle?
A He was out of the vehicle, also. He was standing out the vehicle.
Q He was standing outside of the vehicle when you saw him?
A Yes.
Q Okay. Do you recall giving a description to Investigator McRae at the time?
A Yes.
Q Okay. Do you recall giving a height and or weight

description to -- about Taurus to Investigator McRae?
A (No response.)
Q Do you remember how tall you said he was?
A Yeah, but I'm not sure whether I gave the weight or not.
MS. JOHNS: Your Honor, either I can't hear, or I can't understand him.
THE COURT: Okay. If you'll just put the microphone a little closer to him.
MS. SHIPLEY: Okay.
A I don't --
BY MS. SHIPLEY:
Q And speak up.
A Okay.
Q Do you remember what description you gave to Investigator McRae regarding height?
A I did give his height.
Q Okay, and what height do you remember giving him?
A Um -- I don't remember --
Q Okay, if Investigator McRae noted it -- would that be -- if you told him something that night -- did you remember giving him a description on height?
A Yes.
Q Okay. And would that height be five-ten to six feet --
MS. JOHNS: Your Honor, I object. She's leading

this witness. He's got to remember, then I would expect that he would testify.

MS. SHIPLEY: Your Honor, I asked him if he remembered. He said -- I don't remember. He said he knew that he'd given a description, he just could not remember what it was. So I'm now using this document to refresh his memory.

MS. JOHNS: That's not proper foundation for refreshing memory. He said he didn't remember. If she wants to refresh his memory she should say, do you remember giving the statement, here's your statement, and then he would read it and then he would say, oh, I remember now.

THE COURT: You haven't shown him the document yet?

MS. SHIPLEY: No, ma'am.

THE COURT: Okay.

MS. SHIPLEY: It's not in his written statement, that's why I'm referring to -- the investigator's notes.

MS. JOHNS: Then I think she'll have to get that from the investigator and not from this witness.

MS. SHIPLEY: Your Honor, a person who gives a statement to another individual, and they don't recall what it is, they know that they made the statement, the state is allowed to go into will this refresh your memory. Just because he didn't write it down -- he told another witness

about it, but he said he remembers telling the other witness, he just doesn't remember what it was at this time.

MS. JOHNS: And Your Honor, with regards to that, I think that the document that Ms. Shipley is going to show this witness is not a document that was created by this witness. Therefore it's something that somebody else said or had been noted, and I don't think that's proper.

THE COURT: That was my concern whether or not -- you said you don't have any document that he wrote it down on to refresh his memory about what he wrote down, because right now what we would have is something he gave to another officer, and can only assume that other officer wrote down what he told him, which this witness does not recall what he told him specifically.

MS. SHIPLEY: All right. I'll just move on, Your Honor.

BY MS. SHIPLEY:

Q Did you describe the height of the individual to the investigator that night?

A Yes, I did.

Q Do you remember what it is now; do you remember what that height was that you gave to the investigator?

A (No response.)

Q You don't remember?

A No.

Q Okay. But you did describe -- you testified earlier that he was wearing a white t-shirt and jeans, correct?
A Yes.
Q Now, as to Tremaine, you indicated he was standing outside the champagne in color, tan Suburban?
A Yes.
Q And do you remember if you -- what he was wearing that night?
A Yes.
Q And what was he wearing?
A Which one?
Q Tremaine, the driver?
A I not sure. I think it was the white shirt also -- white t-shirt also.
Q Okay. And did you recognize them that night by their face?
A Of course.
Q And did you remember Taurus' name that night, his first name?
A Yes.
Q Could you remember his last name that night?
A That night, no. So much was going on at the time. I really -- I mean, I was trying to -- handle business as normal. So I mean, my main thing was trying to keep my other customers safe and secure.

Q Okay. So do you remember if you were able to give the name Tremaine to law enforcement that night or to Investigator McRae?

A Yes.

Q Now, did you know both of these individuals by name and face from frequenting your club?

A Yes.

Q Okay. Later on do you recall going to the Sheriff's Department on the 1st of July, 2007 at 1:30 in the afternoon to give a written statement?

A Yes.

Q I'll show that to you to refresh your memory. Is that your statement; do you see your signature on it?

A That's my signature. Yes.

Q Okay. And when you were giving the statement did you tell the investigators whether or not you'd observed both Taurus and Tremaine get into the tan SUV?

A Yes.

Q And what direction did you tell them that the car drove?

A Towards Farrow Road.

Q Okay, and can you show that to Judge Childs, please? Thank you. And while they were driving down Farrow Road -- first of all, who was driving the car?

A Tremaine.

Q And who was in the passenger seat?
A Taurus.
Q And did you see -- you indicated you saw Taurus with a weapon; did you see him get back into the car with that weapon?
A Yes.
Q Okay. When you observed the vehicle driving away on Hardscrabble Road, down towards Farrow Road, where were you standing?
A I was in the middle of the road. I was right here.
Q Okay. Getting ready to cross -- you were crossing the street to go get your car?
A Crossing -- yes.
Q Okay. And what got your attention to that vehicle?
A I heard gunfire. Gunfires.
Q And could you see gunfire coming from the car, from the tan Suburban?
A Yes.
Q And what side of the vehicle was it coming from?
A The driver's side.
Q The driver's side. And could you see which direction the shots were being fired towards?
A Yes.
Q And what were they firing towards?
A Back this way, this direction.

Q Okay, and what is this building here?
A The car wash.
Q So they were firing towards the car wash
A Yes.
Q All right. How many shots do you believe you observed or heard?
A I mean, you --
MS. JOHNS: Your Honor, I object. Speculation. He believes; what he thought he heard. Speculation.
BY MS. SHIPLEY:
Q How many shots did you hear?
A I mean, I'm not sure. I didn't count them. I mean it was a number of shots.
Q Was it more than five?
A Oh, yeah. I know it was. I mean, I don't know if the number of five came towards the business or away from the business.
Q Okay.
A But I know I heard more than five.
Q And so you saw the tan Suburban firing shots towards the car wash?
A Yes.
Q Now, did you have any problems, was anything obstructing your view of that tan Suburban?
A No.

Q Were you eventually asked by Investigator McRae to look at some photos?
A Yes.
Q And I'm going to show you what's been marked as State's No. 6, and ask you if you can recognize this document?
A Yes.
Q Is that your signature on there?
A Yes.
Q And did you sign acknowledging that you had picked photo number six on these photographic line-ups?
A Yes.
Q And I'm going to show you Page 2 of State's No. 6.
A All right.
Q When you were at the Sheriff's Department, can you explain to Judge Childs how these pictures were presented to you?
A At the time that he asked me to pick out Taurus, and I did.
Q And did he suggest to you in any manner which one to pick out?
A No.
Q And did you -- which photograph did you pick out?
A Number six.
Q And who is that a picture of?
A Taurus.

Q And did -- again, no one suggested to you who to pick?
A No.
Q And did you sign this?
A Yes, I did.
Q And number six; was that the driver or the passenger of the tan --
A Passenger.
Q -- Suburban. State's No. 5. Do you recognize this?
A Yes.
Q Do you see your signature on that?
A Yes.
Q And what picture did you pick off -- sign, acknowledging that you identified, made an identification?
A Picture number four.
Q Number four. And who is that a picture of?
A Tremaine.
Q And did you sign and circle that photograph?
A I did.
Q And, again, did Investigator McRae suggest to you who to pick out?
A No, he did not.
Q And who -- number four, Mr. Wray, what was he doing as far as the tan Suburban; was he the driver or the passenger?
A The driver.
Q Okay. And were you also asked about the gun; do you

recall looking at pictures of a gun and picking a gun out?
A Yes.
Q Okay. The two individuals that you saw at 4:00 a.m. on June 30, 2007, leaving the nightclub in the tan Suburban and firing shots; do you see them in the courtroom today?
A Yes.
Q And I'm going to ask you to identify the defendants. Please start first with Tremaine Wray?
A The gentleman right there.
MS. SHIPLEY: Your Honor, please let the record reflect he's identified Mr. Wray.
BY MS. SHIPLEY:
Q What kind of jacket is he wearing?
A A suit jacket.
Q What color?
A Gray.
Q And also, can you please, identify the individual that you recognize as Taurus with the gun getting into the vehicle?
A The gentleman right there with the red tie on.
MS. SHIPLEY: Beg the Court's indulgence.
BY MS. SHIPLEY:
Q Is there any question in your mind -- did you hesitate at all when you were shown these photographs of the perpetrators?

A No.

MS. SHIPLEY: I have no further questions, Your Honor.

THE COURT: Okay.

MR. BAX: Thank Your Honor. May it please the Court.

RICKY JACOBS - CROSS EXAMINATION

BY MR. BAX:

Q Mr. Jacobs, first of all, good afternoon.

A Afternoon.

Q Just real briefly, in your direct testimony here today you testified that you did give a description of Mr. Tremaine Wray to the police that night. Is that correct?

A Yes.

Q You also testified that when asked if you gave Mr. Wray's name to the police that night and you said, yes, that you did. Is that correct?

A (Nods head in the affirmative.)

THE COURT: I need a verbal response, please.

A Yes. Yes, I did.

MR. BAX: Thank Your Honor.

BY MR. BAX:

Q Would it surprise you that if I said the police reports don't indicate that you indicated a name until the next morning of Mr. Tremaine Wray?

A I gave his first name. I didn't know his last name.
Q Okay. Do you recall when that night -- obviously, this happened around 4:00 in the morning; isn't that correct?
A Exactly.
Q Okay. And between the time of this shooting and the time that you spoke to the police how much time lapsed, can you recall?
A I can't recall.
Q You can't?
A Not exactly, no. Six, seven hours -- eight hours when I talked to the investigator the next day.
Q Well, I'm asking when you talked to police that night; how long was between the time of the shooting and when you talked to police that night?
A That morning it was about three or four hours.
Q So you're saying you gave Tremaine's name about four hours later?
A I gave the first name. Yes. I did not remember his last name.
Q Okay.
A I didn't remember his last name at the time. No, I did not.
Q So you didn't remember his name initially right when they got there --
A First name I did. Last name I didn't.

Q Okay. I'm a little confused. I'm sorry. Let me clarify. When was the first time you gave Tremaine's name, first or last to any police officer?

A Investigators -- it was that morning.

Q About what time?

A It had to be -- maybe 7:00, 8:00 o'clock, maybe.

Q Okay. So it would have been a number -- it would have been a couple hours later?

A Yes, of course.

Q And I have another question for you Mr. Jacobs. You have testified that you have known both defendants, and I guess that would include Mr. Wray, for at last 25 years; is that correct?

A Yeah, I would say.

MR. BAX: A moments indulgence, Your Honor. That's all the questions at this time, Your Honor.

THE COURT: Okay.

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

RICKY JACOBS - CROSS EXAMINATION

BY MS. JOHNS:

Q Mr. Jacobs, how tall is Taurus Watts?

A How tall is he? Really, I can't -- he's taller than I, so I'd say about five-ten, five-eleven.

Q And how much does he weigh, sir?

A I have no idea.

Q You've known him for 25 years; is that correct?
A Close.
Q He did not have dreads that night, did he?
A Yes, he did.
Q He did?
A Yes.
Q Okay. How long were his dreads?
A I have no idea.
Q You have no idea?
A I mean, I don't know. They weren't that long. They were like twists.
Q Twists.
A They weren't shoulder length.
Q They were shoulder length?
A They were not.
Q They were not shoulder length?
A Yes.
Q What time did he come to your club?
A I noticed him in the club about maybe 2:30.
Q Did you call the police, sir?
A No, I did not.
Q Did Mr. Wray have dreads?
A No, he didn't.
Q So you saw Mr. Watts at least one time in the club at 2:30; is that correct?

A I wouldn't say exactly 2:30. I mean, I would say roughly yes, 2:30 give or take.
Q Okay. So he was in the club; is that right?
A Yes, he was in the club.
Q That's your testimony is today --
A Yes.
Q -- that he was in the club?
A Yes.
Q And you saw him again, he was outside the club?
A Yes.
Q Did he arrive with Mr. Wray, to your knowledge?
A I have no idea.
Q Were you inside the club at all that night, sir?
A Most of the night, yes, I was.
Q Did you witness a fight inside the club, sir?
A No, it wasn't a fight. It was just an altercation. A lot of yelling and pushing and shoving.
Q Did you witness the altercation, sir?
A Yes, I did.
Q Did you witness -- when you witnessed this altercation, did you give that information to the police?
A Did I witness it? No, I told them what had started -- how things had started, yes. We didn't know the details as far as that's concerned.
Q You told them how it started, is that right?

A No. I don't know how it started. I told them what was going on. The altercation inside and at that time I decided to close my business.

Q So you did witness this altercation inside and you relayed that information to the police?

A Yes, but that wasn't the main concern.

Q Okay. So you did?

A Yes.

Q Did you give a description of those people that were involved in the altercation?

A No. They didn't ask. I didn't give it.

Q I think one of those people in that altercation had dreads; isn't that right?

A Say again, please?

Q At least one person involved in that --

A Yes.

Q -- altercation had dreads; isn't that right?

A Yes.

Q Do you know who that person was?

A Yes.

Q Who was it?

A Bryan Johnson.

Q Anybody else in that altercation wear dreads like Demuria Johnson?

A Was anybody -- no.

Q So nobody else had dreads in that altercation?
A That I know of, no.
Q Did the victim have dreads?
A I -- no, I don't remember the victim. I didn't see the victim.
Q Did one of your bouncers have dreads?
A Did one of my -- yes.
Q And what's his name?
A Shannon Boone. (sp)
Q What length?
A Longer than shoulder length.
Q Shorter --
A Longer than shoulder length.
Q Now, you referred to your dad's residence as being across the street from the club; is that correct?
A Yes.
Q And your dad's house is right on the corner of Howard and Hardscrabble; is that correct?
A Yes. It wouldn't be Howard but -- yes.
Q Okay. What is the name of the road?
A That would be Bethel Church.
Q Bethel Church Road?
A Yes.
Q Okay. Did that Bethel Church Road that we're speaking of, is that a dirt road or is it a paved road?

A Dirt.
Q Okay, and does it have an outlet at the end of that road?
A Yes.
Q Okay. So it's not a dead-end; is that right?
A No.
Q And you stated that -- hold on one moment -- that you knew my client, Mr. Watts for years; is that right?
A Yes.
Q And you knew the name that night didn't you?
A Yes.
Q Okay. And you told the police his name; is that correct?
A I did -- yes, his first name. Yes.
Q All right. Initially, when the police talked to you you did not give his name did you?
A Didn't give the name, initially? Yes.
Q When they first talked to you, you did not give them Taurus' name; isn't that correct?
A No, because we wasn't -- we weren't talking about the names at the time. He was asking me what had happened and what had occurred, and I explained what had occurred. At the time, I was back and forth handling my business, as I said earlier. I had to make sure that my customers in my business were safe and secure. I had to make sure -- my

workers were safe and secure. At the time I was running back and forth handling my business, so I mean, no. Did I give the name at the time initially, no, I don't think I did. But eventually I did give the names and point out the individuals.

MS. JOHNS: Beg the Court's indulgence one moment.

BY MS. JOHNS:

Q When you were shown this photo line-up, that's listed as State's Exhibit No. 6 --

A Yes.

Q -- he told you to pick out Taurus; isn't that correct?

A No. He didn't tell me to pick out Taurus. He just asked me is Taurus on this page, and I said, yes.

Q Is Taurus on this page?

A Yes.

Q Okay.

A And I pointed him out.

Q So you would have known -- he could have shown you any picture, it didn't have to be this photo line-up they provided you, you would have been able to pick out Taurus, wouldn't you, from any photograph, wouldn't you?

A Yes.

Q Okay.

MS. JOHNS: I don't have anything further, Your Honor.

MS. SHIPLEY: Brief redirect?

THE COURT: Surely.

RICKY JACOBS - REDIRECT EXAMINATION

BY MS. SHIPLEY:

Q Mr. Jacobs, who is the person that told Investigator McRae the name, Taurus, that night?

A (No response.)

Q Are you the person that gave that name to --

MS. JOHNS: I object, Your Honor. I ask that he be allowed to answer it.

THE COURT: Answer the question.

A Uh -- I believe I did.

BY MS. SHIPLEY:

Q Okay, so --

A Yes.

Q -- speak into the microphone.

A I'm quite sure I did. Yes.

Q Okay, so you told Investigator McRae the name Taurus that night?

A Yes.

Q And when he asked you to identify, in State's No. 6 -- can you look at that, please. Did he -- Please open it up to the second page. What picture did you pick out; what photograph did you pick on that page?

A Number 6. Right here.

Q Okay. And why did you pick that photograph?
A Because this is Taurus.
Q Okay. Is that the person that you saw that night, that you know as Taurus?
A Yes.
Q Did he suggest to you in any way which photograph to pick out?
A No.

MS. SHIPLEY: No further questions, Your Honor.

MS. JOHNS: Brief follow-up, Your Honor.

RICKY JACOBS - RECROSS EXAMINATION

BY MS. JOHNS:
Q Was anybody else in that line-up that you know; do you know any of those other guys?
A No.
Q Did you ever seen any of those other guys before?
A No.

MS. JOHNS: Nothing else, Your Honor.

THE COURT: All right. Any questions by Mr. Swerling. Okay. All right. The witness can step down.

MS. SHIPLEY: State calls Investigator Don McRae.

THE CLERK: Please raise your right hand.

(WHEREUPON, Don McRae, was sworn to tell the truth.)

THE CLERK: All right. Have a seat in the witness

stand and give your name to the court reporter.

INVESTIGATOR MCRAE: Investigator Don McRae, Richland County Sheriff's Department.

DON MCRAE - DIRECT EXAMINATION

BY MS. SHIPLEY:

Q Investigator McRae, can you please tell the Court where you are employed?

A I'm currently employed with the Richland County Sheriff's Department as a major crimes investigator.

Q And did you respond to a shots fired call on Hardscrabble on June 30, 2007?

A I did.

Q Could you please tell the judge what time you got there?

A Do you have my follow-up available?

Q Yes, sir.

A Just to refresh my memory. On June 30, 2007, I was notified by Sgt. Eric Barnes of a shooting at the incident location, H&J Club on Hardscrabble Road. I was notified at 5:08, and arrived on the scene at 5:40 in the morning.

Q And when you got there who was the first person that you get into contact with?

A First person I talked to -- I met with the responding deputies and Sgt. Barnes, who was the On-Call Sergeant for that evening. The first actual person that I met with that

was at the club at the time of the shooting was Ricky Jacobs.

Q And can you describe the scene to Judge Childs, were there a lot of people lingering around the parking lot; describe the scene for her.

A When I arrived at the scene, Your Honor, there were still some customers in the area. It was a secured scene. In other words, the scene was secured by crime scene tape. There was a little bit of initial confusion about what exactly had transpired that night.

Q And what do you mean by a little confusion?

A People were a little less than cooperative to cooperate with us initially when we first arrived on the scene, which is pretty much the case sometimes in cases that I work. People -- some people just don't want to be involved. Some people just want to stand off and not be involved with police officers.

Q And at one point, were you able to have contact with Mr. Jacobs alone?

A Once everything kind of quieted down, Your Honor, I did get the opportunity to take Mr. Jacobs off to the side and speak with him, one-on-one, out of earshot of the other people that were still lingering inside and outside of the club.

Q And when you talked to Mr. Jacobs alone did he appear

to be more forthright with you?
A Mr. Jacobs and I knew each other from a previous incident. Mr. Jacobs and I had built a somewhat of a rapport on that first incident that I had worked at that location. Mr. Jacobs felt comfortable speaking with me. Especially, felt comfortable speaking with me once we were out of earshot and sight of any other patrons or on-lookers that were still in the area.
Q Okay. And when you did get him aside were you able to figure out what had transpired at the club that night?
A Basic information, yes.
Q Okay. And did he clear up any confusion as to what type of vehicle was used?
A He did.
Q Also, were you able to get any kind of description of how many occupants were in that vehicle?
A I did.
Q And what color vehicle did he describe to you?
A He described a tan in color Suburban.
Q And what description did he provide of the front passenger?
A The front passenger, Mr. Jacobs told me was a black male, height range five-ten to six feet, 150 to 160 pounds. He also informed me that that subject was wearing a white t-shirt and jeans. And that the subject had some sort of

twist, twisties in his hair.
Q All right. And at that point, were you able to get a name of this individual from Mr. Jacobs?
A Once we got -- again, once we got away from any on-lookers and anybody else who was still in the parking lot, he did give me the first name only of Taurus.
Q And that was there at the scene when you arrived there that night?
A I'm sorry?
Q Was that that night at the scene?
A Yes.
Q So you had the name of Taurus that -- those early morning hours of June 30, 2007; is that correct?
A That is correct.
Q Now, the second individual that he described, can you let us know what, if any, information he gave you concerning that individual?
A Mr. Jacobs informed me that the second subject was a black male. According to Mr. Jacobs he did not get a good look at the subject, but he has seen him in the club before.
Q Did he indicate whether or not he would be able to identify both subjects if he saw them again?
A He did.
Q Now, was Mr. Jacobs eventually able to provide you with the first name of subject number two?

A He did.
Q And when was that?
A I received a call at approximately 9:15 that same morning from Mr. Jacobs, who informed me that the last name of the individual he knew as Taurus was either Watts or Watson. Mr. Jacobs also informed me that the driver of the Suburban, the tan in color Suburban was identified -- that was described by Mr. Jacobs, his first name would have been Tremaine. Mr. Jacobs that he informed me at this time that he did not know the last name of the driver, but he would let me know if he got any other information.
Q And during your investigation that night did you go looking for a tan Suburban in the surrounding area?
A We did. In my experience in that club, Your Honor, I know that a lot of the patrons that go to that club actually live in and around that area. We actually drove through two different subdivisions, one being Washington Heights, which is a rock's throw away from the nightclub.
Q And were you able to spot a tan Suburban in the driveway of that residence, of a residence in that subdivision?
A If I recall, there -- we actually found two tan in color Suburbans. One was actually hooked up to, I believe a U-Haul. The second vehicle was backed up -- there was a red Pontiac in the driveway -- I believe either in the driveway

or just on the grass. Next to that Pontiac was a tan in color Suburban, but the vehicle was backed up to where I could not get a view of that license plate.

Q And so as a result of being unable to view the license tag of that Suburban, what, if anything, did you do with that Pontiac?

A I did go ahead and write down and obtain the South Carolina tag to that Pontiac because it was pulled straight in. That license plate was a South Carolina tag of 324-DRG, Delta, Romeo, Juliet (sic).

Q At that point were you able to find out who that vehicle belonged to?

A I did. At the time, that vehicle was registered to Nellie Walker Wray, at 425 Briarcliff Drive in Columbia, which was the location where that vehicle and the tan Suburban were located.

Q And when you were able to find a last name and an address to that Pontiac -- and you had the first name of Tremaine, what did you do to find out if -- whether or not a Tremaine lived at that residence?

A Once I got the last name of Wray from the registration from the Pontiac, I actually ran in the database available to the Richland County Sheriff's Department, the first name of Tremaine. I did get a return with a Tremaine Wray and within that database it listed his location at -- or his

address as 425 Briarcliff Drive in Columbia.
Q And so once you were able to get a name were you able to put a photographic line-up together with both of those individuals, Mr. Taurus Watts and Mr. Tremaine Wray?
A I did.
Q And can you explain how it is that you are able to arrange a photographic line-up and what the goal is in arranging your photographic line-up, and here's five and six, State's No. 5 and No. 6.
A Your Honor, when I build a line-up I try to use similar face characteristics, whether it be facial hair. I also try to use, as close as I can, same hairstyles. I attempt to use same skin tone, however, sometimes that does get a little hard to do, but basically I don't necessarily look for five other people that look like the person or the subject. I'd look for five other people that are similar in building my photo arrays.
Q And did you do so for both photographic line-ups?
A I did.
Q And did you have an opportunity to then present those photographic line-ups to Mr. Jacobs?
A I did.
Q And can you tell Judge Childs the normal procedure that you -- how often do you think show witnesses photographic line-ups?

A On an average, I would say I show a photographic line-up two to three times a month.
Q And when you do so do you have a certain routine that you follow?
A I do.
Q In presenting the photos to witnesses?
A I do.
Q And can you please go over that with Judge Childs?
A Your Honor, basically what I'll do is I'll initially take a written statement from my witness, my victim, whoever it may be that I'm actually taking the statement for in preparation before I show the line-up. Once I get the statement taken, what I'll do is I'll pull the photo line-ups out. I'll set the pictures in front of the person I'm showing the line-up to. Normally, I will ask is there anyone in these pictures that you recognize.
Q And do you make it a habit of telling them the name that you're looking for?
A Not normally, no.
Q And did you do so in this case?
A I honestly cannot remember, but I don't -- I would never do that. I have never done it in the past, and I can't see myself doing it this time.
Q All right. And so when you presented the photos to Mr. Jacobs, did you suggest to him in any manner which

photograph to pick out?
A Absolutely not.
Q Okay. And at that point, did he hesitate in any fashion when you -- when he made an identification in each photographic line-up?
A No hesitation whatsoever.
Q And who did he identify in State's No. 5?
A In State's No. 5, he identified -- the picture is marked Picture Number Four. There is a number four above the picture, and then below the picture are the words, picture number sign four, which is the picture of Tremaine Wray.
Q And again, did he hesitate at all in picking that photograph?
A No, ma'am.
Q And did he appear certain that that was the individual he saw --
A Yes, ma'am.
Q -- driving the vehicle that night?
A Driving the vehicle.
Q And, again, in his statement did you go over and clarify this with him his written statement?
A I did.
Q And verified that this was indeed his identification?
A I did.

Q Now, as to State's No. 6, which photograph, who did he identify in that photographic line-up?

A In State's Exhibit No. 6, he identified picture number six, the number sign six is written above the subject's head --

Q And who is the subject?

A And that is Taurus Watts.

Q And again, did he have any hesitation in identifying that photograph --

A No, ma'am.

Q -- as the driver or passenger of the vehicle?

A Passenger of the vehicle. No, ma'am.

Q And did you have him sign an affidavit swearing that that's who he identified?

A I did. He signed, he provided his address and a phone number that he could be reached at, and it was sworn and notarized by myself.

MS. SHIPLEY: Now, Your Honor, at this time I have no further questions as far as the Neil verses Biggers part. But just out of efficiency can I go into the search warrant?

THE COURT: Okay. Yes.

BY MS. SHIPLEY:

Q Based on the -- you already explained on the record how you were able to develop Tremaine Wray as a suspect?

A Yes.

Q You also testified that you were able to find an address and an owner as to one of the vehicles at 425 Briarcliff?
A That's correct.
Q Did you eventually run the tag of the Suburban, tan Suburban, and find out who that car was registered to?
A I did.
Q First of all, where was the tan Suburban parked when you were able to look at the tag?
A It was actually parked behind the Out Back Steakhouse on Two Notch Road.
Q And who works there?
A Tremaine Wray did at the time.
Q And when you were able to spot the vehicle there did you run the tag?
A I did.
Q And what tag is it?
A (No response.)
Q And if I may just assist you on State's Exhibit No. 8; is this a copy of the search warrant that you prepared in this case?
A It is.
Q Okay. And what is the tag number on -- of the tan Suburban?
A The tag number of that tan Suburban is South Carolina

621 Sierra, Bravo, Papa, 621SBP. It's a tan in color, registered to Nellie Walker Wray of 425 Briarcliff Drive in Columbia.

Q And did you fill this affidavit out?

A I did.

Q And for purposes of this hearing, I'm going to need you to read that affidavit verbatim.

A (No response.)

Q Read from your belief that the property --

A (Reading) -- reasons for belief that the property sought is on subject premise on 6/30/2007, at approximately 4:10 hours, 04:10 hours Demuria Johnson was shot at the H&J Club, 2820 Hardscrabble Road, Columbia South Carolina 29223. Witnesses did identify the above listed vehicle as being at the incident location and firing several shots from this vehicle. One of these rounds from this vehicle did mortally wound Demuria Johnson. A witness identified the driver and passenger in the vehicle as subject was leaving the incident location and has notified law enforcement with a statement stating the gunfire that struck the victim came from this vehicle at the incident location. The vehicle was spotted by investigators at the residence of one of the suspects identified by the witness as the driver of the vehicle that fired the shots at the incident location.

Q Okay. And can you then explain what it was

specifically the property that was to be sought?
A Your Honor, we were looking for any forensic evidence related to the murder of Demuria Johnson. Such as would include but not limited to: Blood, hair, fibers, fingerprints, etcetera. Any and all potential or relevant evidence which would aid in the investigation of the murder outlined -- outlined in the attached affidavit.
Q And was part of the forensics that you eventually was obtained gunshot residue?
A It was.
Q Okay. And the return -- again, what date does the shooting happen at the H&J?
A The shooting happened in the early morning hours of June 30, 2007.
Q And can you look at the page of the return and do you recognize the signature on that return?
A Which signature? The signature of the judge or the signature of the person --
Q The officer executing the search warrant?
A Anna Clemmons
Q And on the top of that return what date was placed on there.
A June 2, 2007.
Q Again this incident happened June 30th
A That's correct.

Q So that would be a scrivener's error?
A That's correct.
Q And on the return did it indicate whether or not gunshot residue was collected or trace evidence?
A On the inventory of property taken from this vehicle would have been photographs, swabs, fingerprints, trace, MUG cans, cigarette butts, and black head -- band -- head rag. I can't quite read that bottom line.
Q Okay. And on what day did you -- were you sworn before Judge Maurer for this search warrant?
A I swore under oath to Judge Maurer on July 1, 2007.
Q And what day was the search warrant returned to his office -- on the return?
A On the return it's dated June 2, 2007.
Q No. I'm sorry. If you could read the bottom of the page?
A I'm sorry. Judge Maurer dated this the 6th day of July, 2007, at 1:30 p.m.
Q And just for background information, did Mr. Jacobs also give a description of another vehicle leaving the scene and also firing a shot?
A He did.
Q And what direction did he indicate to you that that shot was fired?
A Straight up in the air.

Q Okay, and how many times?
A One shot.
Q And also at this time were you privy to the ballistics expert's opinion as to the projectile found at the scene and how many were located?
A At what time?
Q By the time you got the search warrant?
A By the time I got -- I was.
Q Okay. And how many projectiles were located at the scene?
A I believe there were 10.
Q Oh, those were shell casings.
A Oh, projectiles -- three. Projectiles there were three.
Q And --
A Two at the scene and one was recovered from the victim's pant leg.
Q Okay. And do those three match?
A They did.
Q And so as a result of the ballistics, were you able to eliminate the shot from the Isuzu as being the shot that killed the victim?
A Yes.

MS. SHIPLEY: Your Honor, that's all I have as it relates to Neil verses Biggers and to search warrant

matters.

THE COURT: Okay.

MR. BAX: And Your Honor, just for housekeeping, I'm going to ask a few questions about the identification for the photo line-up, and then Mr. Swerling is going to ask some questions about the Chevy Suburban and the search warrant.

THE COURT: Okay.

MR. BAX: Thank you.

DON MCRAE - CROSS EXAMINATION

BY MR. BAX:

Q Briefly, Investigator McRae, you testified, and I think you testified based on some notes that you made that you received a call about 9:00, 9:15 from Mr. Jacobs, and at that time he indicated both that Mr. Watts -- well, both -- that Taurus -- his last name was Watts or Watson, and that the driver's name was Tremaine; is that correct?

A Yes. About 9:00 or 9:15.

Q Okay.

A I can't say specifically, you know, --

Q Sure.

A -- that the clock struck 9:15 at the time the phone rang, but around that time. Yes, sir.

Q But it was definitely a call, in other words, it didn't happen there at the scene when you had that first talk with

him out of earshot of the other individuals; is that correct?

A For the --

Q When he gave you Mr. Wray's first name, Tremaine?

A Tremaine. That's correct, that's correct.

Q And he indicated at that time that he knew Tremaine; is that right?

A Had -- which time?

Q When he called you there at 9:15 and gave you that information?

A He actually told me earlier than that that he had seen Tremaine in the club prior -- on prior occasions and knew of him, but at that time could not remember his name.

Q Okay.

A Okay.

Q So at that time -- so earlier he indicated he could not remember his name?

A That's correct.

Q Okay.

MR. BAX: A moment's indulgence, Your Honor.

That's the end of what I have to ask. Mr. Swerling may want to ask him about the search warrant.

THE COURT: Okay.

DON MCRAE - CROSS EXAMINATION

MR. SWERLING:

Q Investigator McRae, you took out the search warrant on July 1st; is that correct, about 3:00 o'clock in the afternoon?

A Yeah. It would have been July 1st. Yeah. That's the date the judge signed it.

Q Okay. You also got an arrest warrant that day, too, or instructed someone to get an arrest warrant for Mr. Wray that day, as well?

A Okay.

Q Is that correct?

A Can I see a copy of the arrest warrant to make sure I don't --

Q Okay, we'll get that copy to you in a minute. Did you go ahead and actually and appear before Judge Maurer yourself?

A I did.

Q Okay. And let me show you a copy of the search warrant. Is that your affidavit for the search warrant?

A It is.

Q Okay. You -- were you sworn at that time?

A I was.

MR. SWERLING: Your Honor, I'd like to put a copy of this in as a court's exhibit -- and can I substitute a copy of this one at some point.

MS. SHIPLEY: Your Honor, I already have it marked

as State's No. 8.

MR. SWERLING: Okay. I'm sorry. That's fine. We'll leave it at that.

THE COURT: Okay.

BY MR. SWERLING:

Q Let me ask you something, would you look at State's Exhibit No. 8, then, and would you tell me whether or not you told Judge Maurer anything that's not contained in that affidavit?

A Did I express anything to Judge Maurer --

Q Did you tell him anything this case that's not contained in the four corner's of this affidavit?

A I don't recall. I mean, I would have stuck with the facts of the case while discussing the case. However, I may have made general conversation, but the facts of the case would have been only discussed -- what was contained in the affidavit.

Q So for the Court's benefit, Judge Child's benefit, anything you told Judge Maurer would be contained within the four corners of this affidavit?

A To the best of my knowledge, yes.

Q Now, this warrant was returned -- well, actually it was -- what day was it executed? You actually went out to Out Back?

A That's correct.

Q And Tremaine Wray was also arrested that evening; is that correct?
A At Out Back --
Q At Out Back?
A Yes.
Q And he was arrested in the Out Back; is that right?
A That is correct. He was arrested, actually, in the kitchen area of the Out Back.
Q And he was working at that time?
A He was.
Q And the vehicle was in the parking lot?
A It was in the parking lot. The parking lot, I believe is actually the property of Home Depot or one of the hotels back there. I don't believe it's actually the Out Back property that the vehicle was on.
Q Okay. So when Mr. Wray was taken into custody he was not in control of the vehicle; is that correct?
A That's correct.
Q In fact, he was not even anywhere even close proximity to the vehicle; is that correct?
A That's correct.
MR. SWERLING: Excuse me, Your Honor --
BY MR. SWERLING:
Q So he was arrested at Out Back in the kitchen on an arrest warrant for murder; is that correct?

A That is correct.
Q And at the same time that he was being arrested in the Out Back kitchen, his vehicle was being taken into custody pursuant to a search warrant; is that correct?
A The vehicle would have been towed from the location after his arrest. I don't -- that wouldn't have happened simultaneously, but the arrest would have occurred and the vehicle --
Q I guess I mean close. But the arrest warrant was issued against him and then the vehicle was towed pursuant to the search warrant?
A Can I see a copy of the arrest warrant?
Q This is a copy of the arrest warrant. Do you recognize it?
A I do.
Q Okay. And it's dated July 1st, and this seemed to be -- or appears to be served on July 1st, too?
A Correct.
MR. SWERLING: Your Honor, we'll put this in, if that's all right.
THE COURT: Okay.
(Defendant's Exhibit No. 1, arrest warrant, was marked and entered.)
BY MR. SWERLING:
Q Did you have anything to do with the actual taking of

the vehicle into custody?
A No.
Q But you obtained the search warrant that authorized them to take it?
A That's correct.
Q And who did you give that to with instructions to go ahead and take the vehicle into custody?
A The search warrant would have been provided to the lab after the vehicle was towed from the scene. This search warrant wouldn't have been given to the person who did the tow.
Q That did the tow?
A Right.
Q All right. So you personally did not participate in the towing of the vehicle, but it was towed at your instructions?
A That is correct.
Q Pursuant to the search warrant?
A Pursuant to the search warrant and the arrest warrant.
Q Okay. But there's no question that Mr. Wray was arrested inside the Out Back, and the vehicle was in the Home Depot parking lot; is that correct?
A Directly -- the part of the Home Depot parking lot that was directly behind the Out Back, yes.
Q And is that a contiguous type of parking lot. It's

separated where you can say it's Home Depot, you say it's Out Back?

A It's shared.

Q Shared?

A From what it looks like because all the employees from Out Back, when they go to work that's where they park. There are reserved spots for them.

Q All right.

A Customers -- that is actually within the property limits of the Out Back.

Q There are a number of retail establishments in that area?

A There's a couple of hotels -- yes.

Q All right. The search warrant has a return on it June 2nd, which obviously isn't correct; is it not?

A Since I didn't get the search warrant until July 1st, yes.

Q Did you-all -- did you-all perform some magic? I mean, you actually don't know what date it was, but it does say June 2nd?

A That is correct.

Q Okay. Mr. Wray, just so I understand, when you arrested him in the Out Back and his vehicle was out there, he was not in any close proximity to the vehicle at the time of the arrest?

A He was inside the Out Back and the vehicle was outside.

Q Okay.

MR. SWERLING: That's all. Thank you.

THE COURT: Any redirect or anything -- Ms. Johns, do you have anything?

MS. JOHNS: Yes.

THE COURT: Okay. Go ahead.

DON MCRAE - CROSS EXAMINATION

BY MS. JOHNS:

Q Investigator McRae, you stated that you had already received the names of the -- of the people who had allegedly done the shooting prior to you developing the photo line-ups; correct?

A That I had the name prior to me developing the photo line-ups?

Q Yes, sir?

A Yes, ma'am.

Q Okay. And when you arrived on the scene it was daylight; is that right?

A I'm sorry?

Q When you arrived on the scene it was daylight, is that right?

A Um --

Q 9:15, you said?

A When I arrived on the scene, I arrived at 5:40 in the

morning.
Q Oh, okay. Well -- It was starting to daybreak, right?
A I don't know what time sunrise was on June 30, 2007.
Q When you arrived on the scene did you have information about the person who committed the shooting prior to your arrival?
A Prior to my arrival did I have any information on who did the shooting?
Q Yes, sir?
A No, ma'am.
Q After your departure you had the name of Taurus; is that correct?
A Once I left the first time -- I was back and forth a lot that morning. So with -- at one point that morning when I left I did have the first name of Taurus.
Q Okay. When you left the scene and went to the scene where the Isuzu Rodeo was stopped, you already had the name Taurus; is that correct?
A I believe I did.
Q When you created the photo line-up, it wasn't that hard to come up with an array of photographs because you already had a name? So you already had a name and you put that name in the database right?
A No.
Q All right.

A I would have had to put his name in the database, but I believe by the time I was searching for pictures for Mr. Watts, I already had the last name of Watts or Watson.

Q Okay.

A Okay.

Q So from the database, let's just -- for purposes of the judge --

A Yes, ma'am.

Q -- you can put the first name of Taurus in there and run a data search from that database and come back with picture of Taurus Watts, if he was in the database, right?

A (No response.)

Q Your run just one name, you can run Taurus and it will give you some -- if he's in there, it will give you --

A If he's in there it will come back.

Q All right. Now, I'm going to ask you if you have anything with you that would indicate when this photograph was taken? I'm referring to State's Exhibit --

A When that photograph was taken?

Q Yes, sir.

A I couldn't tell you on the stand today, but that picture would have had a date associated with it from that database.

Q Okay. And based on State's Exhibit No. 6, if you look at the photo listed as number six --

A Yes, ma'am.
Q -- it's obvious that that's a jail uniform; is that correct?
A I'm sorry?
Q Obvious that that's a jail uniform; is that correct?
A No, ma'am. It does not state Richland County Detention Center. It actually looks like a June shirt to me.
Q And none of the other photographs in this photo line-up have that article of clothing on; correct?
A There are one, two, three, four others that actually have a non-collared shirt on, but that specific style of shirt? No, ma'am.
Q Taurus is the only one that has that specific style of shirt on; is that right?
A Specific style?
Q Yes, sir.
A I mean, there's no collar. It's go a low neckline. So I would submit to you counselor that the four others are similar, however, they are different colors.
Q Okay. Now, this not a color photograph and you did not show Mr. Jacobs a color photograph, did you?
A No, I didn't.
Q Okay. Are you familiar with the Richland County Detention Center's uniform?
A I am.

Q Okay. And would you agree that number six is consistent with that uniform?

A I would.

Q And would you agree that the other five are inconsistent with that uniform?

A I would.

MS. JOHNS: Your Honor, may I hand this up to the Court?

THE COURT: Yes.

BY MS. JOHNS:

Q Did you do any other interviews on the scene other than Mr. Jacobs?

A On the scene?

Q Yes, sir?

A I don't believe so.

Q Okay.

MS. JOHNS: I have nothing else, Your Honor.

DON MCRAE - REDIRECT EXAMINATION

BY MS. SHIPLEY:

Q Just so we're all clear. The time that you met with the witness, Ricky Jacobs, at the scene, did he know the name of the person with the gun that night? And you may refer to your notes.

A Thank you. He knew the first name, Taurus.

Q Okay. He knew the name, Taurus; is that correct?

A That's correct. Actually, he knew a little bit more information about Taurus.

Q What else did he know about Taurus?

A Mr. Jacobs also related to me that he hung around EL Hunter Road, which is just right up the road, just up the road on Hardscrabble Road, that's Farrow Road, he also told me that he thought that he may stay on the dirt road off of EL Hunter Road. Mr. Jacobs also informed myself that Taurus went to the Townsmen Club off of Hardscrabble Road. All of these areas are within close proximity of the club.

Q Okay. And he was familiar, clearly familiar with Taurus; is that correct?

A Yes.

Q And then he called you back at 9:15 that same morning; correct?

A Correct.

Q With the last name Watts or Watson; is that correct?

A Correct.

Q And so now you have the name Taurus Watts, correct?

A Correct.

Q And were you able to find a Taurus Watts in your database?

A I did.

Q And were you able to find an address for Mr. Watts in your database?

A The 133 Abilene. That would have been what was on that information sheet on that database.

Q And is that consistent with a dirt road off of EL Hunter Road or in that area?

A In that area.

Q Okay.

A Abilene is not a dirt road in that area, but -- I believe what Mr. Jacobs was actually referring to was Ballington Road, which is a dirt road off of EL Hunter.

Q Okay. And so basically, this witness was familiar with Taurus?

A Yes.

MS. SHIPLEY: No further questions.

MS. JOHNS: I don't have any recross, Your Honor.

THE COURT: All right. You can step down.

INVESTIGATOR MCRAE: Thank you, Your Honor.

MS. MCDUFFIE: Your Honor, state would call Lt. Anna Elsey.

THE COURT: Okay.

THE CLERK: Please raise your right hand.

(WHEREUPON, Anna Elsey, was sworn to tell the truth.)

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

LT. ELSEY: Anna Elsey, E-l-s-e-y.

ANNA ELSEY - DIRECT EXAMINATION

BY MS. MCDUFFIE:

Q Lieutenant, where are you employed?

A Richland County Sheriff's Department.

Q And were you employed there in June and July 2007?

A I was.

Q And was your name, last name Elsey at that time?

A It was Clemmons.

Q And on July 2, 2007, did you have a chance to come in contract with a 1999 GMAC Suburban?

A I did.

Q And where was that?

A It was located in our secure forensic garage at 5623 Two Notch.

Q And when did that vehicle come into your secured forensic garage?

A According to our records it was entered on July 1, 2007, at 5:21 by Investigator Livingston.

Q When did you come in contact with that vehicle?

A Monday morning on July 2nd.

Q And approximately what time?

A Around 10:00 o'clock.

Q And from the time that vehicle entered your garage until you came in contact with it was it secured?

A Yes.

Q Could the people -- could the public or anybody tamper with it in any way?

A No. It's a secured location. Restricted access by investigators and the lab.

Q And when you came in contact with that vehicle what was the purpose of what you were doing?

A To execute a search warrant on the vehicle.

Q And did you have a copy of that search warrant?

A Yes.

Q And what exactly were you looking for in the vehicle?

A After contacting Investigators McRae and Gallegos, I searched the vehicle for any forensic evidence related to the incident that occurred on June 30th.

Q The search warrant specifically says search for evidence will include, but not limited to blood, hair, fibers, and fingerprints?

A That's correct.

Q What are some other -- some other forensic evidence you typically look for when you execute a search warrant?

A Trace evidence such as GSR, gunshot residue, also includes things such as photographs or swabs from the vehicle. Anything that -- in this particular case it may include a look for shell casings or anything related to this specific incident.

Q Were you aware of whether or not a weapon had been used

in this incident?
A I was advised that was a possibility; yes.
Q And is that one reason you would look for things like shell casings or trace evidence?
A Yes.
Q And when did you execute the search warrant?
A On July 2nd.
Q And did you fill out a search warrant return?
A I did.
Q And what date did you put on the search warrant return?
A I put June 2nd.
Q And was that the correct date that you executed the search warrant?
A No, it was not. It was a clerical error.
Q And on all of your paperwork that you filled out, what date did you put on that?
A July 2nd.
Q The date you actually executed the search warrant was what?
A July 2nd.
Q And what did you remove from the vehicle?
A I took photographs. Swabs, fingerprints and palm prints, trace evidence, GSR. A MUG can that was empty, cigarette butts and a black head rag.
Q And was that search warrant returned to Judge Maurer?

A It was. I returned it on July 6th at 1:30 p.m.

MS. MCDUFFIE: Beg the Court's indulgence. Nothing further, Your Honor.

THE COURT: Okay.

ANNA ELSEY - CROSS EXAMINATION

BY MR. SWERLING:

Q How are you doing?

A Okay.

Q Good. The search warrant was done on July 6th -- I'm sorry, July 2nd and the return was on July 6th?

A That's right.

Q Okay. And this indicates you had a copy of the warrant in the vehicle?

A That's correct.

Q So you had -- obviously had a copy of the search warrant when you processed the vehicle; is that correct?

A That's correct.

Q And the vehicle was in the compound at the time that you processed it or did you take it to another location?

A No, it was in our forensic garage, which is a different location than the compound. It's at headquarters, and that's where I processed it. In a secure location.

Q But everything that you removed here is listed on the return was taken pursuant to the search warrant; is that correct?

A Yes, sir.

MR. SWERLING: Judge, I want to make sure the -- had the return on it. That's all I have.

THE COURT: Okay.

MS. JOHNS: Nothing from the defense, Your Honor.

THE COURT: Okay. All right, ma'am, you can step down.

LT. ELSEY: Thank you.

THE COURT: Anything else from the state?

MS. SHIPLEY: Not as to this matter. Your Honor, we would like to have time to address Neil verses Biggers and the search warrant.

THE COURT: You may do so now.

MS. SHIPLEY: Thank you, Your Honor.

Your Honor, the state's position is that the Neil verses Biggers Hearing was not necessary because the witness, Ricky Jacobs, testified that he was familiar with both defendants from the 19 years he operated this club, the 25 years is what I think he ultimately said that he's familiar with these individuals that frequent his nightclub. He's familiar with faces or sometimes names or sometimes full names. First names or full names. And that pursuant to State verses McCord where the ruling of the Court was the decision to admit an eye-witness identification is at the trial court's discretion and will not be disturbed. Also

that -- beg the Court's indulgence -- but if a person knows another individual this hearing is not necessary.

Your Honor, the issue here -- the reason why I went ahead with this hearing even though we were not required to is that the first time Mr. Jacobs did not know the name of Tremaine. So this hearing was more for the purpose of Tremaine Wray's identification, but he is the one that came forward with Tremaine Wray's name to Investigator McRae, and as a result was able to positively identify Mr. Wray. He has known Watts for many years. Knew him by name that night. So we just put them both up for the purposes of this hearing for the totality of the circumstances that you have to make in this type of hearing.

Your Honor, the state submits that we have satisfied all five factors of Neil verses Biggers. Mr. Jacobs testified that he did have an opportunity to view both subjects in the parking lot of his business. He indicated that he was crossing the street and -- if I may just refresh the Court's memory, he was at this corner when he encountered them. He was getting ready to go across the street to go get his car from his dad's place, and that this the general area where he encountered them. He testified that the lighting conditions were bright. There are a lot of lights underneath this docking station, gas pumps, and that there are also security lights in the parking lot.

That he had no problem seeing these individuals. Also, that he was able to see what kind of clothes Mr. Watts was wearing that night. He doesn't remember what Mr. Wray was wearing. He thinks it might have been a white t-shirt, but he had no problems giving a description to Investigator McRae that night when he found him about 6:00 a.m., about 5:45 in the morning of the incident date, and that he was able to give a height and weight description of the suspect. He also indicated that he was paying a high degree of attention, especially when shots got fired, he witnessed them both get in the tan Suburban. He stopped in the road and witnessed the tan Suburban go down the street, and he saw -- observed shots coming from the driver's side of the tan Suburban.

Your Honor, the witness' level of -- well, the accuracy of his description is corroborated by Mr. McRae's notes. Also the witness' level of certainty at the time of identification. You heard from Investigator McRae and Mr. Jacobs that he did not hesitate at all in identifying these perpetrators. In fact, he is the one that provided the name of Tremaine to investigators for them to develop a suspect, and they went to diligent efforts to try to find out a last name and ultimately were able to find the name Tremaine Wray that happened to have the same address where they spotted a car fitting the description provided by Mr. Jacobs that

night. And so as a result he was able to develop a photographic line-up and present it to Mr. Jacobs, and he identified them immediately without hesitation. And he testified that he never was suggested by Investigator McRae who to pick out.

And as to the -- again, for purposes of this hearing the whole issue was whether or not he knew Tremaine, because he knew Taurus' name that night. Whether or not -- it's a matter for Your Honor and a matter for a jury to determine the credibility of each witness, but you heard Investigator McRae testify that it's not his practice to tell a witness, here, do you see Joe when they're looking for Joe. That is not his practice, and Mr. Jacobs readily notified the detective that he knew the name Taurus and was looking for Taurus. He is the one that provided the name to the investigators. Not -- usually it's the officers that are privy to that information and know that information, but in this case this witness is telling Investigator McRae who he saw by name.

So basically, Your Honor, the state's position that the standards for Neil verses Biggers have absolutely been met as to both defendants and that a Neil verses Biggers Hearing wasn't even necessary as to Taurus Watts. But regardless we have satisfied those five factors for Your Honor to determine the totality of the circumstances, and that there

is no unduly -- that neither one of them was unduly suggested, and that there was no danger of misidentification in this case.

THE COURT: All right.

MR. BAX: Well, Your Honor, as to Neil v. Biggers defendant Wray, we do not concede the issue, but we leave it in Your Honor's discretion about this case. I would only point out that on the issue of the identification and opportunity, there was not really addressed. All that was addressed by Officer McRae was that he didn't remember this individual and that he did not get a very good look at him. And then later on he called with the name. He doesn't really indicate in the testimony where he got the name, how he got the name, whether it was from people on the street or through his own knowledge, but that's just the one thing I wanted to point out on a factual basis. Thank you.

THE COURT: Thank you. Any response?

MS. MCDUFFIE: Your Honor, we would -- Investigator McRae testified too that Ricky Jacobs told him that he didn't get a very good look, but he could pick them out if he saw them again, which is, in fact, what happened, Your Honor.

THE COURT: All right. The identification will be let in.

MS. JOHNS: Your Honor, with regard to Mr. Watts,

I'd like to be heard?

THE COURT: Sure. I'm talking about Mr. Wray.

MS. JOHNS: Oh, okay. Whenever you're ready, Your Honor.

THE COURT: I'm ready.

MS. JOHNS: Your Honor, with regard to Mr. Watts, Mr. Watts, based on testimony of Mr. Jacobs, has been known by Mr. Jacobs for 25 years or longer. The first opportunity that Mr. Jacobs had to discuss this with Investigator McRae was sometime after police officers were already there. I think Investigator McRae said something about getting to a more isolated condition and that Mr. Jacobs could be interviewed alone for some reason. Your Honor, there was a description of -- well, Your Honor, here's the issue on this particular matter in regards to the identification -- Neil verses Biggers. Your Honor, I wasn't given an opportunity to call any witnesses, and I'd like to call for limited purpose Mr. Watts to the stand so that the Court can get a full idea of his identification before I go into argument. I don't know if that's something that you want to do now or want to take a short minute.

THE COURT: Yeah. Fine

MS. JOHNS: I call Taurus Watts to the stand, please.

THE COURT: Okay.

THE CLERK: Please raise your right hand.

(WHEREUPON, Taurus Watts, was sworn to tell the truth.)

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

MR. WATTS: Taurus Watts.

TAURUS WATTS - DIRECT EXAMINATION

BY MS. JOHNS:

Q Mr. Watts, do you recall June 30, 2007?

A Yes.

Q Do you recall the early morning hours of the same date?

A Yes.

Q What kind of hairstyle did you have, Mr. Watts, on June 30, 2007, at 4:12 a.m?

A I had a low Afro.

Q Okay. And you turned yourself in on July 3, 2007; is that correct?

A Yes.

Q And when you turned yourself in on July 3, 2007, what hairstyle did you have?

A I had a low Afro.

Q Did you have any difficulty when you went to the Sheriff's Department with regards to your description?

A Yes.

Q Please tell the Court what happened?

A The officer -- it was a black female. I don't recall her name, but I had my family member Willie Crosby with me. And I had him turn me in. When I went down there to turn myself in I didn't have my identification on me at the time. But I had told the officer my name, and I told her that I wanted to see the investigator that was on the case. She told me Mr. McRae was on the case, but at the time she told me I was not the person that she had on the photo that they was looking for because the photo had dreads, a picture of me when I had dreads in my head and hair on my face, fully facial hairs. So she told me I wasn't the person. Now, I told her I was the person and my cousin Willie can testimony to that. But I waited. I could have just left because she told me I wasn't the person so I could have just up and left, but no, I told her I'll wait on the investigator. So she called Mr. McRae, so I just waited on Mr. McRae to come, but I could have left.

Q Okay. But you were there for the purpose of turning yourself in; is that correct?

A Yes.

Q Okay. And did you at one time have dreads?

A Yes.

Q Okay, and when was that, sir?

A 2005, the beginning of 2006.

Q Okay, and you've seen the photograph that reflects your

appearance -- that's been used in this case, which is State's Exhibit No. 6, is that right; you've seen this before, right?

A Yes.

Q Okay. And do you know when that photograph was taken?

A That photograph was taken the beginning of 2006. It was either around the -- matter of fact, it was Superbowl night so it had to be the end of January, 2006.

Q Superbowl night when you were arrested; is that right?

A Yes, I was arrested.

Q All right. And that's when that photograph was taken?

A Yes. That's when that photo was taken.

Q And you remember that night specifically because of the Superbowl?

A Yes. I remember that night because of the Superbowl and because I was injured because I had wrecked this guy truck on the interstate.

Q And that was -- and subsequent to that wreck you were arrested?

A Yes.

Q And what were you charged with?

A I was charged with driving under suspension. They charged me with DUI and no seatbelt.

Q All right.

MS. JOHNS: I don't have anything further for Mr.

Watts. Answer any questions that Ms. Shipley may have for you.

MS. SHIPLEY: I don't have any questions.

THE COURT: All right. You can step down, sir. You can continue with your argument.

MS. JOHNS: Your Honor, this picture that has been used by the Sheriff's Department is clearly an old picture that was taken in 2006. I know that Investigator McRae said that in that particular photograph State's Exhibit No. 6, there's not a date and time on there, but he does have the ability to do that. Your Honor, that picture was taken in 2006. Mr. Watts testimony is that he did not have dreads at the time of this incident. That is part of the description, Your Honor, which actually goes against or is counter-productive to the testimony of Mr. Jacobs. Mr. Jacobs knows Mr. Watts. He's known him for 25 years. He may have noticed that he had a dreadlock type of haircut, but on that particular night, Your Honor, he did not have that haircut.

Your Honor, in light of the fact that Mr. Watts did not have that type of haircut, you know, it's questionable as to whether or not the opportunity for Mr. Jacobs to be see Mr. Watts does fall within the five factors. I think the testimony from Mr. Jacobs with regard to State's Exhibit No. 7 is that -- and I'll bring it to you a little closer, Your

Honor, is that this particular shelter right here is a gas -- is the area where the gas pumps are and to the left of that gas pump, if you're on Hardscrabble Road, there's an indication that the car, the SUV was parked over here, and Mr. Jacobs said that he was crossing the street over to his father's -- the direction of his father's residence right here. So if he was crossing the street he is going to have his back to the particular area even if there is lighting over there. The lighting underneath the shelter right here where the gas pumps are, Your Honor, illuminate that area, and if Mr. Jacobs is looking behind him, then Mr. Jacobs is looking into the light. So I would argue that the opportunity to the view is distorted. I would also argue, Your Honor, that with regards to giving a height and weight description, Mr. Jacobs did not recall if he gave a height or weight description. Your Honor, with regards to the totality of the circumstances at the particular scene, Mr. Jacobs takes the witness stand and he tells the Court that he was concerned for his patrons safety, he is concerned about security, and he had a lot of things going on. So I think that in and of itself does shed some, you know, some problems with this particular ID.

Your Honor, with regard to State's Exhibit No. 6. Mr. Jacobs states that when he was given this particular line-up, even though it was unnecessary, he was asked which

one was Taurus. Also, Your Honor, with regards to this particular line-up Taurus is the only one that is wearing a jail uniform and it is a photograph of him when he was in jail in 2006, regarding driving under suspension and no seat belts.

Your Honor, with regards to the hesitation of the identity of Mr. Watts, Mr. Jacobs did, in fact, admit to hesitation because when he was first approached by law enforcement he did not give the information with regards to the description of who it was that was shooting -- who it was that he saw. He gave a description of somebody he thought it was, and that description involved deadlocks. My client did not have deadlocks. I think that after some conversations Investigator McRae had with Ricky Jacobs, it was at some later point that Ricky Jacobs comes forward with the name Taurus Watts. At the initial contact Investigator McRae had with Mr. Jacobs, Mr. Watts was not identified.

Your Honor, based on those facts, Your Honor, I submit Mr. Jacobs has not identified Mr. Watts, where the identification was not doing justice, where the identification was accurate, and for those reasons, Your Honor, I ask that the identification be suppressed.

THE COURT: State?

MS. SHIPLEY: Your Honor, he was arrested on July 3rd, so we're going to have to take his word for it that

that's how he was wearing his hair when he got arrested on these charges on July 3rd. Regardless, Your Honor, the witness's testimony is that the guy had short twists in his hair, not deadlocks. I mean, the witness said he didn't have long deadlocks, but he had twists.

Now, this again, goes to credibility of the witnesses and this is an issue for the jury. Whether or not -- whether or not the description is accurate or not. Bottom line, we didn't have to have this Neil verses Biggers hearing as to Taurus Watts because Mr. Jacobs knows him and has known him for 25 years. Whether he paid attention to how he was wearing his hair styled that day is a question for the jury. He had been identified from the photographic line-up, had no hesitation, according to himself and to Investigator McRae, and again, please remember, it is the witness providing the names to law enforcement, not vice-versa. It's not like law enforcement coming up to the witness with a suspect that they've seen and ask him if he recognizes them or not. This witness knows this perpetrator, and saw him, and testified about his opportunity to view -- I asked him whether or not he had anything obstructing his view and Ms. Johns, is indicating that he was concerned about his patrons and wasn't paying attention. That was after the shots were already fired. That's what made him concerned for his patrons. That was

after the car was already gone and shots had already been fired. He was paying attention. He testified he stopped in the middle of the road to watch them shoot. And that he saw, watched them get in the car, and watched Mr. Wray drive away, and Mr. Watts was in the passenger side.

As so I'll submit to the Court that all five elements under the totality of the circumstances there is no danger of misrepresentation -- of misidentification in this case.

THE COURT: Any last words, Ms. Johns?

MS. JOHNS: No, Your Honor.

THE COURT: Okay. I need to look at that case that you're referring to. McCord.

MS. SHIPLEY: Beg the Court's indulgence.

(Pause.)

MS. SHIPLEY: McCloud, not McCord. McCloud. My mistake.

MS. MCDUFFIE: 260 S.E. 445.

THE COURT: Oh, okay.

MS. SHIPLEY: I got them mixed up. I apologize.

THE COURT: Oh, okay. I'll look at that.

(Pause.)

THE COURT: This case talks about specifically where the victim knew the accused.

MS. SHIPLEY: It's the same thing. The witness -- whoever is doing the identification -- whoever it is,

whether it's the victim or a witness.

THE COURT: Okay. But the reason you're having a Neil v. Biggers is the fact that you're using the pre-trial ID as the support for the ID --

MS. SHIPLEY: Yes.

THE COURT: Okay.

I'll allow it in. You've sufficiently presented evidence on each one of those issues, and we do have cross-examination that indicates there might be a credibility issue, but that's a question for the jury.

MS. SHIPLEY: Thank Your Honor.

THE COURT: Okay.

MS. SHIPLEY: Your Honor, as for the search warrant issue, I guess it's their motion so they have the burden for this one.

THE COURT: Okay.

MR. SWERLING: Judge, I'll make this as brief as I can. I think if you'll look at the search warrant, in the affidavit for the search warrant -- you'll see that particular issue and it is our position that the affidavit for the search warrant is defective and therefore the search is defective. The search warrant is defective and the affidavit is defective. The affidavit for the search warrant fails to set forth any information whatsoever to establish probable cause in this case. I don't know if you

have it in front of you, Judge, but it will probably be a lot easier to see it --

THE COURT: Okay.

MR. SWERLING: Judge, in the affidavit, which is signed by Investigator McRae, it merely states conclusionary statements on the part of the investigator as to what he's learned from this investigation. There is no one in the affidavit identified whatsoever. It refers to witnesses in the affidavit, but none of those witnesses are identified nor is any information given to the magistrate so that the magistrate can determine the reliability of those witnesses. What you have here is basically some bare-bones allegation which no magistrate could find probable cause from.

It says on June 30, 2007, Demuria Johnson was fatally shot. Witnesses, unidentified, did identify the above listed vehicle leaving the incident location firing several shots from the vehicle. One of the rounds hit Demuria Johnson. A witness, not identified, identified the driver and passenger of the vehicle as subjects leaving the incident location and has provided law enforcement with a statement. The statement is not set forth. Statement that the gunfire struck the victim came from this vehicle at the incident location. The vehicle was spotted by the investigator at the residence of one of the suspects.

My question here to the state is where does that set

forth any probable cause that a mutual detached magistrate can determine that that vehicle was used in a crime. You cannot just make those bare-boned assertions. This is a search warrant. It was the instrument that was used to justify the search. Mr. Wray was in the Outback kitchen when he was arrested. The vehicle was taken into custody by law enforcement pursuant to this search warrant.

Your Honor, I'm not going to argue whether it was June 2nd or not, because I think that's -- I'm even going to waste the Court's time, but it was the instrument that was used to justify the search and the gathering of the evidence as set forth on the return in the case.

I will give you a couple of cases, but I don't even know if I need to get that far, but I will. A cardinal principle of law and search warrant is you have to have an affidavit that states probable cause. In State verses Adolph, which is a case found at 441 S.E.2nd, 832 1994. I'll quote this: The test of a magistrate in determining when to issue a warrant is to make a practicable common sense decision as to whether under the totality of the circumstances set for in the affidavit there is a fair probability that the evidence of the crime will be found in a particular place. This includes consideration of the veracity of the person supplying the information and the basis of his or her knowledge. We're not talking about

informants. We're talking about a witness. You have to set forth veracity of the witness providing the information. Certainly his name and the basis of his knowledge, which we don't have here. As the reviewing court, this is the Supreme Court stating this -- I'm sorry -- Court of Appeals. As a reviewing Court our task is to decide whether the magistrate had substantial basis for concluding probable cause existed. I submit that it did not.

Another case that I wanted -- in State verses Smith, which is 392 S.E. 2d 182, the Supreme Court stated the affidavit is defective on its face, in this case. An affidavit must contain sufficient underlying facts and information in which a magistrate may make a determination of probable cause. Mere conclusionary statement which give the magistrate no basis from which to make a judgment regarding probable cause are insufficient. His action could not be a mere ratification of the bare conclusions of others. Essentially, law enforcement. Another case which addresses this issue is State verses Johnson, which is found at 395 S.E. 2d 167. And in that case it says, the reviewing courts will not defer to a warrant based on an affidavit that is not provided by a magistrate with a substantial basis for determining the existence of probable cause. Sufficient information must be presented to the magistrate to allow an official to determine probable cause. These

actions could not be a mere ratification of the bare conclusions of others, based on setting forth the same standard that I just quoted.

Judge, the bottom line is that the affidavit has no -- does not set forth probable cause because it does not establish the reliability of the witness -- first of all, it doesn't identify the witness. It doesn't establish the reliability of the witnesses or the underlying basis for how those witnesses knew the information. So therefore the magistrate could not make a determination as to whether or not the affidavit -- or could not have made a determination that the affidavit contained sufficient information to establish probable cause. Therefore the search has to be suppressed, based on this information on cases in South Carolina, which is basically elementary law.

The other thing I would point out to the Court is that while the state may put in there their description of the property sought as any forensic evidence related to the murder of Demuria Johnson such as and would include, but is not limited to blood, hair, fibers, and fingerprints, etcetera. There is no such thing as etcetera in the Fourth Amendment law. The Fourth Amendment requires that a warrant be particularized. It must state with particularity the description of the property sought and what's in this, what's not contained in here are some of the items that are

in the return that were taken. In particularly photographs, swabs, trace -- they've got MUG can, cigarette butts, and black head rag or something like that. Anyway, that information is not contained, is not stated in any particularity.

What it amounts to, Judge, is a general warrant where we are not particular in describing the property you intend to seize. That amounts to a general warrant which is prohibited by the constitution. So for those reasons I would like the opportunity to respond if the state has any theory under which this affidavit has probable cause, and I'd like to be able to respond to that.

THE COURT: State?

MS. SHIPLEY: Yes, ma'am, Your Honor. Your Honor, it's the state's position, first of all, that this defendant, Tremaine Wray does not have standing to challenge the search warrant of this vehicle. It is registered to Nellie Wray. And the defense has not established what expectation of privacy that he has to this vehicle. So if they'd like to address that first. Maybe that will --

THE COURT: Okay.

MR. SWERLING: He's driving the vehicle. It is a vehicle he drives. It was the vehicle he drove there that night. That establishes standing in and of itself. It's not like the vehicle just appeared in the parking lot. He

brought it there. And that is the vehicle he was driving -- not only that, but it is the vehicle he was driving, supposedly, on the date of this offense. Is that the vehicle they're saying was used in the offense. I believe that estoppes the standing. If Your Honor has any questions about that standing should be established more directly, but I believe that is enough standing right there.

THE COURT: Okay. That's their contention.

MS. SHIPLEY: Your Honor, we -- the state's position is that the affidavit of Investigator McRae to Judge Maurer clearly does satisfy the probable cause standard. If I can just read it in its entirety?

THE COURT: Sure.

MS. SHIPLEY: Just again, so -- there were parts that were left out by Mr. Swerling.

On June 30, 2007, at approximately 04:10 hours, Demuria Johnson was fatally shot at the H&J Club at 2820 Hardscrabble Road, Columbia, South Carolina, 29223. Witnesses identified above vehicle leaving the incident location and firing several shots from this vehicle. One of these rounds from this vehicle did mortally wound Demuria Johnson. A witness identified the driver and a passenger in the vehicle at subjects leaving the incident location and has provided law enforcement with a statement stating that the gunfire that struck the victim came from this vehicle at

that incident location. The vehicle was found by investigators at the residence of one of the suspects identified by witnesses as the driver of the vehicle that fired the shots at the incident location.

Your Honor, there can't be more probable cause than that. That explicitly states that it was this vehicle that was witnessed leaving the scene, shooting, and that led to the death of Demuria Johnson. And it's specific as to this incident that night. It expressly states where it happened and what time it happened. What date it happened, who was killed and so forth. Now, as far as the name of the witness, I -- I've got case law that requires -- that says a witnesses name is required because Your Honor in most drug search warrants they usually always confidential informants providing information to law enforcement and their names are never included in the search warrant. And so that is the result of it. The bottom line is that there is plenty of information contained in this affidavit where the magistrate judge in this case obviously felt that there was enough probable cause to where he signed off on this affidavit. So I believe that the affidavit does meet the requirement for the probable cause.

Your Honor, even if you find that the affidavit is invalid for some reason there is no question that this officer acted in good faith in relying on this search

warrant that was signed by a magistrate judge. The law -- United States verses Leon -- it indicates that law enforcement officers are not legal -- employers of legalize writing skills. They are there to present the facts, to get a search warrant, and when an issuing judge signs a search warrant they are allowed to rely on that magistrate's expertise because they are the ones that are required to find probable cause. So even if you find that this affidavit is invalid for any reason, which state is not conceding that, we're just for argument purposes just explaining that that behavior of this investigator clearly shows that he didn't make exception. He goes to the magistrate, first of all, to get a search warrant for this vehicle. He has the vehicle towed to law enforcement, to the forensic garage. He delivers the search warrant to Lt. Elsey so that she can then use that search warrant to -- it gives her authority to then execute it on the vehicle.

Beg the Court's indulgence.

The whole purpose of the exclusionary rule, if you were considering even excluding the evidence obtained in this case, is to deter police misconduct. It's not to punish for the magistrate's error, if any.

And so, Your Honor, I believe that the record is completely supportive of the fact that Investigator McRae, if you should find that the affidavit was insufficient to

support probable cause, acted in good faith and that a magistrate clearly did find probable cause by signing it and issuing it.

And then lastly, as to the particularity requirement, I have some case law for co-counsel. I guess Ms. Johns --

MS. JOHNS: Well, Your Honor, if anybody doesn't have standing it's my client.

THE COURT: Okay.

MS. SHIPLEY: And Your Honor, you're going to notice in my file that you're not going to find any law about the affidavit being invalid, because in my review of the search warrant in preparation that never even occurred in my mind. That is clearly an articulable affidavit for probable cause. Anyhow, I've handed up State verses Thompson, and United States verses Osborne, State verses Sullivan, and State verses Fletcher.

And Mr. Swerling was indicating that the items sought to be seized were not particularly described in the affidavit. Your Honor, it's state's position that when you're investigating a case where a car is witnessed shooting into a parking lot where there are unarmed victims and people running around, it is only logical for them to investigate the vehicle for forensic evidence relating to a shooting. That would include gunshot residue, ballistics, casings, forensics, evidence of any kind would include

fingerprint analysis, that would also include photographing the vehicle. I have never seen a search warrant executed where photographs were not taken in a case.

The case law that I relied on mostly, Your Honor, was State verses Fletcher. In that case the defense sought to suppress evidence that was seized at the residence of one of the defendants in that case. And the search warrant indicated that this was the residence where a 9 month old child had been brutally beaten and abused to death. At that point, Your Honor, the scope of the search warrant -- it did not describe with sufficient particularity the property which was to be seized, and they argued that the trial court erred in refusing to suppress evidence resulting from an invalid search warrant. Your Honor, in that search warrant, and specifically, it said, any evidence of -- warrant in this case was limited to evidence of abusive behavior towards a child. It authorizes a search warrant only to that particular crime.

In this case, Your Honor, it's clear the only evidence they're seeking from that vehicle is evidence relating to the crime where Demuria Johnson was killed on June 30, 2007. They are not some rampant search for drugs or any other evidence of different crimes. They particular -- they do state with particularity that this is the crime we are requesting the search warrant for. And therefore it was not

fatally general in State verses Fletcher even when they said any evidence of abusive behavior towards children, and the logic behind supporting the search warrant in trial judge's ruling was that requiring a more detailed description would unreasonably thwart an investigation.

Law enforcement officers are not -- they don't have crystal balls. They don't know what they're going to find in executing the search warrant. They're hoping they'll find everything they can, but -- another case cited in State verses Fletcher, Your Honor, was State verses Osborne, which I handed up to you, and that's basically upholding a warrant authorizing the seizure of several described items and also any other evidence relating to the armed robbery.

The case that I handed up concerning -- State verses Sullivan, that was where a tax preparer's office was searched and the search warrant basically indicated it was going to authorize agents to seize quote copies of income tax returns and documents relating thereto and book and record reflecting income expenses relating to income tax returns and on that return signed by law enforcement, they seized five file cabinets, three trash cans, and the contents and items from the defendant's desk. The defense argued that that was too broad. The court completely disagreed saying that a search warrant too technical might require law enforcement to sift through records for an

extended period of time. There is no contention that the search was not reasonable. Again, here Your Honor, there is no contention that the search was not reasonable. They searched for evidence relating to a shooting, gunshot residue. The sole contention was that the search was too broad. Rules relative to the search of an automobile are somewhat relaxed in contrast to the search of a home. Not all searches are prohibited. Only those which are unreasonable are not permitted.

Therefore, Your Honor, it is universally recognized that the particularity requirement must be applied with a practical margin of flexibility depending on the type of property to be seized, and a description of property will be acceptable if it is as specific and the circumstances and the nature of activity under investigation permits.

So the search warrant in this case practically mirrors the search warrant of Fletcher and Osborne, as well as the other case I handed up, Thompson, which was -- not Thompson, it was just Osborne and Sullivan.

And then it said any forensic evidence related to the murder of Demuria Johnson, such evidence would include, but is not limited to blood, hair, fiber, fingerprints, etcetera. Any and all potential relevant evidence which would aid in the investigation of the murder outlined in the attached affidavit.

And so for those purposes and reasons, Your Honor, we believe that this search warrant was valid, first of all, in the affidavit itself. However, if you find that the affidavit -- for some reason does not support probable cause and that the magistrate signed it in error, then -- that the officers acted in good faith on relying on the search warrant being sufficient by the magistrate and that also they clearly satisfied the particularity requirement as stated in Osborne, Sullivan and Fletcher.

Beg the Court's indulgence. That is all from the state, Your Honor.

THE COURT: Okay. Defense?

MR. SWERLING: Judge, I won't belabor the issue on particularity. We've made an argument, and I'll stand on that, but I will say that I do believe that the state is completely in error on the probable cause set forth in the affidavit. You look at this affidavit. Based upon what's in this affidavit someone could have gone to Investigator McRae and said Jack Swerling drove out of the parking lot. He has dope in his car. He's going to his house, the dope's going to be in his car. A witness told him that. There's no magistrate in the world would go ahead and sign that warrant. Your Honor wouldn't sign it. No circuit judge would sign a warrant like that without establishing the veracity of the witness and the basis for the witness

knowing that. Now, when I said the identity of the witness certainly with informants we don't provide identity, but what we're talking about is the veracity of the witness and I don't know how the state gets around the mandate of the Courts which says -- and this is not Jack Swerling on Fourth Amendment.

When you look at the affidavit for search warrant and the totality of the circumstances set forth in the affidavit, there's a clear probability that that evidence of a crime will be found in a particular place. This includes -- this is the Court's mandate -- consideration of the veracity of the person supplying the information and the basis of his or her knowledge.

Now, where in that affidavit is there anything setting forth the veracity of the witness that Mr. McRae was relying on or that Judge Maurer was relying on? It's not there. There is nothing there that sets forth that. So a search warrant based on that is defective because the affidavit does not set out probable cause. Now, with respect to the Leon issue, South Carolina has never adopted the good faith exception, ever, with respect to a search warrant where the affidavit fails to set forth sufficient information that a neutral, detached magistrate can make a finding of probable cause. I will quote to you a couple of cases that talk about that. Our Court has not gone that far. Our Supreme

Court declined to -- this is in State verses Adolph. Our Supreme Court declined to apply the good faith exception if the underlying affidavit does not include sufficient information to allow a magistrate to determine probable cause. In Johnson, as here, the affidavit does not contain any information regarding the reliability of the informant or was there any corroboration. In this particular case it was an informant, but the same standard applies with respect to a witness. You have to establish the veracity of that individual. With -- in State verses Johnson, the Supreme Court rejected the good faith exception again. The state argues that search may be validated by the good faith exception as documented in United States verses Leon. In Leon the Supreme Court held that the Fourth Amendment exclusionary rule does not bar the admission of evidence obtained by officers acting in reasonable reliance on a search warrant which was issued by a detached and mutual magistrate, but ultimately found to be invalid. The dispositive issue here is whether sufficient information was given to the magistrate to perform his neutral and detached function rather than serve as a rubber stamp of the police. Reviewing courts will not defer to a warrant based on an affidavit that does not provide the magistrate with a substantial basis for determining the existence of probable cause. Sufficient information must be presented to the

magistrate to allow that official to determine probable cause. His action cannot be a mere ratification. We have already found that the affidavit alone does not include sufficient information to allow a magistrate to determine probable cause, therefore, the good faith exception may not be employed to validate the warrant. That a South Carolina rule. As Your Honor knows we have a higher standard there with respect to searches than the United States government has based on the privacy issue in our constitution, which has been interpreted far broader than the United States Constitution.

Judge, rarely have I seen an affidavit for a search warrant I can say does not meet the criteria especially in this day and age, but this one does not. It does not have anything in there that anybody could say that establishes the veracity of the person that the police are relying on asked Judge Maurer to rely on. So I submit to you has to be suppressed.

THE COURT: All right. Anything else by the state?

MS. SHIPLEY: Yes, ma'am. All this information that I can find about the veracity deals with confidential informants that are used for drug deals where these are snitches, that are in the drug dealing world, that clearly their veracity is an issue. This involves eye-witnesses to

a drive-by shooting. That is not applicable, Your Honor. The veracity issue deals with confidential informants that are feeding information to the police, and that's why there has to be a finding of reliability that they're not just setting somebody up. They have to have actual knowledge that is detailed and so forth, and that has to be included in the warrant for drug cases, but as far as an eye-witness, such as Ricky Jacobs, that does not apply. The veracity issue does not apply to just eye-witnesses to a crime.

MR. SWERLING: Your Honor, I'd like to see a case that says that, because State verses Adolph says exactly the opposite. Says -- includes the consideration of the veracity of the person supplying the information and on the basis of his or her knowledge. I mean, it's not limited to just informants. You cannot just say a witness saw something and expect a magistrate to go and issue a search warrant based on that. A witness -- that just doesn't even make sense. I mean, with the informant you have to go even further, but you still have to -- with respect to a witnesses establish the witnesses veracity. You can just say he witnessed, and that's all they got in this affidavit is a witness said it.

THE COURT: Yes.

MS. SHIPLEY: State verses Bellamy. Evidence of past reliability is not usually required when information is

provided by an eye-witness because unlike the paid informer, an eye-witness does not ordinarily have the opportunity to establish a record of previous reliability. This is dealing -- again, there's a distinction between CIs, snitches, and an eye-witness in the way that they should be treated in determining a search warrant.

MR. SWERLING: Except in Bellamy, if I remember correctly -- of course, I'd like to read it again, but it talks about -- still you have to establish veracity, the basis of the person's knowledge and veracity -- identify who it is. It doesn't make any sense that you could go ahead and get a search warrant based upon a witness said.

THE COURT: All right. Anything further? You can -- I'm going to look at this overnight. I want to refresh myself on these particular cases.

MS. SHIPLEY: If I -- if we may be given the opportunity to do so as well.

THE COURT: Okay. All right. Anything further for this evening?

MS. SHIPLEY: No, Your Honor.

THE COURT: And I apologize for your delays, and I will do my best this week to not let people interrupt you-all. Just be reminded that sometimes you-all are the interrupters.

Okay. Thank you all.

Oh, just so you all know. The State's proposed voir dire and their witness list is Court's Exhibit No. 1, and the Defendant's requested voir dire, both sets of defendants, and their witness list are Court's Exhibit No. 2.

(Court's Exhibit No. 1, State's voir dire and witness list, was marked and entered.)

(Court's Exhibit No. 2, Defendants voir dire and witness list, was marked and entered.)

(This proceeding was recess for the evening 6:41 p.m.)

CERTIFICATE

I, THE UNDERSIGNED HILDA M. JORDAN, CVR, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 5TH DAY OF MAY, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

Hilda M Jordan

HILDA M. JORDAN, CVR

COLUMBIA, SOUTH CAROLINA

MAY 23, 2010

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)

STATE OF SOUTH CAROLINA)
)
PLAINTIFF,)
) 07-GS-40-5913
VS.) 07-GS-40-5914
)
TREMAINE WRAY AND TAURUS WATTS,)
)
DEFENDANT.) VOLUME 2
)
)

OCTOBER 6, 2009
COLUMBIA, SOUTH CAROLINA

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE MICHELLE CHILDS, JUDGE, AND A JURY

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

ATTORNEYS FOR THE STATE:
VANESSA SHIPLEY, ESQUIRE
JOANNA MCDUFFIE, ESQUIRE

ATTORNEY FOR DEFENDANT WRAY
JACK SWERLING, ESQUIRE
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ATTORNEY FOR DEFENDANT WATTS
THERESA JOHNS, ESQUIRE

HILDA M. JORDAN, CVR
CIRCUIT COURT REPORTER

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THE COURT: Okay. Let's deal with the warrant issue.

MR. SWERLING: Judge, the defendants aren't here.

THE COURT: I'm sorry. Did someone request them --

MS. MCDUFFIE: We were going to bring them up once all the jurors got here so they jurors didn't see them bring them down the hall.

THE COURT: Oh. Okay.

All right. Any issues that we need to take up. I know we're still waiting on them, but do you-all anticipate anything else other than that issue and then moving right into opening? Okay.

And Mr. Swerling, I think you had walked out, but all I did was make Defendant's voir dire and witness list a court's exhibit, as well as the state's voir dire and witness list.

MR. SWERLING: Okay.

MS. SHIPLEY: Your Honor, I suppose we could settle the witnesses prior records while we're waiting?

THE COURT: Fine.

MS. SHIPLEY: If there's no objection.

MR. SWERLING: Can I have a minute. I want to look at some of the state's cases, Judge.

THE COURT: Sure.

MS. SHIPLEY: Your Honor, I'm handing up case law

that we intend to rely on for the search warrant.

THE COURT: Okay.

(Pause.)

THE COURT: Okay, the court is ready to proceed with any additional information on the search warrant.

MS. SHIPLEY: Would you like to hear from the state --

THE COURT: Yeah, just anything that you have in addition to what has already been presented.

MS. SHIPLEY: Yes, ma'am. We did some research when we broke for the day yesterday, and we came up with some cases that are relevant to the distinction that needs to be drawn by this court between a confidential informant, the test for veracity and basis for knowledge for a confidential informant is distinguishable from the test of reliability of an eye-witness.

The first reason that the courts -- the cases that I've handed up is because eye-witnesses to a crime -- first of all, have first-hand knowledge. Also, they don't have a record of snitching or providing information. They're not paid like the confidential informant. The test, therefore is different for a confidential informant -- excuse me, for an eye-witness.

In State verses Bennett, Your Honor, the Supreme Court found that here we do not have an unidentified informer, the

magistrate was made aware of the affidavit -- the affiant got his information from one who was an eye-witness to a killing. The whole showing was sufficient to justify the magistrate in granting the request by the officer for a search warrant to seek and seize the weapon which has been used to kill the victim in that case.

It defines probable cause, Your Honor, as based on evidentiary facts. The evidence must be of sufficient weight to establish probable cause and was required to be such that would lead a man of prudence and caution to believe the offense had been committed. And it must not be so meager to constitute mere conclusions of the applicant and an invasion of the judicial function of the magistrate. It is -- It being enough if it is such to induce the issuing officer to believe that the facts set forth exist or as would lead a man of prudence and caution that the offense has been committed.

Your Honor, the court also requires that reviewing courts apply a factual approach, and this is not an abstract approach. If the teachings of the court's cases are to be followed and a constitutional policy served affidavits for search warrants such as the one involved in Bennett must be tested and interpreted by magistrate's in courts in a common sense and realistic fashion. They are normally drafted by non-lawyers in the mist of a haste of a criminal

investigation. Technical requirements of elaborate specificity once extracted under common law pleadings have no place in this area. And in that case, Your Honor, Bennett, the court held that the magistrate was justified in issuing the search warrant and according the procedure of the gun -- using that case was not proof of illegal search and seizure and was admissible as evidence.

The next case we rely on is State verses Sullivan. Again, this case involves an eye-witness rather than a confidential informant. The court, first of all, said that a magistrate's determination of probable cause for a search warrant should be paid great deference by the reviewing court. In an affidavit for a search warrant for an apartment was not objectionable on the theory that established credibility of informer where specific and detailed information from personal observation were relayed to the magistrate. The information, who was a manager of the apartment was not motivated by financial remuneration that acted as a concerned citizen and there was no evidence that the information was supplied from ulterior motives or rancor. Affidavits in support of search warrant should be viewed in a common sense realistic fashion since they are not meticulously drawn. It is uncontroverted, also, that an affidavit can show probable cause even when based on hearsay statements under the rule of Alveolar in Texas.

Your Honor, the case continues to say there that when a magistrate receives information -- this is drawing distinction, by the way, of confidential informants verses eye-witnesses. When a magistrate receives information that contains hearsay upon hearsay, he need not categorically reject double hearsay information, rather he is called upon to evaluate the information as well as other information in the affidavit in order to determine whether it can be reasonably inferred that the informant had gained this information in a reliable way. It continues to say specificity of information accompanied by the absence of ulterior motives has been held sufficient to constitute reliability.

Here, Your Honor, there's been nothing shown or elicited from the eye-witness on cross-examination by the defense that he had any ulterior motive to report this information to law enforcement. He was simply a bar owner that witnessed a shooting in front of his business and reported it to the police. Furthermore, not only have citizen informants been distinguished between paid informers, but it has been held that affidavits which fail to fully meet the (inaudible) test may be sufficient if circumstances show that it is likely to be as liable as one which does not meet the test.

Again, it goes on to say that the case, the affidavit

in that case clearly justified the issuance of the warrant under the test. It continues to say that specific and detailed information from personal observation was relayed to the magistrate. The informer was not motivated by financial remuneration, but acted as a concerned citizen.

Again, we have a manager of this night club who is not getting paid as a confidential informant by any means. There is no self-motive to provide information to law enforcement.

Affidavits, again, are not meticulously drawn by lawyers and they should therefore be viewed in a common sense and realistic fashion. We are mindful that a magistrate's determination of probable cause should be paid great deference by the reviewing court.

The next case we rely on is State verses Driggers. Again, distinguishing the difference between veracity verses basis of knowledge of the eye-witness. This case specifically says that an eye-witness is given a higher credibility. The reliability may be inferred by a magistrate because of its first-hand knowledge.

Here the affidavit of Don McRae indicates a witness witnessed the shooting that night that resulted it the death of Demuria Johnson at the Hardscrabble Road night club.

It continues to say that the Supreme Court adopted a totality of the circumstances test in Illinois verses Gates

(sp). The test of a magistrate in determining whether to issue a warrant is simply to make a practical common sense decision as to whether under the totality of the circumstances set forth, including the veracity, basis for knowledge for the person supplying the information there is a fair probability that evidence of a crime will be found in a particular case -- or place.

Your Honor, they were seeking forensic evidence related to the shooting, which included GSR, which was collected in this case, and which turned out to be positive.

Again, it says that the reviewing court, the task is to decide whether the magistrate had substantial basis for concluding that probable cause existed, and again the reviewing court should give great deference to the magistrate's determination. The case continues to distinguish the fact that an eye-witness has first-hand knowledge. Again, this case relies on State v. Sullivan. Acknowledging courts have distinguished between affidavits relying on eye-witnesses or victim informer and those relying on paid informers and that the former being the eye-witness and the victim informers may be sufficient to establish probable cause even if affidavits do not independently establish the credibility of the informant when other circumstances show that the informant is likely to be reliable.

Again, hearsay -- is acceptable for a magistrate judge to depend on when being told by an office that he's got a statement from an eye-witness to the shooting, that identified the subjects fleeing the scene in this particular vehicle, and that their word is likely that evidence of this shooting would be found in this vehicle whether it be gunshot residue or ballistics. And in this case there was gunshot residue.

Again, it goes on to say that a non-confidential informant should be given a higher level of credibility because he exposes himself to public view and to possible criminal and civil liability and should the information supplied prove to be false.

The officer in this case also indicated that he got a written statement from the witness. Another factor that this court relied on that this informant was reliable was because he had a -- possessed a special relationship or capacity to gain knowledge. In this case, Your Honor, you've heard testimony from Ricky Jacobs that he is familiar with the people that frequent his night club and that he was familiar with the first name of one of the perpetrators and had seen the other one before, however, he couldn't recall his name right at the time. And he did provide his name in a written statement and he signed it, to law enforcement, which was therefore -- relied upon for probable cause in the

search warrant in the affidavit.

And then last, the specificity of informants information coupled with absence of ulterior motive has bee held sufficient to constitute reliability.

Again, Your Honor, this witness was able to articulate two individuals, identify them, one by name, and indicating he was familiar with the other one, just couldn't remember his name. That they got into the tan Suburban and drove in front of the carwash where low and behold where the victim was standing and got shot.

Again, Mr. Jacobs is not a paid person. He is simple a concerned citizen reporting a crime to law enforcement. He was specific about the vehicle, the occupants, where the shots were fired from in the car. He also, then, positively identified both perpetrators and that -- after that was when the search warrant was obtained. His information was corroborated by the forensic evidence at the scene, such as the number of shell casings and/or projectiles located.

And basically the last thing that this court in Driggers found was that viewed in a common sense and realistic fashion provided a substantial basis for the magistrate's finding of probable cause and the magistrate's issuance of a search warrant.

State verses Bellamy is the last case we will rely upon for the argument that there is probable cause in this case,

and in the affidavit. Is the Gates totality of circumstance as it does away with that rigid two prong test of veracity and basis of knowledge that is set forth in Aguilar because this is a eye-witness, not a confidential informant. It goes on to say that the Supreme Court wrote in Gates that it did agree with the lower courts reasoning that Aguilar-Spinelli element should be construed as an entirely separate and independent requirement to be rigidly exactly in every case, rather they should be understood simply as closely intertwined issues that may be usefully -- that may usefully illuminate the concept factual question, which is, whether there is probable cause to believe that contraband or evidence is located in a particular place. These are relevant considerations in the totality of the circumstances.

A deficiency in one of these elements may be compensated for in determining the overall liability of a tip by strong showing as to the other -- or by some issue of reliability. And it provided examples, like a citizen. If -- likewise if an unquestionably honest citizen comes forward with a report of criminal activity which if fabricated would subject them to criminal liability, we have found rigorous scrutiny for the basis for this knowledge unnecessary. Conversely, if we entertain some doubt as to the informants motives, his explicit and detailed

description of the alleged wrongdoing along with a statement that the event was observed first-hand entitled this tip to a greater weight than might otherwise might be the case.

Again, the duty of this court, Your Honor, is to simply insure that the magistrate had a substantial basis for concluding that probable cause existed, and therefore, Your Honor, your question should be was there fair probability that gunshot residue would be found in this tan Suburban that Ricky Jacobs identified first-hand leaving the crime scene and identified the occupants and which side the gun was fired from and to which direction it was fired to.

Even if we entertain doubt as to motives -- informants motives, his explicit and detailed description of the alleged wrongdoing along with a statement of the event that was observed first-hand entitles his tip to a greater weight than might be otherwise -- might otherwise be the case.

So therefore on the basis of these cases, Your Honor, we feel that you should apply the same standard of common sense, practical -- the courts have found that these affidavits are made by non-legal people that are in the middle of a hasty criminal investigation and that the rigorous test should not be applied, and, Your Honor, basically at that point, Ms. McDuffie would have her argument.

MS. MCDUFFIE: Further, Your Honor, if you do

find that the warrant -- that there was not probable cause to issue the search warrant, we would argue that good faith exception would apply to this, and South Carolina courts have recognized the good faith exception in McKnight, Your Honor, which we have handed up.

However, Your Honor, the courts have held that there are two categories of cases that the good faith exception does not apply. The state submits that neither one of those is applicable to the present case.

The first category of cases where the good faith exception does not apply is where that the search warrant does not comply with the requirements of the South Carolina Code 17-813-140, which outlines the process for the issuance, execution, and return of the search warrant. Your Honor, here this search warrant was properly issued, executed, and returned. It complies with 17-13-140, the code which deals with that issue. The officers performed a search on the 26th of the month on a subjects property, however, Your Honor, the judge did not sign the warrant until he 28th of that month, two days after the search was conducted. There the court held that because there was no validly issued warrant under 17-31-40 (sic) no good faith exception could apply because there was no way the officers could be acting in good faith without a properly issued warrant.

The second category of cases, Your Honor, which we had ended up would be Westin, Austin, and Adolph (sp) deal with when there's not sufficient probable cause to render a warrant sufficient. And all of those cases deal with either some misrepresentation, mis-characterization on the part of the police department, none of which is applicable here, Your Honor.

In one of those cases, Your Honor, they had information from a confidential informant, however, they characterized that information as coming from an agent to the magistrate. That misrepresentation the court found did not allow the good faith exception to apply. In Adolph (sp), Your Honor, the court -- the officers did not tell the court about the reliability and the veracity of the informants information and therefore the court held that because of the officers failed to do that they could not justifiably rely on the search warrant.

However, Your Honor, here our officers, they complied with all the requirements of 17-13-140. They had not misrepresented anything in the warrant to the magistrate, Your Honor, and there's no reason that the good faith exception should not apply when the officers had complied not only with the letter, but the spirit of the law in every way.

We submit that the good faith exception would apply,

Your Honor.

THE COURT: Thank you.

MR. SWERLING: I didn't get a copy of that.

MS. MCDUFFIE: I have a copy right here.

MS. SHIPLEY: We have them right here, Your Honor.

THE COURT: Okay. I don't think the Court got one either.

MS. MCDUFFIE: And Your Honor, it also cited in Cobert (sp) which is a 2009 case.

THE COURT: Okay, you have Cobert. Okay.

MR. SWERLING: If you could would indulge me for a moment.

THE COURT: Sure.

(Pause.)

MR. SWERLING: Judge, with all due respect -- this good faith exception under Leon in the South Carolina courts, in fact, the case, as I thought I recalled, does not -- refuses to address that and says specifically, even if this court were inclined to adopt a good faith exception akin to Leon, the exception does not apply here. There is no case in South Carolina, as I represented yesterday, that has adopted the good faith exception under Leon. The good faith exception that Ms. McDuffie was talking to arose out of the Sacks (sp) case, which is quite an old case, but that was a case that relied on oral supplication beyond the four

corners of the affidavit for a search warrant, and there was a specific question asked by me of the Investigator McRae yesterday as to whether or not he orally supplemented the affidavit for the search warrant and he said, no.

So that's the only good faith exception, that's not a Leon good faith, that's a Sacks good faith to allow oral supplication of a warrant.

I mean, I -- the cases I cited to you yesterday, State verses Cobert (sp), all say that South Carolina has not followed a good faith exception where there's insufficient information in an affidavit that a neutral, detached magistrate can make a finding of probable cause.

Now, Judge, this is -- this is serious business, as you know, because we can't just say because the police act in a hurry and because they knew of an investigation that they can circumvent or a magistrate can circumvent the Fourth Amendment requirements. It's there for a purpose. There are thousands of cases dealing with Fourth Amendment search warrant issues. They are decided every single day, and our court has not hesitated to decide those cases.

What I'd like to address first is Ms. Shipley's statement that Ms. Jacobs is a reliable person, he owns the bar, he witnessed the events, he has no motive in this particular matter. He testified in the case, he gave a written statement. He identified Taurus Watts and Tremaine

Wray afterwards. That's all well and good. I don't dispute that. Fact of the matter is, that information was never given to the magistrate. There was no information given by Mr. McRae that Mr. Jacobs is the manager of the bar. There's no information given by Mr. McRae to Judge Maurer that he, the manager of the bar, Ricky Jacobs, witnessed it, that he identified those individuals and he gave a written statement or that reliably the specifics of the basis of his knowledge as to what he observed. There is no information given to the magistrate that he had no ulterior motive, that he had nothing to gain in this thing. We don't even know if you look at this affidavit as to who the witnesses are. On one occasion says, a witness.

Do you have State's eight?

COURT REPORTER: Here is it.

MR. SWERLING: In there on one occasion it talks about, witnesses did identify the above listed vehicle leaving the incident location firing shots. Who are these witnesses. They still have not been identified to you, Your Honor. Certainly they were not identified to Judge Maurer. Then it says, second paragraph, witnesses identified the driver and passenger as subjects leaving the incident location. Again, that information -- who is that witness and what was presented to the magistrate. There's no information in that of who those individuals were that he

was identifying, how he identified -- the source of his knowledge, where he was standing, was it hearsay information given to him, was it first-hand knowledge. And then it goes down and makes another general conclusionary statement that witnesses identified one of the suspects as the driver of the vehicle. It doesn't even identify in here who the suspects are. So how could any of that information be relayed to Judge Maurer. I mean, I don't disagree with what Ms. Shipley said Mr. McRae's knowledge was, but the fact of the matter, that information was never given to the magistrate so that he could make a determination.

In addition, let me -- I can go through some of the cases state was referring to here. Because there is a different -- there is a difference between a confidential informant and what's called a citizen informant. Okay, we agree with that. Confidential informant has an experienced law enforcement officer and is a basis -- based on his past performance with law enforcement, if the proper representations are made to the magistrate they can establish his credibility and reliability so the judge can make a neutral and detached evaluation of probable cause. With a citizen informer it appears -- I would say for lack of a better word -- a lessor requirement because the citizen informant does not have to have the reliability established as a confidential informant would, but if you look at any of

these cases dealing with citizen informants there are a number of factors that have always been considered. One is their relationship to the people involved. What is their link to the people involved and you have to establish that link. For example, statements against interest. A co-defendant making a statement against another co-defendant. There is that link there. He may not be a confidential informant, but because of his unique relationship to that individual and because he has given a statement against his own interest that statement has reliability or has been given reliability under the cases. His -- the opportunity to observe the events in some of the cases, and I'll get to them briefly. A witness was actually in the apartment when the crime was being planned where he saw the weapons involved, where discussions were being held concerning participation in the crime. In each of these situation -- or there have been situations where the motive, where police have established the citizen informant did not have a motive to fabricate. In fact, had a reason not to fabricate because that person identity being revealed subjected that person to public scrutiny, civil liability and criminal responsibility. So in every one of the citizen informant cases that I can find even though they don't require this past reliability or having given information in the past, it does require in every one of those cases, some information

being given to the magistrate to establish their veracity or their reliability in another way.

Let's say -- I could, let's just talk about the first case that Ms. Shipley has talked about, State verses Bennett, which they say stands for the proposition that this warrant is okay. Well, the problem with State verses Bennett is that in State verses Bennett, Joe Lewis was shot in the back, and then he went on to give some information concerning Joey Bennett, who shot Robert Green with the same pistol. The significance in this particular case is that Joe Lewis was in a unique position to observe the events because he, himself, was shot. Secondly, he is identified in the case. He's identified in the affidavit for the search warrant. So that the cases that talk about the fact that a citizen informant is in a different position because he identifies himself, is subject to public scrutiny, civil liability and criminal responsibility, he is entitled to a more -- a -- he is entitled -- I guess I'm trying to figure out how to say it. His information is entitled to more reliability by the magistrate who is being asked to issue the search warrant. The court says here we do not have a case of an unidentified informant. The magistrate was made aware in the affidavit of the fact that the affiant got his information from one who was an eye-witness to the killing. The whole of the showing is sufficient to justify the

magistrate in granting the request of Lt. Lavern for a search warrant to seek and seize the weapon. But in this particular case, in the affidavit, the person who was giving the information was identified. That's not what we have in our particular case.

So I do not think that case assists the state whatsoever.

The other case that the state was referring to is State verses Sullivan. Again, significantly in this case, which I do not think assists the state again, in fact, I think it supports our position, as well, is that in this particular case the source of the information, the citizen informant, was identified as the manager of the apartment, was identified as not be motivated by any financial remuneration but acting as a concerned citizen. The informant was not only named, but her prescribed position as a manager indicated supervisory capacity, which could enhance both opportunity and reliability of observation and there was no evidence that that information was supplied due to self-servicing motives or rancor. That's the second case in South Carolina that I could find, as well, that talks about the fact that if you're going to use a citizen informant you have to name that person so that the judge can make a determination as to the relationship of that individual and whether that individual has an ulterior motive, and also by

naming that individual it opens that person up to public scrutiny, criminal liability -- criminal responsibility and civil liability.

So that case, I do not believe helps the state either.

THE COURT: What was that last case?

MR. SWERLING: That is State verses Sullivan.

THE COURT: All right. Thank you.

MR. SWERLING: State verses Driggers doesn't help the state either. State verses Driggers helps us, as a matter of fact, because, again, in this particular case, which is the third case in South Carolina that says that this person who was mentioned in the affidavit was an eye-witness to the events following a robbery. He did not keep his name confidential, but exposed himself to public view and possible liability if he gave the wrong information or was later accused of some involvement in the crime. The informant was living at the defendant's apartment, thus, supporting the inference that the defendant had openly discussed the robbery.

In this particular case, as I recall, the -- this individual gave a statement and that statement was incorporated in the officer's representation to the magistrate. Here you have Jacobs gave a statement, but his statement was never incorporated in, according to the testimony, into the presentation that was made to Judge

Maurer.

So this is the third case that South Carolina requires a citizen informant or a person similarly situation would be required to go ahead and give his name in addition to all these other facts and circumstances that I'm talking about.

We might be in a different position here had Mr. McRae given Judge Maurer all the information about Jacobs. All the information about the fact that he was the manager of the club, he was standing in the parking lot, he knew Taurus Watts, he knew Tremaine Wray. And he identified them and gave a statement, but that's not what we have.

Now with respect to a couple of other cases, I believe I discussed Driggers. One of the cases I was talking about Your Honor, which creates that unique exception to -- when you're dealing with people who are not informants is State verses Robinson, but that's one of the situations that I was talking about where the co-defendant implicated himself. And, of course, there's clearly a lot of cases that says a person or co-defendant who may not have any prior relationship with the police and giving them information -- the reliability is established by the fact that he is giving a statement against his own interest.

In State verses Bellamy, there's two opinions on that case. The state -- the Court of Appeals opinion and also the Supreme Court opinion affirming the Court of Appeals.

The bottom line, again, in that respect to the citizen informant, which we'll talk about the citizen informant. I guess that's a good way to put it. Is the fact that that particular person was identified in the affidavit for the search warrant. Here in the affidavit is says Luther Spencer Stanley, after being advised of his rights, then goes through this whole description of the scenario under which the description of which he believes there was criminal activity and the fact that Bellamy was committing criminal activity. That was presented to the magistrate, as well.

So of the four cases that appears that South Carolina discuss citizen informants every one of them has required the fact that in addition to providing specific information details about what that person observed, what that person's relationship is to the individuals and how that person came about that information and the length of that information, every one of them has required the fact that that individual who is a citizen informant be identified and has been identified, and that has been the significant factor in all those cases, as well as, a number of cases from around the country. It is just generally, uniformly accepted that the reason that that is relied on as a victim or as a witness is that that person identifies themselves, unlike a confidential informant who is keeping his identity secret and has to establish his reliability based on past

performance where witness or citizen informer does not or victim informer does not have to do that because of their unique relationship. But they have to be identified so -- every one of these cases talks about the fact that the identification is critical because it subjects that person to public scrutiny, civil liability and criminal responsibility if they're not telling the truth.

So I don't find they're -- I don't find, have not found any case dealing with this kind of situation where we have a citizen informant, witness informant where a person is not named and more information is not given. Again, had that been given to the judge I probably would have sat down a long time ago. That's not what we have here. The Fourth Amendment is there for a particular reason. It protects people against people, places, and things. And in this particular case this warrant was just issued without any underlying information from which a magistrate could make a mutual and detached judgment about the probable cause in this case. There is no case that would uphold this kind of warrant. I have not found one case that upholds this kind of warrant with the kind of information contained in it.

Again, I went through this whole argument yesterday, Judge, about the fact of good faith. Judge, I guess I've been kind of surprised over the years, every time that issue has come up in a case the court declines to apply the Leon

good faith exception. They just have not done it. There is no case that applies it. And that case that they're refer to does not apply it. It refers to it. But there's no case that's ever been decided in South Carolina that applies the Leon good faith exception. We don't follow it. We have a higher standard under our state constitution and by our state law than the United States Constitution or the federal case law, and good faith does not apply in South Carolina under these circumstances.

We respectfully ask the court to suppress the evidence in this case. As I said yesterday, Your Honor, the fact that Tremaine Wray was driving the vehicle on the night in question. I mean, everybody agrees with that. The fact that he was the one that was driving the vehicle on the night that he was arrested, the night the vehicle was impounded establishes standing, clearly. I mean, if you're driving a vehicle on the highway, that vehicle could be owned by anybody, but if you're stopped you have standing to challenge the search. It doesn't make any difference who's name the registration is in. It's the fact that you're driving the vehicle. You have expectation of privacy. That has even been applied to the passengers now, as of last year, in the -- I think it was the Breeland or Beeland (sp) case out of California where they established the fact that a passenger now has the expectation of privacy where as the

court has refused, the U.S. Supreme Court had refused to go that far -- Redland (sp) -- I'm sorry, that's the name of the case -- where the court had previously refused to extend the expectation of privacy to a passenger did so in the 2008 session of the U.S. Supreme Court.

If there's any question about that I will make a Proffer that Ms. Wray will testify and Tremaine Wray will testify that because he had no credit the vehicle was in her name, but he drove the vehicle exclusively. So I do not think -- I submit to the court that standing is just not an issue in this case.

THE COURT: Thank you. State, do you wish to respond?

MS. SHIPLEY: Your Honor, depending on your ruling we will have further argument.

THE COURT: Okay. Well, I just want to know if you want to respond to the distinctions between the confidential informant and the citizen informant, and that he is indicating that these cases, and I'll need to step down to look at them in more detail, require that most of the citizen informants have been named or that there be a little more information about who the witnesses are in the actual affidavit.

MS. SHIPLEY: Your Honor, the cases do indicate that affidavits in those search warrants in those cases did

actually name the witness, but it doesn't indicate that that was a requirement. It just so happens -- I could not find any law that says because they were named, then that satisfies the reliability factor. My understanding in reading the cases the most important thing was the specificity of the information provided, and then the first-hand knowledge by a witness to the crime. And that was what I -- how I interpreted it in reading it that the most important thing was Ricky Jacobs had first-hand knowledge. He provided specific details about the perpetrators, the vehicle, the shots fired and that the question that Your Honor would be faced with, because it's clear that absent -- that you are to give great deference to the magistrate judge, Judge Maurer, in finding probable cause in that your question is, bottom line, in reviewing the probable cause in this case, was there a fair probability that GSR, in this case, would be found in this Suburban. And so -- but that is the question, and my position is clearly when an officer it telling a judge that we have an eye-witness that saw the perpetrators get into this car, shoot at the direction of the victim, the victim died as a result. That that is sufficient probable cause to search that particular vehicle. They identified the crime for which they were investigating. So it was clearly a shooting, and they articulated what evidence they were looking for and that would be putting

trace, GSR evidence. So the state's position is that because the witness, although, he's not named, by name, the officer did make it clear in his affidavit that this witness observed the events of that night, identified the perpetrators and the vehicle described in this affidavit and in the search warrant.

THE COURT: All right. Anything else?

MR. SWERLING: No, Your Honor.

THE COURT: Let's just take a short break, and then I'll come back with my decision.

(Court in recess for short break.)

(Court in session after short break.)

THE BAILIFF: All rise.

THE COURT: You-all can keep your seats.

Okay, the Court is left with the determination of requiring and deciding whether or not the magistrate essentially has a substantial basis for concluding that probable cause existed and that we're not left with conclusionary statements. The Court is also required to give a certain deference to the magistrate's determination of probable cause. I have reviewed the cases cited by the state as well as defense and there are indications that names have been used in affidavit, but I don't read the cases as requiring the names, and I think that in this circumstance, because we have there being an identification

of the vehicle, particularly the vehicle leaving the scene of the accident, an identification that shots were fired from that vehicle and that such shots did cause the victim to be wounded and then also the witness identified the driver and the passenger as the particular subjects in this particular vehicle then I find that there is a substantial basis for concluding of an addition that a crime has been committed from that particular passenger vehicle. So I'm going to rule and not suppress any of the evidence from this particular issue. I don't think I need to get to a good faith requirement based on the Court's ruling in that regard.

MS. SHIPLEY: Thank, Your Honor.

THE COURT: Okay. State?

MS. SHIPLEY: We're ready to proceed, Your Honor.

THE COURT: Okay. Defense? Anything further?

MS. SHIPLEY: We just need to settle a couple of records --

THE COURT: Okay, go ahead.

MS. SHIPLEY: First witness will be Verda Roberts, Your Honor. And reading her rap sheet, nothing would be able to be used against her, in fact, the criminal -- CDVHAN it was nol prossed or dismissed at prelims and she has already expunged that from her record.

The next witness is Stephanie Boston, and she has no

record.

The third witness is Charlie Bates, and he does have two convictions that are permissible to be used for impeachment or to attack his credibility. That would be the auto breaking in 2006, and a petit larceny.

James Lamont Goodwin has no criminal history --

MR. SWERLING: Could we catch -- I'm sorry, could we catch up a little bit.

MS. SHIPLEY: I'm sorry.

MR. SWERLING: That's all right.

(Pause.)

MR. SWERLING: No disagreement yet with Boston or Roberts. Who is the next one?

MS. SHIPLEY: Bates, and he has two convictions that would be permissible. A 2006 auto breaking and petit larceny.

And Your Honor, that ought to get us through until the morning break, and we can worry about the rest of the witnesses later.

THE COURT: Okay.

MR. SWERLING: I agree with the list.

THE COURT: Okay, and then you went to James Lamont Goodwin?

MS. SHIPLEY: Yes, he has no record.

THE COURT: Okay. No record. Okay.

MS. SHIPLEY: Also, just for the record, Your Honor, all parties have stipulated to the internal chain of custody of Richland County Sheriff's Department and SLED. We did -- You presided over Tina Goff's testimony, since she's out this week we'll read that into the record. She transported the GSR to SLED in this case, but the rest of that has remained at the Sheriff's Department. I just wanted to put that on the record that it's my understanding that the parties, all the parties have stipulated to the internal chain of custody in the property room at the Richland County Sheriff's Department and then once these items got to SLED to stipulate to the chain of custody at SLED.

THE COURT: Okay. All right. Anything further from anyone before --

MS. SHIPLEY: Yes. At this time the state would move to sequester all witnesses for the state and the defense. That would include people who were here, they've heard their name called. Mr. Jacobs will have to sit outside. Ms. Boston and Ms. Roberts will have to sit outside, please. Also, Mr. Davis, sit outside. And Nellie Wray. And I believe on the defense, Darrell Wray --

MR. SWERLING: I'm just going to step out for a second while we're --

THE COURT: Yes, you may.

(Pause.)

MR. SWERLING: Judge, would you allow our objections to be when one makes the objection the other one would be joining in that without saying so unless they specifically --

THE COURT: Any objection by the state?

MS. MCDUFFIE: No, Your Honor.

THE COURT: Okay. That's fine, if that will cut down on a lot of -- in the trial.

Are the parties ready to proceed?

MS. SHIPLEY: Yes, ma'am.

MS. JOHNS Yes, Your Honor.

MR. BAX: Yes, Your Honor.

THE COURT: Jurors, please.

(Jury in at 10:53 a.m.)

THE BAILIFF: The jury's all present, Your Honor.

THE COURT: Thank you.

Ladies and gentlemen of the jury, thank you so much for your patience. There are times that when we are in a trial we will have certain matters of law that we have to take up and sometimes we just can't anticipate how long that will be, and so I apologize profusely. Please do not hold any of that against any -- the state or the defense lawyers, because those are just matters sometimes the court has to take up, and we just have to be sure about our certain rules

and things that we do.

I'm going to have the clerk swear you in and then we will proceed with instructions on the case and proceed with the case.

THE CLERK: Ladies and gentlemen of the jury, please stand and raise your right hands to be sworn.

(WHEREUPON, the jury was sworn.)

(Jury sworn at 10:56 a.m.)

THE CLERK: Thank you.

THE COURT: Ladies and gentlemen of the jury, we are about to proceed with the case of the State verses Tremaine Wray and the State verses Taurus Watts. As I indicated to you on yesterday, these are indictments for murder. These are simply the formal instrument by which this case is brought to trial. Both defendants have pled not guilty, so they are exercising their constitutional right to a jury trial. The state has the burden of proving their cases that they are guilty beyond a reasonable doubt. In the state of South Carolina no defendant is ever required to prove himself innocent. So there will be a posture in the case at which the defendants have to decide whether they choose to testify or even put up a case because they don't have any responsibility in doing so. That burden of proof always remains with the state.

As you can indicate by the indictments or in any case

tried in this courthouse, this is a serious matter. So I know a lot of us tend to watch TV, CSI, Law and Order, those various types cases. Those are TV, this is reality. These are serious issues, serious events right here in our community in Richland County, and we will be describing events with real people.

Every day as I take the bench, I understand that I am affecting people's lives and liberties, and I take my role seriously, and I am going to ask that you take that responsibility upon yourself just as well.

I have to listen to facts and evidence and then make certain determinations, but you are the most important people in this room today because you are the sole judges of the facts. In any trial you'll see different versions of facts. At the end of the day it's your conclusions that matter. That is your sole responsibility in this case to offer the state a fair trial in listening to all evidence and testimony and other facts that they present, and should the defendants desire to do so to give them that same opportunity, and then at some point you'll be asked to draw your own conclusions. That is your sole province as the sole judge of the facts.

My role is as the judge of the law, and there will be an appropriate time in which I will instruct you on the law. I will also have the responsibility of ruling on the

admissibility of certain evidence. So certain times you might hear the lawyers stand up and object to certain evidence. Please listen to what my ruling will be on those evidence. Also, there are times, just to give you an idea of procedure, where the lawyers might object and I might ask them to approach me at the bench. That is so that I can hear certain things that you are not allowed to hear and then make my rulings appropriately. Sometimes we may have to send you to the jury room because we may have to create a record with the court reporter so that she gets down everything in their arguments, but to the extent that I have to do that, that is just part of the trial. So just excuse that.

The way the trial will proceed is that the state gets to make an opening statement, as well as each of the defendant's counsel. They get to tell you what they perceive they will be able to show you will be the evidence in this case. Then the state, because they have the burden of proof, will put up their witnesses. You will have the opportunity to review those witnesses. Both defendant's counsel will have the opportunity to cross-examine those witnesses. At some point, the state will conclude their case. At the conclusion of the state's case the Court will have to take up issues of law outside of your earshot, so I will send you to your jury room. Then the defendant will be

advised of his rights to determine whether or not he wishes to testify or put up any case, because, again, he's innocent until proven guilty. Then at that juncture, then we will go forward with the defendant's case, if at all, and then I'll have another opportunity to send you back to your jury room because then I have to take up matters of law at the conclusion of each parties case.

At the conclusion of the trial, then they are able to present closing arguments, at which time they will try to convince you and refresh you of the memory of the evidence in the case and try to convince you of their side of the case.

I need you to pay attention throughout the entire trial. This case is expected to last throughout the week and that there will be several pieces of evidence, and just need to be careful and be deliberate, and observing all the evidence as well as the testimony, because of it is considered evidence.

To the alternates, I expect you to pay just as much attention to the trial because there have been times when you have to step in and be the main juror at times. So I need to you to be just as much -- excuse me -- communicating and participating.

With respect to communicating during the trial, you should not speak to each other at all about the case. You

can only speak about the case as a collective group with the case is handed to you, and you'll know when that time and opportunity will be. I also ask that you not speak with anyone in terms of home, friends, even about the subject matter about what the trial is about, because, again, people tend to inflect their own personal opinions on you just by virtue of you mentioning a particular subject matter, and we want you to make up your mind based on what is here. We went through a lot of questioning, you know, to get just general information from you and you are the ones who were chosen to decide the fate, particularly, in this case.

I'm going to ask that you not be tweeting or be on My Space or any of the communicative devices or let anybody know what your responsibilities this week, because, again, we need no outside influences. You are not to read anything in the paper about this, listen to any media reports. Any type of information, because anything you're relying on for your decision will come in this courtroom. And that will be the basis of your decision, so I'm going to require that.

These lawyers are very professional and very ethical. As you might see them in the streets in terms of lunch or anything like that, they know they're not supposed to speak with you so don't take that against them as being rude. I've also directed all courthouse personnel to not have any communication with you other than basic issues like restroom

breaks or anything -- but nothing related to the case, not anything what are they doing in there or what's the judge doing, because they can't tell you if I'm arguing -- hearing a motion or just anything -- strike up anything that might be a conversation that could lead to something else. So I'm just letting you know they are being rude to you. They have been instructed that we have to make sure, you know, that all these proceedings are just and fair to everybody involved. So that is the rules of the game for everybody involved in this proceeding.

I'm going to ask that you pay close attention to all side and that you'll get your comfort breaks along the way to the extent that you'll need something a little more frequent than what I'm giving you, then just let a bailiff know and we'll be happy to accommodate you. We will try to run the trial as expediently as we can, but as I indicated this morning, sometimes things get a little off track, but they have to be heard. So I apologize in advance.

Thank you so much for your role as jurors. It is extremely important in a democratic society where people can be -- sit in judgment of their peers, and we're asking you to take that responsibility very seriously.

Thank you so much, and I direct your attention to the state.

MS. SHIPLEY: Your Honor, may we approach for one

moment?

THE COURT: Yes.

MS. SHIPLEY: Thank you.

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

THE COURT: I think we have an alternate sitting with the main jurors. I think that Juror 11 and 85 might need to switch. Who are the two alternates, raise your hands?

(Alternates comply.)

THE COURT: You both are the two alternates? Okay, what's your juror numbers?

JUROR NO. 205: I'm number 205.

THE COURT: Okay. Let me look at the list because the -- Juror No. 205 is an alternate, and then Juror No. 85 should be an alternate.

JUROR No. 11: I'm number 11.

THE COURT: So 11 -- you went into the main set of jurors -- I understand that 205 and 85 are the alternates; correct?

MS. SHIPLEY: Yes, ma'am. 205 and 85 are the alternates.

THE COURT: Who is 205?

JUROR NO. 205: I'm --

THE COURT: Okay. Okay. And then who's 85?

(Juror indicates by raising hand.)

THE COURT: Okay, you two need to switch. And you'll always resume those seats on the back because you're the alternates, because we have to clearly identify who our alternates are.

(Juror 85 and 205 switch places.)

THE COURT: All right. Thank you.

Okay, is the state ready to proceed with opening statements.

MS. MCDUFFIE: Friday, June 29, 2007, the friends and family of Sgt. Travis Malone gathered in Columbia to celebrate. They got together to celebrate honor, to celebrate duty, to celebrate sacrifice in service to one's country. They go together to wish Travis Malone good-bye. To wish him a safe journey because he was being deployed to Iraq that weekend. Travis and his good friend, James Lamont Goodwin, and the victim in this case Demuria Johnson went over to Travis's family's house in Columbia. Also present with Travis's family was Stephanie Boston, Verda Roberts and Charlie Bates. They hung out at Stephanie's house for a while, drank, played cards.

And sometime in the early morning hours of June 30, 2007, they decided to go to the H&J Club on Hardscrabble to continue celebrating. When they got to the bar Travis, the victim and Lamont all went to the back deck, had a few

drinks. Charlie saw a girl that he'd been seeing off and on in the bar named Lisa. And they started talking and dancing. Some other guys approached Lisa and a fight ensured between Charlie and those men. Charlie got punched in the face and knocked out. His mother, Verda Roberts also got punched in the face and knocked out. Stephanie tried to pick Verda up and as they were trying to leave the club they started throwing beer bottles to keep people away from them. They all managed to leave the club with Travis trying to break up the fight.

The victim, Demuria Johnson, was not involved in this fight whatsoever. He was outside when this went on. He had nothing to do with what went on at the H&J Club that night. As they were leaving the club they went to their cars, they were parked at the car wash next door. Ladies and gentlemen, during that time, these defendants got into Tremaine Wray's Suburban and opened fire on a crowd of people. They shot an M-11 or Uzi type firearm into a crowd of people, and they struck an unarmed man, Demuria Johnson. A man that had nothing to do with the fight that was going on in the bar that night. But they sprayed that parking lot, that area with gunfire, and they struck Demuria Johnson in the leg. He bled to death that night because of these defendants actions. The night that started out about celebrating honor and service to one's country ended in a

senseless and tragic murder of Demuria Johnson at the hand of these defendants.

Ladies and gentlemen, my name's Joanna McDuffie, and I, along with Vanessa Shipley represent the state of South Carolina for the Fifth Judicial Circuit.

It is our job to prosecute all crimes that are committed in Richland and Kershaw Counties. We would like to thank you in advance for your service. We know that there are millions of other places you would rather be this week than in this courtroom. But on behalf of myself, Ms. Shipley, the state of South Carolina and the family of the victim, Demuria Johnson, we thank you for your service and your attentiveness.

As a result of Tremaine Wray and Taurus Watt's actions on June 30, 2007, they are both charged with murder. In South Carolina murder is defined as the unlawful killing of another with malice aforethought. Malice is a legal term of art. What it basically means is hatred, an ill will, a gross recklessness for human life, a heart devoid of social mischief -- I'm sorry -- a heart devoid of social duty and fatally bent on mischief. Malice can be expressed or implied. An example of expressed malice would be if I said I'm going to kill you, and then I did. I'm expressing malice. Or malice may be implied. Malice may be implied from the use of a deadly weapon.

South Carolina also has a principle called the hand of one is the hand of all. Two or more people can be guilty of murder even if there's only one gun, even if only one person pulls the trigger. If those two people are together, they are acting together, and they are aiding and assisting each other each is guilty of the offense. The hand of one is the hand of all or the act of one is the act of all.

We, as the state of South Carolina have the burden of proof in this case. We must prove that the defendant committed each element of the crime that they are charged with beyond a reasonable doubt and we welcome that burden.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. It's not absolute certainty. We're not required to produce proof that overcomes every possible doubt. If, at the end of this case you are firmly convinced of the defendant's guilt then you must find them guilty.

Now, ladies and gentlemen, Judge Childs is the judge of the law in this case. It is her job to determine what the law is and how to apply it. However, ladies and gentlemen, you are the judges and triers of the facts. It is your job to determine the facts in this case. And that facts, that evidence will come in two forms. The first will be testimony under oath from the witnesses from this witness stand. The second will be the physical evidence introduced

as evidence during this trial.

Ladies and gentlemen, during this trial you will hear from Stephanie Boston, Verda Roberts and Charlie Bates. They will tell you about the fight that occurred inside the H&J Club that night. You will hear from James Lamont Goodwin about how they were all going to their cars. They were at their car in the car wash stall and gunfire erupted from the street. How someone on the street on Hardscrabble Road was shooting at them and the bullet struck Demuria Johnson.

You'll hear from Ricky Jacobs, who owns the H&J nightclub. He will tell you about how the fight broke out in the club. He will tell you that he shut the bar down. He was leaving the bar to go to his car when he saw Tremaine Wray and Taurus Watts, two people he has known for over 20 years. He saw them going to the Suburban and coming back towards the club. And he saw Taurus Watts carrying in his hand a Mack 10 or Uzi style firearm wrapped in a white t-shirt. He told them that the club was closed and to go home. He will tell you how he saw them get into the Suburban with Tremaine Wray as the driver and Taurus Watts in the passenger seat. He will tell you how that Suburban went on Hardscrabble Road in the direction of Farrow Road. And how shots began to come from the driver's side of that vehicle. He will also tell you how behind that vehicle was

a white Isuzu Rodeo, and after the defendant started shooting from their vehicle the passenger in the Rodeo fired one shot into the air.

You will hear from officers from the Richland County Sheriff's Department, officers who responded to the scene. Officers who just a few minutes after the shooting were able to find a white Rodeo and the two -- the driver and the passenger of that vehicle and how they were eliminated as suspects in this case.

You will hear from crime scene investigators who processed the crime scene at the H&J bar and, also, who performed a search warrant on Tremaine Wray's car.

You will hear from ballistics expert David Collins, who will tel you that the 10 shell casings found at the scene were all fired from one gun. There were also two projectiles found at the scene and one that was recovered from the hospital where Demuria Johnson was. You will hear how those three projectiles all matched, as well.

You will hear from Michael Moskal, as well, a trace expert in gunshot residue at SLED. He will tell you how the defendant's car was positive for gunshot residue.

Finally, ladies and gentlemen, you will hear from Dr. Clay Nichols. Dr. Clay Nichols is the forensic pathologist in this case. He will tell you how as a result of the gunshot wound Demuria Johnson bled out that night and he

died.

Ladies and gentlemen, you'll hear from Stan Smith, a captain at the Richland County Sheriff's Department. He will tell you how in just a couple of months he received a call from a defense attorney who represented a client named Brian Watson. Watson had been incarcerated on other charges. Brian Watson came to his attorney and told him he had information about this murder. That he disposed of the murder weapon in this case. You will hear from Brian Watson. You will hear from Jarrell Dansby, Tremaine Wray's cousin, who Tremaine took the gun to to get rid of. You will hear from Jarrell's ex-wife, Rashonda Simpson, who was also present when this occurred, when the murder weapon was disposed of.

Ladies and gentlemen, you will hear from the investigators of the Richland County Sheriff's Department who will detail their investigation and at the end of this trial, we ask you ladies and gentlemen, you the jurors to determine the truth. To return a verdict of guilty against the defendants for the crime of murder.

Thank you.

THE COURT: Defense.

MR. BAX: May it please the Court, Your Honor.

THE COURT: Yes.

MR. BAX: Good morning, everyone. I guess we are

still in the morning. Yes, we are. Good.

First of all, I would like to thank everybody on behalf of my client, Mr. Wray. Obviously, we have two defendants in this case today. And it is both their days in court. Well, it's going to be more than one day, obviously.

First of all, I'd like to introduce our party. As I said at the beginning of the case, I'm Arie Bax. I'm an attorney in town with a solo practice. Actually, I practice with my wife. Sitting at the far end of the table is Jack Swerling, who also represents the defendant, Mr. Wray. He also has a practice and we work together fairly closely.

Finally, Mr. Wray here is the defendant that we represent, but not the only defendant in this case, but I will allow Ms. Johns, his attorney to address Mr. Watts.

I'd like to thank you for going through what you've gone through so far, and ask you to be patient for what you're going to have to go through from here on out. It is an extremely important duty that you're doing. And it's not without it's on benefits on your part. This is, in my opinion, one of the best ways to see how your country works on a ground level basis. The jury selection process, first and foremost, is what you've already been through and we appreciate your patience through that. That process is to insure that each person asserts the right to say I am not guilty of what I've been accused of, which is something that

is protected under the United States Constitution, as well as the constitution of this state, has a fair and impartial jury. We believe that you are a fair and impartial jury and that's why you're sitting here.

As the judge has told you it is a duty that is going to require you to pay close attention. Obviously, we're going to try to make that process as doable for y'all as possible. I certainly know that paying attention for long periods of time is hard to do. As an attorney I've gone through a lot of schooling and it was not easy to sit there and pay attention for hours at a time, and we will try to make sure that you are not overburdened there, however, during the time that we are presenting the court's business to you I want to point out a few things. You are the triers of fact, as the prosecutor, Ms. McDuffie has pointed out to you. And that has some particulars that I want to point out. You're not there in those seats to rubber stamp what the state does and I think you know that. That's why you're on this jury. You're there to look with a critical eye everything that is presented to you. You're here to listen to the witnesses that are presented to you by either party and just them not just on the words that come out of their mouths, but by their body language, by their eyes and using your common sense.

We all are out there in Columbia. We go to

restaurants, we go to the bank, we all go and drive the streets. We all have common experiences as South Carolinians, as residents of Richland County, and that's why you are the triers of the facts and not a governmental panel that sits on every case because you have that commonality with everyone that lives here in this area to be able to judge what's true and what's not true.

We all know that people communicate with more than words. They communicate with their body language. They communicate with the things that they don't say. The things that they leave out. This is experience that all of you have from you daily lives. When you communicate with others. It's like when I'm talking to my daughter I'm always careful to look at her and see what is she not telling me, and I love her, but just like with everyone else, communication is a tricky thing.

And so there's credibility there. And I want you all to remember when you're witnessing, when you're listening to the witnesses, think about that credibility. Think about motivation, think about nervousness, attitude. All those things that you would almost unconsciously take into consideration when you're going through your daily lives. When you're going through what you go through on a daily basis. That's the same thing that you're going to do here.

I want to point out, also, that the jury system in this

country, as the judge has told you, is extremely important. We can't operate this, we can't operate the civil system or the criminal system of justice without you the jury. Because as we've said, you are the deciders in any given case, and it's particularly important in a case where an individual has been accused of a crime, because as you well know their liberty is at stake, and that is an extremely important thing, because I know all of you know your own liberty is an extremely important thing to you. It is to me, and it is to everybody in here. So remember that. Remember that liberty when you're thinking about the facts of the case. You are the buffer zone between the government and any individual. You are the protection. You are the only obstacle between the government, local or federal, in this case state government, from taking this person's liberty away. Obviously, our laws indicate that when it's justified it must be done, but only when it's justified and only when all the elements, every single one of the elements of what someone has been accused of are met and met to y'all's satisfaction.

As the solicitor told you reasonable doubt, firmly convinced. You will be charged at the end of this case by the judge about the law. She is the final word on that before you here in this courtroom, so listen carefully to what she says and take it seriously.

Reasonable doubt is a real thing. It means that if there's anything that you see as being a problem with the case, if there is any reasonable doubt that you have, if you are not firmly convinced you cannot find the defendant in this case guilty. The solicitor in this case pointed out some facts, she told you the story that they intend to produce to you, however, they have not actually produced that story. Our arguments are not evidence in this case. So you have not been presented any evidence as of yet. None of the things that you hear from the lawyers is evidence until you hear it from a witness who has been sworn to tell the truth and has gotten on this stand or who has given some piece of evidence that you can hold in your hand and look at. Until that time, there are no facts in the case.

So remember, you are going to hear things -- they have told you what you are going to hear, but think about what you are not going to hear. She has stated that you are going to hear, according to their presentation, that Mr. Johnson, the victim in this case, had nothing to do with the fight inside of the H&J club. You are also going to hear that the defendants in this case had nothing to do with the fight inside the club, as well. You are going to hear that there is an entirely different set of people that have this fight with the party that went with the victim to this club that night. You're going to hear that those people had a

beef, based on what happened in the club, and you are going to hear that none of that had anything to do with the defendants in this case. You are also going to hear that the defendants didn't know any of these people who were there with Mr. Johnson. Many of those from Orangeburg or St. Matthews, as you were told at the beginning of the case, and you are going to hear that no one in Mr. Johnson's party knew either of these individuals.

Now, my client, as well as Ms. Johns client has pled not guilty. That is their right. And I want you to think and be aware of the fact that that means that they are attesting, standing with risk of their own liberty to say I'm not guilty of what I've been accused of. It is a right that every American has, and it's an important right. I know you will pay attention and I know you will render the true verdict in this case.

Thank you.

THE COURT: Ms. Johns.

MS. JOHNS: Thank you, Your Honor. May it please the Court.

I'm sitting way over on the other end over there and it's hard for me to see you. I feel like I'm especially smaller because of the number of the people in the courtroom, so I'm just going to open up your view a little bit to my side of the courtroom, and I want you to obviously

have an opportunity to look and evaluate my client as well.

Ladies and gentlemen of the jury, my name is Theresa Johns. I represent Taurus Watts, who sits over here in this white shirt beside our investigator, Gary Clark. Mr. Watts and I have known each other since July of 2007, and from that date he has presented himself with one version of this story and that story is Ms. Johns, I'm not guilty. As a result of that relationship and my job in defending him, he is asserting his right to a trial by jury. What that means is that he has come into Court after two years, and he is going to speak to you or at least have you hear his side of the case.

Now, the prosecutor, Ms. Vanessa Shipley and Ms. Joanna McDuffie, are very, very fine people. And I have absolutely nothing but nice things to say about them. They are very professional, they are very ethical, and they take their job very seriously. And as for the officers at the Richland County Sheriff's Department, I've known many of them for 19 years. I respect each and every one of them for doing their job. They do it with heart, they do it with passion, and they do it with true commitment. We're here today not to attack their investigation or attack their reason for arresting Taurus Watts or attack reasons for arresting Tremaine Wray, for that matter. What we're here for today is we're here for you to determine a dispute between the

state and the defendants. That dispute is you're guilty verses I'm not guilty. There isn't anybody that is going to settle that argument except the 12 of you. So congratulations No. 11, and congratulations No. 85 for making the switch. I want to welcome you here.

I'm excited about being here. I want you to decide the truth in this case.

Now, what you've heard from the state, as Mr. Bax has stated, they have presented a story to you that they intend to present, and this story is not to be based on passion and it's not to be based on prejudice. What that means is when you come into this court and you are selected out of a hundred and some people here we didn't want anybody that's going to be on this jury that had any prior -- let's say run-ins with the police. Anything criminal, because they might have a bias against the police. We didn't want anybody to come here who was extremely prosecutorial in nature, because if they were that way then they may be biased in that way. We wanted 12 individuals to come into this courtroom who had the ability to sit on a jury and use their individual critical thinking skills to determine whether or not the state can prove their case beyond a reasonable doubt. And if not, whether they can acquit my client, Mr. Watts, and to do either one is a huge responsibility for each and every one of you.

Now, that responsibility is an individual decision that you make. You're going to have to decide for yourself. You've already heard from the judge that you cannot influence each other during the trial of this case, but once the judge gives you the authority to conversate or converse, and have this discussion about what each of you heard, you are going to sit as an individual juror with an individual number and defend your individual opinion, and collectively as a group you will then decide the fate of my client, Taurus Watts.

Now, this whole case in June of 2007, June 30th, the state is right, the state's right. It's based on loyalty and we're talking about the sergeant who served in the military, who was out partying that night. We have a witness, Ricky Jacobs, who is the owner of that club. But the fact that Mr. Malone is in the service doesn't give him any more credibility than anybody else testifying in this case. You have to decide that upon yourself. The fact that he's a serviceman does not bolster his ability to tell the truth or heightens his witness ability any more than anybody else. You're going to have to make that determination based on their credibility and the witnesses.

So all those things being said, Travis Malone, Sgt. Malone who is serving his country is just another witness.

Investigator Don McRae, when he gets up here and

summarizes his investigation isn't to be given any more credibility granted because he carries a badge.

If you believe that the testimony of a police officer deserves more credit than the testimony of a lay witness, then you should have stood up and said so at the beginning of this process.

So what I'm asking you to do is come in here and have a blank slate. Have an open mind. Have an open heart. Don't judge this case on an opening statement by the state or opening statement by me. You have the critical thinking skills to listen to the evidence in this case, and to make a decision based on the evidence in this case.

Now, what happened on July 30th is a simple story. Simple American story. You've got young people, they go out, they stay past midnight. What did your grandmother tell you? Nothing good happens after midnight. And in this American story there's always a female involved. And this female that was involved in this particular case, her name is Lisa Johnson. And she lives in that area on Hardscrabble Road, whereas Charlie Bates, the guy pursuing her does not live in that area. In fact, he lives all the way -- or was from all the way near St. Andrews area. They may have picked him up from Columbia. I'm not sure about that particular fact, but he doesn't live in the Hardscrabble area. So he was there and a girl that he was interested in

that he had a relationship with off and on for three years was in that club. And when there is another man pursuing your woman, jealousy is invoked. And as a result of that pride is involved and gets injected into it, and on this particular night there is a very big fight in that bar. In that bar there are punches thrown. There were beer bottles thrown, there was bleeding, there was chaos. There was a gun, there was a DJ, there was bartenders. There was excessive drinking, there was drugs, and anything else you want to add to that mix you can. This was a Friday night at 4:00 o'clock in the morning. And there were over 50 people in this night club. Okay. There's the stage set for you.

Now, as Mr. Bax has said, there is going to be testimony about that fight. Is there going to be testimony that either of these two gentlemen were involved in that fight? No. If there is, then you need to critically decide whether or not that testimony is based on an individual eye-witness or if that testimony is based on hearsay, because once the fight happened -- it's dark inside, after it gets chaotic, the lights come on, the DJ turns off his music, shots are fired and people are running. It is chaos. People are jumping in their cars, people are jumping over fences, people were falling down in the parking lot, and when Richland County gets there that's when their investigation opens up, and what happens when their

investigation opens up is people have to at that point, then get a hold of their emotions, sober up enough to communicate what they think they saw.

So we get to the point where we have a "sole eye-witness". That alleged eye-witness is going to be Ricky Jacobs, and he is the owner of this night club. Actually, he's not really the owner. His father owned it, he had a partner. It's a long history. Ultimately, Ricky is in charge of this club on this particular night.

Now, I want you to think about this when the evidence is presented. I want you to think about Mr. Jacobs opportunity to see what was going on. His opportunity to hear what was going on. His motive in knowing what was going on. His motive in cooperating with the police department. His bias in anything with regard to any information he may have given that night.

Now, I want you to use your credible thinking skills to judge the credibility of Ricky Jacobs, because that's really the only eye-witness that the state will put up for you.

There are 59 witnesses that the state has listed in this particular case. That does not include any witnesses that we may want to present, okay. That's how serious this case is, and out of those 59 witnesses we have one alleged eye-witness. So that will be critical. Please pay attention to that. Out of the 59 witnesses there are a

number of them that come from the sheriff's department, and there are a number of them that come from SLED, and a number of them from the Coroner's Office. All of these witnesses will -- are witnesses to something, but they are not witnesses to the act. So I want you to keep that in mind when they testify they'll be summarizing what they did as a result of what somebody told them or what somebody coming in and giving an interview, what -- a call they got over the radio, but none of the sheriff's department were witnesses, and none of what they say should be given more credit by the fact that they carry a badge. You're just -- they'll be testimony from an expert witness. Judge will instruct you what an expert witness is and whether that expert witness should be given more credibility than another witness. No, that expert witness can only testify to their expertise. It doesn't mean what they're saying is more true. You still have to decide that, okay.

Now, what this case will break down into at the end is 59 plus witnesses that are going to tell you what they think they saw and what they did as a result. After that, what we have to deal with is the law. And the law is, and I've stated it twice now, and I'll state it again, as it is this important, no man accused is presumed guilty. No man accused is presumed guilty.

So when you walked into this room yesterday and you

knew you had jury service, and you were thinking about all the other things you could do and you heard that this case is a murder case. You probably hesitated and thinking, Oh, my Lord. But this case is so serious and we're taking it all the way to a jury trial, because, my client, Mr. Watts, is a man that cannot be presumed guilty at this point.

So if you want to judge him you can't even start doing that until after the judge tells you you can start deliberating. You can't even make a decision about him until after the case is over. Even if you have one you're not even supposed to get there yet, because even as he sits there, he's presumed innocent.

He's wearing -- for example, the judge the robe the judge is wearing is a robe that he is also wearing that that robe protects him from any prejudice or bias. He's cloaked with the robe of innocence, and that's how you have to look at Mr. Watts. As hard as that might be, because he's accused of murder, that's how you have to look at him.

If you think by the mere fact that somebody who has been arrested is guilty you should have stood up yesterday and said so. And if any of you are feeling that way you have an obligation to Mr. Watts, and Mr. Swerling, Mr. Bax, and the state of South Carolina to do that.

Now, when it comes down to the law other than the presumption of innocense, we have a state who must prove

this case beyond reasonable doubt. That's plain and simple. You know, convinced, firmly convinced. A doubt, beyond reasonable doubt. It's a simple definition. It's a doubt that you have that you can articulate, that you can give a reason for. That's all it is. Don't make it any harder than it's common definition, because when you try to do that, that in and of itself is telling you you have a doubt. You're looking for a reason to explain this doubt, you have one. And in this case, it's our proposition that you don't have a doubt.

The hand of one is the hand of all. That's the state's theory of my defendant, of my client. Okay. The hand of Mr. Wray is also the hand of Mr. Watts, or because the state wasn't witnesses, the hand of Mr. Watts, is the hand of Mr. Wray.

How can that be possible when you only have a gun that they describe as a Mack 11 Uzi. You'll hear testimony about a Mack 11 Uzi. It is an automatic weapon, which it fires its bullets out of it's barrel, there is a shell casing that dispenses from the weapon and it goes to the right and up in the air.

There can only be, only be one shooter of that particular weapon, and we don't even know who that shooter is. We don't even know, we won't even know what kind of weapon it was, but in order to have a hand of one is the

hand of all theory, you have to have two people acting in concert. Acting in concert with each other. With the tactic understanding that you're going to commit a crime, that this is what the plan is, brother, this is what the plan is, and if you don't have that tacit understanding between two people there is no hand of one, hand of all. There is no accomplice.

I'll give you another example of that. If I have a problem with somebody that I'm in a relationship with and I jump in my car and I put my daughter in the passenger seat with me and I drive towards that person, and I have the intent to run over that person and I do that, that is not the hand of one, the hand of all. If I jumped in the car with Mr. Wray, and he had an intent that I don't have, and I happen to be a passenger, I'm not responsible for his intent. I'm merely present, okay. So this mere presence where a crime is committed is not enough to convict.

So things you have to decide. One, you have to decide first if the crime what was committed was even committed by either of them, passenger, driver or some other person. And what the state has told you is that an Isuzu Rodeo that was also stopped, and what they didn't tell you in their opening statement is that within this Isuzu Rodeo they found live rounds, three, that belonged to a 9 millimeter weapon, and there is eye-witness testimony that's going to come from Mr.

Jacobs that says that he did witness somebody from that Rodeo shoot a gun and when they stopped this vehicle they would three live weapons (sic) they're not going to present to you again. So how do we know what gun it was. That's something the state is going to have to prove to you.

So we have the story of loyalty and jealousy. We have speculation of 58 witnesses and probably 59 with Ricky Jacobs, and we have the law of reasonable doubt.

Now, ladies and gentlemen, I'll be the first to admit to you, I was not there either. Nobody in this courtroom was there, as far as eye-witnessing the crime that may have been committed, but I am up here and I am fighting for my client, Mr. Watts. I have a certain personality about myself, I'm very passionate. Please don't take that the wrong way. I am not tapping individual people like the investigators or anybody of that nature. I'm just trying to make a point. Please do not hold that against Mr. Watts. You might take that -- maybe I might say something that might be -- but please don't hold that against Mr. Watts.

I ask each and every one of you to consider devoting the next few days of your life to this case. That's how important it is. I know you've already been told by both the state and by counsel for Mr. Wray. In the end, when you determine credibility of the witnesses and their opportunity to be witnesses and understand fully the events of June 30,

2007, at 4:12 in the morning or 4:00 o'clock in the morning. I submit to you that there will be many doubts. And with regard to that doubt, if you have the slightest inclination that something isn't right in this case, my client should get the benefit of that that makes you hesitant, of that that nudges you, because that is our rule when you go to a jury trial.

And although we have had many people serve our country, my father was a serviceman for 25 years, the service that you're doing to your country during the next few days rises to a level that is unappreciated in many ways, but I want you to know that you were selected because of your ability to think critically, because of your ability to think fair, because of your ability to come in here without bias. And I'll trust you with that.

Thank you.

THE COURT: Okay. State may proceed with your first witness.

MS. SHIPLEY: Thank Your Honor. May it please the Court. At this time state calls Verda Roberts to the stand.

THE CLERK: Place your left hand on the bible and raise your right hand.

(WHEREUPON, Verda Roberts, was sworn to tell the truth.)

THE CLERK: Thank you. Have a seat in the witness

stand, and give the court reporter your name.

VERDA ROBERTS - DIRECT EXAMINATION

BY MS. SHIPLEY:

Q State your name for the record, ma'am?

A Verda B. Roberts.

Q Ms. Roberts, can you tell the jury a little bit about yourself; where are you from?

A Here in Richland County.

Q Born and raised?

A Yes, ma'am.

Q What part of town do you live in?

A Off of Monticello Road.

Q Can you tell the jury a little bit about the members of your family; do you have a sister?

A Yes, I do.

Q What's her name?

A Stephanie Boston.

Q And you have a brother?

A Yes, I do.

Q And who is that?

A Travis Meyers.

Q And is he also known as Travis Malone?

A Malone, I mean, excuse me.

Q Now, Mr. Malone, can you tell the jury a little bit about what he does for a living?

A He in the service.
Q The U.S. Army?
A Yes, ma'am.
Q Can you tell the jury where he is currently serving?
A He is in Iraq.
Q Ms. Roberts, when was Mr. -- Sgt. Malone, your brother, sent to Iraq, deployed to Iraq?
A Last year.
Q Do you recall whether or not you and your family went out with Sgt. Malone and his friends to celebrate him -- or to wish him well to go back to Iraq?
A Yes, ma'am.
Q Would that have been June 30, 2007?
A Yes, ma'am.
Q Can you tell the jury a little bit about what you were doing the night of June 29, Friday night June 29, 2007 into the morning hours of June 30, 2007?
A We was at my sister's house. They came up to visit us.
Q Okay. And when you say they came up to visit us, who was they?
A My brother, Travis, it was Hank and it was Lamont.
Q And Hank, what is his given name?
A His birth name?
Q Yes, ma'am?
A Oh, I'm not for sure. We call him Hank.

Q Okay. Is it Demuria Hank Johnson?
A That last name Johnson, yes, ma'am.
Q And who was the other friend with your brother?
A Lamont.
Q Lamont?
A Uh-huh. (Affirmative response.)
Q And his last name?
A I don't know Lamont name.
Q Okay. And what part of town or Columbia or South Carolina were they coming to visit from?
A From St. Matthews.
Q From St. Matthews?
A Yes, ma'am.
Q And why is it your brother grew up in St. Matthews and you grew up in Richland County?
A Well, I'm from down there, too, but my momma -- when her and my daddy separated she brought us up here.
Q Okay.
A So I been up here ever since I been five years old.
Q And what about Travis?
A Travis been born down there. We don't have the same mother. We have the same father.
Q Okay. Now, as a result of Travis then, was he raised with Demuria Johnson, the person you know as Hank --
A Yeah.

Q -- and Lamont?
A He grew up with them. Yes.
Q All right. Now, you indicated you were at your sister, Stephanie's house; what time do you think it was that you-all got together?
A I'm going to say it was about 10:00. They came up here about 10:00, 10:30.
Q At night?
A Yes.
Q And where did Stephanie live back then?
A Off of Monticello Road in Ridgewood.
Q Was she pretty close to where you lived?
A No. I'm out farther.
Q Further down?
A Yes.
Q Now, can you tell the jury how long it was -- how long did you stay at Stephanie's house that night?
A We stayed there until we got ready to go to the club on Hardscrabble. Out there on Hardscrabble.
Q Okay. Do you remember what time it was when you got to the club on Hardscrabble?
A It should have been between 1:00 or 2:00. 1:30 or something like that.
Q Okay. So it was early in the morning hours the next day?

A Yeah.
Q Okay. Can you tell the jury how many cars y'all rode in and who was in each car?
A We rode in two cars. I rode in the first one. I have a truck, a white Envoy, and my brother had a rental car. Travis was driving the second, the rental car.
Q And do you remember what kind of plates, license plates were on the rental car; what state they came from?
A I'm not for sure.
Q Okay. Now, you indicated you were driving a white SUV Envoy?
A Yes, ma'am.
Q Who was riding with you?
A My sister, Stephanie.
Q And you indicated that your brother Travis had rented a car?
A Yes, ma'am.
Q Who was in the car with him?
A Him, Hank, and Lamont, and my son, Charlie.
Q And is that Charlie Bates?
A Yes.
Q Now, when you got to the club -- first of all, where is the club located?
A Off of Hardscrabble Road in Richland County.
Q Can you tell the jury, just to orient them, what main

road would cross -- what's the next road that crosses Hardscrabble, so they know?

A Farrow Road.

Q Farrow Road. Now, when you got to the club, do you remember where it was that you parked when you arrived?

A I parked in the car wash, the first set of the car wash. The car wash right next door to the club.

Q Okay. And just to orient the jury I'm going to show you a diagram and ask you if you had a chance to look at it. Do you recognize this, ma'am?

A Yes, ma'am.

Q And does this accurately depict the night club and the car wash?

A Yes, ma'am.

Ms. Shipley: Your Honor, at this time we would seek to introduce State's No. 7 into evidence.

MR. SWERLING: No objection.

MS. JOHNS: No objection.

THE COURT: Okay. Admitted.

(State's Exhibit No. 7, diagram, was marked and entered.)

BY MS. SHIPLEY:

Q Ms. Roberts, I'm going to hand you a pointer, if you could, and you're going to need to speak up for the court reporter, but if you could just orient the jury. You

indicated that Hardscrabble Road is close to Farrow Road; is that correct?

A Yes, ma'am.

Q Can you show the jury which direction do you need to travel in to reach Farrow Road.

A Okay, this way. (Indicating.)

Q Okay.

A Yes, ma'am.

Q And tell the jurors where the club is?

A It's right there. (Indicating.)

Q All right, and what's next door to that club?

A Well, that's the car wash right here.

Q Okay, and is that where you parked that night?

A Yes, ma'am.

Q And which stall did you park in?

A In the first stall. The very first stall right there.

Q And describe for the jury, when you pulled in how did you park and where did your brother park?

A Okay. Well, we went all the way around, and I faced my truck to the road on Hardscrabble Road. He parked behind me at the back. So I was in front and he was directly in back of me.

Q And I'm going to show you two more pictures, Number 12 and 13. Can you look at these and let me know if that accurately depicts the stall that you parked in that night?

A Yes, ma'am.
Q And if you could look at the second photograph?
A That's it.
Q Okay. Does that accurately depict the stall that you parked in that night?
A Yes, ma'am.
Q Thank you, ma'am.
MS. SHIPLEY: Your Honor, the state would seek to introduce 12 and 13 into evidence.
MR. SWERLING: No objection.
MS. JOHNS: No objection.
THE COURT: Okay, it's admitted.
MS. SHIPLEY: Okay, it's admitted.
(State's Exhibit No. 12, photograph, was marked and admitted.)
(State's Exhibit No. 13, photograph, was marked and admitted.)
MS. JOHNS: That's 12 and 13?
MS. SHIPLEY: Yes, ma'am, 12 and 13.
BY MS. SHIPLEY:
Q All right, Ms. Roberts, if you could just point on this photograph which stall you parked in?
A This one right here.
Q Okay. Am I pointing at the right direction?
A Yes, ma'am.

Q And you indicated that you pulled your Envoy through the stall facing Hardscrabble Road?
A Yes, ma'am.
Q And who parked behind you?
A My brother, Travis.
Q Now, once you guys parked your vehicles, tell the jurors what you did next?
A We parked. When there -- each of us waited until we got out and we proceed in there together.
Q Okay. And how many times do you believe you've been at this night club before?
A I've been at it a couple -- several times.
Q So you're familiar with --
A Yes, ma'am.
Q -- the people there?
A Yes, ma'am.
Q Are you familiar with the owner or operator, Ricky Jacobs?
A Yes, ma'am. I speak to them every time I go in; him and his mother.
Q Okay. Now, when you were in there did you see -- did you or your son or anybody see any of the people you were acquainted with?
A No, not then.
Q Okay. Tell the jury what happened when y'all came into

the night club?
A Well, we came in. We sitted there a while and then this commotion started between this girl named Lisa Johnson and my son because he dated her.
Q Okay. And when was the first time that you saw Lisa Johnson?
A She -- we had done been in there at least about 45 minutes to an hour before she walked in.
Q Okay. And did you notice her come in at that time?
A Well, when I seen her walked in, that's when I knowed that she was there.
Q Okay. And tell the jurors what happened after she arrived; did you see her with any party in your group?
A No. She didn't come with us.
Q Okay.
A No, ma'am.
Q And where was it you saw her -- did she at any time dance with your son?
A No, not right then. They was having some words.
Q Okay. What happened next after they were having words?
A Then -- they -- it was Charlie and Jalicca was having some words and some other guy, because he went behind her and started dancing with her.
Q Who did?
A Charlie.

Q Okay.
A He was dancing with Lisa, then him and the other boy had some words.
Q Okay. Do you remember what this other boy looked like?
A He was dark skinned with some dreads.
Q Okay. And describe his height for the jury?
A I'm five-six, so he's -- he should have been like five-eight. He's taller than me.
Q Okay. And you indicated he had dreads?
A Yes, ma'am.
Q Okay. And how long were his dreads?
A Shoulder length, a little bit up above the shoulder, shoulder length.
Q At that point, tell the jurors, do you remember anything about his clothing?
A No, they were dark.
Q Okay. Tell the jurors what happened once the man with the dread locks approached your son who was dancing with Lisa?
A They had a couple of words and then -- I just know that a fight just broke out and then --
Q And did you see Hank involved in any way?
A Not right then, no, because him and Charlie -- Charlie and the guy was having some words, then Lisa, she pushed, she pushed each of them out the way, then they collided,

they hooked back up together.
Q Okay.
A Then that's when everything went haywire.
Q Okay. What do you remember happening after they hooked up, like you indicated?
A Well, I looked back, I seen my son, his lip was laying open, and I looked at the boy, and I said, you hit my boy, you hit my boy. He hit me and knocked me out. I was out for a few seconds.
Q And who -- you indicated you were out for a few seconds, when did you come back; who was helping you?
A My sister picked me up off the floor.
Q Okay. And when you got back up, who did you see around you?
A I seen the guys -- we was swinging -- we was swinging to get out, we was fighting. I was fighting for my life to get out the club, because feel like right then the whole club was against us. My sister said, come on, come on. We was trying to make it to the door to get out.
Q Okay. And did you do anything to -- you indicated you were trying to protect yourself. Did you do anything while you guys were leaving?
A I was throwing bottles. I was one of them throwing bottles, trying to get out.
Q Okay. And do you remember seeing Hank or your brother

Travis or Lamont Goodwin at any time during this altercation?

A No, not when I was trying to get out the club. No.

Q Did you see them at all involved in trying to break up the fight?

A Before then, I guess they was asking what was going on at the time. Before then -- it was everything happened so fast, but when I got out the door, that's when I seen Hank, he was on the wall. When I made it out the club, Hank was on the brick wall, Hank was telling us to come on. He was telling us to come on.

Q Okay. And did -- did everybody come on, as he asked?

A Yes, we was running. About time before we got to the brick wall that's when we heard the shots.

Q Okay, and tell the jurors where y'all went when you started hearing the shots.

A We heard the shot, we jumped across the brick wall. We ran -- I ran directly in front of my truck, and I opened up my truck --

Q Okay.

A -- and I was so scared I didn't get in my truck because I was scared the bullets was going to come through the windshield. I ran and hid up under my truck. My brother jumped on top of me.

Q Did you know where Charlie was at that time?

A No. We made sure all of us was together, but after then I made sure -- I said, everybody behind us, everybody was behind us. We told everybody to hit the ground, hit the ground. Oh, Jesus, that's when I heard -- stopped hearing the shots a little bit and I told everybody to jump in their vehicle and let's go. So when the shots stopped a little bit that's when we jumped in the vehicle and we left.

Q And did you tell them where to meet you?

A No. Not right then. I just told them to follow me, follow me. Let's go to the Waffle House. We went to the Waffle House, but my brother told me at the time he was trying to stop my vehicle because I was steady driving because I was driving so fast he was trying to stop me. We got to the Waffle House, because Travis is not familiar with the roads.

Q Okay.

A We went past the hospital, but the hospital is right there by the Waffle House.

Q Which hospital are you talking about?

A Providence Northeast.

Q Okay. So you passed the hospital and where did you end up?

A At the Waffle House. We went to the Waffle House and my brother jumped out, he say, Hank been hit, sister. I said, well, here's a hospital right here. Turn around

follow me. So we -- I told him, I say, pull directly in front of the hospital and don't stop. Pull directly in front the hospital. So we jumped out, all us grabbed Hank. We grabbed Hank and we proceed to take him in the hospital, and that's when they had him and we let him go.

Q And at that point did the hospital staff take over --

A Yes, ma'am.

Q -- in taking care of Hank.

A Yes, ma'am.

Q And you indicated that you were leading because your brother is not familiar with this side of town?

A No, he's not.

Q And to your knowledge had Hank ever been in this club before?

A No.

Q What about Lamont?

A No.

Q So this was there first night there?

A Never been there.

Q Now, you indicated that you were then at the hospital. Did you have any contact law enforcement while you were at the hospital?

A Well, they came up. They came up.

Q And did you talk to a police officer about --

A The shooting. Yeah.

Q -- or an investigator about what you remembered that night?
A Yes, I did.
Q Eventually, were you asked to give a written statement about what you remember happening that night?
A Yes.
Q And did you give a statement to law enforcement?
A Yes, I did.
Q I'm going to show you a document, State's -- well, actually it's -- do you recognize this three page document; is that your signature on there?
A Yes, ma'am.
Q And is that the statement you gave to the police?
A Yes, ma'am.
Q And just reading from the top of it, the date and time that you gave?
A Okay. Yes, ma'am.
Q The date and time that you gave the statement to the police?
A Yes, ma'am.
Q What date is it?
A June 30th, '07.
Q Okay. So the date of the incident --
A Uh-huh. (Affirmative response.)
Q -- and what time was that that you gave the statement?

A At 4:00 a.m.
Q 4:00 a.m.?
A Yes.
Q Okay. Thank you, ma'am. Do you also recall being asked about being able to identify or trying to identify the man with the dreads that hit you?
A Yes, ma'am.
Q I'm going to show you a document and ask you if you recognize this?
A Yes, ma'am.
Q And do you remember who showed you those pictures?
A Yeah.
Q And who was the officer that showed you those pictures?
A It's a man with Richland County.
Q Okay. And did you -- what were you asked to do with those pictures?
A To identify which one that hit me in the eye.
Q And were you able to identify which one hit you in the eye?
A Uh-huh. (Affirmative response.) Between one and four.
Q Okay.
A Because both of them at that time, but --
Q Okay.
A -- I noticed his dread locks, one was dread locks was shorter than the one I picked out. And number four, I know

they was different because they were a little longer than that one.

Q Okay, and so you were unsure between one and four --

A One and four, yes.

Q -- is that correct? And did you sign that form --

A Yes, ma'am.

Q -- indicating the same?

A Uh-huh. (Affirmative response.)

Q Okay.

MS. SHIPLEY: Your Honor, at this time, the state needs to introduce State's Exhibit No. 14 into evidence.

THE COURT: Okay.

(State's Exhibit No. 14, photo lineup, Ms. Roberts, was marked and entered.)

BY MS. SHIPLEY:

Q And Ms. Johnson, again, which ones -- excuse me, Ms. Roberts, which one did you pick between?

A One and four, but that one there, number four.

Q All right. So you were between one and four. You are certain that it's four?

A Yes, ma'am.

Q Had you ever seen that individual before that night?

A No, ma'am.

Q Do you remember whether or not you observed Lisa Johnson with that man that night?

A Well, she was standing up talking to a few of them.
Q Okay, and did she -- Lisa Johnson appear to be familiar with the other people that were fighting your son?
A She knows them, yes, ma'am.
Q Okay. Do you know what part of town Lisa Johnson lives in in relation to the night club?
A She stay over there by Hardscrabble; she stay in Washington Heights.
Q And how is it that you're familiar with where she resides?
A Because I done gone to her house a couple of times to get my son.
Q And your son did date her at a certain time?
A Yes, he did.
Q And, in fact, do you recall taking law enforcement to her house that night?
A Yes, I did.
Q And showing them where she lives?
A Yes, I did.
Q And how many people do you think were attacking your son while he was dancing with Lisa Johnson?
A It looked to be about five of them.
Q Okay. And you indicated that when you first heard the shots you were in the parking lot getting ready to get in the cars?

A I was jumping across the --
Q The brick wall?
A -- the brick wall. Yes, ma'am.
Q And you indicated that you got to your car, but then you had to duck; is that correct?
A Yes, ma'am.
Q Could you tell which direction the shots were coming from?
A Front wards.
Q Front wards --
A Yes.
Q Would that be from the road?
A From the road, right. Yes, ma'am.
Q Could you tell -- were you able to see any cars that the shots were coming from?
A No, ma'am.
Q And do you remember approximately how many shots you heard?
A It was more than one gun.
Q And do you recall how many shots you heard from any gun; do you know how many shots were shot with any gun?
A It was more than five to me.
Q More than five shots?
A Yes, ma'am.
Q But you don't know how many shots you heard from each

one; do you know?
A No, ma'am.
Q Would it be fair to characterize the events as being chaotic that night?
A Yes.
Q And, again, this was late in the morning hours; correct?
A Yes.
Q How many people do you believe were in the club at this time of night?
A It was crowed. They had a nice little crowd up in there.
Q Okay. Could you give us an approximation of how many people could have been there?
A No, not really, but it was a nice crowd.
Q Okay. And you indicated that you've been to this night club on a few occasions; is that correct?
A Yes, ma'am.
Q The people that frequent this club, are they mostly from that neighborhood?
A Yes.
Q And so the people, is it fair to say, that the people there are acquainted with one another?
A Yes.
MR. SWERLING: Objection, Your Honor. She doesn't

know. She's asking her to draw conclusions from facts that are not in evidence.

THE COURT: Sustained.

BY MS. SHIPLEY:

Q Did anyone in your group; Charlie Bates, Lamont Goodwin, Demuria Johnson, yourself, or Stephanie Boston, have a gun on their person at any time that night?

A No, ma'am.

MS. SHIPLEY: Beg the Court's indulgence.

BY MS. SHIPLEY:

Q I'm going to show you some pictures, State's 9, 10, and 11. Do you recognize these pictures?

A Yes, ma'am.

Q And what are those pictures of?

A Pictures of me.

Q And what night or day?

A The same night of the incident when the guy hit me in my eye.

Q And does that -- what do those pictures show?

A Yes, ma'am.

Q What do they show?

A My eye.

Q Okay. Is that how you looked that morning?

A Yes, ma'am. It swoll up.

MS. SHIPLEY: Your Honor, state seeks to introduce

9, 10, and 11?

MR. SWERLING: No objection.

MS. JOHNS: No objection.

THE COURT: Okay.

(State's Exhibit No. 9, photo of Ms. Roberts, was marked and entered.)

(State's Exhibit No. 10, photo of Ms. Roberts, was marked and entered.)

(State's Exhibit No. 11, photo of Ms. Roberts, was marked and entered.)

MS. SHIPLEY: May I publish it to the jury, Your Honor?

THE COURT: Yes, you may.

BY MS. SHIPLEY:

Q And before I do so, State's No. 9; whose blood is that on your shirt?

A That's Hank's.

Q Ms. Roberts, thank you very much, and please answer any questions from the defense.

VERDA ROBERTS - CROSS-EXAMINATION

BY MR. SWERLING:

Q Good morning, Ms. Roberts.

A Good morning.

Q I'm Jack Swerling.

A How you doing.

Q Let me see if I can recall a couple of areas. First of all, I want to go to the last area first. When you were on the road in front of the club you heard this more than one gun shoot; is that correct?
A Yes.
Q And there were several shots from each gun?
A Yeah.
Q They were together?
A Shooting, yes.
Q Together, they were shooting, and the -- and you can tell, I suppose, from the sound of the gun, the sound of the shot. So you heard multiple shots from different guns?
A Uh-huh. (Affirmative response.)
Q Is that right?
A Yes.
Q Could you estimate whether it was five, 10, 15 or 20 shots?
A I'd say more than five.
Q More than --
A It was more than five shots.
Q But you didn't see anybody doing the shooting or --
A I was busy running for my life.
Q Sure. I understand that. When you were in the club, your son, Charlie, was there and he had know Lisa for some time; correct?

A Yes.
Q And, in fact, they had dated for a while?
A Yes.
Q But they weren't dating any longer; is that correct?
A Off and on.
Q They were dating off and on still?
A They were messing with each other, yes.
Q Messing. And I won't go into what that means, but they were still seeing each other; is that right?
A Yes.
Q Now, when he came up -- he was in the club, and she did not come with you, and as I understood your statement, he actually came up behind her and started dancing?
A Yeah.
Q She didn't want that?
A Yeah. He was talking to her and they was dancing.
Q He was dancing behind her?
A Yeah. She was talking to him. They were talking back and forth for a while.
Q Didn't she push him away?
A She pushed both of them.
Q Both of them.
A When they started arguing.
Q Didn't she push your son away?
A Yes, both of them.

Q I said, my question to you --
A Oh, okay.
Q -- didn't she push your son away?
A Yes.
Q Because she did not want to be messing with your son; isn't that true?
A Not to my knowledge.
Q Why'd she push him away, then?
A Because they both him and the guy was arguing. The other guy was arguing.
Q So --
A She was in between both of them.
Q She was in between both of them?
A Yes, she was.
Q So one was getting aggravated with the other because one was messing with her --
A I don't know what it started from. I wasn't over there listening to them.
Q All you could do was observe that your son was behind her dancing and this guy came up and there was some discussion; isn't that correct?
A Yes.
Q So in one case she turns and pushes your son away, but then she pushes the other guy away as well?
A Yes.

Q When you push somebody away it's an indication that you really don't want anything to do with them, isn't it?
A Yeah, that, too.
Q All right. Now, you spoke with -- do you remember you spoke with Heidi Scott at the hospital --
A Uh-huh. (Affirmative response.)
Q -- you told her the person that was involved in this fight with your son -- of course, you don't know what actually led to the fight, I suppose?
A No, I don't.
Q You didn't hear what went on?
A No, I didn't.
Q But clearly the argument was between this fellow and your son?
A Yes.
Q And you told Heidi Scott at the hospital that you heard people referring to the individual that you described with dreads, as Chris; do you recall that?
A I don't know -- not me, because I don't know him.
Q I didn't say you knew him. What I said was, didn't you tell Heidi Scott at the hospital when she asked you some questions that you thought you heard some people call him Chris?
A No.
Q You didn't tell her that?

A No. You're talking about my sister, not me.
Q Pardon?
A You're talking about my sister. I don't know nothing about no Chris. I don't know him by no name.
Q I didn't say you knew anybody. I'm saying you heard people referring to this individual as Chris.
A No.
Q Okay. All right. I'll move on from that. The person that you saw involved in this altercation had dreads; is that correct?
A Yes.
Q And did this particular person who had dreads, punched you in the face?
A Yes, he did.
Q And that was after your son and he -- he and your son were in a fight and he drew blood on your son?
A Yes.
Q Is that correct? You stepped up and then he punched you?
A Yes, he did.
Q Knocked you down?
A Knocked me out for a few seconds.
Q And where did this individual go after he knocked you down; did you see where he went?
A They were steady swinging and throwing bottles and

stuff in the club. That's the only thing I can tell you.
Q This individual, can you describe his height, his weight?
A He's taller than me. He's kind of big and skinny like.
Q Skinny?
A Yeah.
Q And you gave that description to Investigator McRae when you went down to give him a statement; right?
A Yes.
Q And he showed you this photographic line-up, what we call a photo line-up?
A Yes.
Q Which is State's Exhibit No. 14; is that right?
A Yes, sir.
Q Now, you just told the jury when you looked at it one and four looked familiar?
A Yeah.
Q And I think you just told the jury that four was the most familiar; is that correct?
A Yes.
Q Is that correct? Both of these guys look fairly thin in the face?
A Uh-huh. (Affirmative response.)
Q But they both have dreads?
A One dreads is longer than the other one.

Q But they both have dreads?
A Yes.
Q Okay. But when you spoke to Mr. McRae, that was not how you recalled it that day. You actually told Mr. McRae, did you not, that the one that looked most familiar to you was number one?
A Yes, I did, because at the time, I was hit in my eye I couldn't hardly see.
Q But today, it's number four?
A No, when I identify -- I went back through, I looked at it again, and I kept -- he is taller and darker. The guy was darker than me.
Q I'm just trying to ask it one step at a time.
A Okay.
Q So I'm kind of slow. What I'm asking you is the day you gave the statement on July 7th --
A Uh-huh. (Affirmative response.)
Q -- you said the individual who was most familiar to you was the person in picture number one?
A Uh-huh. (Affirmative response.)
Q Today you told the jury it was number four; is that correct?
A Yes.
Q Which one is it?
A Number four.

Q Okay. The one today?
A Yes.
Q So what you told the police two years ago wasn't correct?
A Yes. I identify just from my --
Q When did you come to that decision?
A I been came to that decision, because he was darker than me.
Q But when did you tell anybody about that decision, just curious --
A I kept --
Q Excuse me. You have two different people identified?
A I know, but I kept looking at the picture, because when I told them that I couldn't hardly still see out this eye. And still can't to this day.
Q That's fine, but you do agree that in your signed statement --
A Yeah.
Q -- Ms. Shipley showed you, you said it was number one?
A Yeah.
Q You do agree with that?
A Yeah. I understand what you're saying.
Q Now, the individual you described as having dreads, you did not know his name?
A No.

Q But you indicated that Lisa -- and Lisa is who?
A Lisa Johnson.
Q Lisa Johnson is the young lady who is in between the two guys?
A Uh-huh. (Affirmative response.)
Q Is that right? She knows who he was?
A Yeah, she knows.
Q And you told the police that?
A Yeah.
Q That she knew?
A Yeah, uh-huh. (Affirmative response.)
Q So the real fight was between this guy with the dreads and your son. And then the fight was between this guy and you; is that correct?
A No. I just asked him why he hit my son and he hit me.
Q Well, when he hit you that was a fight?
A Yeah, and then everybody jumped in.
Q But he was the one that was the --
A Started it.
Q -- provoked the situation or was the recipient; I don't know who started the thing, but he was the one who was fighting with your son and he was the one who turned around and hit you?
A Yes, sir.
Q Is that correct?

A Yes.
Q Okay.
MS. JOHNS: May it please the Court?
THE COURT: Certainly.
VERDA ROBERTS - CROSS-EXAMINATION
BY MS. JOHNS:
Q Ms. Roberts, you said that after you got hit that you fell to the ground --
A Fell to the floor.
Q -- is that correct?
A Yes, ma'am.
Q And when you fell to the ground what did you see?
A I didn't see nothing because I was out.
Q Okay. And you were out for what, five or ten minutes?
A Yeah, my sister got me up off the floor and shook me until I woke back up.
Q And during those five or ten minutes, you didn't know what was going on did you?
A Huh-uh. (Negative response.)
Q Okay. When you did get up, you stated that you threw some beer bottles?
A I threw some bottles to make it to the door.
Q So when you were throwing these beer bottles, you were throwing them at this guy, number four; you were throwing them at him?

A To try to make it out the door. I was just throwing to make it out the door so I can get to my truck.
Q Okay, and your sister, did she throw bottles, too?
A She probably did. I don't know.
Q Okay. Did you hit this guy?
A I don't know.
Q Was your son throwing beer bottles, too?
A My son wasn't in there. I didn't see my son any more.
Q Okay. You didn't see him any more. Okay. So if you did throw beer bottles -- did you hit anybody?
A I don't know.
Q Now, after you got outside your sister was basically underneath you; is that what you're saying?
A No, I didn't. I said after we got outside, Hank was on the brick wall telling everybody to come on all of us.
Q Now, I want you to take this pointer and point out exactly, for the jury, where the brick wall is?
A There's the brick wall right there. (Indicating.)
Q Okay. And it goes from the street --
A Uh-huh. (Affirmative response.)
Q -- all the way, where?
A To the back -- but we was right in here.
Q Okay.
A And when we was coming out the club we jumped cross to get to my truck right there.

Q Okay. Now, when you pointed right there, you said when you were coming out the club, you pointed to this shelter thing right there. Is that where the club is?
A Well, there's a door right in here. It's a door that you go in. There's a door.
Q And is there any other door to -- facing --
A Yeah.
Q -- that building?
A Yeah.
Q Where is that at?
A It's two doors that go to the restaurant and one to -- you come into the club. That's where you park at under that -- there was gas pumps.
Q All right. So two front doors?
A Yes.
Q Okay. Back door?
A Yeah.
Q Okay. Where's the back door.
A Okay. The back door is the patio.
Q Okay. And you've been out on that patio before?
A Yes.
Q Okay. And when you jumped that wall you saw people jumping off that patio, too, right?
A Huh-uh. (Negative response.)
Q Okay. When you came and jumped off that wall you just

-- how far down was it?

A When I jumped off the brick wall?

Q Yeah.

A The brick wall ain't but so high.

Q Okay.

A And you going to jump right there and come across it and go to the car wash.

Q Okay. I have nothing else. Thank you.

THE COURT: Okay.

MS. SHIPLEY: Brief redirect, Your Honor.

THE COURT: Sure.

VERDA ROBERTS - REDIRECT EXAMINATION

BY MS. ROBERTS:

Q You were asked by Mr. Swerling about Lisa pushing your son and pushing Mr. Johnson -- excuse me, the guy with the dreads?

A Uh-huh. (Affirmative response.)

Q Was she doing that at the same time?

A She just did like that. (Indicating.)

Q To both of them at the same time?

A Yeah. That's how she did it.

Q So did it appear to you that she was trying to break them up?

A Well --

MR. SWERLING: Objection.

BY MS. SHIPLEY:

Q What did you observe?

A She was pushing them.

Q Now, you were also asked about the fact that once your son and this guy with the dread locks started fighting did other people in the club get involved as well?

A Yes, ma'am.

Q How many other people do you think got involved?

A It was like, more than five. Looked like it.

Q Okay. Do you remember what all these people looked like?

A No.

Q And so could you identify those other people?

A I can just identify the one that hit me in my eye.

Q You were also asked by Ms. Johnson -- Ms. Johns how long you were out. Do you know how long you were out when you got punched?

A No. No more than five minutes or seconds or something like that because she shook me.

Q Five minutes or seconds?

A Five minutes at the most.

Q And so when you wake up is the fight still going on?

A Yes.

Q And also you were asked about the brick wall, just to help explain it to the jury, how tall is this brick wall?

A It's not that high.
Q Okay. I'm going to show you a picture, State's No. 15. Does that accurately show how high --
A That's it.
Q -- the brick wall is?
A Right there.
Q Okay.

MS. SHIPLEY: Your Honor, we'd like to introduce 15, at this time.

MS. JOHNS: No objection.

THE COURT: All right.

(State's Exhibit No. 15, photo of brick wall, was marked and entered.)

MS. SHIPLEY: Thank Your Honor.

BY MS. SHIPLEY:
Q And so you just jump over, you step up on and climb over?
A Yeah.
Q You don't have to hike up it or anything?
A No, ma'am.
Q Okay.

MS. SHIPLEY: Your Honor, may I publish it to the jury?

THE COURT: Yes, you may.

BY MS. SHIPLEY:

Q And you did not see anybody jumping off this patio in the back?
A No, ma'am.
Q You were also asked about the shots coming -- the shots that you heard?
A Yes, ma'am.
Q And I believe you testified you were running for your life?
A Yes, ma'am.
Q Are you sure, do you know how many shots total that you heard?
A No, ma'am.
Q And do you know how many shots you heard from each gun?
A No, ma'am.
Q Thank you.

MS. SHIPLEY: No further questions.

THE COURT: Ma'am, you can step down and be excused.

MS. ROBERTS: Thank you.

THE COURT: State, you may call your next witness.

MS. MCDUFFIE: State calls Stephanie Boston.

MR. SWERLING: Judge, one second?

THE COURT: Yes.

(Pause.)

THE CLERK: Place your left hand on the Bible and

raise your right.

(WHEREUPON, Stephanie Boston, was sworn to tell the truth.)

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

MS. BOSTON: Stephanie Boston.

STEPHANIE BOSTON - DIRECT EXAMINATION

BY MS. MCDUFFIE:

Q Good afternoon, Stephanie.

A Hi.

Q Stephanie, where are you from?

A Columbia.

Q And where were you raised?

A Richland County.

Q Do you have any siblings?

A I have two sons.

Q Do you have any brothers and sisters?

A Oh, yeah. Two brothers, two sisters.

Q And is one of your brothers Travis?

A Yes.

Q And is another Verda?

A Yes.

Q And back in June of 2007, where were you living?

A Woodbriar. I can't remember them address, but I was staying on Woodbriar Street.

Q And on June 29, 2007, did Stephanie and Travis and your family come over to your house?
A Yes.
Q And what was that for?
A Because Travis was from Iraq, and we was just celebrating that he made it home.
Q And was he also getting ready to go back again?
A Uh-huh. (Affirmative response.)
Q On the 29th of June 2007, what were y'all doing that night?
A Drinking, playing cards, Spades. Taking pictures.
Q How long were you at your house that night?
A Well they came right before it got dark and we played cards for about three hours.
Q And you said "they" came; who came to your house?
A Travis, Hank, and Lamont.
Q And Hank and Lamont are who; are they friends of Travis, are they friends of yours?
A Yeah.
Q And had you met either Hank or Lamont before this night?
A Yes, ma'am.
Q About how many times have you met them before?
A About three times.
Q And did y'all leave your house at any point in time

during that evening?
A Yes.
Q Where did y'all go?
A To the club.
Q And where is the club?
A Off of Hardscrabble Road.
Q And I'm going to show you what's already in evidence at State's Exhibit No. 7. Do you recognize that?
A Uh-huh. (Affirmative response.)
Q And using this pointer, show the jury where the club is?
A Right over in there.
Q And in that area there's a club. Is there anything else over there?
A The dirt road. This is Hardscrabble right here.
Q And where did y'all park when you got there?
A We parked in the -- where you wash cars at.
Q Is that next door to the club?
A Yes.
Q And what stall in the car wash did y'all park in?
A The first one. I can't hardly see this because I'm kind of like far-sighted, and I can't see small stuff.
Q That's fine. This is State's Exhibit No. 12. Is that the car wash that y'all parked in?
A Yeah, right here.

Q I'm showing the jury. This is where y'all parked?
A Uh-huh. (Affirmative response.)
Q And what car were you riding in that evening?
A My sister's truck.
Q And how did Travis and Charlie and Hank and Lamont get there that night?
A By Travis.
Q And whose car was it?
A Travis.
Q What kind of car was it; do you remember?
A I don't know the name brand of the car. I just know if was kind of tan brown type of car.
Q And when y'all got there where did Travis park his car?
A Behind us.
Q Behind y'all?
A Yes.
Q In the same car wash stall?
A Yeah.
Q What did y'all then do after you parked your cars?
A We went into the club.
Q What did y'all do when you got into the club?
A Went to the bar and got a drink.
Q And did you see anyone else you knew there that evening?
A I saw a lot of people because I been going to the club

about eight years.
Q And you got a drink at the bar and saw some people you knew. Where were y'all seated when you first came in?
A We didn't sit down.
Q Where were you?
A At the bar, the first bar as you come in the door.
Q And do you know a woman by the name of Lisa Johnson?
A Uh-huh. (Affirmative response.)
Q After you got there did you see her at the club?
A She came a little after we got there.
Q And what was she doing?
A Walking around, hanging like you do at the club.
Q Did -- are you aware of whether or not she and Charlie had a relationship, off and on?
A Uh-huh. (Affirmative response.)
Q And did you see them talking that night?
A On and off.
Q And at some point in time did a fight break out in the club?
A Uh-huh. (Affirmative response.)
Q Did you see what started the fight?
A Lisa came with another guy and I guess Charlie got mad and Charlie and the guy started with words, and the next thing I know Charlie threw the drink and a fight broke out.
Q So Charlie threw a drink at the guy?

A Uh-huh. (Affirmative response.)
Q And do you know who this guy is?
A I know him from seeing him a lot.
Q And where would you see him?
A At the club or on Washington Park Road where Lisa stays at, that road.
Q In Washington Heights?
A Yeah.
Q And where did she live in Washington Heights?
A I don't know which house, but I know he stayed on that road.
Q And where did Lisa stay on that road?
A About 11 houses down on the right.
Q And was he -- if you turned on that road from Hardscrabble was his house before or after hers?
A Before.
Q Towards the beginning or the middle or the end by Lisa?
A I guess -- I used to always see him at the beginning of the road. Sometimes he used to come down to Lisa house when we would be down there cooking out. I'd see him at the club.
Q And what name did you call him by or that you know him as?
A I know Chris.
Q Any other names that you know him by?

A They said his name was Brian. So I don't know. I just know him when I see him.
Q And that's the person you saw Charlie throw a drink at and then a fight started?
A Yeah.
Q And what was the next thing that happened after that?
A Everybody start fighting.
Q And did anything happen to Verda?
A Yes. He punch her in the eye.
Q And what happened?
A And we started throwing bottles at him.
Q Did Verda fall down?
A Yeah, I caught her.
Q And what happened next?
A That's when the little bouncers or whoever, the little security guards came and start getting everybody cleared out the club. And we walked out the club and everybody was talking about what happened, how the fight started and this and that. That's when Hank got out the car, he was standing beside the car and we was walking towards where we was parked and he was like, what's going on, what's going on. And we was telling him that we been in a fight in the club, whatever, whatever, and he was like, y'all let's just go. Let's just go. So as we was getting into the -- Travis and them getting in their car, we getting into my sister car,

gunshots.
Q And do you know where the gunshots were coming from?
A I couldn't really remember. I know it was coming from off of Hardscrabble Road.
Q Coming from that direction?
A It had to, because it wasn't coming behind us. It wasn't behind us. The shots came like --
Q In front of you?
A Yeah.
Q After you all started hearing the shots what did y'all do?
A We jumped in the car and Hank was like, I'm hit.
Q And what happened next?
A Charlie, Lamont, and Travis put Hank in the car.
Q And then what happened. So Travis stopped at the Waffle House on what -- that's Farrow Road.
Q Y'all stopped at the Waffle House?
A Yeah.
Q And when y'all pulled out of the car wash at the club which way did you go?
A We went left.
Q Towards what road?
A That's Farrow Road, right?
Q So you went left towards Farrow Road?
A Yeah.

Q And y'all stopped at the Waffle House?
A Yeah.
Q And why did y'all stop at the Waffle House?
A Because Travis didn't know where the hospital was. He was in the front of us. So he stopped to ask her where was the nearest hospital, and that Hank was bleeding a lot, he was losing a lot of blood. So my sister, Verda, was like just straight up it's a hospital, just straight up the street, and we went to the hospital and they took him out and we took him in the hospital.
Q And did some police officers come to the hospital that morning?
A Yes, ma'am.
Q And did you talk to a female police officer?
A Yes, ma'am.
Q Investigator Heidi Scott?
A I can't remember her name. I know she was a female.
Q I'll show you what's this three-page document. Do you recognize this?
A This is my statement.
Q And is that your signature at the bottom of the pages?
A Yes, ma'am.
Q And what is the date and time of that statement?
A June 30th, '07, what, 7:35.
Q June 30, 2007, at 7:35 in the morning?

A (No response.)
Q And did you tell Investigator Scott about the individual that you saw that punched Verda and that you knew him by what you thought was Chris?
A Yes, sir. (Sic.)
Q And you told her about what happened that night with the fight and the shooting and the things of that nature?
A Yes, ma'am. I told her everything that I could remember.
Q And did you ever see the person that was shooting at y'all?
A No.
Q But the shots were coming from where; what area?
A The road. He had -- like I said, he had to be shooting in the -- towards the front of us because where we was parked at, ain't no way they could have shot, you know what I'm saying, from behind. It had to be coming from the street.
Q And about how many shots did you hear?
A Over three.
Q But you don't know how many?
A No.
Q But it was at least three?
A Yeah.
Q And do you know if it was one gun or multiple guns?

A Sound like to me it was more than one gun.
Q Do you know how many guns?
A It was -- it wasn't the same shot.
Q And could you tell which gun shot how many times?
A No. I can't.
MS. MCDUFFIE: Beg the Court's indulgence.
BY MS. MCDUFFIE:
Q Let me show you what's in evidence as State's Exhibit 14.
A Uh-huh. (Affirmative response.)
Q Do you see the person you know as Chris in that -- in this State's Exhibit No. 14?
A Uh-huh. (Affirmative response.)
Q And what number is he?
A 44526.
Q And up here is written what number?
A 36996.
Q And that's picture number what?
A Four.
Q So picture number four, that's the person you knew as Chris?
A Uh-huh. (Affirmative response.)
Q And that's the person who was in the fight at the club that night?
A Uh-huh. (Affirmative response.)

Q And when Verda got punched about how long was she out, about five minutes, a couple seconds; do you know?
A I can't say because I caught her. When he punched her she fell back on me.
MS. MCDUFFIE: Nothing further.
STEPHANIE BOSTON - CROSS-EXAMINATION
BY MR. SWERLING:
Q Hey, Ms. Boston. I'm Jack Swerling. How are you.
A I'm fine. How are you.
Q Good. Did you and Verda Roberts discuss that photograph that was just shown to you?
A No.
Q So you -- when was the first time you saw that?
A When the investigators, solicitors showed it to us.
Q Which was when?
A Last time we had to come to court.
Q So -- were you Ms. Roberts together when they showed it to you?
A No.
Q And they showed it to you separately?
A Yeah.
Q You told Ms. Roberts that you picked out number four?
A No, I ain't told her nothing.
Q Did she tell you who she picked out?
A No.

Q At the club, from what I understand, how long had you been there when all this happened?
A Not really an hour.
Q Everybody drinking?
A Yeah.
Q Everybody -- four or five of you actually drinking together?
A Five of us were together.
Q Five together.
A When you got there you saw Lisa; is that right?
A No. She wasn't there yet.
Q Oh, she got there after you?
A Uh-huh. (Affirmative response.)
Q Lisa and Charlie had been seeing each other from time to time?
A Yeah.
Q Or they had dated in the past?
A Yeah.
Q They weren't dating then?
A No.
Q In fact, they had broken up some time ago?
A I guess.
Q Okay, far as you know?
A Uh-huh. (Affirmative response.)
Q Lisa was dancing and Charlie came up behind her and was

hugging her; is that right?
A No. She wasn't dancing.
Q Well, then he was just hugging her from behind?
A Yeah. He was to the side talking.
Q So they weren't dancing. Was he hugging her behind or from the front; do you remember?
A From the side.
Q From the side?
A They was like side by side.
Q This guy named -- you said it was Chris?
A Yeah.
Q That you told Investigator Scott about at the hospital; is that right?
A Yeah.
Q You now say it was also known as Brian. When did you first come up with the name Brian, because that's not in any of your statements is it?
A Somebody said he name was Brian.
Q After that night?
A Uh-huh. (Affirmative response.)
Q Not that night. So you never told the police that. You said the guy's name was Chris?
A Yeah, I was giving him a name that I thought his name was, but it wasn't Chris.
Q Okay, but later on -- do you remember if it was

somebody in law enforcement who told you his name was Brian?
A No.
Q Do you know who it was?
A It was in the street.
Q Somebody in the street. All right. Now, the person that looked like the person who got into it with Charlie, you said was number four?
A Uh-huh. (Affirmative response.)
Q Okay. He's fairly thin. Got a thin face and dreads in his hair; is that right?
A Uh-huh. (Affirmative response.)
Q Dreads or plaits; is that right?
A Uh-huh. (Affirmative response.)
Q I don't know if this has been published to the jury or not, but that's the guy who was in the fight?
A Uh-huh. (Affirmative response.)
Q As far as you can tell?
A Uh-huh. (Affirmative response.)
Q Now, from what I understand, the actual fight started when Charlie threw a drink in his face?
A Uh-huh. (Affirmative response.)
Q Is that right?
A Uh-huh. (Affirmative response.)
Q And after Charlie threw a drink in his -- do you know what prompted that?

A What?
Q Do you know what prompted the guy with Charlie throwing a drink in the guy with the dreads face?
A Because he was over there and he and Charlie had words. I guess it was about Lisa. I couldn't hear what they was having words for, because I was beside the speaker. But next thing I know, Charlie three the drink, fight broke out. I ran over there -- and everybody stopped fighting.
Q Okay. And this guy and Charlie got into it?
A Uh-huh. (Affirmative response.)
Q And then your sister Verda got into it --
A Uh-huh. (Affirmative response.)
Q -- with the guy with the dreads, she was trying to help her son?
A Yeah.
Q And then he turned around and punched her in the face; is that right?
A Uh-huh. (Affirmative response.)
Q The whole fight at that time was between your sister and Charlie and Verda; is that right?
A No, I ain't going to say that. All of us was fighting.
Q Who else was fighting?
A All us was fighting.
Q Which is who?
A Me, Charlie, Verda Mae, Lamont and Travis.

Q So everybody was fighting?
A Uh-huh. (Affirmative response.)
Q Now, when you went to the hospital, you talked to Heidi Scott at the hospital, remember that when everybody was waiting around?
A Uh-huh. (Affirmative response.)
Q Investigator Scott, interviewed you, took some notes; is that correct?
A I believe that was her name.
Q That's when you told her the person's name was Chris?
A Uh-huh. (Affirmative response.)
Q And you told her you thought Chris was the one responsible for the shooting?
A I told her that?
Q Uh-huh. (Affirmative response.)
A Is that the statement I got?
Q Let me see if this refreshes your memory. Right here.
A Where at?
Q Where it says, talked to Stephanie Boston.
A I don't see where you pointed at?
Q Do you see where it says talked to Stephanie Boston?
A Huh-uh. (Negative response. Okay. Right here?
Q That she thought the person involved in the fight was the person responsible for the shooting.
A Oh, he has something to do with shooting. That's where

the fight started about.
Q Well, my question was, and I guess the answer is that you told Heidi Scott the person in the fight with the dreads that's in that picture was responsible for the shooting; correct?
A Well, yeah.
Q Now, when everybody went outside you said that you heard shots from several weapons?
A At least two.
Q At least two?
A Uh-huh. (Affirmative response.)
Q And there was at least three shots?
A Uh-huh. (Affirmative response.)
Q You couldn't tell exactly how many shots, but you're saying at least three, and there were at least two weapons?
A I'm saying it didn't sound like the same gun.
Q Did not sound like the same gun?
A Huh-uh. (Negative response.)
Q And they were coming from different directions?
A I would had to be coming from the front of us where we was parked at.
Q Okay. So both weapons, whatever you heard, was coming from the front of you?
A Yeah.
Q But do you know, can you tell the jury whether or not

those gunshots were coming from a vehicle or from someone standing somewhere or --

A I can't tell you that.

Q You have no idea. So it could just as easily come from someone who is standing rather than someone in a vehicle; is that correct?

A I can't tell you that.

Q I said, just as easily could have. You don't know which it was, a vehicle or somebody standing?

A No. No.

Q Correct?

A No.

Q You don't know whether or not it was to the right or left of the club or across from the club or -- but you do know it was coming towards you --

A Uh-huh. (Affirmative response.)

Q -- and not from behind you?

A Uh-huh. (Affirmative response.)

Q Is that correct?

A Uh-huh.

Q Thank you. That's all I have.

MS. JOHNS: Please the Court?

THE COURT: Yes.

STEPHANIE BOSTON - CROSS-EXAMINATION

BY MS. JOHNS:

Q Ms. Boston, you mentioned security. Can you tell us a little bit more about the security; you've been in this club before, right?
A Uh-huh. (Affirmative response.) Yes.
Q And you mentioned something about security in the club?
A Well, they -- you know, they got guys out there that they have for security or whatever.
Q Well, where do they -- what do they do, describe -- when you walk up to the club what do you see?
A They search you, ask you for your ID.
Q Uh-huh. (Affirmative response.)
A I guess they there to prevent any trouble at the club.
Q Which door are they at, the door at the kitchen or --
A The door as you enter the front.
Q Okay. And how many are there?
A It varies. Some nights they have two, some nights they have three.
Q Do you know what their names are?
A No.
Q How often do you go to the club?
A I haven't been there since this happened.
Q Okay. Before this, how often did you go to the club?
A I used to go like every other weekend.
Q And do they get to know you?
A Who?

Q Security, they got to know you every other weekend?
A They learned your face.
Q After a while they stop asking for your ID?
A They know your face.
Q And they've seen you there before, they've searched you before?
A Yes, ma'am.
Q You said they searched you to let you in, right?
A I didn't say that.
Q Did they?
A No, you have to show your ID.
Q Okay. Now, they check your pocketbook?
A Yes.
Q How often do they do that?
A Well, they check my pocketbook every time I went.
Q Every time.
A Uh-huh. (Affirmative response.)
Q And so was there anytime that they didn't check your pocketbook?
A I can't say that.
Q Was there anytime that they didn't check your ID?
A I can't say that.
Q Okay. Well, what did this security guy look like?
A I'm mean, which one you're talking about?
Q Well, start with the biggest one?

A He big, brown skin, got low haircut. Then the other one short, brown skin. Then the other one is kind of tall.
Q Okay. The first one, big, brown skin, short haircut. Next one was short, brown skin. What kind of haircut?
A I guess it was like a low haircut, too.
Q Okay. And then the other one?
A He was taller.
Q Tall. Complexion?
A Brown.
Q Hair?
A I can't remember.
Q Did you know any of them by name?
A No.
Q Do you know who Sherman is?
A Yes.
Q What does Sherman look like?
A Brown skin, low haircut. Sometimes he'll be dressed. Sometimes he won't be dressed.
Q Do you know the guy who sits at the door that falls asleep all the time?
A No.
Q Did you ever see him?
A No.
Q Now, when -- the times that you've been to the club, have you always been there with your sister?

A No.
Q Okay, you've been there with other girls, before?
A Me and Lisa or me and my friend, a guy.
Q Okay. When you've been there with Lisa, did Lisa's ID get checked?
A Yes.
Q Okay. And did her purse get searched?
A Lisa don't ever carry a purse in the club.
Q She doesn't carry a purse. So if you don't carry a purse you don't get searched.
A They don't search your purse. They take the thing and go over you?
Q The little thing?
A The metal detector or whatever the little thing they take to check you?
Q So it's like a wand like downstairs on the first floor?
A Yeah.
Q Now, I'm going to show you State's Exhibit No. 14, which are these pictures?
A Uh-huh. (Affirmative response.)
Q Anywhere on these picture do you see Mr. Wray sitting beside Jack Swerling; is the one, number four, is that Mr. Wray?
A No.
Q Is number four; is that Mr. Watts?

A No.
Q Anybody in this picture that's Mr. Watts?
A Who's Mr. Watts?
Q Okay. Never mind. I'll withdraw that.
A I don't know these people by name.
Q Okay. Have you seen this guy, Chris, aka, Brian, since the shooting?
A Uh-huh. (Affirmative response.)
Q When was the last time you've seen him?
A The last time we came to court.
Q Would that be May or last week.
A No. The last time we been to -- supposed to been going to court.
Q The time before this. Did you speak to him?
A No.

MS. JOHNS: Beg the Court's indulgence, Your Honor. Okay, that's all I have. Thank you.

THE COURT: Yes.

STEPHANIE BOSTON - REDIRECT EXAMINATION

BY MS. MCDUFFIE:

Q Ms. Boston, about how many people were fighting in the club?
A I can't tell you.
Q One to five?
A Yeah.

Q One to 10?
A I can't -- I really can't say. It was a big old fight.
Q And Mr. Swerling asked you about a statement that Investigator Scott's report that said you thought the person, Chris, who was in the fight was responsible for the shooting?
A I really don't remember that statement. I really don't.
Q Do you know who was responsible for the shooting?
A I wish I did.
Q Did you see the person who was shooting at y'all?
A No.

MS. MCDUFFIE: Nothing further, Your Honor.

MS. JOHNS: Nothing further.

THE COURT: Okay. You can step down and be excused. Thank you.

MS. BOSTON: Thank you.

MS. SHIPLEY: State calls Charlie Bates.

THE CLERK: Place your left hand on the Bible and raise your right hand.

(WHEREUPON, Charlie Bates, was sworn to tell the truth.)

THE CLERK: Thank you. Have a seat up there in the witness stand. Tell the court reporter your name.

MR. BATES: Charlie Bates.

CHARLIE BATES - DIRECT EXAMINATION

BY MS. SHIPLEY:

Q Good afternoon, Mr. Bates.

A How you doing.

Q Mr. Bates, can you tell the jury a little bit about yourself. What part of Columbia are you from?

A Columbia. Ridgewood, North Main, Monticello, parts like that.

Q Okay.

A Yes, ma'am.

Q And who is your mother?

A Verda Roberts.

Q And who is Stephanie Boston to you?

A My aunt.

Q Do you have an uncle that's in the army?

A Yes, ma'am.

Q And who is that?

A Travis.

Q Can you tell the jury if you're familiar with your uncle's friends from St. Matthews?

A Yes, ma'am. I wouldn't say I'm as close as he is with them, but we've got a good relationship.

Q Okay. And who are those friends?

A Lamont and Hank.

Q Okay.

A Yes, ma'am.
Q And do you know their given birth names?
A I just know them by Lamont and Hank.
Q Okay.
A Yes, ma'am.
Q So they are good friends with your uncle, Travis?
A Yes, ma'am.
Q On June 30, 2007, or the night of June 29, 2007, do you recall being with your uncle that night?
A Yes, ma'am.
Q And who was with him?
A Me, my uncle, Lamont, Hank, my auntie, and my momma.
Q Okay. And tell the jury where it was that you all first met together?
A We met at my auntie house, first. We was having a little party. I think it was for my cousin, Hank -- I'm not sure. It was -- I just know we was having a party at my auntie's house.
Q And were you drinking at your auntie's house?
A Yes, ma'am.
Q What else were y'all doing?
A Just mingling, talking with each other.
Q Okay.
A Yes, ma'am.
Q And at one point in the evening did you all decide to

leave your auntie's house?
A Yes, ma'am.
Q And where did you guys go?
A We decided to go to the nightclub.
Q Okay, and which nightclub did you go to?
A The club.
Q Had you ever been to the Club before?
A Yes, ma'am.
Q And what street is that one?
A Hardscrabble.
Q How often have you been to the Club?
A Probably like -- I can count on my hand. Probably about five, maybe six, seven times.
Q Okay. And who would you go to the nightclub with in the past?
A My momma, my auntie, or a lady friend of mine.
Q And which lady friend is that?
A Lisa.
Q Lisa what?
A Johnson.
Q And did you date Lisa Johnson?
A Yes, ma'am.
Q For how long?
A Off and on for about four years.
Q Okay, and where did Lisa Johnson live in relation to

the club or the nightclub?
A Off Hardscrabble in Washington Heights.
Q In Washington Heights?
A Yes, ma'am.
Q And did you become acquainted with any of Lisa's friends from that neighborhood?
A No, ma'am.
Q I'm going to bring your attention to -- eventually you made it to the club; is that correct?
A Yes, ma'am.
Q Do you remember what time it was when you all arrived there?
A I know it was late. I'm going to say 11:00, maybe 12:00. Probably a little later. I'm not sure, though.
Q You're not sure?
A Yes, ma'am.
Q Were you paying attention to the time?
A No, ma'am.
Q And can you tell the jury where it is that you all parked when you got there?
A At the car wash.
Q And in which part of the car wash?
A In the beginning of the first slot of the car wash.
Q Okay. And are you familiar with the map that's hanging behind you?

A Yes, ma'am.
Q Do you see the car wash on that map?
A Yes, ma'am.
Q Okay. I'm going to ask you to point that out for the jury, please.
A (Indicating.)
Q What part of the car wash were y'all parked at?
A I was in the back with my uncle. My momma was in the part in front of us. We stopped in the same car wash thing, though.
Q Okay.
A Yes, ma'am. (Affirmative response.)
Q Okay. So who was riding with your mother that night?
A Just her and my aunt.
Q Okay. What kind of car does your mom drive?
A She had an all white Envoy, GMC Envoy.
Q And what kind of car did -- you said you were in the car behind, correct?
A Yes, ma'am.
Q Whose car was that?
A My uncle car.
Q Okay.
A Yes, ma'am.
Q And I'm going to show you pictures, State's No. 16. Does that look like your uncle's car?

A Yes, ma'am. I just remember it was a Chevy; Yes, ma'am.

Q Okay.

MS. SHIPLEY: Your Honor, state seeks to move State's 16 into evidence.

MR. STERLING: No objection.

THE COURT: Okay.

(State's Exhibit No. 16, photo of car, was marked and entered.)

MS. SHIPLEY: May I publish it to the jury, Your Honor.

THE COURT: You may.

BY MS. SHIPLEY:

Q This is the car your uncle was driving that night?

A Yes, ma'am.

Q And who was riding in this vehicle?

A Me, my uncle, Lamont, and Hank.

Q Okay. So there's four individuals in there?

A Yes, ma'am.

Q Tell the jury what it is -- what you did after you parked?

A After we parked we talked for a little second before we walked into the club, but eventually after we all parked we walked into the club.

Q Where did you go inside the club when you first got

there?
A We went to the entrance at the beginning of the club.
Q And you're welcome to use that pointer so you can show the jury.
A Yes, ma'am.
Q Thank you.
A We walked across the brick wall to the entrance of the club.
Q What did you do once you got to the club?
A Once we got in the club we went -- all met at the back, I think, for a little minute before we went to the dance floor. Get everybody, make sure everybody had a little drink. We was feeling okay. When we first walked in we just wanted to make sure everybody was comfortable.
Q Okay.
A Yes, ma'am.
Q And so you went to the back, you said, is there an outdoor patio?
A Yes, ma'am.
Q Okay. And tell the jury, eventually -- you said you went to the dance floor?
A Yes, ma'am.
Q While you were at the dance floor area did you run into anybody you knew?
A No, ma'am.

Q Okay. Did you ever see Lisa Johnson that night?
A Yes, ma'am.
Q When did you run into her; how long had you been in the club by the time you see her?
A I had done been to the club, probably, about five -- a good five, maybe 10 minutes before she had came.
Q All right.
A Yes, ma'am.
Q Did you know she was going to be coming there?
A At first I didn't know, ma'am, but after I had got a warning that she was coming, yes, ma'am.
Q So did you know she was coming or not?
A Not at first I didn't; no, ma'am.
Q Now when you see her there was she with anybody?
A No, ma'am.
Q What, if anything happened next between the two of you?
A Us. We was on the dance floor. I seen her, first we stay on the back patio for a little minute, but after I gets -- everybody was okay on the back patio we decide to go dance a little bit. So we made it to the dance floor.
Q You and Lisa Johnson went to the dance floor?
A Yes, ma'am.
Q And where did everybody else go?
A My mom was -- she was on the dance floor, too. My aunt -- I think the majority of us was on the dance floor.

Q Okay.
A Yes, ma'am.
Q What about Hank and Lamont and Travis.
A It blur with me for a second, because I remember Hank wasn't feeling too good in the club, and he left out the club.
Q Uh-huh. (Affirmative response.)
A But a little bit after, he came back in and him and my momma was on the dance floor dancing a little bit.
Q Okay.
A Yes, ma'am.
Q Now, tell the jury what happened while you were dancing with Lisa Johnson?
A While I was on the dance floor dancing with Lisa Johnson, I'm behind her dancing. She got her back to me, I'm behind her dancing, two males approached me while me and her was dancing on the dance floor.
Q And do you remember -- first of all, are you familiar with other people that go to this dance club?
A No, ma'am. That's not my side of town. I don't know nobody on that side of town.
Q Okay. And you said two males approached you?
A Yes, ma'am.
Q Can you please describe those two males for the jury?
A I don't -- I just remember one male was short, kind of

cocky, like. They didn't -- one had on like a collar shirt. I -- I get kind of blurry with that.

Q Okay. Do you remember giving a statement to the police on June 30th --

A Yes, ma'am.

Q -- the day of this incident?

A Yes, ma'am.

Q Would it help you to refresh your memory what you told them that day?

A It probably would, yes, ma'am.

Q Okay. I'm going to show you a document. Do you recognize this?

A Yes, ma'am.

Q And what is that?

A This is my statement I gave.

Q Okay. Take your time to refresh your memory of the description of the people you described.

A I can't really give -- I don't really remember how they faces was. I'm trying to focus more on what they had on and how their hair. I know they both had low haircuts.

Q Okay.

A That's all I really know.

Q I'm going to show you -- just to assist you in this matter.

A Yes, ma'am.

Q Where you describe the individuals, starting right there. Can you read that handwriting; is that your handwriting, first of all, or is that the officer's?

A I think this was the officer's.

Q Okay.

A Yes, ma'am. It says, one was about six-two --

MR. SWERLING: Your Honor, the question is does it help him refresh his memory. He can't read it and say does it refresh his memory and then ask him.

THE COURT: Correct.

MS. SHIPLEY: Your Honor, I asked him if he could read his statement to refresh his memory.

THE COURT: Sure. That's fine, but I think -- just make sure you're not reading it to us.

MR. BATES: Yes, ma'am.

THE COURT: Read it to yourself, okay.

A Yes, ma'am.

BY MS. SHIPLEY:

Q Well, how did you describe the first guy?

A That one of them was like six -- kind of tall, white t-shirt.

Q All right.

A Yes, ma'am.

Q And did you describe his build?

A Kind of stocky like. Both of them -- both stocky like

shapes.
Q Okay.
A Yes, ma'am.
Q And so, was one taller than the other?
A Yes, ma'am.
Q And tall was the tall one; how tall do you think he was?
A He was a little taller -- the one in the white shirt was a little bit taller than the one that had on the collar shirt.
Q Okay. And you indicated; could you give us an approximate age of these individuals?
A I'd say probably early 30s.
Q Now, what happened when these two individuals approached you and Lisa on the dance floor.
A While we was on the dance floor, the first -- I thought they was maybe walking, but the more and mor they kept walking towards us on the dance floor I seen that they was approaching us. So I jumped in front of her thinking -- at first I didn't know what was going on, but I jumped in front of her, I pushed her to the side and I jumped in front of her. So they -- they got in my face, so while they was in my face, I was about to exchange words with them gentlemen, but before I got a chance to exchange words, my uncle pushed me out the way and they started having words with the

gentlemen, my uncle and probably Lamont and Hank. They start having words with the gentlemen. Yes, ma'am.

Q Okay. What happened after that?

A After that it just broke loose in the club. Everything went crazy.

Q Did you get struck at any point?

A Yes, ma'am.

Q And where -- what part of your body did you get struck?

A On the left side of my face.

Q Okay.

A Top lip.

Q And when you got struck did it cause you to bleed?

A Yes, ma'am, real bad.

Q Okay. Did you see anything happen to your mother?

A I knew she got hit, but I was -- after I went hit I went blurry. It went blurry a little bit. I wasn't sure if I done got hit with a bottle or anything. I just seen a lot of blood coming. I wasn't sure if it was a main artery or anything. So I grabbed my face, and I just start making it towards the door.

Q Okay.

A Yes, ma'am.

Q And so as soon as you got hit you started making it towards the door?

A Yes, ma'am.

Q And do you know -- can you give us an approximation of the number of people from that club got into the fight with your group?
A I would say it was us against the whole club.
Q Okay. And could you identify all the people in that club?
A No, ma'am.
Q Tell the jury what happened when you got out of the club?
A Once I made it out the club it was so -- it was so much ruckus going on.
Q Was it chaotic?
A Yes, ma'am. I just remember once I made it outside the club, I ran -- the first person I ran into was Hank.
Q Where was Hank when you ran into him?
A I think he -- he probably looked like he was coming from the car.
Q Okay.
A Because he was sitting in the car, because he started going hysterical once he seen my face.
Q Really?
A Once he seen all the blood coming from my mouth, he was going crazy. Man, what happened to you. What's going on. He couldn't believe it. So after I seen him going crazy, I seem my momma coming from out the club holding her face.

She done been hit, too. So it was just going real crazy.
Q Then what happened; where did you guys go from there?
A Well, once we made sure that everybody was out the club, once I seen that my momma, my aunt, and everybody was outside the club we started making our way back to our vehicles.
Q Okay.
A On our way making -- going to our vehicles, guns started going off.
Q And you indicated guns; did you hear more than one gun?
A It sounded like the same gun to me.
Q Same gun.
A Yes, ma'am.
Q And how many shots did you hear from this gun?
A A lot.
Q A lot?
A Yes, ma'am.
Q Just give --
A More than five.
Q Okay.
A Yes, ma'am.
Q And were you guys able to take cover any where?
A Me and -- I remember my aunt and my momma, they was a little closer by her vehicle. Me, Lamont and Hank be by my uncle car. I -- Lamont was on the left side. Me and Hank

was on the passenger side. So only thing I remember me and Hank throwing the Trav door open. I jumped in the front seat and I jumped in the back. When Hank jumped in the front, he had told me he had done been hit.

Q So before you even get in the car Hank told you --

A While we jumping in the car. I guess he could have been while we outside the car, too, but while we was moving, making our way to the inside of the car, that's when I realize -- that's when he told me he done been struck.

Q Struck by a bullet?

A Yes, ma'am.

Q And from what direction were the bullets coming from?

A I couldn't tell you.

Q Okay.

A Yes, ma'am.

Q Were you -- what were you focused on at this time?

A Just making sure we were safe. Getting out of them bullets path.

Q All right.

A Yes, ma'am.

Q And while the shots were being fired you were in the stall already?

A We were in the middle of the washer -- where you wash the cars at.

Q Okay. I'm going to show you a photograph, and if you

could just point, State's 13.
A Yes, ma'am.
Q Can you just point to where y'all were standing first when you hear the shots?
A When we first heard the shots, me and Travis -- not Travis, Hank was on this side.
Q Okay, and just point right there.
A Yes, ma'am.
Q Okay. Am I pointing at the right direction?
A Yes, ma'am.
Q And so before Hank gets in the car with you, you hear him say I've been hit?
A I've been hit. Yes, ma'am.
Q Tell the jury what happened after you guys got in the car?
A Well, after we jumped in the car, I'm telling everybody -- Lamont finally made it in. My uncle holding my momma down. They finally get up off the ground. They jump in the truck. My momma and them skid off. We took off right behind them. Me and Hank -- I'm the only person know that he done been hit. So I'm telling everybody Hank done been shot, Hank done been shot, Hank done been shot. So we drive past Providence Hospital. On our way after we leave Hardscrabble Road we drive past the hospital. Well, I guess ain't nobody believe that he -- by me saying he done been

shot until they really seen him losing focus in hisself, and so we met up at the Waffle House to get my momma and to let them know we going back to the hospital. That he done been shot. So we turned around real fast and went to Providence Hospital.

Q Okay. And when you get to Providence Hospital what do y'all do for Hank?

A Me, Lamont, and Travis carried -- my momma, my auntie, we all started trying to carry him in the hospital.

Q Okay. And did you eventually find out that he didn't make it.

A While we was carrying him in the hospital, man, he passed out in our arms. So right then and there we knew something was wrong. We knew something was wrong right then and there.

Q Okay. Eventually did the doctors or law enforcement tell you that he didn't make it.

A Yes, ma'am, the doctors came right back out soon as they got him in the back and told us that he was gone.

Q Okay.

A Yes, ma'am.

Q And you remember being approached by law enforcement that night to talk to them about what you remember?

A Yes, ma'am.

Q And you gave your statement on June 30th; is that

correct?
A Yes, ma'am.
Q And when you heard the shots, can you describe the speed of the shots?
A They right behind each other. One after the other, boom, boom, boom, boom, boom, boom. It was coming. It was coming.
Q Okay. May I see your statement, please.
A (Passes statement to Ms. Shipley.
Q Thank you.
A Yes, ma'am.
Q While you were at the hospital did you also talk to anybody on your phone?
A Yes, ma'am.
Q And who was that?
A Lisa.
Q Lisa Johnson?
A Yes, ma'am.
Q Did you tell her what had happened to your friend?
A Yes, ma'am.
Q And do you recall how many shots you heard that night?
A I don't know how many it was. I just know that it was repeated amount of shots.
Q Okay. Would it help you to refresh your memory by reading your statement, what you told police how many shots

you heard that night?
A I'll read over it. Yes, ma'am.
Q Okay. And, again, read it to yourself.
A Yes, ma'am.
Q And let me know when you're ready to answer.
A Yes, ma'am.
Q How many did you say to the police?
A I said 10 or more, but it was coming so fast I couldn't tell.
Q Okay.
A Yes, ma'am.
Q Also, Mr. Bates, you have been in trouble in the past; is that correct?
A Yes, ma'am.
Q And isn't it true that in 2006, you were convicted of auto breaking and petit larceny?
A Yes, ma'am.
Q And that was the year before this incident happened; is that correct?
A Yes, ma'am.
MS. SHIPLEY: Beg the Court's indulgence.
BY MS. SHIPLEY:
Q And do you know who was responsible for the shooting and killing of Demuria Johnson?
A No, ma'am.

Q No further questions.
A Yes, ma'am.
Q Please answer any --
THE COURT: Yes.
CHARLIE BATES - CROSS-EXAMINATION
BY MR. SWERLING:
Q Mr. Bates, how you doing. I'm Jack Swerling.
A How you doing, Mr. Swerling.
Q A few follow up questions. How long had you been at the club when this started?
A Probably about a good 20 minutes, if that.
Q Drinking, everybody was drinking, having a good time, partying?
A Yes, sir.
Q Okay. Now, you and Lisa dated each other at one time; is that right?
A Yes, sir.
Q You all were not dating at that time?
A Yes, sir.
Q Is that correct?
A No. We were dating at that time.
Q You were dating at that time?
A Off and on. Like we wasn't in no relationship, but we was messing around.
Q Well, I want to ask you this, I guess I'm a little bit

confused; when you -- you were talking to her, right?
A Yes, sir.
Q Were you hugging her, were you dancing with her?
A We was just dancing; yes, sir.
Q You were not hugging her?
A No, sir.
Q Didn't she kind of indicate to you that she really did not want to dance or be with you that evening?
A No, sir.
Q And you're sure about that?
A Yes, sir.
Q So she was a willing participant in your dancing and talking?
A I was supposed to have came to her house before I came to the club. Yes, sir.
Q Now, you said you got approached by two people?
A Yes, sir.
Q All right. And you described them, the statement you gave the police, you actually have no independent recollection of that at all?
A No, sir.
Q All right. Now, you have no idea how -- what kind of a description you gave to the officer?
A I don't remember what I gave him, but it's been so long ago, it's still kind of blurry to me.

Q So it is blurry to you, what happened that night?
A Yes, sir. To a certain extent.
Q You described two people coming up to you?
A Yes, sir.
Q And what did they say to you when they came up to you?
A They was just approaching me.
Q Okay, so they never said anything?
A No, sir.
Q Nobody ever did anything to you?
A No, sir.
Q So did you push Lisa out of the way?
A No, sir. I just moved to the side. I stepped in front of her. I stepped in front of her. Yes, sir.
Q And tell me -- it doesn't make sense to me. They didn't say anything to you, they hadn't said anything to her, but yet you stepped in front of her when they were walking towards you.
A Yes, sir.
Q There were a lot of people in the club.
A Yes, sir. I guess -- I seen the way they was looking at me while I was dancing with her. They was coming towards us while I was on the dance floor with her.
Q Did you know them?
A No, sir. I never seen them in my life.
Q Was there any kind of conversation with them?

A Not from me, no, sir.
Q Was there any kind of conversation between them and Lisa?
A Not at that time, no, sir.
Q Did you and they get into some sort of argument?
A When we did get into the argument, like I say, my uncle shoved me to the side and they got into a little dispute. Before I could even get into it with the fellow, I guess my uncle had been watching me from a little distance, so they shoved me to the side and they got into it with the fellows?
Q Okay.
A Yes, sir.
Q Did you ever actually get into a verbal argument with these individuals?
A No, sir. I was trying -- once my people pushed me to the side then we were just trying to figure out what was going on then and there.
Q Well, could you enlighten me and the jury as to what was the discussion about if there had not been anything prior?
A Tell you the truth, I don't know. I guess they asked what was going on. We was trying to figure out what was going on. When the two gentlemen approached me, I seen -- I was just mingling with a female. I don't know what it was about. So when my people seen they was approaching me while

I was on the floor with her, they seen all that from a distance. I don't know where they was. Yes, sir.

Q So you have no idea why they were coming towards you --

A No, sir.

Q -- or if they were coming towards you?

A If that. Yes, sir.

Q You have no idea whether they were coming towards you or not; is that right?

A I guess so. Yes, sir.

Q And someone -- you said your uncle pushed you out of the way?

A Yes, sir.

Q Before you actually found out what it was -- you didn't do anything?

A Yes, sir. When me and the gentlemen got ready to exchange words and I said, like I said, I moved Lisa and I was in front of her when they was approaching. When they got close enough to me, I was right there. So we in each other's face and we getting ready to exchange words. I really don't even know what we was talking about. I just know my people moved me to the side and they got into it with them. Once my uncle pushed me to the side, my momma grabbed me and say, Charlie come here. My momma grabbed me and she said, no, baby, it ain't -- not all that. You know what I'm saying. So while I'm talking to my momma I

couldn't really see what was going on with them because I'm trying to talk to my momma, plus make out what was going on and make sure my momma was okay, too. Yes, sir.

Q I guess what I'm trying to find out, there was no altercation between you and these guys. There were no words?

A I couldn't make no observation. They had moved me to the side. They moved me, and it was between my uncle and then, then. And they started. They really got off the chain with my uncle and them started, you know what I'm saying. Exchanging words. Seems like it got really worse then.

Q When did you throw the glass with the drink in their face?

A I poured a drink, I didn't throw a drink. I didn't throw one. I think after I had done got hit I threw my drink, yes, sir.

Q So after you got hit you threw the drink?

A Yes, sir.

Q Well, how did you get hit if you're not in the --

A And that's the -- I don't know. I'm standing there next to my momma. I don't know. I don't know.

Q Do you know who hit you?

A No, sir.

Q All right. Didn't have to be one of those two guys?

A I don't know.
Q Didn't have to be one of those two guys, did it?
A I don't know. Yes, sir.
Q Were you intoxicated?
A Yes, sir. We was drinking. Yes, sir.
Q Well, my question was were you intoxicated?
A Yes, sir.
Q So you get pushed out of the way but yet you're over with your mom, and you have not thrown a drink, but somebody just punches you. You have no idea who?
A I don't know who it was. Yes, sir.
Q And then you threw your drink at the guy after that?
A No. I threw my drink. I can't say when. I ain't even going to say I threw it. I think I poured it. I don't think I threw my drink.
Q So you didn't throw your drink at anybody?
A No, sir. No, sir.
Q And so you got hit, where?
A I don't even know if I got hit. I could have got cut or anything. I don't even remember.
Q You don't remember if you got hit?
A Or cut. Yes, sir.
Q You don't even know if you got hit?
A Yes, sir. I got hit, because you can tell I had got hit.

Q You don't remember?
A I don't remember what -- how I got hit. Yes, sir.
Q You must have been three sheets to the wind?
A It wasn't there. It came from somewhere. I don't know.
Q Okay. Well, let me ask you this, then, you don't remember getting hit, you don't know who hit you. Did you throw any punches?
A Not that I can recall?
Q Who else got hit besides you?
A My momma. My momma.
Q Was that after you got hit?
A I think so.
Q Did you continue to engage in a fight with these other people?
A No. After I seen I was bleeding, and I didn't know where it was coming from, like I said, could have been a main artery. I didn't know. I started making my way outside the club.
Q Okay, now, your mom and your aunt were with you, right?
A No. I ain't seen them --
Q I'm talking about when you got hit?
A My momma was by me, but after I got hit I didn't see her no more.
Q You didn't see her any more. Did you see her get hit?

A No, sir.
Q So you do not remember -- did not see or don't remember her getting hit?
A I remember her getting hit, but I didn't see her get hit.
Q You got -- you remember her getting hit because of what you saw afterwards or did you see it?
A Because I seen her coming out holding her face.
Q That's what I'm saying, that you saw it afterwards?
A Yes, sir.
Q Is that right? All right. How long after this altercation took place did y'all step outside or get outside?
A We was going outside while it was going on.
Q Now, the guys that you described, one of them had dreads, right?
A Uh, I ain't said nothing about no hair.
Q Huh?
A I don't remember saying anything about no hair.
Q Well, I didn't say you did. Look at No. 4. Does that look like the guy that you got in the altercation with?
A He was one of the dudes.
Q He was?
A Yes, sir.
Q Okay. Does he have dreads?

A Yes, sir.
Q Do you know his name?
A No, sir.
Q Has anybody shown you this before?
A Yes, sir.
Q Okay. So you did know one of the persons. You identified one of the people from that photograph?
A That wasn't one of the two gentlemen that approached me, now.
Q That was not one of them?
A No, sir. He was one of the men that ran up after when it started getting out of hand. He was one of the ones that ran up, I guess, taking up for the gentleman that approached me. Yes, sir.
Q Okay. So was this the guy that hit you?
A I don't know. I know he the one hit my mother.
Q If some people said that's the one that hit you would you deny that?
A I couldn't say he did, I couldn't say he didn't.
Q No. I'm saying your mother and your aunt said that person number four is the person that hit you, would you deny that?
A No, sir, because I don't know.
Q If your mother and your aunt said that was the person that came up to you when you were dancing with Lisa or when

you were with Lisa, would you deny that?
A Yes, sir.
Q You would?
A Yes, sir. I remember him. And I would remember if that's the one that approached me.
Q Well, I didn't ask you if you remembered him. I asked you if your mother and Ms. Boston testified that number four was the person that came up to you and interfered with you and Lisa, and was the one that you threw a drink at and then punched you, would you deny that?
A Yes, sir.
Q All right. So you get outside; correct?
A Yes, sir.
Q Let me see if I understand something. Where were you on this chart here?
A When I first went outside?
Q State's Exhibit No. 7. Yeah.
A When we first go outside, we make our way to the front of the club. We leave out the club making our way to the front of the club.
Q And the car was where?
A Our vehicles was in the first slot right here.
Q Were you altogether?
A Yes, sir.
Q Okay. Now, you described to Investigator McRae, two

series of shots; did you not?
A No, sir.
Q Let me ask you to look at your statement here. See if down at the bottom there, didn't you say that when you left the club the shooting started and then you got down and the shooting started again?
A And the shots kept coming. So I don't know --
Q See where it started -- where it began?
A The shots kept coming. I can't read this.
Q Is this your handwriting?
A No, sir.
Q Okay. Did you say, my mom was -- you signed this statement didn't you?
A Yes, sir.
Q My mom was holding me back, them all left out of the club and the shooting started. We ducked down and ran to the cars. When we got to the cars the shooting began again.

MS. SHIPLEY: Objection, Your Honor, leading. Like you asked me not to.

MR. SWERLING: No. I can though, prior and consistent statement.

THE COURT: Correct.

Go ahead.

BY MR. SWERLING:
Q Did you say that?

A I don't remember saying that because the shooting didn't never stop. From the time I was leaving outside the club, making it from the outside the club to the car, the shooting didn't stop.

Q Is this your statement?

A Uh --

Q Did you signed your statement?

A I signed it. Yeah.

Q Did I read it correctly?

A Yes, sir, you read it correctly.

Q Said, the shooting began again and my uncle's friend got shot as we were getting in the car. Do you agree that's what the statement says; is that correct?

A Yes, sir.

Q That was two years ago since it happened; correct?

A Yes, sir.

Q Now, you told the solicitor you remembered at least ten shots; is that correct?

A Yes, sir.

Q And there was more than one gun; correct?

A I don't remember more than one gun.

Q Okay. Could you hear different sounds coming?

A No, sir. Every time one shot left another one was coming right behind it.

Q So you tell me -- I just want to make sure so everybody

gets a fair assessment here. Are you saying the statement is incorrect that the shooting stopped and started again?

A I don't remember it stopping and start again. I just remember it keep coming. The shots keep coming.

Q So are you saying that the statement is wrong?

A It might be. Yes, sir.

Q Okay. Can you say that you only heard one gun shoot?

A I can't say that.

Q Or that there was more than one gun?

A It could be possible. Yes, sir.

Q All right. Do you have any idea where the shots were coming from?

A No, sir.

Q Do you remember speaking to my investigator, Mr. McDougall back in March of 2009?

A I don't remember. I probably did. Yes, sir.

Q Do you remember telling him that the shots sounded like they were coming from behind the club?

A Yes, sir.

Q Not from Hardscrabble Road, but from behind the club; correct?

A No, sir. I mean, I wasn't sure. I just told him I wasn't sure it was coming from somewhere?

Q But you did tell him --

A No, sir. I said it could have been coming from the

back of the club. Yes, sir.
Q Could have been coming from the back of the club?
A Yes, sir.
Q That's what the sound sounded like?
A Yes, sir.
Q When Mr. McRae was -- I think it was Mr. McRae that took your statement or Mr. Barnes took your statement? When Mr. Barnes took your statement he asked you, given the environment you were in would you say -- would you say -- who would you say was doing the shooting. Answer: The same dudes in the club where we were having the altercation with. Do you remember telling him that?
A I guess so. Who else would do it. Yes, sir.
Q That's what I'm asking you?
A Yes, sir.
Q Is that who you're saying did it?
A I don't --
Q The court reporter's got to get it down. Maybe I can get an answer?
A Oh, I was just shaking my head because I don't understand what's on the paper. I'm not saying that that's who did it because I don't know that that was them, but I'm saying it could have been them.
Q Well, this is Mr. Barnes, he asked you the question. Who would you say was doing the shooting? Answer: The same

dudes in the club who we were having the altercation with.
A I guess so. The same people we was having the altercation with. Yes, sir.
Q You're not changing that now from your statement two years ago, are you?
A No, sir.
MR. SWERLING: If the Court would indulge me one moment.
THE COURT: Yes.
BY MR. SWERLING:
Q In all fairness, you don't know who did the shooting, do you?
A No, sir.
Q And you told them that night as well?
A Yes, sir.
Q But you were saying that it was from the environment that it was the two guys that were in the altercation?
A I didn't say it was the two guys. I don't know who it was.
Q I'm trying to be fair with you. You don't know who did the shooting?
A No, sir.
Q But you told the police that it was the same dudes in the club we were having the altercation with?
A It could have been the same ones. That's what I'm

saying.
Q You don't know who they were?
A Yes, sir.
Q Correct?
A Yes, sir.
MR. SWERLING: Thank you. That's all I have.
MS. JOHNS: Thank Your Honor. Please the Court.

CHARLIE BATES - CROSS-EXAMINATION

BY MS. JOHNS:
Q Mr. Bates, I'm Theresa Johns.
A How you doing, Ms. Johns.
Q You said that you guys -- you, particularly, you don't frequent this club?
A No, ma'am.
Q It's not on your side of town; right?
A No, ma'am.
Q And the only reason you were over there is because you'd been there before with your lady friend, Lisa; right?
A Yes, ma'am.
Q And you've been to your lady friend, Lisa's, house before in Washington Heights; right?
A Yes, ma'am.
Q And you'd been there for a cook-out; right?
A No, ma'am.
Q You haven't. Okay.

A For a cook-out, no, ma'am.
Q All right. Then you haven't been there for a cook-out?
A No, ma'am.
Q And you were dating her off and on for three years?
A Yes, ma'am.
Q All right. Now, you told Ms. Shipley that you didn't know that Lisa was coming; is that right?
A At first I didn't, but I had got a warning at the club that she was coming. Yes, ma'am.
Q You got a warning in the club?
A Yes, ma'am.
Q Who warned you?
A My auntie. They had done talked on the phone.
Q So your aunt warned you that Lisa was coming; right?
A Yes, ma'am.
Q Would you agree that if somebody warned you of something that that means that danger or trouble might be amiss?
A No, ma'am, because she know how we -- if we ain't together I might be mingling with another female. Just -- you got watch yourself when you be in an environment like that. Yes, ma'am.
Q So when you went to the club you knew there was a possibility that Lisa could have been there; is that right?
A Yes, ma'am.

Q And y'all were not in a good situation in your relationship; isn't that right?
A We was in a good thing. Yes, ma'am.
Q You were seeing somebody else; right?
A Yes, ma'am.
Q And she was seeing somebody else; right?
A Oh, I guess so. I couldn't say. Yes, ma'am.
Q That's kind of a dangers that you take when you have -- when you're dating somebody and you're not -- you're not excluding everybody else; right?
A Yes, ma'am.
Q So you're uncle, Travis and Hank and Lamont were in the club and they pushed you aside after you threw the drink; right?
A No, ma'am.
Q No. Okay, so somebody pushed you aside?
A My uncle, Lamont and Travis did. Yes, ma'am. I mean, my uncle, Hank and Lamont did.
Q Okay. Your uncle, Hank and Lamont pushed you aside, and then you got hit in the face?
A I got hit in the face while me and my momma had me. When the altercation first started, no, I did not get hit in the face. That's when everybody was trying to figure out what was going on. What -- the more and more people was trying to figure out what was going on, the more and more it

got out of hand.
Q And you said that when you got out the door the shooting began again?
A The shooting -- when I got out the door the shooting began again?
Q Well, on your statement, you said that the shooting began again. Mr. Swerling just went over this with you?
A Well --
Q Ducked down. The shooting began again.
A (No response.)
Q All right. Let me back up.
A Yeah, please.
Q You're inside the club, there is an altercation going on. It's between you and Lisa and other people get involved; fair enough?
A I guess. Yes, ma'am.
Q You get hit in the face at some point --
A Uh-huh. (Affirmative response.)
Q -- somehow. Don't know if it was a fist or knife or whatever --
A Uh-huh. (Affirmative response.)
Q -- your mom helps you or tells you to leave or let's go; right?
A No. Can we back up a little bit first. See, I guess, we're running over each other. Before I got hit, that's

when me and my momma was together. After I got hit I didn't see my mother no more.

Q Okay.

A Yes, ma'am.

Q So after you got hit you didn't see your mother again?

A Yes, ma'am.

Q So at some point you're leaving the club; is that correct?

A Yes, ma'am.

Q You're walking out the door?

A Yes, ma'am.

Q All right. Who follows behind you?

A Well, I'm -- nobody was behind me while I was walking out the club. While I'm looking at the door of the club I see my momma and my auntie. My auntie and my momma come out the door.

Q So you look behind you, right, and you see your auntie and --

A Helping my momma.

Q -- your mother --

A Yes, ma'am.

Q -- coming out of the door, and you're in front of them?

A Yes, ma'am.

Q And you see Hank coming from the car?

A Yes, ma'am.

Q Towards the club?
A Yes, ma'am.
Q He's concerned about you?
A Yes, ma'am.
Q What's wrong, what's happening?
A He came right to me. Yes, ma'am.
Q Now, did you see any altercations outside the club --
A No, ma'am.
Q -- whether it involved you or not?
A No, ma'am.
Q Okay. And could you describe that parking lot, the car wash parking lot that particular night. How many cars -- let me refer to State's Exhibit No. 6. Okay, you see that?
A Uh-huh. (Affirmative response.)
Q Okay. How many cars are parked in this parking lot?
A It wasn't that many on this particular night. I don't mean it was a packed night. This night I'd say they'd probably be like three, maybe three cars out there.
Q Okay. Well, show us where the cars were parked, then?
A I think it was a car -- if I recall right it was a car -- because we was inside there. There was a car parked straight, right there; you know what I'm saying?
Q Uh-huh. (Affirmative response.)
A I'm not sure, but it was a couple of cars out there other than our vehicles. It was a long -- I know it was a

car right there.
Q Okay.
A Yes, ma'am.
Q What'd that car look like?
A I'm not sure, but I do know it was one out there.
Q And you guys were parked inside the bay; is that right?
A Yes, ma'am. Last one.
Q Okay, and you were kind of double parked, one behind the other?
A Yes, ma'am.
Q And the white Envoy was in front?
A Yes, ma'am.
Q And the -- the car that he rented, the Chevrolet, was behind?
A Yes, ma'am. Behind the Envoy. Yes, ma'am.
Q Okay. Tell me about the security when you walked into the club that night; what did they do to you?
A They check you down.
Q What did they do?
A They got a little metal detector they go up and down your clothes with.
Q Okay. Did you have to show your ID?
A Yes, ma'am.
Q Okay.
MS. JOHNS: Beg the Court's indulgence.

I don't have anything further. Thank you, Your Honor.

THE COURT: Any redirect?

MS. SHIPLEY: Yes, ma'am.

CHARLIE BATES - REDIRECT EXAMINATION

BY MS. SHIPLEY:

Q Mr. Bates --

A Yes, ma'am?

Q -- I'm going to ask you to read, in order to give the whole context of your statement --

A Yes, ma'am.

Q -- you can now read it out loud. Starting from here, and continue.

MR. SWERLING: Tell me where he's going to start?

MS. SHIPLEY: Starting second page --

A Where my momma was holding?

BY MS. SHIPLEY:

Q Uh-huh. (Affirmative response.)

A My momma was holding me -- I don't know what this saying. My momma was holding me back, then we all left out of the club and -- I don't know what that's saying. We started -- something -- shooting restarted. I don't recall saying that.

Q Okay. So you told investigators on June 30th that the shooting started, we ducked down, ran to the cars, got to the cars the shooting began again. My uncle's friend got

shot and we -- when we were getting in the cars?
A Yes, ma'am. But I don't remember telling them that. It restarted -- because it didn't stop when it was coming.
Q So why -- just explain to the jury what you remember.
A Yes, ma'am.
Q You're outside, you're looking for your mother. Describe what happens next?
A Well, once we all make sure we was outside of the club, while we was in front of the club, once we all made sure we as all outside, done made it outside the club, we started making our way back. While we making our way back to the car it starts while we walking. So we running, trying to get everybody not stampeding over each other trying to make sure we okay, while we running trying to get in the car.
Q So by that point, are you -- when is it that you hear Hank say, I've been hit?
A Once me and him -- because everybody else was outside the cars on the ground laying almost up under the car. Me and Hank was the only two inside the cars. Yes, ma'am.
Q And that is in the stall of the carwash?
A Yes, ma'am.
Q Now, when you were having this altercation with the two men approaching you while you're with Lisa --
A Yes, ma'am.
Q -- how many people -- you indicated on cross-

examination that more and more people were getting involved; is that correct?

A Yes, ma'am.

Q Tell the jury how many people you believe you saw that night, that you did see that night getting involved?

A It was us against the whole club.

Q And how many people do you think were in the club that night?

A Thirty, 40, maybe 50 people. It was us against a whole lot of people that night.

Q And before you walked into that club that night, you indicated on cross-examination by Ms. Johns or direct -- cross-examination by Ms. Johns that you were searched by security?

A Yes, ma'am.

Q You did not have any guns on you?

A Oh, no, ma'am. No, ma'am.

Q Thank you, Mr. Wray (sic).

A Yes, ma'am.

MR. SWERLING: Your Honor, I'd just like to ask one follow up?

THE COURT: Sure.

CHARLIE BATES - RECROSS EXAMINATION

BY MR. SWERLING:

Q Mr. Bates, I just want to clarify something, because

it's kind of a broad statement.
A Yes, sir.
Q When you say it was you against the whole club, you have no idea how many people in the club were actually engaged in the fight did you?
A I just seen how many people there approached us. Yes, sir.
Q But you can't make a statement that everybody in the club started fighting?
A No, sir.
Q That's not what you're saying?
A No, sir.
Q All right. Thank you.
A It was a lot of people, though. Yes, sir.

MS. JOHNS: Your Honor, just briefly.

CHARLIE BATES - RECROSS EXAMINATION

BY MS. JOHNS:
Q You said there were about 30 or 40 people in the club, right? When I was asking you questions a minute ago you said there were only three cars in the parking lot at the car wash --
A In there where we was. There's a lot of places around the club where you can park. The parking lot where we was there wasn't nothing but like our cars, who was parked with us, the car in front of us, whoever was driving that, and

there was probably one more, two more cars out there.

Q Okay.

A Yes, ma'am. There's plenty of other places around there to park. Yes, ma'am.

Q Okay. I just wanted to get that straight?

A Yes, ma'am.

Q The carwash parking lot is what you're saying, right?

A Yes, ma'am. It wasn't nothing but us. Yes, ma'am.

Q About three cars?

A Yes, ma'am.

THE COURT: Anything further?

MS. JOHNS: No, ma'am.

THE COURT: Okay.

Ladies and gentlemen, we're going to go -- sir, you can step down, please.

MR. BATES: Yes, ma'am. Thank you.

THE COURT: We're going to go ahead and recess for lunch. I'm going to ask that you report back to your jury room at 3:00 p.m., and then I'll remind you not to discuss this case in any shape, form, or fashion.

(Jury out at 1:41 p.m.)

THE COURT: Any issues that need to be taken up by the Court?

MR. SWERLING: No, ma'am.

MS. SHIPLEY: I think we do have one matter that we

need to address now as the next group of witnesses.

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

THE COURT: You can do so, now.

MS. SHIPLEY: Thank you, Your Honor.

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

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

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

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

THE COURT: Okay.

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

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

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

Thank you, Your Honor.

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

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

THE COURT: And what occurred in 2000?

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

THE COURT: Okay.

MS. SHIPLEY: Within the last 10 years.

THE COURT: Okay. All right.

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

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

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

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

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

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

MR. SWERLING: Correct.

THE COURT: Okay. Okay.

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

THE COURT: Convicted in '95 --

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

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

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

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

THE COURT: Okay. Anything further from the State?

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

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

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

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

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

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

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

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

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

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

THE COURT: Anything further?

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

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

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

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

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

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

THE COURT: The cite --

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

THE COURT: Right.

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

THE COURT: All right. Anything further?

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

(Court at recess for lunch break)

(Court in session after lunch break.)

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

MS. SHIPLEY: Yes, ma'am.

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

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

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

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

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

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

MS. SHIPLEY: Yes.

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

MS. SHIPLEY: Thank Your Honor.

THE COURT: Okay.

Anything further?

MS. SHIPLEY: No.

THE COURT: Okay. I have one issue --

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

THE COURT: Okay. That's fine.

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

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

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

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

THE COURT: Okay.

MR. SWERLING: What about resisting arrest?

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

MR. SWERLING: I apologize Judge --

THE COURT: Go ahead.

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

THE COURT: That's okay.

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

MS. SHIPLEY: Correct. In --

MR. SWERLING: So in '05 --

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

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

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

MS. SHIPLEY: Yes, sir.

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

MS. SHIPLEY: Zero to one.

THE COURT: Zero to one.

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

MS. SHIPLEY: Beg the Court's indulgence.

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

MR. SWERLING: Yeah.

THE COURT: Okay.

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

THE COURT: Right.

MS. MCDUFFIE: Maximum is one year.

MR. SWERLING: One year?

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

THE COURT: Okay.

MS. SHIPLEY: So that's magistrate.

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

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

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

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

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

THE COURT: Okay. All right.

So any disputes to the records that may come in?

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

THE COURT: Okay. Sounds great.

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

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

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

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

Any objections?

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

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

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

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

THE COURT: Okay.

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

THE COURT: Sure.

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

five?

THE COURT: Yeah, that's fine.

MS. SHIPLEY: Okay.

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

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

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

THE COURT: Okay.

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

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

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

THE COURT: Oh.

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

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

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

MS. MCDUFFIE: Just have him come once.

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

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

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

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

THE COURT: Okay.

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

THE COURT: Okay.

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

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

make to that?

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

THE COURT: Okay.

MR. SWERLING: We're discussing that.

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

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

THE COURT: Okay.

MS. SHIPLEY: Is that okay with everybody?

MR. SWERLING: Yeah, that's fine.

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

Yes?

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

THE COURT: Sure. I appreciate it.

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

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

MS. JOHNS: Yes, Your Honor.

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

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

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

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

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

THE COURT: Okay. All right.

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

THE COURT: Yes. Have them come in first. Yes. Okay. Jurors are coming.

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

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

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

THE BAILIFF: Jury is all present, Your Honor.

THE COURT: Okay. Ladies and gentlemen of the

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

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

(Note pads passed out to the jury.)

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

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

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

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

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

MR. GOODWIN: My name is James Lamont Goodwin.

JAMES LAMONT GOODWIN - DIRECT EXAMINATION

BY MS. MCDUFFIE:

Q Good afternoon.

A Good afternoon.

Q You commonly go by Lamont?

A Yes, ma'am.

Q And Lamont, where are you from?

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

Q And is that where you were raised?

A Yes, ma'am.

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

A Yes, ma'am.

Q Do you know Travis Malone?

A Yes, ma'am.

Q How do you know Travis Malone?

A He is my close friend from school.

Q And about how long have you known him?

A Since about sixth grade.

Q And about how old are you right now?
A I'm 27.
Q And do you know the victim in this case, Demuria Johnson?
A Yes, ma'am.
Q And what did y'all call him?
A We called him Hank.
Q And how long had you known Hank?
A I've known Hank since about ten years old.
Q And y'all grew up together?
A Yes, ma'am.
Q Friends all through school?
A Yes, ma'am.
Q And you remained friends after you finished school?
A Yes, ma'am.
Q On June 29, 2007, do you recall what you were doing that day?
A Yes. We -- Travis was going back to Iraq, so we had a party with his family to send him off.
Q And where did y'all come to meet his family?
A We come to Columbia.
Q And are you familiar with the area that you were in in Columbia?
A No, ma'am.
Q Had you met his family before?

A This was my first time to met them.
Q And where did you go in Columbia?
A We were at their house for a second, and then we all decided to go out to a bar.
Q And do you remember which bar y'all went to?
A It was H&J's bar.
Q And had you ever been to the H&J Pub before?
A No, I hadn't.
Q And since June 30, 2007, have you ever been back there?
A No, ma'am.
Q On June 30, 2007, do you remember what time you got to the H&J club?
A Not exactly.
Q Was it early in the evening, early in the morning?
A It was late in the evening.
Q And how did you get to the H&J club?
A We drove behind each other.
Q Y'all followed someone?
A Yes, ma'am.
Q And whose car were you in?
A I was in the car Travis had.
Q And who else was in the car with you and Travis?
A It was me, Travis, Hank, and his nephew.
Q And what car were y'all following?
A We was following his sister.

Q And do you remember what kind of car that was?
A I don't know. I think it was like a van.
Q And when y'all got to the H&J club, do you remember where y'all parked?
A Yes, ma'am. There was a car wash and we parked in the stall.
Q And do you remember which direction you were facing in the stall?
A Yes, ma'am. Facing towards the road.
Q And that would be Hardscrabble Road?
A Yes, ma'am.
Q And after y'all got to the club what happened next?
A We just went in the club, we had a couple of drinks.
Q Where did you go in the club?
A They have like a deck and they have a main part of the building. So we was in between.
Q You were in both places?
A Yes, ma'am.
Q And who were you with mostly?
A We were back and forth. Me and Hank was together and Travis.
Q And at some point during the night did a commotion start at the club?
A Yes, ma'am.
Q And did you see how that started?

A I came out to the deck of the club, and I guess some guys started to get into it with Charlie, and I didn't know what it was about.
Q And what happened after some guys started to get into it with Charlie?
A Well, just a lot of commotion that he was in.
Q And what were you doing during this?
A We were trying to get Charlie out of there. There were a lot of guys in there. I didn't know anybody from that area, so I didn't know who was who.
Q And what was Hank doing during this time?
A He was trying to get him out, too.
Q And what was Travis doing?
A Same thing.
Q And were you able to get Charlie out of the club?
A Yes, ma'am.
Q And who was with you outside of the club?
A Me and Hank and we realized everybody wasn't out at the same time. So we went back and tried to get them out. Let's go.
Q So did you actually go back into the club?
A No, ma'am.
Q So where did y'all go to try and get everybody?
A Right at the -- it's a brick wall curb at the car wash.
Q I'm going to show you State's Exhibit No. 15; is that

what you're referring to?
A Yes, ma'am.
MS. MCDUFFIE: Your Honor, permission to publish?
THE COURT: Yes.
BY MS. MCDUFFIE:
Q So y'all went to the brick wall area?
A Yes.
Q And when you got there you saw the other members of your party?
A Yes, ma'am.
Q And what happened after that?
A Well, like I said, I guess they got into a fight. Travis sister, I see that she had blood, and he had like a busted lip or something.
Q What was Hank doing during this time?
A Well, he was also trying to tell them to get out of there.
Q So y'all were at the brick wall and started heading back towards the cars?
A Yes, ma'am.
Q And what happened next?
A After that we heard gunshots.
Q And do you know which direction the gunshots were coming from?
A They came from the road.

Q And that's Hardscrabble Road?
A Yes, ma'am.
Q On State's Exhibit No. 7?
A Yes, ma'am.
Q And did you see who was shooting?
A I didn't actually see who was shooting.
Q But you know that the shots were coming from Hardscrabble Road?
A Yes, ma'am.
Q And what did y'all then do?
A Well, everybody, like, got to the cars.
Q And who's car did you get into?
A The car Travis was driving.
Q And do you remember which seat you sat in in the car?
A I was behind the passenger seat.
Q And where was Hank sitting?
A Hank was sitting in the passenger seat.
Q In the front passenger seat?
A Yes, ma'am.
Q And where was Charlie sitting?
A Charlie sitting next to me.
Q In the rear of the vehicle?
A Yes, ma'am.
Q And what happened next?
A We drove off. Then we went to the Waffle House parking

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

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

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

Q But multiple shots?

A Yeah.

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

A I sounded like one gun.

Q And what direction were the shots coming from?

A They were coming from the road.

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

A To the hospital.

Q And you helped the victim into the hospital?

A Yes, ma'am.

Q Did you stay at the hospital that morning?

A Yes, ma'am.

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

A Yes, ma'am.

Q And then you went back to St. Matthews?

A Yes, ma'am.

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

case?
A Yes, ma'am.
Q And did you ever meet with any police officers?
A I didn't meet with them.
Q The I think the first time you met with anyone was when Ms. Shipley and I came to see you at your house in St. Matthews --
A Yes, ma'am.
Q -- a couple months ago?
A Yes, ma'am.
MS. MCDUFFIE: Beg the Court's indulgence.
BY MS. MCDUFFIE:
Q The gunshots you heard outside the H&J club were they slow, were they quick; what did they sound like?
A Well, they didn't last long, so I'll say quick.
Q Was there a lot space in between them?
A No, ma'am.
MS. MCDUFFIE: Nothing further, Your Honor.
THE COURT: Defense?
MR. SWERLING: Excuse me, one minute.
THE COURT: Sure.
(PAUSE.)
JAMES LAMONT GOODWIN - CROSS-EXAMINATION
BY MR. SWERLING:
Q Mr. Goodwin, in actuality, they actually tried to talk

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

A Yes, sir.

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

A I don't know --

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

A Yes, sir.

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

A I don't know about that, sir.

Q You don't remember them coming down there?

A I remember when they came to my house.

Q You remember that?

A Yes.

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

A I'm not sure.

Q You're not sure?

A I never got that message.

Q Well, if you never got that message?

A No, sir.
Q You're not telling the jury that the sheriff's department didn't try and investigate this case and get a statement from you right up from the time of those events, are you?
A No.
Q Huh?
A No.
Q And you're saying you're not aware of the fact that Mr. McRae came down there to St. Matthews to try and interview you and went to your family home?
A No, sir.
Q You never contacted the sheriff's department then, is that right?
A No, sir.
Q You never tried to give them a statement.
A No, sir.
Q The only time you gave a statement was when Ms. Shipley and Ms. McDuffie came down?
A Yes.
Q How long ago was that?
A I'm not sure, before the trial first started.
Q Within the last month or two?
A No, sir.
Q Before that?

A Yes, sir.
Q I just want to get a little bit more information about what happened. You were at the club, there's five of you; correct?
A Yes, sir.
Q Were you drinking that night?
A Yes, sir.
Q How long had you been there?
A At the club with them, a couple hours.
Q You were there a couple hours before anything happened?
A Yes, sir.
Q Nobody was bothering you?
A No, sir.
Q You weren't bothering anybody?
A No, sir.
Q What was the first thing that happened that you recall that created some sort of incident?
A Well, when we -- when I came off the patio to come into the club and I guess they were getting into it about the girl. I don't know.
Q Well, what did you see?
A I just saw a commotion.
Q A what?
A Commotion.
Q Okay. Well, where was Charlie?

A He was right there.
Q He was in the middle of the commotion?
A Yes, sir.
Q Okay. And did you see -- do you know Lisa Johnson --
A No, sir.
Q -- the girl he was supposed to be dating at some time?
A No, sir.
Q Okay. Did you see him with a young lady?
A No, sir.
Q Did you see this guy, here, number four on this photo ID. This is State's Exhibit No. 14, number four. Did you see him in there in the confrontation with Charlie?
A To be honest, sir, if I did I don't remember. I never seen these people before in my life.
Q Okay. Did you see a guy with dreads or plaits in a fight or confrontation with Charlie?
A There were several guys with dreads.
Q Well, that doesn't really answer my question. Did you see a guy with plaits or dreads in the confrontation with Charlie?
A Yeah.
Q You did?
A Yeah.
Q And do you recognize the person I just showed you in that photo spread?

A No, sir.
Q But the guy that was fighting with Charlie and the others was a guy who had dreads and plaits -- wore plaits -- I don't know which is the proper word -- is that correct?
A Yes.
Q Is that right?
A That's right.
Q Did you see Charlie -- did you actually get in there before any punches were thrown?
A Well, I really didn't see what kind of punches. It was a small club, there was a lot of people.
Q So did you see Charlie throw a punch?
A No.
Q Did you see anybody throw a punch at Charlie?
A Just like I said.
Q Did you see anybody throw a punch?
A I got -- somebody swung at me.
Q But you never got punched?
A No.
Q Did you see the guy with dreads or anybody else punch Verda Roberts?
A No, I didn't see that.
Q And you were right there?
A Yeah, I was right there.
Q You didn't see any of this?

A I was watching out for myself, also.
Q You didn't see any of this?
A I didn't see a lot of action -- I didn't --
Q Well, I'm talking about the people you were with. Those are the people that would matter most to you?
A Yes, sir.
Q Is that right?
A Yes, sir.
Q So what you're telling the jury is that you don't remember Charlie getting in a confrontation with anyone, throwing a punch or getting hit?
A I saw a lot of guys coming at Charlie. I did not see him get hit.
Q You didn't see him throw a glass or a drink at anybody?
A No. I can't remember --
Q But you did see a guy with dreads in the middle of the fight; is that right?
A Yeah.
Q In the confrontation?
A Yes, sir.
Q And you did not see Verda Roberts get hit?
A No, sir.
Q You were standing right with all these folks; is that right?
A Yes, sir.

Q Would it be fair to say that you were pretty high that night, intoxicated, and that's why you don't remember?
A I don't remember. I didn't know anybody there.
Q Well, you knew the people you were with?
A Yeah.
Q Those would be the people that are important to you?
A Yes, sir.
Q So what I'm asking you is how is it that you don't remember seeing anything or who was doing what, and these were the people you were very close with.
A I was really watching Charlie.
Q But you haven't described much of what Charlie did either?
A Yeah.
Q So if you were watching Charlie, tell the jury what you remember Charlie doing?
A I remember Charlie getting into it with these guys.
Q Which guys?
A I don't know.
Q What'd they look like?
A They were black.
Q They were black. Well, that's helpful.
A They were black.
Q Well, what did they get into; describe what happened? I mean if you were there that night and you remember what

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

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

Q Coming at Charlie?

A Yes, sir.

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

A Yes, sir.

Q You didn't do anything to help him?

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

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

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

Q Huh?

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

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

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

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

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

Q Where; can you point out on here somewhere, where you were?
A The car was at the car wash. I was at the car wash.
Q Where's the car wash?
A Right here.
Q All five of you go there?
A Yeah. Well, first it was me and Hank over there. And we realized they was still at the club and by the time we get to the wall they were right there.
Q They were on their way where?
A Coming to the car.
Q So you and who else -- ran out of the club?
A Yes.
Q And you found out that the others had not run out of the club yet, so you started going back and they were meeting you or coming towards you?
A Yes, sir.
Q Is that right?
A Yes, sir.
Q And where were you when the shooting started?
A I was right here. (Indicating.)
Q Now, they asked you where'd the shooting come from. You really have no idea where the shooting came from do you?
A I could tell it was coming from the road.
Q Where on the road?

A It had to come from somewhere over here. (Indicating.)
Q And -- but how do you know it was on the road and was not on the other side of the road. I mean, can you tell the jury based upon your, what seems to be an intact recollection of what happened, can you tell whether the shots came from here, these bushes, these bushes, this house, over here or some car driving down the road; you have no idea do you?
A I know they came from right here. (Indicating.)
Q Where?
A Right here. (Indicating.) From that area.
Q Which area? You can stand up and point to it?
A Okay. I know it came from over here. Somewhere in this area here.
Q So you're not saying it came from a vehicle?
A No.
Q You have no idea if it came from a vehicle, right?
A I can't say that.
Q Could have been someone standing over in that area; isn't that right?
A That's right.
Q And you know the sound of gunfire?
A Yes, sir, I was in the military.
Q And you did hear several different shots, didn't you, several kinds of shots?

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

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

A Could be doubt.

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

A Not exactly.

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

A That's true.

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

A Not exactly.

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

A That's true.

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

A Yes, sir.

Q And the fact is, you don't recall a whole lot; isn't that true?
A What I told you is what I recall.
Q I know. That's what I said. Do you agree that it's not a whole lot of detail?
A (No response.)
Q Do you agree that you don't have a lot of detail about what happened inside the club?
A I agree with that.
Q And do you agree that you don't have a lot of detail about what happened outside the club?
A Yes, sir. I agree to that.

MR. SWERLING: That's all I have.

THE COURT: All right.

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

JAMES LAMONT GOODWIN - CROSS-EXAMINATION

BY MS. JOHNS:

Q Mr. Goodwin, my name is Theresa Johns. Let's refer to this arial view of the scene which is State's Exhibit No. 7, and please tell the jury -- that blue area --
A Yes, ma'am.
Q -- what is that, do you know what that blue area is?
A I guess that's like the other side of the club.
Q The other side of the club?
A I see the club right here, and the patio.

Q Okay. So the blue roof then would be the other side of the club, right?
A (No response.)
Q The blue area that looks like a blue roof?
A I see that now.
Q You see that?
A Yes, ma'am.
Q That would be the other side of the club?
A I don't know.
Q Okay. You've never been there before; right?
A That was my first time, yes, ma'am.
Q All right. But next to that blue area, that blue roof coming towards you to the left of the diagram there's another roof there; what's underneath that roof?
A That's the club.
Q Okay. And as an extension of the club in that photograph is there a sun deck back there?
A Yes, ma'am.
Q That you call a patio?
A Yes, ma'am.
Q And that's where you went to hang out; right?
A Yes, ma'am.
Q Okay. And when you were out there on that patio how many people were out there with you?
A Well, we was there a long time, so people coming out

and leaving.

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

A There was places to sit down.

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

A Yes, ma'am.

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

A Yes, ma'am.

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

A Yes, ma'am.

Q In that first stall?

A Yes, ma'am.

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

A Yes, ma'am.

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

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

Q Okay. Did they check your ID?

A Yes, ma'am.

Q What else did they do?

A We just went in.

Q You just went in?
A Yes, ma'am.
Q Okay. But you had to show somebody your ID?
A I can't remember.
Q All right. How old are you?
A I'm 27.
Q All right. When you went on that back deck who from your party is with you?
A All us was out there at one point.
Q Okay. You were there for two hours; is that right?
A Yes, ma'am.
Q And before that where were you, at a party?
A Well, we was at Travis sister house.
Q Were you playing cards?
A Yes, ma'am.
Q Drinking?
A Yes, ma'am.
Q What were you drinking?
A It's hard to remember.
Q And like Mr. Swerling said you don't recall many of the details that happened inside that club do you?
A I recall what happened.
Q What you relayed to the jury?
A Yeah, but I saw it.
Q But, again, would you agree that it's not very

detailed, right?
A It was a fight, a fight that lasts less than a minute. It's really not much detail to give.
Q You're concerned for Charlie, right?
A Yes, ma'am.
Q Yet you were outside with Hank and you left Charlie in the bar didn't you?
A Yeah. We told him to come over. We got him almost out and it could have been a fight some more. His lip was busted.
Q Okay. But nonetheless, you said you were out there with Charlie and Hank and the rest of these people came out after you?
A Yes, ma'am.
Q So you really didn't say with Charlie did you?
A Not the whole time.
Q And you didn't really stay with Hank the whole time did you?
A No, me and Hank was pretty much the whole time.
Q The whole time. Okay, so when you were trying to help Charlie out, then Hank was there helping Charlie out, also; is that right?
A Yes, ma'am.
Q So Hank was involved in the fight; right?
A Yes, ma'am.

Q How many guns did you see inside that club that night?
A Guns?
Q Yes, sir.
A I didn't see any guns there.
Q How many cars were outside in that parking lot when you attempted to leave?
A It was a car parked beside us and a car parked behind us at that time.
Q So in that car wash area how many cars were there when you got there?
A I didn't take the time to count the cars.
Q Can you estimate?
A I can't estimate.
Q Okay. How about when you left?
A When we left it was full.
Q It was full. How many people were in the club?
A I didn't take the time to count the people.
Q Would you say there was more than 10?
A Yes, ma'am.
Q More than 20?
A Yes, ma'am.
Q More than 30?
A Yes, ma'am.
Q Did they have a DJ that night?
A Yes.

Q You do not know this area at all other than the fact that you pulled in as a passenger into that first stall; isn't that right?
A Yes, ma'am.
Q You didn't take a walk down the road did you?
A No, ma'am.
Q You didn't cross the street did you?
A No, ma'am.
Q Okay.

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

THE COURT: Sure.

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

THE COURT: Okay.

JAMES LAMONT GOODWIN - REDIRECT EXAMINATION

BY MS. MCDUFFIE:

Q Lamont, what was Hank doing during the fight?
A Me and Hank was trying to break them up. We weren't actually trying to fight. We were trying to get them out.
Q And had you seen any of the people in this bar before except for Hank and Travis?
A No, never seen them before.
Q And when was the first time you met Verda, Stephanie, and Charlie?
A That night.
Q And you had never seen them before this night either?

A No, ma'am.
Q And how many people in that bar that night had dread locks?
A It's hard to say, a lot.
Q More than five?
A Approximately more than five.
Q And about how many people were in this fight?
A It was like the whole club was in the fight.
Q And when you left the club and you heard the gunshots, what direction were the gunshots coming from?
A They were coming from the road outside the club.
Q Any question in your mind about that?
A No, ma'am.
Q Were they coming from behind you?
A Yes. I remember looking at the patio, and I was hoping the gun didn't come off the patio at us and hit us. While I was looking at the patio, I heard -- I could tell that the gunfire wasn't coming from there.
Q Was there shooting coming from the patio?
A No, ma'am.
Q was there shooting coming from the other side of the car wash?
A No, ma'am.
Q Where was the only place you recall there being shooting?

A I was standing like this so I could hear it coming from right here. (Indicating.)
Q And that's the area of Hardscrabble Road?
A Yes, ma'am.
Q And you have no idea who was shooting do you?
A No, ma'am.
Q And you don't remember all the details about the fight that night do you?
A No, ma'am.
Q And when you got to the hospital you were informed that Hank has passed away; correct?
A Not at first.
Q But after a while they informed you?
A Yes, ma'am.
Q Okay. And then the investigators came, Investigator Barnes, and he asked you if you'd talk to him?
A Yes, ma'am.
Q And did you want to talk to him that night?
A No, not that night.
Q Why not?
A I was kind of upset, and the investigator was getting Hanks family to come to tell them. I was out there the whole time. Then when we -- I took that personally. I should have told them that night. I really didn't know anything.

Q And you were upset because you weren't a relative the hospital wouldn't give you any further information?
A Yes, ma'am.
Q And you were waiting for his family to come?
A Yes, ma'am.
Q And when Ms. Shipley and I called you, you invited us to come to St. Matthews to your home?
A Yes, ma'am.
Q And you told us what you're telling the jury?
A Yes, ma'am.
Q And are you ever going to forget the night that your best friend was murdered?
A No, I'll never forget that.

MS. MCDUFFIE: No further questions, Your Honor.

JAMES LAMONT GOODWIN - RE-CROSS EXAMINATION

BY MS. JOHNS:

Q Mr. Goodwin, when you were at the hospital you made a conscious choice not to give a statement; is that what you're saying?
A They didn't really come to me asking for a statement.
Q They didn't?
A They were talking to everybody taking down notes.
Q They were. And you didn't volunteer any information?
A No, ma'am.
Q And did you see other people at the hospital that were

also at the club but not involved in your party?
A Yes, ma'am?
Q You did?
A Yes, ma'am.
Q And you knew that there had been gunshots fired; is that right?
A Yes, ma'am.
Q And you knew that your friend, Hank, had taken a shot somehow; right?
A Yes, ma'am.
Q And then you knew that he died; correct?
A Yes, ma'am.
Q And even after you learned that you didn't volunteer to go to Sgt. Barnes or Investigator McRae and say, let me tell you what I heard; you didn't say I heard shots coming from the roadway?
A I didn't think about that when my best friend just got murdered.
Q You didn't think whether to tell them whether you heard shots coming from the patio; right?
A At that point, it didn't matter where the shots come from at that time, to me.
Q All right, and you didn't tell them that somebody sung at you, either, did you?
A No.

Q Okay. In fact, you just didn't get involved?
A Yes, ma'am.
Q Thank you.
THE COURT: All right, sir, you can step down and be excused.
MS. SHIPLEY: Your Honor, at this time the state calls Jalicca Johnson.
(WHEREUPON, Jalicca Johnson, was sworn to tell the truth.)
THE CLERK: Thank you. Have a seat in the witness stand and give the court reporter your name.
MS. JOHNSON: Jalicca Johnson.

JALICCA JOHNSON - DIRECT EXAMINATION

BY MS. SHIPLEY:
Q Ms. Johnson, can you tell this jury where you're from?
A Columbia, South Carolina.
Q And what part of Columbia do you reside in?
A The Northeast area.
Q Is that a neighborhood -- do you live in Washington Heights?
A Yes.
Q Okay. Can you tell us the name of your street. You don't have to give us the number, but just the street?
A Briarcliff Drive.
Q Briarcliff Drive.

A Yes.
Q And is that in close proximity to the club or the H&J on Hardscrabble Road?
A About a mile.
Q About a mile. Okay.
A Half mile.
Q Half mile. So it's pretty close?
A Yes.
Q I'm just going to ask you to look at this diagram and see if this is an accurate depiction of the H&J club and the car wash on Hardscrabble Road; do you recognize that, does that accurately depict the area?
A Right here?
Q Yes, ma'am.
A Well, it look like it.
Q And the H&J with the patio and the deck behind it --
A Oh.
Q -- and the car wash right here; does that accurately depict the area?
A Yeah.
Q Okay. Do you know the defendant, Taurus Watts?
A Yes.
Q And can you tell the jury how you are related to him?
A His sister has son of my brother.
Q Okay. So your sister has a child that would be your

nephew; correct?
A Yes.
Q And your nephew's mother is the defendant's sister?
A Yes.
Q So basically, he is your nephew's uncle?
A Yes.
Q Okay. And what nickname does he go by?
A Who?
Q Mr. Watts?
A I just call him Taurus.
Q Okay. Does he also go by T?
A Not him. I don't know Taurus.
Q Okay. I'm going to bring your attention -- by the way, do you know Mr. Wray?
A I know him, but not real good, because he younger than I am.
Q Okay. Does he live on the same street as you do; on Briarcliff?
A No.
Q Okay. And do you know a guy named Brian Johnson?
A Yes.
Q And I'm going to ask you to look at this picture and let me know -- am I pointing out Mr. Johnson, Brian Johnson?
A That look like -- he look different now.
Q Okay. Is his hair longer now?

A Yeah.
Q Okay, but is this Brian Johnson with shorter dreads?
A I think so.
Q Okay. And does Mr. Johnson live on Briarcliff?
A I don't think so. I think he parents do.
Q Okay. Do you know him from the neighborhood?
A Yes.
Q And from the club?
A Sometimes.
Q Sometimes, okay. Do you also know an individual by the name of Chris Crosby?
A Yes.
Q And can you describe him for the jury, please; what's he look like?
A Dark skin, kind of heavy set.
Q How many pounds you think he might weigh?
A About 300. I don't know.
Q Okay. And how tall would you say he is?
A I don't know.
Q Okay. Do you remember giving a statement to the police on June 30, 2007?
A Yes.
Q Would that help you refresh your memory of what you told them that night?
A No. I know what I told them.

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

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

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

THE COURT: Okay.

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

THE COURT: Right --

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

THE COURT: Go ahead.

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

BY MS. SHIPLEY:

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

A Huh?

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

A I said he was tall.

Q Okay. Well, how tall is he?

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

Q Okay. And you indicated his weight just now?

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

Q Okay, and would these islands right here be it?
A I don't know -- probably right here.
Q And do you remember if you parked behind any other vehicles?
A Yeah, it was another car.
Q Another car. Do you remember what the other car looked like?
A No, huh-uh. (Negative response.)
Q Do you remember giving a description of that car to law enforcement that night?
A Yeah, I think a white car. I'm not sure.
Q A white car. Do you know if it was like a sedan or an SUV, do you know anything or remember that at all?
A A small car like a Chrysler.
Q A Chrysler.
A About the same size.
Q Okay. Now, when you got inside the club can you tell the jury who you ran into that night?
A I ran into Charlie.
Q Charlie?
A Uh-huh. (Affirmative response.)
Q And did you and Charlie used to have a relationship together?
A Yes.
Q How long did you guys date?

A Off and on for a couple of years.
Q Couple of years.
A Uh-huh. (Affirmative response.)
Q And did you become familiar with his family as a result of dating him?
A Well, I knew his family before I met him.
Q Oh, okay. And how did you know them?
A Because me and his aunt was good friends.
Q Okay. And which aunt would that be?
A Stephanie.
Q Stephanie Boston?
A Uh-huh. (Affirmative response.)
Q Did you know his mother, Verda Roberts?
A Yeah, I know her.
Q And when you got there did you run -- you said you ran into Charlie; is that correct?
A Uh-huh. (Affirmative response.)
Q And what did you and Charlie do when you ran into each other?
A He told me that his mom and them were on the patio.
Q Okay, and when he told you his mom and them were on the patio what did you do?
A I went in the bathroom because I had to use the restroom.
Q Okay.

A But I stood in there for a while.
Q Okay, and did you eventually go the patio --
A Yes.
Q -- to meet your friend, Stephanie Boston?
A Uh-huh. (Affirmative response.)
Q Okay. And did you meet any other people that were with them that night?
A Yeah, there was a couple of people out there.
Q Okay. Did you know the three men that were with them that night?
A No.
Q So that was the first time that you met them that night?
A Yes.
Q Were you introduced to them that night?
A Yes.
Q Okay. Who introduced you to the three men?
A Stephanie.
Q Stephanie?
A Uh-huh. (Affirmative response.)
Q And just so the jurors are clear when you came to the H&J club that night you and Charlie were not dating, correct?
A Huh-uh. (Negative response.)
Q All right. Now, after you were introduced by Stephanie

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

A Went back inside.

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

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

Q To the bar?

A Yeah, by myself.

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

A I was approached by an unknown man.

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

A Yes.

Q And did he introduce himself to you?

A Yes.

Q And what did he say his name was?

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

Q Okay. And you thought it was T?

A Uh-huh. (Affirmative response.)

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

A Short, five-five to five-seven.

Q Okay. How much do you think he weighed?

A Not very much, maybe 140 pounds, maybe.
Q Okay. And could you describe his hair cut, please?
A Short.
Q And do you remember what color shirt he was wearing?
A White.
Q White t-shirt?
A Uh-huh. (Affirmative response.)
Q At that point, did you continue talking to this man at the bar?
A No.
Q Where did you go next?
A I went and stood up by the dance floor.
Q By the where, I'm sorry?
A By the dance floor.
Q And when you went to the dance floor, who came up to you next?
A Charlie.
Q Charlie?
A Uh-huh. (Affirmative response.)
Q And when he came up to you did you want to dance with him?
A No. He didn't ask me to dance, he just stood behind me.
Q Oh, okay. So he was not dancing with you?
A No.

Q And were you in the mood to talk to Charlie at this point?
A No.
Q And if anything -- why didn't you want to hang out with Charlie that night?
A I just didn't.
Q Okay. While you were standing with Charlie by the dance floor?
A Yeah, the same guy.
Q The same guy?
A Uh-huh. (Affirmative response.)
Q The one that had introduced himself as T?
A Yes.
Q All right. And can you tell the jury what if anything you said or motioned to that man as he approached you?
A Yeah, I did like -- like don't talk to me. (Indicating.)
Q Like this? (Indicating.)
A Uh-huh. (Affirmative response.)
Q And did you get -- when you did that did Charlie react?
A Well, he said that he was being disrespectful.
Q Okay. And did you see what Charlie did next?
A What you mean?
Q Well, did the guy continue approaching you even though you went like that? (Indicating.)

A Yes.
Q Okay, and what happened next?
A I guess they had some words or something. I guess that when he said you're being disrespectful or something.
Q Uh-huh. (Affirmative response.)
A And he kept right on.
Q And so Charlie threw the drink on the guy?
A Yes.
Q Okay. And what happened when Charlie threw the drink on the guy?
A I motioned for his mom to come over there.
Q Verda Roberts?
A Yeah.
Q Okay. And did she come over?
A Yes.
Q And what happened next?
A It was just so much going on at that point I couldn't tell you.
Q All right. Do you remember your friend Brian coming also?
A Yeah, everybody was fighting.
Q Everybody was fighting?
A Uh-huh. (Affirmative response.)
Q Did you see Ms. Verda Roberts get punched by anybody?
A No.

Q You didn't see her get hit?
A No.
Q Did you see anybody hit Charlie?
A No.
Q Did you notice any injuries on Charlie's face at any point that night?
A Not that night.
Q Not that night?
A Huh-uh. (Negative response.)
Q You said not that night. Did you eventually see injuries on his face?
A It was after that, maybe a month or two months.
Q Okay. So he still had an injury?
A He had cut lips.
Q Okay. So tell the jury how it is that you and Brian know each other?
A Well, I knew Brian when he was a little boy, his parents lived down the street from my house.
Q And did he go to the same school as you?
A No, I think he younger than I am. He probably went to the same school, but I was before that.
Q Years apart?
A Uh-huh. (Affirmative response.)
Q All right, and when you first came into the club before the fight ever happened, did you see Brian in the club?

A I think Brian was standing in the bar.
Q He was standing by the bar?
A Uh-huh. (Affirmative response.)
Q When you were approached by the person who said he was T?
A Yes.
Q Now, when Brian came when the fight started between this T individual and Charlie, did you hear Brian say anything about this individual, about who he was siding with in this situation?
A No. He was saying that he knew the guy. His home boy.
Q His home boy?
A Yes.
Q And at that point, did he try -- did he get involved in the fight?
A It was so many people doing so many different things. I was trying to tell him to stop. So I just got out the way.
Q Okay. And you didn't want to get hurt?
A Yeah, and the bouncer was throwing people out, and a lot of people left out ahead of us, because they threw some people out.
Q Okay. And how many people would you say got involved in this altercation at the club?
A A lot.

Q A lot?
A Uh-huh. (Affirmative response.)
Q And of those people, how many people do you think had dread locks that night?
A You know, it was dark in there. I don't know.
Q Okay. Did you have to hold Brian back at one point?
A Yeah. I told him he didn't need to get in trouble.
Q Okay. And after -- you remember if Brian came out of his shirt at any point when you were trying to hold him back?
A Yeah. And I held onto his arm.
Q And you held onto his arm?
A Uh-huh. (Affirmative response.)
Q Now, during this time you stated that bouncers were already kicking people out?
A Yes.
Q And by the way, when you first got there did you get searched by the bounces, the security, or ID'd by security.
A Yeah, it was a female.
Q A female did check your ID?
A Yeah.
Q And you don't typically carry your pocketbook into the club?
A No. I left it in the car.
Q And so at this point you're still holding Brian back,

did you hear anything about gunshots?
A No, not at that point.
Q Okay. Tell the jury when it is the first time you hear gunshots?
A There was a handful of us still up in there, and I got my keys and was ready to go home. And that's when I heard gunshots when I was trying -- getting to the door. I was going out through the kitchen.
Q Okay. And I don't think we're familiar with where the kitchen is? I'm going to ask you to point that out for us, please?
A Well, both the doors right beside each other. The kitchen is right here.
Q Okay. So it's in the adjacent building, in this side where the carports for the gas tanks?
A Yes.
Q So is there a way to go from the night club through to this side at night?
A This is the entrance to the night club, this is the entrance to the kitchen.
Q And so you used the kitchen exit. Okay, so tell the jury again when it is that you first hear shots at this point?
A When I was heading to the door.
Q Heading towards this door right here?

A I'm still inside.
Q Okay, you're still inside when you heard the shots. Where was Brian Johnson?
A I think he was in the club. I'm not sure.
Q I believe you testified that you had held him back and he came out of his shirt.
A I think he was in the club, but I got my keys so I can get out of there.
Q All right. Would there have been enough time for him to leave before you?
MS. JOHNS: Your Honor, I object. That calls for speculation. She saw or she didn't.
BY MS. SHIPLEY:
Q Where did you leave Brian Johnson.
A When I got my keys he was still in there. When I get my keys I was out.
Q Okay.
A What startled me was when I heard the gunshots.
Q All right. Let me make sure I understand. You got your keys, correct?
A Uh-huh. (Affirmative response.)
Q You're heading to go to your car?
A Yes.
Q You don't even make it outside and you hear gunshots?
A Yes.

Q Had you just left Brian Johnson?
A I don't know.
Q At that point, describe for the jury the rate of the shots that you heard?
A Real fast.
Q Real fast. And could you tell this jury how many shots you may have heard that night?
A No.
Q Why not?
A Because it was too fast.
Q Too fast to count?
A Uh-huh. (Affirmative response.)
Q Had you ever heard anything like it before?
A No.
Q And did anybody accompany you to your car?
A No.
Q And when you got to your car which way did you leave?
A What you mean?
Q Which route did you take to go home?
A On Hardscrabble back to my house.
Q Okay. So if you're parked in the parking lot of the H&J, did you have to turn left or right on Hardscrabble to go home?
A Which way is towards Farrow Road?
Q This would be heading towards Farrow Road and that

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

A Oh, I went straight home.

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

A Yes.

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

A I don't remember.

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

A Uh-huh. (Affirmative response.)

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

A Uh-huh. (Affirmative response.)

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

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

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

THE COURT: That's correct.

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

BY MS. SHIPLEY:

Q Who else was in the bar when you left?

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

of people in there.
Q Okay. And where were Verda, Charlie, and Stephanie?
A Gone.
Q They had already gone?
A Uh-huh. (Affirmative response.)
Q Do you know how long they had been gone for from inside the bar?
A Give or take, maybe 10, 15 minutes, 20 minutes at the most. It wasn't a long period of time.
Q It wasn't a long period of time?
A No.
Q And were you paying attention to the time this night?
A No.
Q Okay. Did you see anybody outside the club or near Hardscrabble Road when you were leaving, driving home?
A I don't remember.
Q Where there any other cars parked around --
A There were still cars out there.
Q There were still cars?
A Uh-huh. (Affirmative response.)
Q And again, this was early morning hours -- how crowded was the area?
A What you mean?
Q Were there a lot of cars there or --
A It was a good many cars there?

Q Still a good many cars?
A Uh-huh. (Affirmative response.)
Q Okay. Now, when you left the bar did you talk to Stephanie Boston again?
A When I got home.
Q When you got home. And did you hear what had happened to their friend?
A Yes.
Q And did you also speak with Charlie Bates that night?
A No, I didn't listen.
Q I'm just asking yes or no, did you talk to him?
A He called me, but I didn't talk to him.
Q Okay. And in 2000 -- sorry, October of 2000, you were convicted of one count of fraudulent check, correct?
A October what?
Q 2000, the year 2000?
A I don't know if that --
MS. SHIPLEY: Beg the Court's indulgence.
BY MS. SHIPLEY:
Q I've got to ask you a couple more questions, Ms. Johnson. The night or the morning you provided the statement to the police, do you remember them coming to your house, a female officer and Investigator Gallegos?
A Yes.
Q And do you remember being reluctant to talk to them

that morning?
A Yeah. I was shocked they knowed where I stayed at.
Q Okay.
A And I didn't have anything to do with it, so why were they coming to my house.
Q Isn't it true you were scared to talk to them?
A No, I was not scared to talk to them.
MR. SWERLING: Your Honor, object to leading.
THE COURT: Sustained.
BY MS. SHIPLEY:
Q All right. Do you recall telling Investigator Gallegos that they were going to get you killed?
MR. SWERLING: Objection.
A No.
MR. SWERLING: I just objected. And you sustained the objection. That's a leading question and it's prejudicial. And I -- I object to it. I'd like to be heard on it.
MS. SHIPLEY: I'll rephrase the question.
THE COURT: All right. Thank you.
BY MS. SHIPLEY:
Q When the officers --
THE COURT: Hold on one second.
MS. SHIPLEY: Yes, ma'am.
THE COURT: The jury is to disregard both the

question and answer in that line of questioning.

MS. SHIPLEY: All right. Thank you.

THE COURT: Thank you.

BY MS. SHIPLEY:

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

A No, I was not.

Q Did you want to talk to them?

A No, I didn't.

Q Did you eventually talk to them?

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

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

A Yes, I did.

Q And did you give them a written statement?

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

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

A They asked me questions.

Q Okay. And you signed the statement; correct?

A Yes.

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

A (No response.)
Q After you gave your statement you left?
A Yes.
Q All right. On July 6, 2007, at 5:00 p.m. did you return to the Sheriff's Department?
A What --
Q To talk to Investigator McRae?
A I -- I don't remember.
Q Do you remember giving him a name of who T was?
A No, I still don't know T.
Q Okay.

MS. SHIPLEY: Your Honor, may we approach?

THE COURT: Yes, you may.

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

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

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

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

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

MS. JOHNS: I join that, Your Honor.

THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Okay.

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

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

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

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

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

MR. SWERLING: You can't --

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

MS. JOHNSON: That's not true.

MS. SHIPLEY: -- at 5:15.

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

Okay, go ahead.

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

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

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

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

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

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

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

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

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

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

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

MR. SWERLING: Well, you can't.

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

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

MS. SHIPLEY: Yes --

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

MS. SHIPLEY: It was impeachment.

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

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

MR. SWERLING: We're talking about two different

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

THE COURT: Ms. McDuffie.

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Okay.

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

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

(A short break was taken.)

(Court in session after short break.)

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

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

THE COURT: Okay. All right. Thanks.

MR. SWERLING: The same, Your Honor.

THE COURT: Okay. Jurors, please.

And Ms. Shipley --

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

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

MS. SHIPLEY: Okay.

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

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

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

MS. SHIPLEY: Yes, ma'am.

Shall I proffer it now?

THE COURT: Yeah, that will be fine.

MS. SHIPLEY: Okay.

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

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

THE COURT: Sure.

PROFFER:

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

you remember that question?
A Huh-uh. (Negative response.) I don't remember.
Q Do you remember going back to the Sheriff's Department?
A No, I don't.
Q You don't remember going back?
A No.
Q So you don't recall going to see investigator --
A I remember both the officers, but I don't know if it was the day they took me. It's been so long ago.
Q Okay. So on June 30th, you went with officers to the headquarters; correct?
A I'm not sure about the date.
Q Okay, the day you gave this five page statement. Does it say June 30th on there?
A Yeah.
Q Okay. What time does it say it was taken at; does it say?
A 11:54.
Q All right. And that's when you signed that statement that was typewritten; correct?
A Yeah.
Q Six days later on July 6, 2007, do you recall going back, being called back to headquarters by Investigator McRae?
A No, I don't.

Q You don't remember that?
A No, I don't.
Q So you don't remember making any statements to them about the identity --
A I don't remember going back. I just don't remember it.
Q Okay.
MS. SHIPLEY: Beg the Court's indulgence.
BY MS. SHIPLEY:
Q Did you ever tell Investigator McRae the identity of the person named T?
A Yeah.
Q You did? And what was that name?
A I told him T. That's all I know.
Q Okay.
A He's dark, brown skin, medium height, medium build, but that was my first time I seen him.
Q Do you remember telling Investigator McRae that T was Taurus Watts?
A No. I know T is not Taurus Watts.
MS. SHIPLEY: I believe that that is the extent of the questions.
THE COURT: Okay.

JALICCA JOHNSON - CROSS EXAMINATION

BY MR. SWERLING:
Q Ms. Johnson, if that situation -- the person that you

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

A Yeah.

Q -- that was not Taurus Watts was it?

A No.

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

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

Q Okay. You don't remember?

A No.

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

A No.

MR. SWERLING: Judge, excuse me a second.

(Pause.)

BY MR. SWERLING:

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

A Yes.

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

A Yes.

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

up to you known as T-something?
A Yes.
Q That's how you referred to him as T-something?
A Yeah, that was his initial in there.
Q Right. And you described him as a brown skinned black male, approximately five foot, eight inches, he was approximately 145 pounds, had a low haircut. I think he was wearing a white t-shirt. Were you describing Taurus Watts?
A No, I wasn't.
Q Then he asked you again, who asked you to dance. The guy who came up to the bar and tried to talk to me, the guy, T.
A Uh-huh. (Affirmative response.)
Q If that had been Taurus Watts would you have said so?
A Yes. I know it was two different people.
Q It was two different people?
A Yes.
Q The one that -- this person here Taurus Watts --
A Uh-huh. (Affirmative response.)
Q -- and the person T, who came up to you to dance and got involved in this whole confrontation, altercation is two different people?
A Yes.
Q That's all. Thank you.
THE COURT: Anything further?

JALICCA JOHNSON - REDIRECT EXAMINATION

BY MS. SHIPLEY:

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

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

Q Okay.

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

THE COURT: Okay.

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

THE COURT: Right.

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

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

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

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

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

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

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

MS. SHIPLEY: Correct.

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

MS. SHIPLEY: Yes, ma'am.

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

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

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

MS. SHIPLEY: Okay.

THE COURT: Okay. All right.

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

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

MS. SHIPLEY: That's right.

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

MS. SHIPLEY: Yes, ma'am.

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

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

THE COURT: Sure.

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

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

MS. SHIPLEY: Yes, ma'am.

THE COURT: And then you would have to make a

motion to me to get beyond that rule.

MS. SHIPLEY: Yes, ma'am.

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

MS. SHIPLEY: Okay.

THE COURT: Okay. Clear.

All right. Jurors, please.

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

THE COURT: All right. Thank you.

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

Okay. Jurors, please.

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

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

THE COURT: Thank you.

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

THE COURT: Yes.

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

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

THE COURT: Okay. Thank you.

State, you may continue with your case.

MS. SHIPLEY: Thank you, Your Honor.

JALICCA JOHNSON - CONTINUED DIRECT EXAMINATION

BY MS. SHIPLEY:

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

A No.

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

A I do.

Q So you do remember?

A I remember him.

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

A I remember him and another man.

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

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

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

A I did that the first time.

Q Okay. And so do you recall telling Investigator McRae

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

A No, I didn't say that.

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

THE COURT: Okay.

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

JALICCA JOHNSON - RECROSS-EXAMINATION

BY MS. JOHNS:

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

A No.

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

A Yes.

Q Do you recall what the initials were specifically?

A No. I just remember T.

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

A It was more than one initial?

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

A No. I know Taurus Watts.
Q All right. So if Taurus Watts was making a move on you at the bar, if that fact was true then you would have told Investigator McRae that, wouldn't you?
A Yes.
Q And you would have told Investigator Gallegos that, too; right?
A Yes.
Q And you also would have told Heidi Scott that it was Taurus Watts that was making a move on you; wouldn't you?
A Yes.
Q Okay. And the fact that Taurus Watts did not make a move on you, did that change the identity of the person who did make a move on you?
A Yeah.
Q Okay. When they asked you if Taurus Watts was T --
A I don't remember them ask me that.
Q Okay. Now, in your statement, did you have an opportunity to review your statement before today?
A Yes. Today I looked over it.
Q Okay. And was it your intention to give information to the investigators that T was Taurus Watts, at any time?
A What you mean; saying they was the same person?
Q Yes.
A No. I know they not the same.

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

A A long time. Maybe 20 years.

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

A No.

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

A Yes.

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

A Yes.

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

A Yes, because it made my son upset.

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

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

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

A Yes.

Q And you did not know -- you were surprised, were you not, that they were at your house --
A Yes.
Q -- about this?
A Yes.
Q Because you didn't have anything to do with it, right?
A Yes.
Q Okay. And when they did come to speak to you, you had not had much sleep that night, right?
A Yes.
Q And when you talked to them, you do remember saying to them that the guy that made a move on you in the bar had more than one initial when he introduced himself?
A Yes.
Q Okay. That has not changed between then and today?
A No.
Q You'd have the same response, correct?
A Yes.
Q All right. And when you gave the description, did you give the description that you gave today about being five feet, about five feet, eight inches tall, that he was probably about 145 pounds with a low haircut; is that right?
A I guess.
Q Well --
A Can I see --

Q Yes, ma'am. It's on Page 2.
A Yes.
Q Is that right?
A Yes.
Q Okay, and that he had a low haircut, right?
A Yes.
Q And he was wearing a white t-shirt.
A Yes.
Q Is this information that you voluntarily gave to them or is it information that they gave to you and you agreed to it?
A No, it was me.
Q Okay. You gave them this information?
A I guess.
Q Okay.
A I mean, as far as the height and weight, he might have said is he this tall and I'd say yes.
Q Okay. Okay. Now, the guy that asked you to dance at the bar, that was making a move on you was not Taurus Watts?
A No.
Q Okay. And you've never known Taurus Watts to go by the nickname T?
A No. Only Taurus.
Q Okay. And you've known him for 20 years; is that right?

A Yes.
Q And you know his family; is that right?
A Yes.
Q And you know a Willie Crosby?
A Yes.
Q Okay. And how do you know Willie Crosby?
A I have a son by him.
Q Okay. And is Willie Crosby and Taurus friends?
A Yes.
Q Okay. So not only do you know Taurus over the 20 years you've known his family, but you also some of the friends Taurus hangs out with, one being Willie Crosby?
A Yes.
Q And Willie Crosby is also your son's father?
A Yes.
Q Okay. Now, this person that you referred to that had the initials?
A Yes.
Q Did he appear to be with Brian Johnson?
A Well, there was a lot of people standing at the bar.
Q Okay.
A And they all standing up there. So if he was with him, he probably was.
Q Okay. Has you ever seen this guy with the initials ever with Willie Crosby or Taurus?

A No.
Q Okay. So it's fair to say, then, that the guy that made move on you at the bar was not an associate of Taurus Watts, right?
A No. I've never seen him before.
Q Okay. And so when there is a fight that breaks out it breaks out starting with Charlie Bates, is that right, him splashing a drink in somebody's face?
A Yes.
Q Okay. And do you remember the person who splashed, who was that person who received the drink in the face?
A T.
Q Okay. So it was the guy that made the move on you?
A Yeah.
Q Okay. And that person that got a drink in the face is not Taurus Watts?
A No.
Q Okay. Now, when that happened to the guy that had the initials that you refer to as T, somebody came up and said that was his home boy; is that right?
A Yeah.
Q Who was that person that came up and said that was my home boy?
A I think it was Brian.
Q Brian Johnson?

A Uh-huh. (Affirmative response.)
Q So when that happened then you saw Charlie Bates get hit?
A No. I didn't see Charlie get hit. I just seen the fight.
Q Okay. So after the drink got thrown in the face, then you saw all the people fighting, right?
A Yes.
Q And you did say you were trying to hold Brian back?
A Yes.
Q And when you were trying to hold Brian back did you see -- did you see Chris Crosby in the bar?
A No. I seen Chris right before I got ready to leave.
Q Before you got ready to leave?
A Yeah. That's when they were throwing some of the people out.
Q Okay. And did you see Charlie?
A No.
Q Okay. So when they were throwing people out, you didn't see Charlie?
A No.
Q Okay. And you'd just been introduced to three other men that night that came with Charlie. One was Travis Malone. The three men that were with your friend Stephanie?
A Yeah.

Q Do you remember seeing them out on the patio?
A Yes.
Q And when this fight broke out did you see them in the bar?
A When the fight broke out they were standing next to Charlie's mother, Verda. That's why I called her over to me, they were fighting. So she can kind of calm Charlie down.
Q Okay. So at some point in time you said that the bouncers or whatever started kicking people out?
A Uh-huh. (Affirmative response.)
Q And describe what that means?
A I guess because they was fighting they threw them out of the club.
Q Okay. Did they physically take them and remove them or did they instruct them to get out?
A I don't know.
Q Okay.
A Where I was like five minutes later there was bunch of moving in the club and they was pushing everybody out.
Q Okay. And you said you had gone to get your key?
A Uh-huh. (Affirmative response.)
Q Where were your keys?
A On the bar.
Q So after this commotion starts, the fight, the drink

thrown in the face, and then the fight and then the chaos --
A Yes.
Q -- and you were thinking, I'm going to get out of here, right?
A Not at first. Because, like I said, I didn't want to go out there while it was going on. They was fighting. So I waited a minute. There was people still in there.
Q Okay.
A So then I said, well, I'll go get my keys and go before anything else happens.
Q Can you say for sure that Brian Johnson was in the bar when you left?
A No.
Q You can't say for sure?
A When I went to get my keys I thought I seen him.
Q Okay.
A So I was holding him, so I think he was in the club.
Q Okay. You think he was?
A Uh-huh. (Affirmative response.)
Q So you're sure about that?
A I think so.
Q Okay. What about these three men that were with Stephanie, did you see them in the club?
A No.
Q Okay. Did you see Taurus in the club?

A I think I seen Taurus in the club.
Q Okay. So Taurus and Brian Johnson are in the club when you go to get your keys to leave?
A Yes.
Q Okay. Now, you have known Taurus, and you know Willie and Chris, and all those boys and you have been in the club before, right?
A Yes.
Q And you've seen Taurus in the club before, right, many times?
A Yes.
Q Correct?
A Yeah, I saw him.
Q Okay. And you didn't carry a purse with you that night, is that right?
A No.
Q The people, the management, or the owner of this club, they know you by sight, is that fair to say?
A The people working.
Q Okay. Do you know a guy named Sherman?
A No.
Q Do you know who the female was that checked your ID?
A No.
Q And but she did check your ID, some female, right?
A Yeah, it was two of them at the door. A heavy set dude

and a female.
Q A heavy set dude and a female. Okay. And when they checked your ID they just let you in?
A Yeah. Most of the time, if it's a female and a guy there they'll have the female check the female and the guy check the guys.
Q Okay. How does the female check you?
A What you mean?
Q She just checked your ID, she didn't search you, right?
A I don't remember.
Q Okay. Now, you went to the club alone --
A Yes.
Q -- you drove your car to the club by yourself?
A Yes.
Q All right. And when you parked you said you parked beside a white car?
A Yes.
Q Behind it?
A Yes.
Q It was about the same size as yours?
A Yes.
Q And your car was, I'm sorry, refresh my memory?
A A '97 Chrysler Concorde.
Q Chrysler Concorde, which is a sedan, right?
A Yes.

Q Okay. And you got to the club before the fight broke out, obviously?
A Yes.
Q And when you left the club the white sedan was gone, is that right?
A I'm not sure.
Q You parked by the telephone booth, right?
A Yes.
Q Okay. Were there any other cars near the telephone booth.
A I say I remember seeing a white truck.
Q Okay. A white truck?
A Yes.
Q Okay. Now, let me ask you this, Ms. Johnson, is there any reason whatsoever for you to be in this courtroom today in an effort to tell this jury what you saw to try to protect Taurus Watts?
A No, ma'am.
Q Okay. Do you know Chris Crosby to have a nickname?
A No.
Q Okay. And Ms. Shipley asked you on direct examination if you remember talking with Investigator McRae?
A Yes.
Q When you talked to Investigator McRae, did you talk to him at your home?

A No. I didn't talk to any of them at my home.
Q Okay. You talked --
A They came and they got me and they took me back to the police department.
Q So they came and got you and took you to the Sheriff's Department on Two Notch, right?
A Yes.
Q Okay. The first time you talked to a female investigator and Investigator Gallegos?
A I don't know. I remember talking to her, but she was in the car.
Q Okay. She was in the car. Did you talk to her when you got to headquarters?
A I don't remember talking to her?
Q Okay. Do you remember her being present?
A I can't say I do.
Q Okay. And then the next time you were at headquarters you were talking to Mr. McRae, is that right?
A I don't remember that.
Q Okay. But do you remember talking to the Sheriff's Department on two days?
A No.
Q Okay. Just one day?
A Yes.
Q Okay. And so therefore at any time thereafter for the

Sheriff's Department having any information about T being Taurus Watts would be wrong?

A Yes.

Q Okay. T is not Taurus Watts --

A That's right.

Q -- in any regard, is that correct?

A Correct.

MS. JOHNS: Beg the Court's indulgence.

BY MS. JOHNS:

Q How long did it take you to get from where Charlie Bates and Brian Johnson were to go to the bar and get your keys, about how long did that take?

A Okay. They threw Charlie on out.

Q Okay.

A So there was a couple minutes in between that. Brian was still in there.

Q Okay.

A And they was going back and forth, and they was kicking people out. So I don't know maybe 10 minutes, at the most. Fifteen maybe.

Q All right. And how many entrances to this club are there?

A How many --

Q Yes, ma'am. How many door are at the --

A Two that I know of.

Q Two.
A Uh-huh. (Affirmative response.)
Q Okay. One would be located -- you said you exited through the kitchen?
A Yes.
Q Is that one of the doors?
A Yes.
Q Okay. Can you enter through the kitchen, as well?
A No. Most of the time, coming in they have the door locked.
Q Okay. So when you come in do they only have one door that you can get in?
A Yes.
Q Okay. And that's where the bouncers sit?
A Yeah.
Q Okay. Now, when you left through the kitchen was there any bouncers there at that door?
A Not that I remember.
Q So when you went to leave you don't know if somebody could have gotten in behind you?
A Possibly, because I went out through the kitchen. When I walk through the kitchen I can't see who coming in the other door.
Q Okay. If you did leave through the kitchen and somebody caught the door as you were going out to your car

they could have gotten in, right?
A Possibly.
Q And there's also another way of exiting or entering the building primarily and that would be the deck on the back, right?
A Yes.
Q Okay. Now, the deck on the back has a door, and that door is near the bathrooms, right?
A Yes.
Q Okay. So is the deck too high for somebody to jump down on that wall?
A I don't know.
Q Well, you've been out on the deck before?
A I've been out on the deck before.
Q Well, if you had to run for your life would you jump off the deck?
A Yeah, if I was running for my life.
Q Okay. So did they have a security guard at the back door?
A The back door?
Q Yes, ma'am.
A Where that?
Q The back door to the sun deck, to the patio?
A Oh, I didn't go back there.
Q Okay. Is there -- when you've been there before do

they have somebody on the back door?
A Yeah, they come out on the deck.
Q Do they check IDs through that back door?
A I've never heard nobody entering the back door.
Q Okay. That back door stays open?
A Not that I know of.
Q So in order to get to the patio you have to push a door --
A Oh, you're talking about the back door to the patio?
Q Yes, ma'am.
A That back door stays open.
Q Stays open. Okay. So when that back door stays open do they have a bouncer or security officer there?
A No.
Q Okay. And you say that Brian Johnson was in the club --
A Yes.
Q -- when you got your keys?
A Yes.
Q And you saw Taurus Watts in the club when you got your keys?
A Yes.
Q And when you went to leave you left by yourself?
A Yes.
Q That's all I have for you, Ms. Johnson.

A Okay.

MR. SWERLING: Your Honor.

THE COURT: Okay. I'm mindful of the jurors notes. So are we okay with just about five minutes or so?

(Jurors nod heads in affirmative.)

THE COURT: Okay.

JALICCA JOHNSON - RECROSS EXAMINATION

BY MR. SWERLING:

Q Ms. Johnson, let me get these questions pretty quick. When Ms. Shipley was asking you the questions before when you left, when you got your keys. Your last recollection was that Brian was in the club, when -- I believe you said when you got your keys and started out the door you don't k now where he went?

A In the club?

Q Yeah.

A I seen him before I got my keys.

Q Before you got your keys?

A I had turned back around and left.

Q So after you got your keys you don't know where he was?

A No.

Q Is that correct?

A No.

Q Okay. And this fellow known as T --

A Uh-huh. (Affirmative response.)

Q -- after the altercation in the club you don't know where he was either?
A I didn't see him any more.
Q You didn't see him even after the altercation?
A No.
Q So he -- you have no idea where he was; correct?
A No.
Q All right. Let me -- as far as where the shots were fired, you turned left and went down towards Farrow Road; correct?
A Yes, sir.
Q When you were speaking with Investigator Barnes, you told him the shots sounded like they were coming from the Farrow Road area; is that correct?
A Yeah. Not towards Farrow Road, but on that side.
Q On that side. Well, the club was here, this is the club, just tell me what you were describing when you said Farrow Road?
A When I went out the door I could hear it more on my left side.
Q Down this way?
A Yes.
Q Not over in this area; down this way?
A Yes.
Q Is that correct?

A Yes.
Q You don't know if they were coming from a vehicle or someone was standing stationary?
A No.
Q Couple other questions I wanted to ask you. When you got to the club you and Charlie did not have a relationship --
A No, sir.
Q -- at that time; is that correct?
A No.
Q That relationship was over for a while, was it not?
A Yes, sir.
Q Charlie didn't want to give it up, did he?

A No, sir.
Q And that particular evening you didn't even know he was going to be at the club?
A No.
Q And he was bothering you that evening wasn't he?
A Yes, sir.
Q As a matter of fact, you were trying to go to the bathroom and he was just bothering you and he disrupted the entire thing, I think was the word you used?
A Yes, sir.
Q He was basically harassing you that evening?

A Yes, he was.
Q And you told him that. He started telling about all this stuff, I think you told him you didn't want any of that BS; is that what you told him?
A Yes.
Q You agree with me?
A Yes.
Q All right. So when all that was going on between you and Charlie, this guy who you describe as a guy named something like T; he approached you, right?
A No.
Q Well, he asked you to dance?
A Yeah.
Q All right. And he was trying to talk with you; correct?
A I mean, he asked me to dance.
Q Yeah, he asked you to dance and he was trying to talk to you, and Charlie got mad, did he not?
A Yeah.
Q Charlie was the one that got mad?
A Yeah.
Q Charlie even said he was going to knock his ass out?
A Yes.
Q Isn't that right, and you wanted his mother to come over and calm him down?

A Yes.
Q But it didn't calm him down?
A No.
Q He was the aggressor in that situation, he was provoking the whole thing wasn't he?
A I guess.
Q All right. And he threw a drink in this guy's face?
A Yes.
Q And that's when everything went crazy; is that right?
A Yes.
Q Now, you said you were holding Brian back and Brian said something about that was his home boy?
A Yes.
Q Was he referring to this particular guy named T?
A Yes.
Q All right, so that's clear?
A Yes.
Q When all this was going on didn't someone in the club say someone's fixing to shoot?
A Yes.
Q In the club --
A Yes.
Q -- you heard that comment that someone was fixing to shoot?
A Yes.

Q That was not outside, that was not when you went outside?
A I know the shots was already fired before I got outside.
Q But somebody in the club said that somebody is fixing to shoot?
A Yes.
Q That was inside the club?
A Yes.
Q And when you got out you heard a number of shots; you don't know how many?
A No.
Q You don't know how many guns were being used?
A No.
Q But there were a number of shots that were being fired, and they were coming from your left; is that correct?
A Yes.

MR. SWERLING: That's all I have, Your Honor.

MS. SHIPLEY: I have a question, Your Honor.

THE COURT: Sure.

JALICCA JOHNSON - REDIRECT EXAMINATION

BY MS. SHIPLEY:

Q On Page 4 of your statement do you recall being asked who was left in the club by the investigators? The very first question on Page 4. Question: Who else was in the bar

when you left?
A Yes.
Q Okay. What was your answer?
A Well, what I can remember -- I don't know what I told them, but I know Brian, Taurus, Chris -- it was a handful of people in there.
Q Okay. So your answer was, Brian, Chris, and a handful of people; correct?
A I just told you who was in there.
Q Okay. On your statement on June 30th your answer was Brian, Chris and a handful of people; correct?
A I just said Brian, Taurus, Chris --
Q I know you're saying that now, but on June 30, 2007, isn't it true you answered.
A That's what I told him. I don't know why it's not in there but that's what I told him.
Q Okay. And you were given an opportunity to review this statement --
A Yeah, yesterday.
Q -- before you signed it? Before you signed it on June 30?
A I mean, I guess. I don't even remember signing it.
Q So you don't mention Taurus Watts in the written portion; correct -- in the writing his name is not in this statement, correct?

A It's not in the statement, no.

MS. SHIPLEY: Okay. No further questions, Your Honor.

THE COURT: Okay.

MR. SWERLING: I just have one follow up.

JALICCA JOHNSON - RE-CROSS EXAMINATION

BY MR. SWERLING:

Q What you're saying is the last thing you remember before you got your keys is that they were in the club?

A Yes, sir.

Q But you don't know where Brian or T was when you got your keys and exited the club; isn't that true?

A True.

THE COURT: Anything further from anyone else?

MS. JOHNS: No, Your Honor.

THE COURT: Okay. I'll remind you not to discuss the case and I'll meet you all at 9:30. I hope the juror makes it to her appointment.

Please leave your note pads in the jury room. That room will be secured.

(Jury out at 5:50 p.m.)

THE COURT: Anything from the attorneys?

MS. JOHNS: Not from Watts, Your Honor.

THE COURT: Okay.

All right. We'll see you at 9:30. I'm always here

early, if anything comes up let me know, but let's try to start promptly at 9:30.

(Court in recess for the evening at 5:52 p.m.)

CERTIFICATE

I, THE UNDERSIGNED HILDA M. JORDAN, CVR, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 6TH DAY OF OCTOBER, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

Hilda M. Jordan

HILDA M. JORDAN, CVR

COLUMBIA, SOUTH CAROLINA

MAY 23, 2010

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)

STATE OF SOUTH CAROLINA)
)
PLAINTIFF,)
) 07-GS-40-5913
VS.) 07-GS-40-5914
)
TREMAINE WRAY AND TAURUS WATTS,)
)
DEFENDANT.) VOLUME 3
)
)

OCTOBER 7, 2009
COLUMBIA, SOUTH CAROLINA

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE MICHELLE CHILDS, JUDGE, AND A JURY

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

ATTORNEYS FOR THE STATE:
VANESSA SHIPLEY, ESQUIRE
JOANNA MCDUFFIE, ESQUIRE

ATTORNEY FOR DEFENDANT WRAY
JACK SWERLING, ESQUIRE
ARIE BAX, ESQUIRE

ATTORNEY FOR DEFENDANT WATTS
THERESA JOHNS, ESQUIRE

HILDA M. JORDAN, CVR
CIRCUIT COURT REPORTER

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MS. SHIPLEY: We have the video all ready.

THE COURT: Mr. Swerling informed me.

Bring the jury in.

(Jury in at 9:39 a.m.)

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

THE COURT: Good morning, ladies and gentlemen of the jury. Sorry for the slight delay, but we did have a couple of technical difficulties, although we played our equipment and everything was fine, but we had a glitch. So we had to try it out again before we showed you some information this morning. But we are really to proceed, and our full attention is directed to you and hopefully you'll do the same with respect to the parties.

State, you may call your next witness.

MS. SHIPLEY: Thank you, Your Honor. State would call Brian Johnson to the stand.

THE CLERK: Place your left hand on the Bible and raise your right hand.

(WHEREUPON, Brian Johnson was sworn to tell the truth.)

THE CLERK: Thank you. Have a seat in the witness stand. Give the court reporter your name.

MR. JOHNSON: Brian Johnson.

BRIAN JOHNSON - DIRECT EXAMINATION

BY MS. SHIPLEY:

Q Mr. Johnson, can you tell the jury where you're from?
A Columbia, South Carolina.
Q And where do you live?
A Off of Farrow Road.
Q What street do you live on?
A Briancliff.
Q And how long have you lived there?
A About 21 years.
Q And what's the name of your subdivision?
A Washington Heights.
Q Washington Heights. Do you know Lisa Johnson?
A Yes.
Q Is she a neighbor of yours?
A Yes.
Q How long have you known Lisa Johnson?
A Probably about 10, 15 years.
Q Do you frequent the H&J club on Hardscrabble Road?
A Yes.
Q How often do you think you've gone there?
A Pretty often.
Q Over how many years?
A About six or seven years.
Q Are you familiar with the owner of the pub?
A Yeah.
Q And what's his name?

A Rick.
Q Rick. Also known as Ricky Jacobs?
A Yes.
Q And can you tell the jury a little bit about this club, do you know the other customers that frequent this club?
A Yeah. I know a lot of them.
Q And do they all reside in the same neighborhood or area of the club?
A Same area.
Q And is Ricky Jacobs, everybody familiar with Ricky Jacobs as the owner?
A If they stay 'round the area.
Q Okay. Now, do you know Taurus Watts?
A Yes.
Q And how do you know him?
A He's a friend from the neighborhood.
Q And what about Tremaine Wray?
A Yes.
Q And how long have you known Tremaine and Taurus?
A All my life.
Q Okay. And do they frequent the H&J club?
A Yes.
Q I'm going to bring your attention to June 30, 2007. Do you recall being at the H&J club that night?
A Yes.

Q And the early morning hours of June 30th?
A Yes.
Q Can you tell the jury is you were involved in an altercation that night?
A Yes.
Q And tell the jury what your role was in that altercation?
A Just breaking it up.
Q What started the fight?
A Somebody threw a drink in my friend's face.
Q It wasn't your face?
A No.
Q What was your friend's name?
A Darius.
Q Darius what?
A White
Q Darius White?
A Yeah.
Q What did he look like?
A Short, brown skin, low haircut.
Q What kind of shirt was he wearing?
A I don't know.
Q You can't remember?
A Don't remember.
Q What were you wearing?

A Don't remember.
Q And was your hair in dread locks that day?
A Yeah.
Q And you're indicating that the drink was thrown on Darius White?
A Yes.
Q What when you saw -- is Darius White your friend?
A Yes.
Q Did you know who threw the drink on him?
A No.
Q Had you ever seen that person before?
A No.
Q When you saw that person throw a drink on your friend, Darius White, what did you do next?
A Just stepped between them.
Q And did you get involved in the fight at that point?
A No.
Q Did you throw any punches?
A No.
Q How long did it take for you to get the fight to break apart?
A Once I stepped between them everything just went crazy, so I just stepped out the way.
Q And when you say everything went crazy, what do you mean by that?

A Everybody just start tussling and fighting.
Q And would that be other people from the bar?
A Yeah.
Q And the people that were with the individual that threw the drink?
A Yes.
Q Did you see a woman get hit in the face and knocked down unconscious?
A No.
Q And did you see Lisa Johnson involved in this situation or in the midst of the fight?
A At the beginning.
Q At the beginning?
A Yeah.
Q And do you recall if Ms. Johnson tried to pull you back?
A No, ma'am.
Q You don't remember that?
A No.
Q Did you ever come out of your t-shirt?
A No.
Q Did you see Taurus Watts and Tremaine Wray that night?
A No.
Q You did not see them?
A No.

Q Did you talk to either one of them that night?
A I talked to Tremaine earlier that day.
Q Earlier that day?
A Yeah.
Q But I'm talking about that night?
A No.
Q Did you talk to anybody?
A No.
Q How long were you there at the club before the fight started?
A About 20 minutes.
Q What did you do after the fight finished?
A Stayed in the club.
Q And did you hear any shots fired?
A Yes.
Q Where were you when you heard the shots fired?
A In the club.
Q How long did you stay in the club after the shots were fired?
A About 10, 20 minutes.
Q Did you remain for the police?
A No.
Q And where did you go from the club?
A Home.
Q Did you ever go out on the patio?

A No.
Q How many people do you think were in the club that night when the fight broke out?
A Twenty or more.
Q And what is your cell phone number?
A 269.5796.
MS. SHIPLEY: Beg the Court's indulgence.
BY MS. SHIPLEY:
Q And you've been convicted of malicious injury to personal property over $1,000 and assault and battery of a high and aggravated nature from April 14, 2005; correct.
A Yes.
Q And you've also been convicted on September 25, 2008, of distribution of crack cocaine; correct?
A Yes.
Q And also a possession of ecstasy on December 11, 2008?
A Yes.
Q I'm going to show you State's No. 14, and ask you if you see any pictures of yourself in this lineup?
A Yes.
Q And which one is you?
A That one right there. (Indicating.)
Q Is that number four?
A Yes.
Q Okay. After this incident were you allowed to go back

to the H&J bar?
A No.
Q You were banned from the bar; correct?
A Yes.
Q Thank you, Mr. Johnson.
MS. SHIPLEY: I have no further questions, Your Honor.
THE COURT: Okay.
BRIAN JOHNSON - CROSS EXAMINATION
BY MR. SWERLING:
Q Mr. Johnson, I just have a couple of follow up. Do you remember what time you got to the club?
A No, sir. I know it was late.
Q And as I understand you frequented the club?
A Yes, sir.
Q And this particular night there was a group of people, particularly the people who got involved in the fight, you did not know who they were?
A No.
Q Is that right?
A Yeah.
Q The -- someone threw a drink at your friend, Darius White, and then Darius White and that person got in a fight?
A He really didn't even get a chance to do nothing. The club, you know what I'm saying, just went crazy.

Q And so a number of people in the club got in the fight and you stepped out after you tried to break it up; is that your testimony?
A Yeah.
Q Okay. You said that you did not see Tremaine Wray and Taurus Watts in the club that night; is that correct?
A No.
Q Had they been in the club you would have been able to see them; isn't that correct?
A Yes.
Q It's not that big a place?
A Right.
Q All right. When this fighting broke out, isn't it true that somebody in the group, somebody mentioned something about somebody pulling a gun inside?
A Yes.
Q And do you know who said, he's got a gun?
MS. SHIPLEY: Objection, hearsay.
MR. SWERLING: I don't think it's hearsay under the circumstances, an excited utterance under Rule 801(1)2.
THE COURT: Lay a foundation.
BY MR. SWERLING:
Q This was a melee going on, correct, it was a fight?
A Yeah.
Q Everybody was fighting, a number of people were

fighting?
A Yeah.
Q You stepped out of the fight?
A Yeah.
Q Okay. And in your presence, during the -- was that an upsetting situation --
A Yeah.
Q -- obviously, with a fight?
A Yeah.
Q And if someone had yelled out something about a gun would that have gotten your attention?
A Yes.
Q Would that have concerned you?
A Yes.
Q And when you heard something like that, did it concern you?
A Yes.
Q And what did that person say?
A (No response.)
Q The person you heard yell out something about a gun?
A I just heard, you know what I'm saying, somebody got a gun.
Q Do you know who it was that said that?
A No.
Q But it was clear that somebody did say that?

A Yeah.
Q This was during the fight?
A Yes.
Q Is that one of the reason why you stepped out of the --
A I stepped out from the beginning.
Q You stepped out from the beginning. All right. Thank you.

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

BRIAN JOHNSON - CROSS EXAMINATION

BY MS. JOHNS:

Q Mr. Johnson, do you have a nickname?
A B.
Q B. What's Darius White's nickname?
A Boo.
Q Okay. Now, the solicitor pointed out for the jury that you have a history of -- well, a drug conviction for is it cocaine, something like that?
A Yeah.
Q And what year was that?
A '08.
Q All right. Now, going back to 2007, you said you were a frequent patron of the club; that's right?
A Yes.
Q How frequently?
A Every other weekend.

Q Okay. And when you would go up there every other weekend would you partake in drinking alcohol?
A Yes.
Q Did you partake in doing drugs?
A No.
Q Okay. Did you ever see anybody in there use drugs?
A No.
Q Were you dating Lisa Johnson at the time?
A No.
Q Had you had a relationship with her?
A No.
Q You say you've known Taurus all your life, right?
A Yes.
Q All right. What did he look like that night?
A I can't remember. The same.
Q What kind of haircut did he have?
A I can't remember.
Q Do you remember whether or not he had dread locks?
A I don't think he had them no more.
Q Okay. Okay. He didn't have them no more. Are you familiar with the term, twists?
A Yes.
Q Did he have a low haircut or did he have twists, in your opinion?
A Low haircut.

Q You did know him at a time when he did have dreads, right?
A Yes.
Q And that was before June 30, 2007, right?
A Yes.
Q You mentioned to the solicitor on her questions that you'd been banned from the bar; is that correct?
A Yes.
Q Who banned you from the bar?
A Rick.
Q Now, there was a time subsequent to this event in June or July of 2007, where you did go back to the bar; do you remember that?
A No.
Q You don't remember going to the bar when they were having a private party, and that's when Rick told you you couldn't come in.
A No. I heard it from the street saying I can't come back.
Q Did you ever confirm that with Ricky?
A No.
Q Now, do you know Taurus's mother?
A Yes.
Q Okay. And how long has this convenience store, food mart, pub, and nightclub; how long have you known that to be

in the neighborhood?
A All my life.
Q Have you ever known Taurus's mother to work there?
A Yes.
Q Do you remember what she did there?
A Cook.
Q And they also served food there then, called Granny's Kitchen or Granny's Home Cooking?
A Yes.
Q And while Ms. Watts was a cook do you remember how old you might have been at the time?
A Probably in my early 20s.
Q And how old are you now?
A Twenty-nine.
Q So at the time this happened you were 27?
A Yeah.
Q Two years ago?
A Yeah.
Q Do you know Ricky Jacobs, Jr., Ricky Jacobs father?
A Mr. Jacobs?
Q Yes.
A Yes.
Q Does he still run that place, sort of?
A I don't know. I don't even go up there no more.
Q When you were going up there did you see Ricky Jacobs

father in there?
A Yes.
Q Okay. Did he run the convenience store?
A Yes.
Q Did he also run the kitchen?
A I'm not sure.
Q Did Ricky, the guy in this case, who people call the club owner now, was he also working there at the time?
A Yes.
Q If it fair to say that Ricky Jacobs was working there at the same time that Ms. Watts was working there?
A Yes.
MS. JOHNS: One moment, please.
BY MS. JOHNS:
Q Now, back to the incident. You heard somebody shout out, somebody's got a gun?
A Yes.
Q Did you see a gun in that club that night?
A Yes.
Q Did you see who might have been holding that gun?
A Somebody with the other group.
Q Was it a male or a female?
A Male.
Q Can you describe him for me?
A I can't describe him?

Q Do you know if he was black or white?
A Black.
Q Do you know if he had dreads, twists, or a low haircut?
A Can't remember.
Q Do you know how tall he was?
A Probably about five-eight or a little taller.
Q Do you know about how much he would weigh?
A (No response.)
Q How tall are you, Mr. Johnson?
A How am I?
Q I'm sorry. How tall are you?
A Six-six.
Q And how much do you weigh?
A 185.
Q Now, had you seen or had an opportunity to see a gun in the club before this day?
A No.
Q Okay. Do you know about the alleged security system that they have at this club?
A Yes.
Q Tell me about that?
A They got the little wand.
Q Okay. And who works the door; who worked the door on that night, do you remember?
A I don't know the name.